



Queensland

Property Agents Bill 2010



Queensland

Property Agents Bill 2010

Contents

Part 1	Preliminary	
Division 1	Introduction	
1	Short title	16
2	Commencement	16
3	Act binds all persons	16
Division 2	Exemptions	
4	Particular auctions	16
5	Administrators, liquidators, controllers and receivers	17
6	Financial institutions and trustee companies	18
7	Non-profit corporations	18
Division 3	Objects of Act	
8	Objects	19
Division 4	Interpretation	
9	Definitions	21
10	Meaning of beneficial interest	21
11	Meaning of completes a residential property sale	24
12	Meaning of in charge	25
13	Meaning of open listing	25
14	Meaning of residential property	26
15	Meaning of unsolicited invitation	27
16	Difference between exclusive agency and sole agency	28
Part 2	Licensing	
Division 1	Categories of licence	
17	Categories of licence	29
Division 2	Limited property agent licence	
18	Limited property agent licence	29
Division 3	How to obtain a licence	
19	Steps involved in obtaining a licence	29

Contents

Division 4	Applications for licence	
20	Application for licence.	30
21	Applicant must state business address	31
22	Special provision for applicant for resident letting agent licence	32
23	Requirement to give information or material about application	32
24	Applicant intending to carry on business to advise name of auditor	33
Division 5	Suitability of applicants and licensees	
25	Suitability of applicants and licensees—individuals	33
26	Suitability of applicants and licensees—corporations	34
27	Chief executive must consider suitability of applicants and licensees	34
28	Public trustee is a suitable person	36
29	Chief executive of department is a suitable person	36
30	Defence Housing Australia is a suitable person	36
31	Investigations about suitability of applicants and licensees	36
32	Costs of criminal history report.	37
33	Confidentiality of criminal history	38
34	Requirement to give chief executive information or material about suitability.	39
Division 6	Eligibility for licence	
Subdivision 1	Property agent licence	
35	Eligibility for property agent licence	39
Subdivision 2	Resident letting agent licence	
36	Eligibility for resident letting agent licence	40
Subdivision 3	Chief executives and particular corporation sole	
37	Public trustee is eligible to obtain licence.	42
38	Chief executive of department is eligible to obtain licence.	42
39	Defence Housing Australia is eligible to obtain licence	42
Division 7	Issue of licences	
40	Chief executive may issue or refuse to issue licence	43
41	Licence—public trustee	44
42	Licence—chief executive of department.	45
43	Licence—Defence Housing Australia	45
44	Licence—conditions	45
Division 8	Restrictions on performing activities under licences	
45	Restriction—corporations.	46

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

Contents

69	Replacement licences	65
70	Register of licences	65
71	Licensees to notify chief executive of changes in circumstances.	67
Part 3	Property agents	
Division 1	Property agents' authorisation and responsibility	
72	What a property agent licence authorises	67
73	Responsibility for acts and omissions of salespersons	68
Division 2	Conduct provisions	
Subdivision 1	Carrying on business	
74	Carrying on of business under property agent licence	69
75	Licensee to be in charge of a property agent's business at a place	69
Subdivision 2	Appointment	
76	Appointment of property agent—general	71
77	Form of appointment	73
78	Pre-appointment advice about types of appointment	73
79	Appointment of property agent—sole and exclusive agencies.	74
80	Proposal for assignment of appointments	75
81	Restriction on reappointment of property agents for sales of residential property.	75
82	Form of reappointment	76
83	When appointments and reappointments are ineffective	76
Subdivision 3	Disclosure of interest	
84	Disclosures to prospective buyer	77
Subdivision 4	Auctions of goods	
85	Buyer's premium.	78
Subdivision 5	Recovery of reward or expense	
86	Commission may be claimed only for actual amounts	79
87	Restriction on recovery of reward or expense—no proper authorisation etc.	80
88	Restriction on recovery of reward or expense above amount allowed	80
89	Excess commission etc. to be repaid.	81
Subdivision 6	Interests in property	
90	Definition for sdiv 6.	81
91	Beneficial interest—options	82
92	Beneficial interest—other than options.	82

93	Return of beneficial interest if in form of commission.	83
Subdivision 7	Lands not lawfully useable for residential purposes	
94	Definition for sdiv 7	84
95	Application of sdiv 7	84
96	Notice to be given about vacant land	84
97	Buyer's rights if notice not given or materially defective	85
98	Liability to punishment under s 96 or 97 additional to other liabilities at law	87
Subdivision 8	Sales of particular businesses	
99	Application of sdiv 8	87
100	Notice to be given about sale of resident letting agent's business	87
Subdivision 9	Auctions of goods	
101	Buyer's premium.	88
Subdivision 10	Code of conduct	
102	Code of conduct	89
103	Complaints about conduct and action chief executive may take	90
Division 3	General	
104	Registered office	90
105	Property agent must notify chief executive of change in place of business etc.	91
106	Display and publication of licensee's name	91
107	Principal licensee must keep employment register	92
Division 4	Offences	
108	Acting as property agent	93
109	Pretending to be property agent salesperson	94
110	Property agent must not act for more than 1 party.	95
111	Production of licence or registration certificate.	95
112	Employment of persons in real estate business	96
Part 4	Resident letting agents	
Division 1	Resident letting agent licence	
113	What a resident letting agent licence authorises	97
Division 2	Conduct provisions	
Subdivision 1	Carrying on business	
114	Carrying on of business under resident letting agent licence.	98
115	Licensee to be in charge of a resident letting agent's business at a place	99

Contents

Subdivision 2	Appointment	
116	Appointment of resident letting agent	100
117	Form of appointment	102
118	Assignment of appointments	102
Subdivision 3	Recovery of reward or expense	
119	Commission may be claimed only for actual amounts	103
120	Restriction on remedy for reward or expense.	103
121	Excess fees etc. to be repaid	104
Subdivision 4	Code of conduct	
122	Code of conduct	105
123	Complaints about conduct and action chief executive may take	105
Division 3	General	
124	Registered office	106
125	Resident letting agent to notify chief executive of change in place of business etc.	106
126	Display and publication of licensee's name	107
127	Principal licensee must keep employment register	108
128	Access to particular documents	108
Division 4	Offences	
129	Acting as resident letting agent	109
130	Resident letting agent must not act for more than 1 party	110
131	Production of licence	110
Part 5	Employee registration as a property agent salesperson	
Division 1	Registered employees' authorisation	
132	What a registration certificate authorises	110
Division 2	How to obtain registration	
133	Steps involved in obtaining registration	111
Division 3	Applications for registration	
134	Application for registration	111
135	Requirement to give chief executive information or material about application	112
Division 4	Suitability of applicants	
136	Suitability of applicants	112
137	Chief executive must consider suitability of applicants.	113
138	Investigations about suitability of applicants.	114
139	Costs of criminal history report.	115

140	Confidentiality of criminal history	115
141	Requirement to give chief executive information or material about suitability	116
Division 5	Eligibility for registration	
142	Eligibility for registration as property agent salesperson	116
Division 6	Issue of registration certificate	
143	Chief executive may issue or refuse to issue registration certificate	117
144	Registration certificate—conditions	118
Division 7	Renewal and restoration of registration certificates	
Subdivision 1	Renewal	
145	Application for renewal	119
146	Chief executive may renew or refuse to renew registration certificate	119
147	Registration certificate taken to be in force while application for renewal is considered	120
Subdivision 2	Restoration	
148	Application for restoration	120
149	Chief executive may restore or refuse to restore registration certificate	121
150	Registration certificate taken to be in force while application for restoration is considered	122
Division 8	Dealings with registration certificates	
Subdivision 1	Transfer of registration certificate	
151	Transfer of registration certificate prohibited	122
Subdivision 2	General	
152	Amendment of registration certificate conditions	122
153	Return of registration certificate for amendment of conditions . . .	124
154	Surrender of registration certificate	124
Division 9	Immediate suspension and cancellation of registration certificates	
155	Immediate suspension	124
156	Immediate cancellation	125
Division 10	General provisions about employee registration	
157	Form of registration certificate	126
158	Term of registration certificate	126
159	Replacement certificates	126
160	Register of registration certificates	127

Contents

161	Property agent salespersons to notify chief executive of changes in circumstances.	128
Part 6	Residential property sales	
Division 1	Preliminary	
162	Purposes of pt 6.	128
163	Definitions for pt 6.	129
164	Relationship with Electronic Transactions (Queensland) Act 2001	131
Division 2	Independence of lawyers, disclosure of interests, and particular valuations	
165	Lawyer's disclosure to buyer about independence.	131
166	Disclosures to prospective buyer	132
167	Buyer to receive copy of property valuation buyer pays for	133
Division 3	Warning statements for proposed relevant contracts and relevant contracts	
168	Content and effectiveness of warning statement	134
169	Warning statement etc. if proposed relevant contract is given to buyer for signing	135
170	Defence for s 169(6).	137
171	Warning statement must be attached to relevant contract	137
Division 4	Waiving and shortening cooling-off periods	
172	Cooling-off period.	138
173	Waiving cooling-off period	139
174	Shortening cooling-off period	139
Division 5	Terminating relevant contracts	
175	Buyer may terminate relevant contract in certain circumstance if clear statement is not given under s 169(2)(c)(i)	140
176	Terminating relevant contract during cooling-off period	141
Division 6	Accounting requirements for relevant contracts	
177	Application of div 6.	142
178	Part payments must be paid to particular persons.	142
179	Part payment to be held in trust	143
Division 7	Advertising sale of particular properties—sustainability declarations	
Subdivision 1	Preliminary	
180	Definitions for div 7.	144
Subdivision 2	Requirements about advertising sale, and inspection, of residential dwellings	
181	Application of sdiv 2.	145

182	Requirements about advertising sale of residential dwelling	145
183	Requirements about inspection of residential dwelling	146
184	Requirement to give copy of sustainability declaration.	147
185	Breach of obligation does not give rise to civil right or remedy . .	147
Subdivision 3	Publishing or giving incomplete or false or misleading sustainability declaration	
186	Application of sdiv 3	147
187	No right to terminate contract for publishing or giving declaration	148
188	Publishing or giving declaration does not contravene particular provisions	148
Part 7	Trust accounts	
189	Opening and maintaining trust accounts	148
Part 8	Claims against the fund	
Division 1	Preliminary	
190	Definitions for pt 8.	149
191	What is the purchase of a non-investment residential property . .	150
Division 2	Claims against the fund	
192	Claims	150
193	Persons who can not claim.	151
194	Claims limited to realised loss	152
Part 9	Jurisdiction of QCAT	
195	Definitions for pt 9.	152
196	Jurisdiction	153
Part 10	Proceedings	
Division 1	Disciplinary proceedings	
197	Grounds for starting disciplinary proceedings	153
198	Starting disciplinary proceedings	155
Division 2	Marketeer proceedings	
199	Grounds for starting marketeer proceeding	156
200	How to start a proceeding	156
Division 3	Review proceedings	
201	Person dissatisfied with chief executive's decision may seek review	156
202	Stay of operation of decisions	157
203	QCAT may extend time.	157

Contents

Division 4	Proceedings generally	
Subdivision 1	Reference committee	
204	Reference committee	157
205	Reference committee functions	158
206	Reference committee may authorise application for public examination	158
Subdivision 2	Public examinations	
207	QCAT may conduct public examination	159
208	Procedure before public examination starts	159
209	Person must answer particular questions.	160
Subdivision 3	Stopping particular conduct	
210	Stopping particular conduct	161
Subdivision 4	QCAT's orders	
211	Orders QCAT may make on disciplinary hearing	162
212	Stopping contraventions	163
213	Orders QCAT may make in a marketeer proceeding	164
214	Criteria for deciding amount to be ordered.	166
Subdivision 5	Chief executive's right of appeal	
215	Appeal	167
Part 11	Injunctions, undertakings, preservation of assets and civil penalties	
Division 1	Injunctions	
216	Injunctions	168
217	Who may apply for injunction	168
218	Grounds for injunction	168
219	Court's powers for injunctions	169
220	Terms of injunction	169
221	Undertakings as to costs	170
Division 2	Undertakings	
222	Chief executive may seek undertaking after contravention	170
223	Undertaking about other matter	171
224	Variation and withdrawal of undertakings.	171
225	Enforcement of undertakings	172
226	Register of undertakings	172
Division 3	Preservation of assets	
227	Powers of court for preservation of assets	173

Division 4	Civil penalties and compensation orders for particular contraventions	
228	Application of div 4	175
229	Application for order imposing civil penalties	175
230	Orders District Court may make	175
231	Criteria for deciding amount to be ordered	177
Part 12	General contraventions, evidentiary matters and legal proceedings	
Division 1	General contraventions	
232	Wrongful conversion and false accounts	178
233	Misleading conduct	179
234	Unconscionable conduct	179
235	False representations and other misleading conduct relating to residential property	181
236	Application of ss 234, 235 and 236	183
237	Offensive conduct relating to residential property	183
238	False representations about property	184
239	Representation of price of property to seller—property agent	185
240	Property agent not to indicate reserve or other price to bidder	186
241	Representation of price of property—property agent	187
242	Property agent not to indicate reserve price to potential buyer	188
243	Chief executive's power to ask for substantiation of representations made by licensees or property agent salespersons	189
244	Chief executive to ask for substantiation of representations made by marketeers	189
245	Offence to charge fee for providing documents etc.	190
246	Offence to ask for, or receive, excess or improper remuneration	190
247	Offence to lend or borrow licence	191
248	False or misleading statements	192
249	False or misleading documents	192
250	Prohibited practices	192
Division 2	Evidentiary matters	
251	Evidentiary provisions	193
252	Entries in licensee's documents	194
Division 3	Proceedings	
253	Proceedings for an offence	194
254	Responsibility for acts or omissions of representatives	196

Contents

255	Executive officers must ensure corporation complies with Act. . .	197
256	Power of court	198
257	Power of court for particular offences.	198
258	Allegations of false or misleading representations or statements etc.	199
Part 13	General	
259	Public warning statements	199
260	Civil remedies not affected	200
261	Criminal Proceeds Confiscation Act 2002 not limited.	200
262	Delegation—chief executive	200
263	Approved forms	201
264	Review of Act	201
265	Regulation-making power.	201
Part 14	Repeal	
266	Repeal	202
Part 15	Transitional and saving provisions	
Division 1	Preliminary	
267	Definitions for pt 15.	202
Division 2	Transitional provisions	
Subdivision 1	Licences and registration certificates	
268	Existing licences.	203
269	Existing registration certificates	205
270	Expiry of particular licences and certificate	207
271	Existing applications.	207
272	Restoration of expired existing licences	209
273	Restoration of expired existing registration certificates	210
274	Previous refusals of applications	211
275	Deactivated existing licences	212
276	Suspended existing licences and existing registration certificates	213
Subdivision 2	Miscellaneous provisions	
277	Existing appointments	214
278	Disciplinary action relating to pre-commencement conduct.	216
279	Marketeer proceeding relating to pre-commencement conduct. . .	216
280	Continuation of reviews under the repealed Act.	217
281	Injunctions relating to pre-commencement conduct.	217
282	Undertakings relating to pre-commencement conduct.	218

Contents

283	Proceedings for particular offences under repealed Act.	219
284	Existing infringement notice offences.	220
285	Existing delegations	220
286	Reference committee—marketeters	220
287	Existing registers	221
288	Existing fines and fees	221
289	Return of beneficial interest if in form of commission.	222
290	Buyer's rights if notice about land is not given under repealed Act or is materially defective.	222
291	Transitional regulation-making power	222
Division 3	Savings provision for repealed Act	
292	Saving of enforcement provisions	223
Part 16	Minor and consequential amendments	
293	Minor and consequential amendments	224
Schedule 1	Decisions subject to review	225
Schedule 2	Minor and consequential amendments	226
Part 1	Amendments of this Act	
Part 2	Other amendments	
	Body Corporate and Community Management Act 1997.	226
	Building Act 1975	228
	Building Units and Group Titles Act 1980.	228
	Integrated Resort Development Act 1987	228
	Land Sales Act 1984	228
	Legal Profession Act 2007	229
	Personal Property Securities (Ancillary Provisions) Act 2010 . . .	230
	Retirement Villages Act 1999.	230
	Sanctuary Cove Resort Act 1985.	231
	Second-hand Dealers and Pawnbrokers Act 2003.	231
	South Bank Corporation Act 1989	232
Schedule 3	Dictionary	233

2010

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, and to make minor and consequential amendments of the *Body Corporate and Community Management Act 1997*, the *Building Act 1975*, the *Building Units and Group Titles Act 1980*, the *Integrated Resort Development Act 1987*, the *Land Sales Act 1984*, the *Legal Profession Act 2007*, the *Personal Property Securities (Ancillary Provisions) Act 2010*, the *Retirement Villages Act 1999*, the *Sanctuary Cove Resort Act 1985*, the *Second-hand Dealers and Pawnbrokers Act 2003* and the *South Bank Corporation Act 1989* for particular purposes

[s 1]

The Parliament of Queensland enacts—	1
Part 1 Preliminary	2
Division 1 Introduction	3
1 Short title	4
This Act may be cited as the <i>Property Agents Act 2010</i> .	5
2 Commencement	6
This Act commences on a day to be fixed by proclamation.	7
3 Act binds all persons	8
(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.	9 10 11
(2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.	12 13
Division 2 Exemptions	14
4 Particular auctions	15
(1) Part 3 does not apply to—	16
(a) a sale made under a rule, order, or judgment of the Supreme Court or District Court; or	17 18
(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	19 20 21 22

-
- (c) a sale of an animal lawfully impounded and sold under the *Animal Care and Protection Act 2001* or another 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 Administrators, liquidators, controllers and receivers

- (1) This section applies to—
- (a) a person appointed under the Corporations Act as an administrator of a corporation that is authorised under a licence to perform an activity; or
- (b) a person appointed under the Corporations Act as an administrator of a deed of company arrangement for a corporation that is authorised under a licence to perform an activity; or
- (c) 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
- (d) a person appointed under the Administration Act as a receiver of an entity that is authorised under a licence to perform an activity.

[s 6]

- (2) The person is exempt from the following provisions while performing the activity for any business carried on under the licence in accordance with the conditions applying to the licence—
 - (a) part 3, division 2, subdivision 1;
 - (b) section 76;
 - (c) part 3, division 3;
 - (d) part 4, division 2, subdivision 1;
 - (e) section 116;
 - (f) part 4, division 3.

6 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 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 1
- (b) the providing or locating of the housing or 2
accommodation is funded or managed by the 3
Commonwealth, the State or a local government. 4
- (2) Subsection (1) does not apply if the non-profit corporation is 5
otherwise carrying on the business of a resident letting agent 6
or property agent. 7
- (3) To remove any doubt, it is declared that a corporation does 8
not stop being a non-profit corporation only because it 9
receives a reward for providing its services to another 10
non-profit corporation. 11
- (4) In this section— 12
- affordable housing scheme* see the *Residential Tenancies and* 13
Rooming Accommodation Act 2008, schedule 2. 14
- approved supported accommodation* see the *Residential* 15
Tenancies and Rooming Accommodation Act 2008, schedule 16
2. 17
- non-profit corporation* means a corporation formed for a 18
purpose other than the purpose of making a profit. 19

Division 3 Objects of Act 20

8 Objects 21

- (1) The objects of this Act are— 22
- (a) to provide a system for licensing and regulating persons 23
as property agents or resident letting agents and for 24
registering and regulating persons as property agent 25
salespersons that achieves an appropriate balance 26
between— 27
- (i) the need to regulate for the protection of 28
consumers; and 29
- (ii) the need to promote freedom of enterprise in the 30
market place; and 31

[s 8]

- (b) to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property. 1
2
3
- (2) The objects are to be achieved by— 4
 - (a) ensuring— 5
 - (i) only suitable persons with appropriate qualifications are licensed or registered; and 6
7
 - (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 licence maintain close personal supervision of the way the business is carried on; and 8
9
10
11
12
 - (b) providing— 13
 - (i) protection for consumers in their dealings with licensees and their employees; and 14
15
 - (ii) a legislative framework within which persons performing activities for licensees may lawfully operate; and 16
17
18
 - (c) regulating fees and commissions that can be charged for particular transactions; and 19
20
 - (d) providing protection for consumers in their dealings with marketeers; and 21
22
 - (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 the fund; and 23
24
25
 - (f) providing for the enforcement of matters involving marketeers by QCAT and the District Court; and 26
27
 - (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 28
29
30
31
 - (h) promoting administrative efficiency by providing that— 32

-
- | | |
|--|--------|
| (i) responsibility for licensing rests with the chief executive; and | 1
2 |
| (ii) responsibility for reviewing particular decisions of the chief executive rests with QCAT; and | 3
4 |
| (iii) responsibility for disciplinary matters rests with QCAT. | 5
6 |

Division 4 Interpretation 7

9 Definitions 8

The dictionary in schedule 3 defines particular words used in this Act. 9
10

10 Meaning of *beneficial interest* 11

(1) For this Act, other than section 40(6)(b)(i), a licensee is taken to have a ***beneficial interest*** in property in each of the following cases— 12
13
14

Case 1 15

The purchase of the property is made for the licensee or an associate of the licensee. 16
17

Case 2 18

An option to purchase the property is held by the licensee or an associate of the licensee. 19
20

Case 3 21

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. 22
23
24

Case 4 25

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. 26
27
28

[s 10]

- Case 5 1
- The purchase of the property is made for a corporation of 2
which the licensee or an associate of the licensee is an 3
executive officer. 4
- Case 6 5
- An option to purchase the property is held by a corporation of 6
which the licensee or an associate of the licensee is an 7
executive officer. 8
- Case 7 9
- If the licensee is a corporation, the purchase of the property is 10
made for an executive officer of the licensee or an associate of 11
the executive officer. 12
- Case 8 13
- If the licensee is a corporation, an option to purchase the 14
property is held by an executive officer of the licensee or an 15
associate of the executive officer. 16
- Case 9 17
- The purchase of the property is made for a member of a firm 18
or partnership of which the licensee or an associate of the 19
licensee is also a member. 20
- Case 10 21
- The purchase of the property is made for a person carrying on 22
a business for profit or gain and the licensee or an associate of 23
the licensee has, directly or indirectly, a right to participate in 24
the income or profits of the person's business or the purchase 25
of the property. 26
- (2) For this Act, a property agent salesperson of a licensee is 27
taken to have a *beneficial interest* in property in each of the 28
following cases— 29
- Case 1 30
- The purchase of the property is made for the property agent 31
salesperson or an associate of the salesperson. 32

Case 2	1
The property agent salesperson or an associate of the salesperson has an option to purchase the property.	2 3
Case 3	4
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 salesperson is a member.	5 6 7 8
Case 4	9
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 salesperson is a member.	10 11 12 13
Case 5	14
The purchase of the property is made for a corporation of which the property agent salesperson or an associate of the salesperson is an executive officer.	15 16 17
Case 6	18
An option to purchase the property is held by a corporation of which the property agent salesperson or an associate of the salesperson is an executive officer.	19 20 21
Case 7	22
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 salesperson is an executive officer.	23 24 25
Case 8	26
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 salesperson is an executive officer.	27 28 29 30

[s 11]

Case 9	1
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 salesperson is also a member.	2 3 4
Case 10	5
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 salesperson has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.	6 7 8 9 10

11	Meaning of <i>completes a residential property sale</i>	11
(1)	A person <i>completes a residential property sale</i> if a residential property in which the person has an interest is sold, whether or not a transfer to the purchaser under the sale has been registered.	12 13 14 15
(2)	However, the person is not to be taken to have completed a residential property sale if—	16 17
(a)	the person appointed a property agent to sell the interest in the residential property on the person's behalf and the property agent is the effective cause of the sale; or	18 19 20
(b)	the person held the interest in the residential property as—	21 22
(i)	a personal representative; or	23
(ii)	an administrator under the <i>Guardianship and Administration Act 2000</i> ; or	24 25
(iii)	a beneficiary in, or a trustee of, a deceased person's estate; or	26 27
(iv)	a mortgagee; or	28
(c)	the person is a corporation and the corporation sold the corporation's interest in the residential property to a related body corporate of the corporation; or	29 30 31

(d)	the interest in the residential property is sold under a court order.	1 2
(3)	In this section—	3
	<i>related body corporate</i> means a body that, under the Corporations Act, section 50, is related to the corporation.	4 5
12	Meaning of <i>in charge</i>	6
(1)	A person is <i>in charge</i> 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.	7 8 9 10
(2)	In this section—	11
	<i>licensee’s business</i> means the licensee’s business carried on under the authority of the licensee’s licence.	12 13
13	Meaning of <i>open listing</i>	14
(1)	An <i>open listing</i> is a written agreement entered into between a person (<i>seller</i>) and a property agent (<i>selling agent</i>) under which the seller appoints the selling agent, in accordance with the terms of the agreement, to sell stated property.	15 16 17 18
(2)	Under the agreement—	19
(a)	the seller retains a right—	20
(i)	to sell the seller’s property during the term of the agreement; or	21 22
(ii)	to appoint additional property agents as selling agents to sell the property on terms similar to those under the agreement; and	23 24 25
(b)	the appointed selling agent is entitled to remuneration only if he or she is the effective cause of sale; and	26 27
(c)	the appointment of the selling agent can be ended by either the seller or the selling agent at any time.	28 29

[s 14]

- 14 Meaning of *residential property*** 1
- (1) Property is ***residential property*** if the property is— 2
- (a) a single parcel of land on which a place of residence is 3
 constructed or being constructed; or 4
- (b) a single parcel of vacant land in a residential area. 5
- (2) Without limiting subsection (1), property is ***residential*** 6
property if the property is any of the following lots that is a 7
place of residence or in a residential area— 8
- (a) a lot included in a community titles scheme, or proposed 9
 to be included in a community titles scheme, under the 10
 Body Corporate and Community Management Act 1997; 11
- (b) a lot or proposed lot under the *Building Units and Group* 12
 Titles Act 1980; 13
- (c) a lot shown on a leasehold building units plan registered 14
 or to be registered under the *South Bank Corporation* 15
 Act 1989. 16
- (3) Despite subsections (1) and (2), the following property is not 17
residential property— 18
- (a) a single parcel of land on which a place of residence is 19
 constructed or being constructed if all or part of the land 20
 is used substantially for industry, commerce or primary 21
 production; 22
- (b) a single parcel of vacant land, if— 23
- (i) the property is in a non-residential area; or 24
- (ii) the property is in a residential area, but only if a 25
 local government has approved development for all 26
 or a part of the land, the development is other than 27
 for residential purposes and the approval is current; 28
 or 29
- (iii) all or part of the land is used substantially for 30
 industry, commerce or primary production. 31
- (4) In this section— 32

<i>development</i> see the <i>Sustainable Planning Act 2009</i> , section 7.	1 2
<i>non-residential area</i> means an area other than a residential area.	3 4
<i>planning scheme</i> see the <i>Sustainable Planning Act 2009</i> , section 79.	5 6
<i>residential area</i> means an area identified on a map in a planning scheme as an area for residential purposes.	7 8
<i>residential purposes</i> includes rural residential purposes and future residential purposes.	9 10
<i>vacant land</i> means land on which there are no structural improvements, other than fencing.	11 12

15	Meaning of <i>unsolicited invitation</i>	13
(1)	An <i>unsolicited invitation</i> to a person to attend a property information session includes an invitation—	14 15
(a)	addressed personally to the person and sent to the person's residential, business, postal or email address; or	16 17
(b)	made by telephoning the person, or by another personal approach to the person.	18 19
(2)	An invitation to a person to attend a property information session is not an unsolicited invitation if it is—	20 21
(a)	made at the person's request, other than in response to an approach of a kind mentioned in subsection (1)(b); or	22 23
(b)	made to the public generally or a section of the public by media advertisement; or	24 25
(c)	addressed non-specifically and sent to the person's residential, business, postal or email address.	26 27
	<i>Examples of invitations addressed non-specifically—</i>	28
	• 'The owner'	29
	• 'The householder'	30

[s 16]

- 16 Difference between *exclusive agency* and *sole agency*** 1
- (1) The only difference between an *exclusive agency* and a *sole agency* is the extent of the entitlement of a selling agent to receive an agreed commission or other reward on the sale of particular property. 2
3
4
5
- (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. 6
7
8
9
10
- (3) However, if the sale was subject to a *sole agency*, the selling agent would not be entitled to the commission or other reward if the seller was the effective cause of the sale. 11
12
13
- Example—* 14
- Facts—S is the owner of a place of residence that S appoints R to sell. B buys the place of residence. 15
16
- Assume for the example that in the following cases the following persons are the effective cause of the sale— 17
18
- case 1—R 19
- case 2—X (another property agent) 20
- case 3—M (S's mother) 21
- case 4—S. 22
- 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. 23
24
25
26
27
28
- (4) In this section— 29
- seller*, of property, means the person authorising the sale of the property. 30
31
- selling agent*, of property, means a property agent appointed under a written agreement under this Act by the seller to sell the property. 32
33
34

Part 2	Licensing	1
Division 1	Categories of licence	2
17	Categories of licence	3
	The chief executive may issue the following categories of licence under this Act—	4 5
	(a) property agent licence (real estate agent and auctioneer);	6
	(b) resident letting agent licence.	7
Division 2	Limited property agent licence	8
18	Limited property agent licence	9
(1)	The chief executive may issue a property agent licence (<i>limited property agent licence</i>) 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 licence.	10 11 12 13 14
(2)	A regulation may prescribe—	15
(a)	the activities that may be performed under a limited property agent licence; and	16 17
(b)	the educational requirements for obtaining a limited property agent licence.	18 19
Division 3	How to obtain a licence	20
19	Steps involved in obtaining a licence	21
(1)	A person who wishes to obtain a licence must be a suitable person to hold a licence under division 5.	22 23

[s 20]

- (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 21 and, if the person is required under section 189 to keep a trust account or special trust account, section 24.
- (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

20 Application for licence

- (1) An applicant for a licence must—
 - (a) apply to the chief executive in the approved form; and
 - (b) state the category of licence being applied for; and
 - (c) state the term of the licence being applied for; and
 - (d) establish the applicant's eligibility for the category of licence being applied for; and
 - (e) state the names and addresses of the applicant's business associates; and

-
- (f) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence. 1
2
3
- (2) The application must be accompanied by— 4
- (a) the application fee prescribed under a regulation; and 5
- (b) the licence issue fee prescribed under a regulation; and 6
- (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. 7
8
9
- 21 Applicant must state business address** 10
- (1) The applicant must also state in the applicant's application— 11
- (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 12
13
14
15
- (b) if the applicant does not intend carrying on business under the licence immediately after the issue of the licence— 16
17
18
- (i) the capacity in which the applicant intends performing activities under the licence and the address where the activities are to be performed (*business address*); and 19
20
21
22
- (ii) if the applicant intends to be a person in charge of a licensee's business at a place of business—the name of the applicant's employer and the address of the place of business where the applicant is to be in charge (also a *business address*). 23
24
25
26
27
- Examples of capacity in which activities may be performed—* 28
- person in charge of a corporation's business 29
 - licensed employee of a licensee 30
- Example of business address of an employed licensee—* 31
- the address of the person's employer's place of business where the person generally reports for work 32
33
-

[s 22]

	(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.	1 2 3 4
	(3)	A place of business or an address under this section must be a place where a document can be served personally.	5 6
	(4)	A place of business or an address must not be a post office box.	7 8
22		Special provision for applicant for resident letting agent licence	9 10
	(1)	This section applies to an applicant for a resident letting agent licence for a building complex.	11 12
	(2)	Before the chief executive may issue the licence, the applicant must satisfy the chief executive that the applicant has prescribed approval.	13 14 15
		<i>Note—</i>	16
		See section 40(2)(d).	17
	(3)	In this section—	18
		<i>prescribed approval</i> means—	19
	(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	20 21 22 23 24
	(b)	if the applicant is a corporation—body corporate approval for the corporation to carry on a business of letting lots in the building complex under the authority of a licence.	25 26 27 28
23		Requirement to give information or material about application	29 30
	(1)	This section applies to an applicant for a licence.	31

(2)	The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the applicant's application for the licence.	1 2 3 4 5
(3)	The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.	6 7 8
24	Applicant intending to carry on business to advise name of auditor	9 10
(1)	If the applicant intends carrying on business under a licence and is required under section 189 to keep a trust account or special trust account, the applicant must—	11 12 13
(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	14 15 16
	<i>Note—</i>	17
	See the Administration Act, section 26 (Principal licensee must appoint auditor).	18 19
(b)	give the chief executive evidence that the auditor has accepted the appointment as auditor.	20 21
(2)	In this section—	22
	auditor see the Administration Act, section 25.	23
Division 5	Suitability of applicants and licensees	24 25
25	Suitability of applicants and licensees—individuals	26
(1)	An individual is not a suitable person to hold a licence if the person is—	27 28
(a)	an insolvent under administration; or	29

[s 26]

	(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or	1 2 3
	(c) currently disqualified from holding a licence or registration certificate; or	4 5
	(d) a person the chief executive decides under section 27 is not a suitable person to hold a licence.	6 7
	(2) An individual who is not a suitable person can not hold a licence.	8 9
26	Suitability of applicants and licensees—corporations	10
	(1) A corporation is not a suitable person to hold a licence if an executive officer of the corporation is—	11 12
	(a) an insolvent under administration; or	13
	(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or	14 15 16
	(c) a person the chief executive decides under section 27 is not a suitable person to hold a licence.	17 18
	(2) A corporation that is not a suitable person can not hold a licence.	19 20
27	Chief executive must consider suitability of applicants and licensees	21 22
	(1) The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider all of the following things—	23 24 25
	(a) the character of the person;	26
	(b) the character of the person's business associates;	27
	(c) whether the person held a licence under a relevant Act that was suspended or cancelled under the relevant Act;	28 29

-
- | | | |
|-----|---|--------------------------|
| (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; | 1
2
3 |
| (e) | whether the person has been disqualified under a relevant Act from being the holder of a licence within the meaning of the relevant Act, or an executive officer of a corporation; | 4
5
6
7 |
| (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; | 8
9
10
11
12 |
| (g) | for an individual— | 13 |
| | (i) the person's criminal history; and | 14 |
| | (ii) whether the person has been an insolvent under administration; and | 15
16 |
| | (iii) whether the person has been convicted of an offence against a relevant Act or the Administration Act; and | 17
18
19 |
| | (iv) whether the person is capable of satisfactorily performing the activities of a licensee; and | 20
21 |
| | (v) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act; | 22
23
24 |
| | <i>Note—</i> | 25 |
| | See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers). | 26
27 |
| (h) | for a corporation— | 28 |
| | (i) whether the corporation has been placed in receivership or liquidation; and | 29
30 |
| | (ii) whether an executive officer of the corporation has been an insolvent under administration; and | 31
32 |
-

[s 28]

	(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	1 2 3
	(iv) whether each executive officer of the corporation is a suitable person to hold a licence;	4 5
	(i) another thing the chief executive may consider under this Act.	6 7
(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 about the decision within 14 days after the decision is made.	8 9 10 11
(3)	In this section—	12
	<i>fund</i> includes the claim fund under the repealed Act.	13
	<i>relevant Act</i> means this Act, an Agents Act, the repealed Act or a corresponding law.	14 15
28	Public trustee is a suitable person	16
	The corporation sole called The Public Trustee of Queensland is taken to be a suitable person to hold a licence.	17 18
29	Chief executive of department is a suitable person	19
	The chief executive of a department is taken to be a suitable person to hold a licence.	20 21
30	Defence Housing Australia is a suitable person	22
	Defence Housing Australia is taken to be a suitable person to hold a licence.	23 24
31	Investigations about suitability of applicants and licensees	25 26
(1)	The chief executive may make investigations about the following persons to help the chief executive decide whether	27 28

[s 32]

-
- 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 55(3) or 56(4).

32 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 31 about—
- (a) the applicant or licensee; or
 - (b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person

[s 33]

- with whom the applicant or licensee intends carrying on, 1
or carries on, business in partnership or in conjunction; 2
or 3
- (c) if the applicant or licensee is a corporation—the 4
corporation’s executive officers; or 5
- (d) a business associate of the applicant or licensee; or 6
- (e) if the applicant has made an application under section 7
55(3) or 56(4)—the person nominated by the applicant 8
under section 55(3) or 56(4). 9
- (2) The requirement is a ***criminal history costs requirement***. 10
- (3) The requirement is sufficiently made of the applicant or 11
licensee if it is made generally of applicants or licensees of 12
that type in the relevant approved form or notified on the 13
department’s website for applicants or licensees of that type. 14
- (4) The chief executive must refund to an applicant an amount 15
paid under the requirement if— 16
- (a) the chief executive refuses the application without 17
asking for the report; or 18
- (b) the applicant withdraws the application before the chief 19
executive asks for the report. 20
- (5) In this section— 21
applicant includes proposed applicant. 22

33 Confidentiality of criminal history 23

- (1) A public service employee performing functions under this 24
Act must not, directly or indirectly, disclose to anyone else a 25
report about a person’s criminal history, or information 26
contained in the report, given under section 31. 27
Maximum penalty—100 penalty units. 28
- (2) However, the person does not contravene subsection (1) if— 29
- (a) disclosure of the report or information to someone else 30
is authorised by the chief executive to the extent 31

[s 34]

	necessary to perform a function under or relating to this Act; or	1 2
	(b) the disclosure is otherwise required or permitted by law.	3
(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.	4 5 6
34	Requirement to give chief executive information or material about suitability	7 8
(1)	This section applies to an applicant for the issue of a licence or the renewal or restoration of a licence.	9 10
(2)	The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the licence.	11 12 13 14 15
(3)	The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.	16 17 18
Division 6	Eligibility for licence	19
Subdivision 1	Property agent licence	20
35	Eligibility for property agent licence	21
(1)	An individual is eligible to obtain a property agent licence only if the individual—	22 23
(a)	is at least 18 years; and	24
(b)	has the educational or other qualifications for a property agent licence prescribed under a regulation.	25 26

[s 36]

- (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 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 licence only if—
 - (a) a person in charge of the corporation's business is a property agent; and
 - (b) each director of the corporation would be a suitable person under division 5 if the director were an applicant for a licence.

Subdivision 2 Resident letting agent licence

36 Eligibility for resident letting agent licence

- (1) An individual is eligible to obtain a resident letting agent 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 licence prescribed under a regulation; and
 - (c) satisfies the chief executive that the individual—
 - (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 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 would be a suitable person under division 5 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
- (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

[s 37]

- 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.

Subdivision 3 Chief executives and particular corporation sole

37 Public trustee is eligible to obtain licence

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

38 Chief executive of department is eligible to obtain licence

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

39 Defence Housing Australia is eligible to obtain licence

Defence Housing Australia is taken to be eligible to obtain a
licence.

Division 7	Issue of licences	1
40	Chief executive may issue or refuse to issue licence	2
(1)	The chief executive may issue or refuse to issue a licence to an applicant.	3 4
(2)	The chief executive may issue a licence to an applicant only if the chief executive is satisfied—	5 6
(a)	the applicant is a suitable person to hold a licence and—	7
(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 to hold a licence; and	8 9 10 11 12 13
(ii)	if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and	14 15 16
(b)	the applicant is eligible to obtain a licence of the category of licence being applied for; and	17 18
(c)	the application is properly made; and	19
(d)	if the application is for a resident letting agent licence for a building complex—the applicant has the prescribed approval under section 22.	20 21 22
(3)	For subsection (2)(c), an application is properly made only if it complies with section 20 and is accompanied by the things mentioned in that section.	23 24 25
(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.	26 27 28
(5)	If the applicant's application for a licence is refused, the applicant may not make another application for a licence—	29 30
(a)	for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or	31 32

[s 41]

- (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. 1
2
3
- (6) Subsection (5) does not apply if— 4
 - (a) the applicant is a corporation; and 5
 - (b) the applicant satisfies the chief executive that, because of a genuine sale— 6
7
 - (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 8
9
10
11
12
 - (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. 13
14
15
16
17

- 41 Licence—public trustee** 18
- (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'. 19
20
21
 - (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. 22
23
24
25
 - (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. 26
27
28
29

-
- 42 Licence—chief executive of department** 1
- (1) The chief executive may issue a licence to the chief executive 2
of a department in the name ‘The Chief Executive of the 3
(name of department)’. 4
- (2) The licence is taken to be issued to the chief executive for the 5
time being of the department. 6
- (3) The chief executive of a department, as licensee, is taken to 7
represent the State. 8
- (4) A licence issued to the chief executive authorises an officer or 9
employee of the department of which the chief executive is 10
chief executive to perform any activity authorised by the chief 11
executive that the chief executive may perform under the 12
licence. 13
- (5) To remove any doubt, it is declared that an officer or 14
employee performing an activity authorised by the chief 15
executive is not required to be licensed or registered under this 16
Act to perform the activity. 17
-
- 43 Licence—Defence Housing Australia** 18
- (1) The chief executive may issue a licence to Defence Housing 19
Australia in the name ‘Defence Housing Australia’. 20
- (2) A licence issued to Defence Housing Australia authorises an 21
officer or employee of the authority to perform any activity 22
authorised by the authority that the authority may perform 23
under the licence. 24
- (3) To remove any doubt, it is declared that an officer or 25
employee performing an activity authorised by the authority is 26
not required to be licensed or registered under this Act to 27
perform the activity. 28
-
- 44 Licence—conditions** 29
- (1) The chief executive may issue a licence on the conditions the 30
chief executive considers necessary or desirable for the proper 31
performance of the activities authorised by the licence. 32
-

[s 45]

- (2) Without limiting subsection (1), a condition may— 1
 - (a) limit or prohibit the performance of an activity 2authorised under this Act or the Administration Act; or 3
 - (b) require a licensee to hold insurance of a kind and in an 4amount prescribed under a regulation. 5
- (3) If the chief executive decides to issue a licence on condition, 6the chief executive must give the applicant an information 7notice about the decision within 14 days after the decision is 8made. 9

Division 8 Restrictions on performing 10
activities under licences 11

45 Restriction—corporations 12

- (1) A corporation that holds a licence may perform an activity 13under its licence at a place only if the activity may be 14performed by— 15
 - (a) a licensed person who is in charge of the corporation’s 16business at the place; or 17
 - (b) a liquidator or controller appointed under the 18Corporations Act of property of the corporation; or 19
 - (c) a person appointed under the Corporations Act as an 20administrator of the corporation; or 21
 - (d) a person appointed under the Corporations Act as an 22administrator of a deed of company arrangement for the 23corporation; or 24
 - (e) a receiver, appointed under the Administration Act, for 25property of the corporation. 26
- (2) If the corporation performs an activity it is not authorised to 27perform, it is taken to be a person who acts as a licensee 28without a licence for the performance of the activity. 29

46 Restriction—individuals

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

Example—

E is a licensed employee of P, a 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.

47 Restriction—conditions

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

Note—

For the consequences of a licensee performing an activity that the licensee is not authorised to perform because of a condition on the licensee's licence, see sections 108 and 120.

[s 48]

Division 9	Renewal and restoration of licences	1
Subdivision 1	Renewal	2
48	Application for renewal	3
(1)	A licensee may only apply for renewal of the licensee's licence before the licence expires.	4 5
(2)	The application must—	6
(a)	be made to the chief executive in the approved form; and	7
(b)	state the term of the licence being applied for; and	8
(c)	state the names and addresses of the licensee's business associates; and	9 10
(d)	be accompanied by—	11
(i)	the application fee prescribed under a regulation; and	12 13
(ii)	the licence renewal fee prescribed under a regulation; and	14 15
(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	16 17 18
(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.	19 20 21 22
(3)	The application must also be accompanied by—	23
(a)	an audit report for all trust accounts kept by the licensee during the relevant audit period; or	24 25
(b)	a statutory declaration that the licensee did not operate a trust account during the relevant audit period.	26 27
(4)	The licensee must also satisfy the chief executive that the licensee has actively carried out the activities authorised	28 29

under the licence for a period, and within the period,
prescribed under a regulation. 1 2

(5) In this section— 3

relevant audit period, for a licensee's licence, means the audit
period ending immediately before the licence's expiry date. 4 5

49 Chief executive may renew or refuse to renew licence 6

(1) The chief executive must consider the renewal application and
may renew or refuse to renew the licence. 7 8

(2) The chief executive may renew the licence only if the chief
executive is satisfied— 9 10

(a) the licensee is a suitable person to hold a licence and— 11

(i) if the licensee carries on business in partnership or
in conjunction with others—each member of the
partnership or each person with whom the licensee
carries on business in conjunction is a suitable
person to hold a licence; and 12 13 14 15 16

(ii) if the licensee is a corporation—each executive
officer of the corporation is a suitable person to
hold a licence; and 17 18 19

(b) the application is properly made; and 20

(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 21 22 23 24 25

(d) the licensee meets the eligibility requirements, other
than eligibility requirements of an educational nature,
for the licence. 26 27 28

(3) For subsection (2)(b), an application is properly made only if
it complies with section 48 and is accompanied by the things
mentioned in that section. 29 30 31

[s 50]

- | | |
|---|---|
| (4) If the chief executive decides to refuse the application, the | 1 |
| chief executive must give the applicant an information notice | 2 |
| about the decision within 14 days after the decision is made. | 3 |

50	Licence taken to be in force while application for renewal is considered	4
		5

If an application is made under section 48, the licensee's	6
licence is taken to continue in force from the day that it	7
would, apart from this section, have expired until the	8
licensee's application for renewal is—	9

- | | |
|---|----|
| (a) decided under section 49; or | 10 |
| (b) withdrawn by the licensee; or | 11 |
| (c) taken to have been withdrawn under section 34(3). | 12 |

Subdivision 2	Restoration	13
----------------------	--------------------	----

51	Application for restoration	14
-----------	------------------------------------	----

- | | |
|--|----|
| (1) If a licensee's licence expires, the person (<i>former licensee</i>) | 15 |
| may apply for restoration of the licence. | 16 |
| (2) The application must— | 17 |
| (a) be made within 3 months after the expiry; and | 18 |
| (b) be made to the chief executive in the approved form; and | 19 |
| (c) state the term of the licence being applied for; and | 20 |
| (d) state the names and addresses of the former licensee's | 21 |
| business associates; and | 22 |
| (e) be accompanied by— | 23 |
| (i) the application fee prescribed under a regulation; | 24 |
| and | 25 |
| (ii) the licence renewal fee prescribed under a | 26 |
| regulation; and | 27 |

(iii) the licence restoration fee prescribed under a regulation; and	1 2
(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	3 4 5 6
(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.	7 8 9 10
(3) The application must also be accompanied by—	11
(a) an audit report about all trust accounts maintained by the former licensee during the relevant audit period; or	12 13
(b) a statutory declaration that the former licensee did not operate a trust account during the relevant audit period.	14 15
(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.	16 17 18 19
(5) In this section—	20
<i>relevant audit period</i> , for a former licensee's licence, means the audit period ending immediately before the former licence's expiry date.	21 22 23
52 Chief executive may restore or refuse to restore licence	24
(1) The chief executive must consider the restoration application and may restore or refuse to restore the licence.	25 26
(2) The chief executive may restore the licence only if the chief executive is satisfied—	27 28
(a) the licensee is a suitable person to hold a licence and—	29
(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	30 31 32 33

[s 53]

- in conjunction is a suitable person to hold a licence; and
- (ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person to hold a licence; 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 51 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 about the decision 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 53, 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.

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

If an application is made under section 51, the licensee's licence is taken to continue in force from the day that it

[s 54]

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

- (a) decided under section 52; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 34(3).

Division 10 Dealings with licences

Subdivision 1 Transfer of licence

54 Transfer of licence prohibited

A licence may not be transferred.

Subdivision 2 Substitute licences

55 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

[s 55]

- (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— 1
- principal licensee* means a principal licensee who is an 2
individual. 3
- representative*, of a principal licensee, means— 4
- (a) for a licensee for whom an administrator has been 5
appointed under the *Guardianship and Administration* 6
Act 2000—the licensee’s administrator; or 7
- (b) for a deceased licensee—the licensee’s personal 8
representative. 9
- 56 Appointment of substitute licensee—employed licensee 10
in charge of a licensee’s business at a place 11**
- (1) This section applies if an employed licensee who is in charge 12
of a licensee’s business at a place will be absent from the 13
place for any reason, other than the employed licensee’s 14
resignation or termination of employment. 15
- (2) If the employed licensee will be absent from the place for a 16
period of not more than 30 days, the principal licensee who 17
employs the employed licensee may appoint an adult as the 18
employed licensee’s substitute licensee for the period if the 19
adult consents to the appointment. 20
- (3) The principal licensee must ensure an appointment under 21
subsection (2) and the person’s consent to the appointment 22
are— 23
- (a) in writing and state the period of appointment; and 24
- (b) kept at the licensee’s registered office; and 25
- (c) made available for immediate inspection by an inspector 26
who asks to see them. 27
- Maximum penalty—100 penalty units. 28
- (4) If the employed licensee will be absent from the place for a 29
period of more than 30 days, the principal licensee who 30
employs the employed licensee must apply to the chief 31
executive in the approved form for the appointment or the 32

[s 57]

extension of the appointment of a person (<i>nominated person</i>)	1
as the licensee's substitute licensee.	2
Maximum penalty—200 penalty units.	3
(5) The application must be accompanied by—	4
(a) the nominated person's signed consent to the	5
appointment; and	6
(b) enough information about the nominated person to	7
enable the chief executive to decide whether the person	8
is—	9
(i) a suitable person to hold a licence; and	10
(ii) sufficiently qualified to perform the employed	11
licensee's activities during the period; and	12
(c) the application fee prescribed under a regulation; and	13
(d) if, before or when the application is made, a criminal	14
history costs requirement is made of the principal	15
licensee—the amount of the costs required to be paid.	16
(6) In this section—	17
<i>principal licensee</i> includes—	18
(a) for a licensee for whom an administrator has been	19
appointed under the <i>Guardianship and Administration</i>	20
<i>Act 2000</i> —the licensee's administrator; and	21
(b) for a deceased licensee—the licensee's personal	22
representative.	23
57 Chief executive may appoint or refuse to appoint	24
substitute licensee	25
(1) The chief executive may appoint or refuse to appoint a	26
nominated person mentioned in section 55(3) or 56(4) as a	27
licensee's substitute licensee.	28
(2) The chief executive may appoint the nominated person only if	29
the chief executive is satisfied the person—	30

-
- (a) is, under division 5, 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 about the
decision within 14 days after the decision is made.

58 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—

[s 59]

- (i) for a substitute licensee appointed under section 55(1) or 56(2)—to the substitute licensee; or
 - (ii) for a substitute licensee appointed under section 57—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 55(1) or 56(2)—to the principal licensee making the appointment; or
 - (ii) for a substitute licensee appointed under section 57—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.

- 59 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

60 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 211.

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

[s 61]

- (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 about the decision within 14 days after the decision is made. 1
2
3
4
- (7) The amendment takes effect— 5
 - (a) on the day the written notice of the amendment is given to the licensee; or 6
7
 - (b) if a later day is stated in the notice, on the stated day. 8
- (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 about the decision within 14 days after the decision is made. 9
10
11
12

61 Return of licence for amendment of conditions or when suspended or cancelled 13
14

- (1) If the chief executive amends the conditions of a licence under section 60, the chief executive may require the licensee to produce the licence for amendment within a stated period of not less than 14 days. 15
16
17
18
- (2) The licensee must comply with a requirement under subsection (1), unless the person has a reasonable excuse. 19
20
Maximum penalty—100 penalty units. 21
- (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. 22
23
24
25
Maximum penalty—100 penalty units. 26

62 Surrender of licence 27

- (1) A licensee may surrender the licensee's licence by giving written notice to the chief executive and returning the licence. 28
29
- (2) A licence surrendered under this section stops having effect on the day it is surrendered. 30
31

63	Licence may be deactivated	1
(1)	A licensee may ask the chief executive to deactivate the licensee's licence.	2 3
(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.	4 5 6
(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).	7 8 9
(4)	A licence that is deactivated does not authorise the licensee to perform an activity under the authority of the licence.	10 11
(5)	The deactivation of a licence under this section does not—	12
	(a) affect the term of the licence; or	13
	(b) entitle the licensee to a refund of fees relating to the licence for the balance of the licence's term.	14 15
(6)	The holder of a deactivated licence may apply to have the licence renewed under section 48 or restored under section 51 as a deactivated licence at a reduced fee prescribed under a regulation.	16 17 18 19
(7)	A licensee may ask the chief executive to reactivate the licence.	20 21
(8)	However, if the licence has been deactivated for 5 years or more, the licence may be reactivated only if the licensee satisfies any educational or other requirements prescribed under a regulation for the issue of the licence.	22 23 24 25
(9)	A request under subsection (7) must be made in the approved form and be accompanied by the fee prescribed under a regulation.	26 27 28

[s 64]

Division 11	Immediate suspension and cancellation of licences	1 2
64	Immediate suspension	3
(1)	This section applies if—	4
(a)	the chief executive reasonably considers that a licensee's licence was obtained, or renewed or restored, because of materially incorrect or misleading information; or	5 6 7
(b)	the chief executive reasonably considers that an irregularity or deficiency exists in a licensee's trust account; or	8 9 10
(c)	the chief executive is satisfied a licensee who has been convicted of failing to file an audit report as required under the Administration Act, section 36 continues, after the end of any appeal against the conviction, to fail to file the audit report; or	11 12 13 14 15
(d)	a receiver is appointed under the Administration Act, section 45 over property—	16 17
(i)	held by a licensee; or	18
(ii)	held by another person for a licensee; or	19
(iii)	recoverable by a licensee; or	20
(e)	the chief executive reasonably considers that a licensee—	21 22
(i)	has contravened or is contravening this Act or the Administration Act; or	23 24
(ii)	has contravened the repealed Act; or	25
(ii)	is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.	26 27 28
(2)	The chief executive may, whether or not disciplinary proceedings have been started under this Act—	29 30
(a)	suspend the licensee's licence; or	31

-
- (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)(a), (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 about 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.

65 Immediate cancellation

- (1) A licensee's licence is cancelled on the happening of any of
the following events—
- (a) the licensee is convicted of a serious offence;
- (b) if the licensee is an individual, the licensee is an
insolvent under administration;
- (c) if the licensee is a corporation, the licensee has been
wound up or struck off under the Corporations Act.

[s 66]

- | | |
|---|---|
| (2) The licensee must return the licence to the chief executive | 1 |
| within 14 days after the happening of an event mentioned in | 2 |
| subsection (1), unless the licensee has a reasonable excuse. | 3 |
| Maximum penalty—100 penalty units. | 4 |

Division 12	General provisions about licences	5
--------------------	--	----------

- | | | |
|-----------|---|-----------|
| 66 | Form of licence | 6 |
| (1) | A licence must be in the approved form. | 7 |
| (2) | However, the chief executive may approve— | 8 |
| (a) | a form of licence for office display purposes; and | 9 |
| | <i>Example—</i> | 10 |
| | a licence in the form of a certificate that may be framed and | 11 |
| | displayed in an office | 12 |
| (b) | a form of licence for personal identification purposes. | 13 |
| (3) | The chief executive may also issue a form of licence for a | 14 |
| | corporation endorsed with the categories of licence issued in | 15 |
| | the corporation's name. | 16 |
| (4) | The licence must contain the following particulars— | 17 |
| (a) | the name of the licensee; | 18 |
| (b) | the date of issue of the licence; | 19 |
| (c) | the expiry date of the licence; | 20 |
| (d) | other particulars prescribed under a regulation. | 21 |
| 67 | Display of licence | 22 |
| | A principal licensee must display the licensee's licence at the | 23 |
| | licensee's principal place of business in the way prescribed | 24 |
| | under a regulation. | 25 |
| | Maximum penalty—100 penalty units. | 26 |

68	Term of licence	1
	A licence may be issued for a 1 year or 3 year term.	2
69	Replacement licences	3
(1)	A licensee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence.	4
(2)	The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.	5
(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.	6
(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.	7
70	Register of licences	8
(1)	The chief executive must keep a register of licences and applications for licences (<i>licence register</i>).	9
(2)	The licence register must contain the following particulars—	10
(a)	for each applicant for a licence—	11
(i)	the applicant's name; and	12
(ii)	if the applicant intends to carry on business under the licence, the place where the applicant intends to carry on business; and	13
(iii)	the category of licence applied for; and	14
(iv)	the date of the application; and	15
(v)	the application number;	16
(b)	for each licensee—	17
(i)	the licensee's name; and	18
(ii)	the licensee's registered office; and	19

[s 70]

- (iii) the category of the licensee's licence; and 1
 - (iv) the dates of issue and expiry of the licensee's 2
current licence; and 3
 - (v) any conditions imposed on the licence; and 4
 - (vi) if the licensee is a corporation, the name of the 5
individual in charge of the licensee's business at 6
the licensee's registered office; and 7
 - (vii) if the licensee is a director of a licensed 8
corporation, the name of the licensed corporation; 9
and 10
 - (viii) if the licensee is an employee of another licensee, 11
the name of the licensee's employer; and 12
 - (ix) the licensee's licence number; and 13
 - (x) particulars of any surrender, suspension or 14
cancellation of the licensee's licence. 15
- (3) A person may, on payment of the fee prescribed under a 16
regulation, inspect, or get a copy of details in, the part of the 17
register containing the particulars mentioned in subsection 18
(2)— 19
- (a) at a place or places decided by the chief executive; or 20
 - (b) by using a computer. 21
- (4) A person may pay the fee, in advance or in arrears, under an 22
arrangement approved by the chief executive. 23
- (5) The register may be kept in any way the chief executive 24
considers appropriate. 25
- (6) In this section— 26
contain includes record and store. 27

71	Licensees to notify chief executive of changes in circumstances	1 2
(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.	3 4 5
	Maximum penalty—100 penalty units.	6
(2)	In this section—	7
	<i>prescribed change</i> means a change prescribed under a regulation.	8 9
 Part 3	 Property agents	 10
 Division 1	 Property agents' authorisation and responsibility	 11 12
 72	 What a property agent licence authorises	 13
(1)	A property agent licence authorises the holder of the licence (<i>property agent</i>) to perform the following activities as an agent for others for reward—	14 15 16
(a)	to buy, sell, exchange, or let places of residence or land or interests in places of residence or land;	17 18
(b)	to buy, sell, exchange, or let businesses or interests in businesses;	19 20
(c)	to sell, or attempt to sell or offer for sale or resale, something mentioned in paragraph (a) or (b) by way of auction;	21 22 23
(d)	to negotiate for the buying, selling, exchanging, or letting of something mentioned in paragraph (a) or (b);	24 25
(e)	to collect rents.	26

[s 73]

- | | | |
|-----|--|----|
| (2) | A property agent licence also authorises the holder of the | 1 |
| | licence to perform the activity of selling or attempting to sell | 2 |
| | or offering for sale or resale goods by way of auction if the | 3 |
| | sale or resale is directly connected with a sale by auction of a | 4 |
| | place of residence or land performed by the property agent. | 5 |
| (3) | For subsection (2), an auction of goods may be directly | 6 |
| | connected with a sale by auction of a place of residence or | 7 |
| | land despite the auction of the goods being conducted | 8 |
| | separately from the auction of the place of residence or land. | 9 |
| | <i>Example—</i> | 10 |
| | An auction of a place of residence followed by an auction of the | 11 |
| | contents of the residence. | 12 |
| (3) | A property agent may perform the activities mentioned in | 13 |
| | subsection (1) or (2) in the carrying on of a business, either | 14 |
| | alone or with others, or as an employee of someone else. | 15 |

73	Responsibility for acts and omissions of salespersons	16
-----------	--	----

- | | | |
|-----|---|----|
| (1) | A property agent who is a principal licensee must take | 17 |
| | reasonable steps to ensure each property agent salesperson | 18 |
| | employed by the agent is properly supervised and complies | 19 |
| | with this Act. | 20 |
| (2) | A property agent who is an employed licensee in charge of a | 21 |
| | licensee's business at a place of business must take reasonable | 22 |
| | steps to ensure each property agent salesperson employed at | 23 |
| | the place is properly supervised and complies with this Act. | 24 |
| (3) | A property agent who fails to comply with subsection (1) or | 25 |
| | (2) is liable to disciplinary action under part 10, division 1. | 26 |

Division 2	Conduct provisions	1
Subdivision 1	Carrying on business	2
74	Carrying on of business under property agent licence	3
	An individual who carries on the business of a property agent with others is not required to hold a property agent licence if—	4 5 6
	(a) at least 1 of the persons with whom the individual carries on business is a property agent; and	7 8
	(b) the individual does not perform the activities of a property agent; and	9 10
	(c) the individual is a suitable person to hold a licence.	11
75	Licensee to be in charge of a property agent's business at a place	12 13
	(1) A property agent who is an individual and a principal licensee must—	14 15
	(a) be in charge of the agent's business at the agent's registered office; and	16 17
	(b) if the property agent has more than 1 place of business, ensure the following at each other place of business—	18 19
	(i) for 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;	20 21 22 23
	(ii) otherwise—a property agent who is an individual is in charge of the property agent's business at the place of business.	24 25 26
	Maximum penalty—200 penalty units.	27
	(2) A property agent that is a corporation and a principal licensee (<i>corporate agent</i>) must ensure—	28 29

[s 75]

- (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 the following at each other place of business—
 - (i) for 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;
 - (ii) otherwise—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 255—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.

Subdivision 2 Appointment

76 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 80 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 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 76]

- the agent may receive for 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 for 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 79.
- (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 the 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.	1 2
	Maximum penalty for subsection (8)—200 penalty units.	3
77	Form of appointment	4
(1)	The appointment must be in the approved form.	5
(2)	The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.	6 7 8
(3)	An appointment that does not comply with subsection (1) is ineffective from the time it is made.	9 10
78	Pre-appointment advice about types of appointment	11
	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—	12 13 14 15 16
(a)	the effect of the following—	17
(i)	an open listing;	18
(ii)	an exclusive agency;	19
(iii)	a sole agency; and	20
(b)	the difference between sole agency and exclusive agency.	21 22
	<i>Note—</i>	23
	The commission of an offence against this section also renders the appointment ineffective under section 83(3).	24 25
	Maximum penalty—200 penalty units.	26

[s 79]

79	Appointment of property agent—sole and exclusive agencies	1 2
(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—	3 4 5 6 7
(a)	the proposed term of the appointment; and	8
(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	9 10 11
(c)	the difference between sole agency and exclusive agency, unless the information has been brought to the client's notice under section 78; and	12 13 14
(d)	the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.	15 16 17
	<i>Note—</i>	18
	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 83(3).	19 20 21
	Maximum penalty—200 penalty units.	22
(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.	23 24 25 26
(3)	Subsection (1)(b) does not apply if the appointment—	27
(a)	is for the sale of 3 or more residential properties; or	28
(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.	29 30 31 32

80 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 76 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 under 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 76, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

81 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.

[s 82]

(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.	1 2 3
(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.	4 5 6 7
	<i>Note—</i>	8
	The commission of an offence against this subsection relating to the reappointment also renders the reappointment ineffective under section 83.	9 10 11
	Maximum penalty—200 penalty units.	12
82	Form of reappointment	13
(1)	The reappointment of a property agent under section 81 must be made in the approved form.	14 15
(2)	A reappointment that does not comply with subsection (1) is ineffective from the time it is made.	16 17
83	When appointments and reappointments are ineffective	18
(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.	19 20 21 22
(2)	Subsection (1) does not apply if the appointment is for the sale of 3 or more residential properties.	23 24
(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 78 or 79(1).	25 26 27 28
(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	29 30 31

commits an offence against section 81(3) relating to the
reappointment. 1
2

Subdivision 3 Disclosure of interest 3

84 Disclosures to prospective buyer 4

(1) A residential property agent for the sale of residential property
must disclose the following to any prospective buyer of the
property— 5
6
7

(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; 8
9
10
11

Examples of relationships for paragraph (a)— 12

- a family relationship 13
- a business relationship, other than a casual business
relationship 14
15
- a fiduciary relationship 16
- a relationship in which 1 person is accustomed, or obliged,
to act under the directions, instructions, or wishes of the
other 17
18
19

(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; 20
21
22

(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. 23
24
25
26
27

Examples for paragraph (c) of persons who may receive a benefit— 28

- finance broker 29
- financial adviser 30
- financier 31
- property valuer 32

[s 85]

• residential property agent	1
• seller	2
• solicitor	3
Maximum penalty—200 penalty units.	4
(2) The disclosure is effective for subsection (1) only if it is—	5
(a) given to the prospective buyer in the approved form; and	6
(b) acknowledged by the prospective buyer in writing on the approved form; and	7 8
(c) given and acknowledged before a contract for the sale of the residential property is entered into.	9 10
(3) Also, for subsection (1)(c), disclosure in compliance with the approved form is sufficient.	11 12
(4) In this section—	13
<i>benefit</i> means monetary or other benefit.	14
<i>residential property agent</i> means—	15
(a) a property agent; or	16
(b) a property agent salesperson acting for the property agent; or	17 18
(c) a person acting as a property agent in contravention of section 108(2); or	19 20
(d) a person acting as a property agent salesperson in contravention of section 109(1).	21 22
 Subdivision 4 Auctions of goods	 23
 85 Buyer's premium	 24
(1) This section applies to an auction of goods conducted by a property agent.	25 26
(2) A property agent must not charge the buyer of the goods a buyer's premium unless—	27 28

-
- (a) the property agent— 1
- (i) before the auction, obtains the written consent of 2
the owner of the goods; and 3
- (ii) discloses, in the way prescribed under a regulation, 4
that a buyer's premium is payable on the purchase 5
of the goods; and 6
- (b) the premium is not more than the amount prescribed or 7
worked out under a regulation. 8
- Maximum penalty—200 penalty units. 9
- (3) The property agent does not act for the buyer of the goods 10
only because the agent accepts a buyer's premium from the 11
buyer. 12
- (4) In this section— 13
- buyer's premium* means an amount, not more than an amount 14
prescribed or worked out under a regulation, payable to a 15
property agent by a buyer on the purchase of goods. 16
- owner*, of goods, includes a person who is lawfully entitled to 17
sell the goods. 18

Subdivision 5 Recovery of reward or expense 19

86 Commission may be claimed only for actual amounts 20

- (1) This section applies to a property agent who performs, for the 21
payment of a commission, a service of selling or letting 22
property or collecting rents. 23
- (2) The property agent must not claim commission worked out on 24
an amount more than the actual sale price of the property or 25
the amount collected. 26
- Maximum penalty—200 penalty units. 27

[s 87]

87	Restriction on recovery of reward or expense—no proper authorisation etc.	1 2
(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—	3 4 5 6
(a)	held a property agent licence; and	7
(b)	was authorised under the person’s licence to perform the activity; and	8 9
(c)	had been properly appointed under subdivision 2 by the person to be charged with the reward or expense.	10 11
(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.	12 13 14
	Maximum penalty—200 penalty units.	15
88	Restriction on recovery of reward or expense above amount allowed	16 17
(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 that is more than the amount of the reward stated in the appointment given under section 76.	18 19 20 21
(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.	22 23 24 25
(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 76 and actually expended.	26 27 28 29 30
(4)	However, if the amount of expenses that may be incurred for 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.	31 32 33 34

- (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.

89 Excess commission etc. to be repaid

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 86(2), 87(2) or 88(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.
- (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 Interests in property

90 Definition for sdiv 6

- In this subdivision—
obtain includes being in any way concerned in obtaining.

[s 91]

- 91 Beneficial interest—options** 1
- (1) This section applies to property placed by a person (*client*) 2
with a property agent for sale. 3
- (2) The property agent commits an offence if the agent obtains 4
from the client an option to purchase the property in which the 5
agent has a beneficial interest. 6
Maximum penalty—200 penalty units or 3 years 7
imprisonment. 8
- (3) A property agent salesperson employed by the property agent 9
commits an offence if the salesperson obtains from the client 10
an option to purchase the property in which the salesperson 11
has a beneficial interest. 12
Maximum penalty—200 penalty units or 3 years 13
imprisonment. 14
- (4) The property agent must not sell the property if the agent 15
obtains a beneficial interest in an option to purchase the 16
property. 17
Maximum penalty—200 penalty units or 3 years 18
imprisonment. 19
- 92 Beneficial interest—other than options** 20
- (1) This section applies to property placed by a person (*client*) 21
with a property agent for sale, but does not apply if section 91 22
applies. 23
- (2) The property agent commits an offence if the agent obtains a 24
beneficial interest in the property. 25
Maximum penalty—200 penalty units or 3 years 26
imprisonment. 27
- (3) A property agent salesperson employed by the property agent 28
commits an offence if the salesperson obtains a beneficial 29
interest in the property. 30
Maximum penalty—200 penalty units or 3 years 31
imprisonment. 32

-
- (4) A person does not contravene subsection (2) or (3) if— 1
- (a) the person— 2
- (i) before a contract for the sale of the property is 3
entered into, obtains the client's written 4
acknowledgement in the approved form that the 5
client— 6
- (A) is aware that the person is interested in 7
obtaining a beneficial interest in the 8
property; and 9
- (B) consents to the person obtaining the interest; 10
and 11
- (ii) acts fairly and honestly in relation to the sale; and 12
- (b) no commission or other reward is payable for the sale; 13
and 14
- (c) the client is in substantially as good a position as the 15
client would be if the property were sold at fair market 16
value. 17

93 Return of beneficial interest if in form of commission 18

- (1) This section applies if— 19
- (a) a person is convicted of an offence against section 92(2) 20
or (3); and 21
- (b) the court convicting the person is satisfied on the 22
balance of probabilities that the person, in connection 23
with the offence, has recovered or retained from 24
someone (*client*) for whom the person performed an 25
activity an amount of commission to which the person 26
was not entitled. 27
- (2) The court must order the person to pay the amount to the 28
client. 29
- (3) The order must be made whether or not any penalty is 30
imposed on the conviction. 31

[s 94]

	(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.	1 2 3
	Subdivision 7 Lands not lawfully useable for residential purposes	4 5
94	Definition for sdiv 7	6
	In this subdivision—	7
	<i>vacant land</i> means land on which there are no structural improvements, other than fencing.	8 9
95	Application of sdiv 7	10
	This subdivision applies to a sale or proposed sale of vacant land if—	11 12
	(a) the sale is by a property agent either as agent for another or as principal; and	13 14
	(b) the land is within a local government area; and	15
	(c) the land can not, as at the day of sale, be lawfully used for residential purposes.	16 17
96	Notice to be given about vacant land	18
	(1) The property agent must give to a proposed buyer a written statement under this section.	19 20
	Maximum penalty—200 penalty units or 2 years imprisonment.	21 22
	(2) The property agent must give the statement to the proposed buyer before the buyer signs any contract for the sale.	23 24
	Maximum penalty—200 penalty units or 2 years imprisonment.	25 26
	(3) The statement must include the following particulars—	27

[s 97]

-
- (a) the land, clearly identified (including by lot-on-plan, or similar, description), to which the statement relates; 1 2
 - (b) the names and addresses of the seller of the land and the proposed buyer; 3 4
 - (c) a clear statement that the use of the land for residential purposes is unlawful; 5 6
 - (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— 7 8 9
 - (i) the buyer may commit an offence; and 10
 - (ii) a named local government may be lawfully empowered to demolish the place of residence or other residential structure; 11 12 13
 - (e) the date on which the statement is given. 14
 - (4) The statement must be signed and dated by the property agent and the proposed buyer. 15 16
 - (5) The property agent must— 17
 - (a) keep a copy of the signed statement at the property agent's registered office; and 18 19
 - (b) make it available for immediate inspection by an inspector who asks to see it. 20 21
 - Maximum penalty for subsection (5)—200 penalty units or 2 years imprisonment. 22 23

97 Buyer's rights if notice not given or materially defective 24

- (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— 25 26 27
 - (a) the buyer has not been given the notice under section 96; or 28 29
 - (b) the notice has been given to the buyer, but the notice is defective in a material way. 30 31

[s 97]

- (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. 1
2
3
- (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— 4
5
6
 - (a) under the contract; and 7
 - (b) for legal and other expenses for the contract after it was signed. 8
9
- (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 relating to, the contract must repay the amount within 14 days after becoming liable. 10
11
12
13
Maximum penalty—200 penalty units. 14
- (5) The buyer may recover an amount mentioned in subsection (3) as a debt. 15
16
- (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. 17
18
19
- (7) However, if separate actions are brought— 20
 - (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 21
22
23
 - (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. 24
25
26
- (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)— 27
28
29
 - (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 30
31
32

[s 98]

	(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.	1 2 3
(9)	The buyer—	4
	(a) is not liable for any costs associated with a conveyance under subsection (8); and	5 6
	(b) may recover from the seller and the property agent as a debt the buyer's reasonable costs associated with the conveyance.	7 8 9
(10)	The liability of the seller and the property agent under subsections (3) and (9) is joint and several.	10 11
98	Liability to punishment under s 96 or 97 additional to other liabilities at law	12 13
	Liability to punishment under section 96 or 97 is in addition to other liabilities at law imposed under section 97.	14 15
Subdivision 8	Sales of particular businesses	16
99	Application of sdiv 8	17
	This subdivision applies to the sale of a business for which a resident letting agent licence is required (<i>resident letting agent's business</i>).	18 19 20
100	Notice to be given about sale of resident letting agent's business	21 22
	(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.	23 24 25 26
	Maximum penalty—200 penalty units.	27
	(2) The property agent must give the statement to the proposed buyer before the buyer signs any contract relating to the sale.	28 29

[s 101]

- (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 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.
 - (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 9 Auctions of goods

101 Buyer's premium

- (1) This section applies to an auction of goods by a property agent.

[s 102]

- (2) A property agent must not charge the buyer of goods a buyer's premium unless—
 - (a) the property agent—
 - (i) before the auction, obtains the written consent of the owner of the goods; and
 - (ii) discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the goods; and
 - (b) the premium is not more than the amount prescribed or worked out under a regulation.Maximum penalty—200 penalty units.
- (3) The property agent does not act for the buyer of the goods only because the property agent accepts a buyer's premium from the buyer.
- (4) In this section—

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

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

Subdivision 10 Code of conduct

102 Code of conduct

- A regulation may prescribe a code of conduct about the practice of a property agent 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.

[s 103]

103	Complaints about conduct and action chief executive may take	1 2
(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.	3 4 5
(2)	The chief executive may investigate the complaint and, if satisfied the code of conduct has been breached, take the action about the conduct allowed under this Act.	6 7 8
	<i>Note—</i>	9
	Breach of the code of conduct may be an offence and is a ground for starting disciplinary proceedings under section 197.	10 11
(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.	12 13 14 15
Division 3	General	16
104	Registered office	17
	A property agent's <i>registered office</i> is—	18
(a)	for a property agent who is a principal licensee—	19
(i)	the place the agent states in the agent's application for a property agent licence as the agent's principal place of business; or	20 21 22
(ii)	another place notified to the chief executive by the agent in the approved form as the agent's principal place of business; and	23 24 25
(b)	for a property agent who is an employed licensee—	26
(i)	the place the agent states in the licensee's application for a property agent licence as the agent's business address; or	27 28 29

[s 105]

-
- (ii) another place notified to the chief executive by the agent in the approved form as the agent's business address. 1
2
3
- 105 Property agent must notify chief executive of change in place of business etc.** 4
5
- (1) A property agent who is a principal licensee must notify the chief executive in the approved form of— 6
7
- (a) any change in the agent's principal place of business within 14 days after the change; and 8
9
- (b) the closure of any place where the agent carries on business within 14 days after the closure; and 10
11
- (c) the opening of any place where the agent carries on business within 14 days after the opening. 12
13
- Maximum penalty—200 penalty units. 14
- (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. 15
16
17
- Maximum penalty—200 penalty units. 18
- 106 Display and publication of licensee's name** 19
- (1) A property agent who is a principal licensee must display at each place the agent carries on business, in the way prescribed under a regulation— 20
21
22
- (a) the agent's name; and 23
- (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 24
25
26
- (c) the other particulars prescribed under a regulation. 27
- Maximum penalty—100 penalty units. 28
- (2) A property agent who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an 29
30

[s 107]

advertisement for the agent's business without stating in the
advertisement the particulars prescribed under a regulation. 1 2

Maximum penalty—100 penalty units. 3

(3) A property agent who conducts an auction must display at the
auction, in the way and for the period prescribed under a
regulation— 4 5 6

(a) the property agent's name; and 7

(b) the other particulars prescribed under a regulation. 8

Maximum penalty—100 penalty units. 9

107 Principal licensee must keep employment register 10

(1) A property agent who is a principal licensee must keep a
register (*employment register*) at each place where the agent
carries on business. 11 12 13

Maximum penalty—200 penalty units. 14

(2) The property agent must enter, and keep entered, in the
employment register— 15 16

(a) the name, and the other particulars prescribed under a
regulation, of each person (*employee*) who is employed
as an employed licensee, or property agent salesperson
at the place; and 17 18 19 20

(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. 21 22 23

Maximum penalty—200 penalty units. 24

(3) The property agent must— 25

(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 26 27 28 29

- (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. 1 2 3
- Maximum penalty—200 penalty units. 4
- (4) The form of the register may be prescribed under a regulation. 5

Division 4 Offences 6

108 Acting as property agent 7

- (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 licence unless the person— 8 9 10
 - (a) holds a property agent licence and the performance of the activity is authorised under the person's licence; or 11 12
 - (b) is otherwise permitted under this or another Act to perform the activity. 13 14
- Maximum penalty—200 penalty units or 2 years imprisonment. 15 16
- (2) A person must not act as a property agent unless— 17
 - (a) the person holds a property agent licence and the act is done under the authority of the person's licence; or 18 19
 - (b) the act is otherwise permitted under this or another Act. 20
- Maximum penalty—200 penalty units or 2 years imprisonment. 21 22
- (3) Without limiting the ways a person may act as a property agent, a person acts as a property agent if the person— 23 24
 - (a) performs an activity mentioned in section 72(1); or 25
 - (b) advertises or notifies or states that the person— 26
 - (i) performs an activity mentioned in section 72(1); or 27
 - (ii) is willing to perform an activity mentioned in section 72(1); or 28 29

[s 109]

- (c) in any way holds out as being ready to perform an activity mentioned in section 72(1). 1
2
 - (4) However— 3
 - (a) a person does not act as a property agent only because 4
the person, while performing duties as an employee of a 5
property agent at the property agent's registered office 6
or other place of business— 7
 - (i) collects, and issues receipts for, rents; or 8
 - (ii) gives a person a list, prepared by or for the 9
property agent, of premises available for rent; or 10
 - (iii) does something of an administrative nature relating 11
to a thing the property agent does as a property 12
agent; and 13
 - (b) a person does not act as a property agent only because 14
the person collects rents for the provider of rooming 15
accommodation, as an employee of the provider, if the 16
rents are collected in the course of providing rooming 17
accommodation; and 18
 - (c) a lawyer does not act as a property agent only because 19
the lawyer collects rents in the lawyer's practice if the 20
lawyer complies with the requirements of the *Legal* 21
Profession Act 2007 for the rents; and 22
 - (d) a person does not act as a property agent only because 23
the person sells, or negotiates the sale of, a 24
manufactured home under an authority given to the 25
person under the *Manufactured Homes (Residential* 26
Parks) Act 2003, section 60. 27
- 109 Pretending to be property agent salesperson 28**
- (1) A person must not act as a property agent salesperson unless 29
the person holds a registration certificate as a property agent 30
salesperson. 31
- Maximum penalty—200 penalty units. 32

-
- (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
 - (c) does something of an administrative nature relating 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.
- 110 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) 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.
- 111 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 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

[s 112]

registration certificate for inspection by the person.	1
Maximum penalty—100 penalty units.	2
112 Employment of persons in real estate business	3
(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 a property agent salesperson.	4 5 6 7
Maximum penalty—200 penalty units.	8
(2) A property agent must not directly engage a property agent or property agent salesperson as an independent contractor unless the person holds a property agent licence.	9 10 11
Maximum penalty—200 penalty units.	12
(3) A principal licensee who is an individual and carries on the business of a property agent must not employ, as a property agent salesperson for the business, himself or herself or another individual with whom the principal licensee carries on business as a property agent.	13 14 15 16 17
Maximum penalty—200 penalty units.	18
(4) 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 property agent salesperson for the business.	19 20 21 22
Maximum penalty—	23
(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 255—200 penalty units; or	24 25 26
(b) for a corporation—1000 penalty units.	27

Part 4	Resident letting agents	1
Division 1	Resident letting agent licence	2
113	What a resident letting agent licence authorises	3
(1)	A resident letting agent licence authorises the holder of the licence (<i>resident letting agent</i>) to perform the following activities as an agent for others for reward—	4 5 6
(a)	letting lots in a building complex;	7
(b)	collecting rents for lots in a building complex.	8
(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.	9 10 11
(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.	12 13 14
(4)	The chief executive may authorise the resident letting agent to perform the activities in more than 1 building complex if—	15 16
(a)	the chief executive is satisfied—	17
(i)	each building complex is on land contiguous to land on which another building complex for which the letting agent is, or is to be, authorised to perform the activities is situated; and	18 19 20 21
(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	22 23 24 25
(b)	both of the following apply—	26
(i)	immediately before the commencement of the repealed Act, section 607, a person held a resident real estate agent's licence or corporation licence (with a director holding a resident real estate agent's licence) for all the building complexes;	27 28 29 30 31

[s 114]

	(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.	1 2 3 4
(5)	For subsection (4)(a)(i), land is <i>contiguous</i> with other land only if the parcels of land have a common boundary that is not separated by a public road.	5 6 7
Division 2	Conduct provisions	8
Subdivision 1	Carrying on business	9
114	Carrying on of business under resident letting agent licence	10 11
(1)	An individual who carries on the business of a resident letting agent with others is not required to hold a resident letting agent licence or property agent licence if—	12 13 14
(a)	at least 1 of the persons with whom the individual carries on business is a resident letting agent or property agent; and	15 16 17
(b)	the individual does not perform the activities of a resident letting agent; and	18 19
(c)	the individual is a suitable person to hold a licence.	20
(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 for more than 1 building complex, 1 of the building complexes for which the letting agent is authorised to perform activities.	21 22 23 24 25
	Maximum penalty—200 penalty units.	26
(3)	A resident letting agent that is a corporation must ensure 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	27 28 29 30

[s 115]

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 255—200 penalty
units; or

(b) for a corporation—1000 penalty units.

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

115 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 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 255—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 resident letting agent 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 another individual who
is a resident letting agent or property agent is in charge of the
agent's business at the other place.

[s 116]

Maximum penalty—200 penalty units. 1

- (4) An individual must not be in charge of a resident letting agent's business at more than 1 place of business. 2
3

Maximum penalty—200 penalty units. 4

Subdivision 2 Appointment 5

116 Appointment of resident letting agent 6

- (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— 7
8
9
- (a) the client first appoints the letting agent in writing under this section; or 10
11
- (b) a previous appointment by the client is assigned to the letting agent under the terms of that appointment or under section 118 and the appointment is in force. 12
13
14

Maximum penalty—200 penalty units. 15

- (2) The appointment may be for the performance of— 16

- (a) a particular service (*single appointment*); or 17
- (b) a number of services over a period (*continuing appointment*). 18
19

- (3) The appointment must— 20

- (a) state the service to be performed by the letting agent and how it is to be performed; and 21
22

- (b) state— 23

- (i) in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount prescribed under a regulation; and 24
25
26
27

- (ii) for a single appointment, if commission is payable and expressed as a percentage of rent, the amount 28
29

[s 116]

-
- 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
- (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 for 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 for 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.
-

[s 117]

- | | | |
|-----|--|-------------|
| (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. | 1
2
3 |
| (8) | The letting agent must give a copy of the signed appointment to the client. | 4
5 |
| | Maximum penalty for subsection (8)—200 penalty units. | 6 |

117	Form of appointment	7
------------	----------------------------	---

- | | | |
|-----|---|---------------|
| (1) | The appointment must be in the approved form. | 8 |
| (2) | The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment. | 9
10
11 |
| (3) | An appointment that does not comply with subsection (1) is ineffective from the time it is made. | 12
13 |

118	Assignment of appointments	14
------------	-----------------------------------	----

- | | | |
|-----|---|----------------------------------|
| (1) | This section applies if a resident letting agent who holds appointments from clients to perform services for the clients under section 116 for a building complex proposes to assign the appointments to another person who is to become the resident letting agent for the complex (<i>proposed assignee</i>) without changing the terms of the appointment. | 15
16
17
18
19
20 |
| (2) | However, this section does not apply to the assignment of an appointment if— | 21
22 |
| | (a) the terms of the appointment authorise the assignment of the appointment; and | 23
24 |
| | (b) the assignment is made in compliance with the terms of the appointment. | 25
26 |
| (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. | 27
28
29
30 |
| (4) | The notice must state the following— | 31 |

[s 119]

-
- (a) the proposed assignee's name; 1
 - (b) the appointments are to be assigned without changing 2
the terms of the appointment; 3
 - (c) the client may agree or refuse to agree to the proposed 4
assignment; 5
 - (d) when the proposed assignment is to take effect. 6
- (5) If a client agrees to the assignment and the resident letting 7
agent assigns the appointment under this section, the 8
appointment is taken, for section 116, to be an appointment by 9
the client of the proposed assignee and to continue to have 10
effect according to its terms. 11

Subdivision 3 Recovery of reward or expense 12

119 Commission may be claimed only for actual amounts 13

- (1) This section applies to a resident letting agent who performs, 14
for the payment of a commission, a service of letting lots or 15
collecting rents. 16
- (2) The resident letting agent must not claim commission worked 17
out on an amount more than the actual amount collected. 18
Maximum penalty—200 penalty units. 19

120 Restriction on remedy for reward or expense 20

- (1) A person is not entitled to sue for, or recover or retain, a 21
reward or expense for the performance of an activity as a 22
resident letting agent unless, at the time the activity was 23
performed, the person— 24
 - (a) held a resident letting agent licence; and 25
 - (b) was authorised under the person's licence to perform the 26
activity; and 27
 - (c) had been properly appointed under subdivision 2 by the 28
person to be charged with the reward or expense. 29

[s 121]

- (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 116. 1 2 3 4
- (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. 5 6 7 8
- (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 116 and actually expended. 9 10 11 12 13
- (5) However, if the amount of expenses that may be incurred for 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. 14 15 16 17
- (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. 18 19 20 21
- (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. 22 23 24 25
- Maximum penalty for subsection (7)—200 penalty units. 26

121 Excess fees etc. to be repaid 27

- (1) This section applies if— 28
- (a) a person is convicted of an offence against section 119(2) or 120(7); and 29 30
- (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 31 32 33

[s 122]

someone (<i>client</i>) for whom the person performed an activity an amount to which the person was not entitled.	1 2
(2) The court must order the person to pay the amount to the client.	3 4
(3) The order must be made whether or not any penalty is imposed for the offence.	5 6
(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.	7 8 9
Subdivision 4 Code of conduct	10
122 Code of conduct	11
A regulation may prescribe a code of conduct about resident letting agent practice that may include the following—	12 13
(a) setting conduct standards for resident letting agents;	14
(b) establishing principles for fair trading;	15
(c) providing for a system of complaint resolution;	16
(d) providing that contraventions of some provisions of the code are an offence.	17 18
123 Complaints about conduct and action chief executive may take	19 20
(1) A person aggrieved by the conduct of a resident letting agent may complain in writing to the chief executive about the conduct.	21 22 23
(2) The chief executive may investigate the complaint and, if satisfied the code of conduct has been breached, take the action about the conduct allowed under this Act.	24 25 26
<i>Note—</i>	27
Breach of the code of conduct may be an offence and is a ground for starting disciplinary proceedings under section 197.	28 29

[s 124]

- (3) The investigation may take place and action may be taken 1
against a person who was a resident letting agent even though 2
the person is no longer a resident letting agent. 3

Division 3 General 4

124 Registered office 5

A resident letting agent's *registered office* is— 6

- (a) for a resident letting agent who is a principal licensee— 7
- (i) the place the letting agent states in the letting 8
agent's application for a resident letting agent 9
licence as the letting agent's principal place of 10
business; or 11
- (ii) another place notified to the chief executive by the 12
letting agent in the approved form as the letting 13
agent's principal place of business; and 14
- (b) for a resident letting agent who is an employed 15
licensee— 16
- (i) the place the letting agent states in the letting 17
agent's application for a resident letting agent 18
licence as the resident letting agent's business 19
address; or 20
- (ii) another place notified to the chief executive by the 21
letting agent in the approved form as the resident 22
letting agent's business address. 23

125 Resident letting agent to notify chief executive of change 24 in place of business etc. 25

- (1) A resident letting agent who is a principal licensee must— 26
- (a) notify the chief executive in the approved form of any 27
change in the letting agent's principal place of business 28
within 14 days after the change; and 29

[s 126]

- (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.

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 resident letting agent's business address within 14 days after the change.

Maximum penalty—200 penalty units.

126 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 prescribed under a regulation—
 - (a) the letting agent's name; and
 - (b) if the letting agent is not the person in charge of the resident letting agent's business at the place, the name of the resident letting agent who is in charge of the resident letting agent's business at the place; and
 - (c) the other particulars 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 resident letting agent's

[s 127]

business without stating in the advertisement the particulars prescribed under a regulation.	1 2
Maximum penalty—100 penalty units.	3
127 Principal licensee must keep employment register	4
(1) A resident letting agent who is a principal licensee must keep a register (<i>employment register</i>) at each place where the letting agent carries on business.	5 6 7
Maximum penalty—200 penalty units.	8
(2) The resident letting agent must enter, and keep entered, in the employment register the name, and the other particulars prescribed under a regulation, of each person (<i>employee</i>) who is employed as a resident letting agent at the place.	9 10 11 12
Maximum penalty—200 penalty units.	13
(3) The resident letting agent must enter the particulars about each employee immediately after the employee is employed at the place.	14 15 16
Maximum penalty—200 penalty units.	17
(4) The form of the register may be prescribed under a regulation.	18
128 Access to particular documents	19
(1) This section applies if a resident letting agent (<i>existing letting agent</i>)—	20 21
(a) is a letting agent for a community titles scheme; and	22
(b) enters into a contract to sell management rights for the community titles scheme to another resident letting agent (<i>new letting agent</i>).	23 24 25
(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	26 27 28 29 30

- period before the intended date of the sale of the management rights. 1
2
- (3) If the existing letting agent fails to comply with subsection 3
(2), the new letting agent may avoid the contract. 4
- (4) In this section— 5
- prescribed period* means— 6
- (a) 5 years; or 7
- (b) if the existing resident letting agent has been the letting 8
agent for the community titles scheme for a shorter 9
period, the shorter period. 10

Division 4 Offences 11

129 Acting as resident letting agent 12

- (1) A person must not, as an agent for someone else for reward, 13
perform an activity that may be done under the authority of a 14
resident letting agent licence unless the person— 15
- (a) holds a resident letting agent licence and the 16
performance of the activity is authorised under the 17
person's licence; or 18
- (b) is otherwise permitted under this or another Act to 19
perform the activity. 20
- Maximum penalty—200 penalty units or 2 years 21
imprisonment. 22
- (2) A lawyer does not act as a resident letting agent only because 23
the lawyer collects rents in the lawyer's practice for lots in a 24
building complex if the lawyer complies with the 25
requirements of the *Legal Profession Act 2007* for the rents. 26
- (3) A person does not act as a resident letting agent only because 27
the person collects rents for the provider for rooming 28
accommodation, as an employee of the provider, if the rents 29
are collected in the course of the conduct of the service. 30

[s 130]

130	Resident letting agent must not act for more than 1 party	1
(1)	A resident letting agent must not act for more than 1 party to a transaction.	2
	Maximum penalty—200 penalty units.	3
(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.	4
		5
		6
		7
131	Production of licence	8
	A resident letting agent must, if asked by a person with whom the letting agent is dealing, produce the resident letting agent licence for inspection by the person.	9
		10
		11
	Maximum penalty—100 penalty units.	12
Part 5	Employee registration as a property agent salesperson	13
		14
Division 1	Registered employees' authorisation	15
		16
132	What a registration certificate authorises	17
(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.	18
		19
		20
(2)	However, the registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform because of a condition to which the certificate is subject.	21
		22
		23
		24

Division 2	How to obtain registration	1
133	Steps involved in obtaining registration	2
(1)	A person who wishes to obtain registration as a property agent salesperson must be a suitable person to hold registration under division 4.	3 4 5
(2)	The person must apply for registration by—	6
(a)	giving the chief executive an application showing, among other things, the person is eligible to obtain registration; and	7 8 9
(b)	paying the prescribed fees.	10
(3)	In deciding the person's application, the chief executive must have regard, among other things, to—	11 12
(a)	the person's suitability to hold a registration certificate under this Act; and	13 14
(b)	the person's eligibility to hold the registration certificate.	15 16
Division 3	Applications for registration	17
134	Application for registration	18
(1)	An applicant for registration must—	19
(a)	be an individual; and	20
(b)	apply to the chief executive in the approved form; and	21
(c)	state the term of the registration being applied for; and	22
(d)	establish the applicant's suitability and eligibility for registration as a property agent salesperson; and	23 24
(e)	provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a property agent salesperson.	25 26 27
(2)	The application must be accompanied by—	28

[s 135]

- (a) the application fee prescribed under a regulation; and 1
- (b) the registration issue fee prescribed under a regulation; 2
and 3
- (c) if, before or when the application is made, a criminal 4
history costs requirement is made of the applicant—the 5
amount of the costs required to be paid. 6

**135 Requirement to give chief executive information or 7
material about application 8**

- (1) The chief executive may, by written notice given to an 9
applicant for registration, require the applicant to give the 10
chief executive within a stated reasonable period information 11
or material the chief executive reasonably considers is needed 12
to consider the applicant's application for the registration. 13
- (2) The applicant is taken to have withdrawn the application if, 14
within the stated reasonable period, the applicant fails to 15
comply with the chief executive's requirement. 16

Division 4 Suitability of applicants 17

136 Suitability of applicants 18

- (1) A person is not a suitable person to obtain registration as a 19
property agent salesperson if the person is— 20
 - (a) a person who has been convicted, in Queensland or 21
elsewhere, within the preceding 5 years of a serious 22
offence; or 23
 - (b) currently disqualified from holding a licence or 24
registration certificate; or 25
 - (c) a person the chief executive decides under section 137 is 26
not a suitable person to obtain registration as a property 27
agent salesperson. 28
- (2) An individual who is not a suitable person can not obtain 29
registration as a property agent salesperson. 30

137	Chief executive must consider suitability of applicants	1
(1)	The chief executive must, when deciding whether a person is a suitable person to obtain registration as a property agent salesperson, consider all of the following things—	2 3 4
(a)	the person's character;	5
(b)	whether the person held a licence or registration under a relevant Act that was suspended or cancelled under the relevant Act;	6 7 8
(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;	9 10 11
(d)	whether the person has been disqualified under a relevant Act from being—	12 13
(i)	the holder of a licence within the meaning of the relevant Act; or	14 15
(ii)	the holder of a registration certificate within the meaning of the relevant Act; or	16 17
(iii)	an executive officer of a corporation;	18
(e)	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;	19 20 21 22 23
(f)	the person's criminal history;	24
(g)	if the person is an insolvent under administration—	25
(i)	the circumstances giving rise to the person being an insolvent under administration; and	26 27
(ii)	whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being an insolvent under administration; and	28 29 30 31

[s 138]

(iii) whether the person is in a position to influence significantly the management of a licensee's business;	1 2 3
(h) whether the person has been convicted of an offence against a relevant Act or the Administration Act;	4 5
(i) whether the person is capable of satisfactorily performing the activities of a registered property agent salesperson;	6 7 8
(j) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;	9 10 11
<i>Note—</i>	12
See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).	13 14
(k) another thing the chief executive may consider under this Act.	15 16
(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 about the decision within 14 days after the decision is made.	17 18 19 20
(3) In this section—	21
<i>fund</i> includes the claim fund under the repealed Act.	22
<i>relevant Act</i> means this Act, an Agents Act, the repealed Act or a corresponding law.	23 24
138 Investigations about suitability of applicants	25
(1) The chief executive may make investigations about the applicant to help the chief executive decide whether the applicant is a suitable person to obtain registration as a property agent salesperson.	26 27 28 29
(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.	30 31 32
(3) The commissioner must give the report to the chief executive.	33

-
- (4) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access. 1
2
3
- (5) If the criminal history of the applicant includes a conviction recorded against the applicant, the commissioner's report must be written. 4
5
6

139 Costs of criminal history report 7

- (1) The chief executive may require an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under section 138 about the applicant. 8
9
10
- (2) The requirement is a *criminal history costs requirement*. 11
- (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. 12
13
14
15
16
- (4) The chief executive must refund to the applicant an amount paid under the requirement if— 17
18
- (a) the chief executive refuses the application without asking for the report; or 19
20
- (b) the applicant withdraws the application before the chief executive asks for the report. 21
22
- (5) In this section— 23
applicant includes proposed applicant. 24

140 Confidentiality of criminal history 25

- (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 138. 26
27
28
29
Maximum penalty—100 penalty units. 30
- (2) However, the person does not contravene subsection (1) if— 31

[s 141]

(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 relating to this Act; or	1 2 3 4
(b)	the disclosure is otherwise required or permitted by law.	5
(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.	6 7 8 9
141	Requirement to give chief executive information or material about suitability	10 11
(1)	This section applies to an applicant for registration as a property agent salesperson or the renewal or restoration of the registration.	12 13 14
(2)	The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the registration.	15 16 17 18 19
(3)	The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.	20 21 22
Division 5	Eligibility for registration	23
142	Eligibility for registration as property agent salesperson	24
(1)	An individual is eligible to obtain registration as a property agent salesperson only if the individual—	25 26
(a)	is at least 18 years; and	27
(b)	has the educational or other qualifications for registration prescribed under a regulation.	28 29

-
- | | | |
|------|--|-------------|
| (2) | An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual— | 1
2
3 |
| (a) | has a comparable qualification; or | 4 |
| (b) | within 2 years before the day the individual's application for registration is received by the chief executive— | 5
6
7 |
| (i) | has been the holder of a registration certificate as a property agent salesperson under this Act; or | 8
9 |
| (ii) | has been the holder of a comparable certificate under the repealed Act. | 10
11 |

Division 6	Issue of registration certificate	12
-------------------	--	----

143	Chief executive may issue or refuse to issue registration certificate	13 14
------------	--	----------

- | | | |
|-----|---|----------------------|
| (1) | The chief executive may issue or refuse to issue a registration certificate to an applicant. | 15
16 |
| (2) | The chief executive may issue a registration certificate to an applicant only if the chief executive is satisfied— | 17
18 |
| (a) | the applicant is a suitable person to obtain registration; and | 19
20 |
| (b) | the applicant is eligible to obtain registration; and | 21 |
| (c) | the application is properly made. | 22 |
| (3) | For subsection (2)(c), the application is properly made only if it complies with section 134 and is accompanied by the things mentioned in that section. | 23
24
25 |
| (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. | 26
27
28
29 |

[s 144]

- | | | |
|-----|--|-------------|
| (5) | If the applicant's application for a registration certificate is refused, the applicant may not make another application for a registration certificate— | 1
2
3 |
| (a) | for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or | 4
5 |
| (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
7
8 |

144	Registration certificate—conditions	9
------------	--	----------

- | | | |
|-----|--|----------------|
| (1) | The chief executive may issue a registration certificate on the conditions the chief executive considers necessary or desirable— | 10
11
12 |
| (a) | for the proper performance of the activities authorised by the certificate; or | 13
14 |
| (b) | for another purpose consistent with the achievement of the objects of this Act or the Administration Act. | 15
16 |

<i>Example—</i>	17
-----------------	----

If the chief executive decides to issue a registration certificate to a person who is or has been an insolvent under administration, 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.	18 19 20 21 22
--	----------------------------

- | | | |
|-----|---|----------------------|
| (2) | A condition may limit or prohibit the performance of an activity authorised under this Act or the Administration Act. | 23
24 |
| (3) | If the chief executive decides to issue the certificate on condition, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. | 25
26
27
28 |

Division 7	Renewal and restoration of registration certificates	1 2
Subdivision 1	Renewal	3
145	Application for renewal	4
(1)	A property agent salesperson may only apply for renewal of the salesperson's registration certificate before the certificate expires.	5 6 7
(2)	The application must—	8
(a)	be made to the chief executive in the approved form; and	9
(b)	state the term of the registration being applied for; and	10
(c)	be accompanied by—	11
(i)	the application fee prescribed under a regulation; and	12 13
(ii)	the registration certificate renewal fee prescribed under a regulation; and	14 15
(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.	16 17 18 19
146	Chief executive may renew or refuse to renew registration certificate	20 21
(1)	The chief executive must consider the renewal application and may renew or refuse to renew the registration certificate.	22 23
(2)	The chief executive may renew the certificate only if the chief executive is satisfied—	24 25
(a)	the property agent salesperson is a suitable person to obtain registration; and	26 27
(b)	the application is properly made; and	28

[s 147]

- (c) the property agent salesperson meets the eligibility requirements for the certificate. 1
2
 - (3) For subsection (2)(b), an application is properly made only if it complies with section 145(2) and is accompanied by the things mentioned in that subsection. 3
4
5
 - (4) If the chief executive decides to refuse the application, the chief executive must give the property agent salesperson an information notice about the decision within 14 days after the decision is made. 6
7
8
9
- 147 Registration certificate taken to be in force while application for renewal is considered** 10
11
- If an application is made under section 145, 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 application for renewal is decided under section 146 or taken to have been withdrawn under section 141(3). 12
13
14
15
16
17
- Subdivision 2 Restoration** 18
- 148 Application for restoration** 19
- (1) If a property agent salesperson's registration certificate expires, the person (*former salesperson*) may apply for restoration of the certificate. 20
21
22
 - (2) The application must— 23
 - (a) be made within 3 months after the expiry; and 24
 - (b) be made to the chief executive in the approved form; and 25
 - (c) state the term of the registration being applied for; and 26
 - (d) be accompanied by— 27
 - (i) the application fee prescribed under a regulation; 28
and 29

	(ii) the registration renewal fee prescribed under a regulation; and	1 2
	(iii) the registration restoration fee prescribed under a regulation; and	3 4
	(iv) if the former salesperson was required as a condition of the former salesperson's registration to hold insurance—proof of the currency of the insurance; and	5 6 7 8
	(v) if, before or when the application is made, a criminal history costs requirement is made of the former salesperson—the amount of the costs required to be paid.	9 10 11 12
149	Chief executive may restore or refuse to restore registration certificate	13 14
	(1) The chief executive must consider the restoration application and may restore or refuse to restore the registration certificate.	15 16
	(2) The chief executive may restore the certificate only if the chief executive is satisfied—	17 18
	(a) the property agent salesperson is a suitable person to obtain registration; and	19 20
	(b) the application is properly made; and	21
	(c) the property agent salesperson meets the eligibility requirements for the certificate.	22 23
	(3) For subsection (2)(b), an application is properly made only if it complies with section 148(2) and is accompanied by the things mentioned in that subsection.	24 25 26
	(4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.	27 28 29
	(5) If the chief executive decides to restore the certificate—	30
	(a) the certificate is taken to have been renewed on the day it would, apart from section 150, have expired (the <i>initial expiry date</i>); and	31 32 33

[s 150]

- (b) to remove any doubt, a thing done during the period 1
starting on the initial expiry date and ending on the day 2
the certificate is restored under this section is taken to 3
have been as validly done as it would have been if the 4
certificate had been renewed immediately before the 5
initial expiry date. 6

150 Registration certificate taken to be in force while 7
application for restoration is considered 8

If an application is made under section 148, the property agent 9
salesperson's registration certificate is taken to continue in 10
force from the day that it would, apart from this section, have 11
expired until the application for restoration is decided under 12
section 149 or taken to have been withdrawn under section 13
141(3). 14

Division 8 Dealings with registration 15
certificates 16

Subdivision 1 Transfer of registration certificate 17

151 Transfer of registration certificate prohibited 18
A registration certificate may not be transferred. 19

Subdivision 2 General 20

152 Amendment of registration certificate conditions 21
(1) The chief executive may amend the conditions of a 22
registration certificate— 23
(a) on the property agent salesperson's application; or 24
(b) on the order of QCAT after a disciplinary hearing; or 25

-
- (c) on the chief executive's own initiative. 1
- Note—* 2
- QCAT may deal with the conditions of a person's registration certificate 3
under section 211. 4
- (2) An application under subsection (1)(a) must be made to the 5
chief executive in the approved form and be accompanied by 6
the application fee prescribed under a regulation. 7
- (3) Before making an amendment under subsection (1)(a), the 8
chief executive must be satisfied the property agent 9
salesperson meets the eligibility requirements the chief 10
executive considers relevant to the amendment of the 11
condition. 12
- (4) Before making an amendment under subsection (1)(c), the 13
chief executive must— 14
- (a) give written notice to the property agent salesperson— 15
- (i) of the particulars of the proposed amendment; and 16
- (ii) that the property agent salesperson may make 17
written submissions to the chief executive about 18
the proposed amendment before a stated day, not 19
later than 14 days after the notice is given to the 20
salesperson; and 21
- (b) have regard to submissions made to the chief executive 22
by the property agent salesperson before the stated day. 23
- (5) Subsection (4) does not apply if the chief executive decides 24
that the amendment must be made urgently to ensure 25
compliance with this Act or the Administration Act. 26
- (6) If the chief executive decides to amend the conditions of a 27
registration certificate under subsection (1)(c), the chief 28
executive must give the property agent salesperson an 29
information notice about the decision within 14 days after the 30
decision is made. 31
- (7) The amendment takes effect— 32
- (a) on the day the written notice of the amendment is given 33
to the property agent salesperson; or 34
-

[s 153]

	(b) if a later day is stated in the notice, on the stated day.	1
(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 about the decision within 14 days after the decision is made.	2 3 4 5
153	Return of registration certificate for amendment of conditions	6 7
(1)	If the chief executive amends the conditions of a registration certificate under section 152, 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.	8 9 10 11
(2)	The property agent salesperson must comply with a requirement under subsection (1), unless the person has a reasonable excuse.	12 13 14
	Maximum penalty—100 penalty units.	15
154	Surrender of registration certificate	16
(1)	A property agent salesperson may surrender the salesperson's registration certificate by giving written notice, and returning the certificate, to the chief executive.	17 18 19
(2)	A registration certificate surrendered under this section stops having effect on the day it is surrendered.	20 21
Division 9	Immediate suspension and cancellation of registration certificates	22 23 24
155	Immediate suspension	25
(1)	This section applies if the chief executive believes, on reasonable grounds, that—	26 27
(a)	a property agent salesperson's registration certificate, or a renewal or restoration of the registration certificate,	28 29

[s 156]

-
- | | |
|---|--------|
| was obtained because of materially incorrect or misleading information; or | 1 |
| | 2 |
| (b) both— | 3 |
| (i) an irregularity or deficiency exists in a licensee's trust account; and | 4 |
| | 5 |
| (ii) a property agent salesperson of the licensee may be responsible for the irregularity or deficiency; or | 6 |
| | 7 |
| (c) a property agent salesperson— | 8 |
| (i) has contravened or is contravening this Act or the Administration Act; or | 9 |
| | 10 |
| (ii) is likely or proposing to engage in conduct that would contravene this Act or the Administration Act. | 11 |
| | 12 |
| | 13 |
| (2) The chief executive may suspend the property agent salesperson's registration certificate, whether or not disciplinary proceedings have been started under this Act. | 14 |
| | 15 |
| | 16 |
| (3) The certificate may be suspended for the period (not more than 28 days), and on the conditions, the chief executive decides. | 17 |
| | 18 |
| | 19 |
| (4) The chief executive must give the property agent salesperson an information notice about the suspension within 14 days after suspending the registration. | 20 |
| | 21 |
| | 22 |
| (5) The property agent salesperson must return the certificate to the chief executive within 14 days after receiving the notice, unless the property agent salesperson has a reasonable excuse. | 23 |
| | 24 |
| | 25 |
| Maximum penalty for subsection (5)—100 penalty units. | 26 |
|
156 Immediate cancellation |
27 |
| (1) The registration certificate of a property agent salesperson is cancelled if the employee is convicted of a serious offence. | 28 |
| | 29 |
-

[s 157]

- | | |
|---|-------------|
| (2) The property agent salesperson must return the certificate to the chief executive within 14 days after the conviction, unless the property agent salesperson has a reasonable excuse. | 1
2
3 |
| Maximum penalty—100 penalty units. | 4 |

Division 10	General provisions about employee registration	5 6
--------------------	---	--------

157	Form of registration certificate	7
------------	---	---

- | | |
|---|----------|
| (1) A registration certificate must be in the approved form. | 8 |
| (2) However, the chief executive may approve— | 9 |
| (a) a form of certificate for office display purposes; and | 10 |
| <i>Example—</i> | 11 |
| a form of certificate that may be framed and displayed in an office | 12
13 |
| (b) a form of certificate for personal identification purposes. | 14 |
| (3) The certificate must contain the following particulars— | 15 |
| (a) the name of the property agent salesperson; | 16 |
| (b) the date of issue of the certificate; | 17 |
| (c) the expiry date of the certificate; | 18 |
| (d) other particulars prescribed under a regulation. | 19 |

158	Term of registration certificate	20
------------	---	----

A registration certificate may be issued for a 1 year or 3 year term.	21 22
---	----------

159	Replacement certificates	23
------------	---------------------------------	----

- | | |
|---|----------------|
| (1) A property agent salesperson may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate. | 24
25
26 |
|---|----------------|

[s 160]

-
- | | | |
|-----|--|-------------|
| (2) | The application must be made in the approved form and be accompanied by the fee prescribed under a regulation. | 1
2 |
| (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. | 3
4
5 |
| (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. | 6
7
8 |

160	Register of registration certificates	9
------------	--	---

- | | | |
|-------|--|----------------------|
| (1) | The chief executive must keep a register of registration certificates and applications for registration certificates (<i>registration certificate register</i>). | 10
11
12 |
| (2) | The registration certificate register may form part of the licence register. | 13
14 |
| (3) | The registration certificate register must contain the following particulars— | 15
16 |
| (a) | for each applicant for a registration certificate— | 17 |
| (i) | the applicant's name; and | 18 |
| (ii) | the date of the application; and | 19 |
| (iii) | the application number; | 20 |
| (b) | for each property agent salesperson— | 21 |
| (i) | the salesperson's name; and | 22 |
| (ii) | the dates of issue and expiry of the salesperson's current registration certificate; and | 23
24 |
| (iii) | any conditions imposed on the certificate; and | 25 |
| (iv) | the salesperson's registration certificate number; and | 26
27 |
| (v) | particulars of any surrender, suspension or cancellation of the salesperson's registration certificate or any licence or certificate issued to the salesperson under this or the repealed Act. | 28
29
30
31 |

[s 161]

(4)	A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (3)—	1 2 3 4
(a)	at a place or places decided by the chief executive; or	5
(b)	by using a computer.	6
(5)	A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.	7 8
(6)	The register may be kept in the way the chief executive considers appropriate.	9 10
(7)	In this section—	11
	<i>contain</i> includes record and store.	12
161	Property agent salespersons to notify chief executive of changes in circumstances	13 14
(1)	A property agent salesperson must give written notice to the chief executive of a prescribed change in the salesperson's circumstances within 14 days after the change.	15 16 17
	Maximum penalty—100 penalty units.	18
(2)	In this section—	19
	<i>prescribed change</i> means a change prescribed under a regulation.	20 21
Part 6	Residential property sales	22
Division 1	Preliminary	23
162	Purposes of pt 6	24
	The purposes of this part are—	25

-
- (a) to give persons who enter into relevant contracts as buyers a cooling-off period; and 1
2
- (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 3
4
5
6
7
- (c) to enhance consumer protection for buyers of residential property by ensuring, as far as practicable, the independence of lawyers acting for buyers; and 8
9
10
- (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. 11
12
13
14

163 Definitions for pt 6 15

In this part— 16

attached, for a warning statement, any information sheet and a proposed relevant contract or relevant contract, means— 17
18

- (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 19
20
21
22
23

Examples of ways a warning statement and any information sheet may be attached to a proposed relevant contract or relevant contract— 24
25
26

- binding 27
- stapling 28

- (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. 29
30
31
32
33
34

[s 163]

<i>Example—</i>	1
by including the documents in a single email	2
<i>benefit</i> means monetary or other benefit.	3
<i>business day</i> means a day other than a Saturday, Sunday or public holiday.	4 5
<i>buyer</i> , for a matter, includes the buyer's agent authorised to act for the buyer for the matter.	6 7
<i>cooling-off period</i> see section 172.	8
<i>electronic communication</i> see the <i>Electronic Transactions (Queensland) Act 2001</i> , schedule 2.	9 10
<i>formed on a sale by auction</i> means formed on sale by auction—	11 12
(a) directly on the fall of the hammer, by outcry; or	13
(b) directly at the end of another similar type of competition for purchase.	14 15
<i>Examples—</i>	16
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.	17 18 19
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.	20 21 22
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.	23 24 25
<i>information sheet</i> means an information sheet in the form approved under the <i>Body Corporate and Community Management Act 1997</i> , section 206(6) or 213(5A).	26 27 28
<i>relevant contract</i> means a contract for the sale of residential property in Queensland, other than a contract formed on a sale by auction.	29 30 31
<i>seller</i> , for a matter, includes the seller's agent authorised to act for the seller for the matter.	32 33

termination penalty, for 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.

warning statement means a statement in the approved form that includes the information mentioned in section 168(1).

164 Relationship with Electronic Transactions (Queensland) Act 2001

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.

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

165 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 for 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—

[s 166]

- (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 for 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 relating to the sale, or for promoting the sale, or for providing a service for 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.

166 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 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)—
 - 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 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;

[s 167]

- (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
- (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.

167 Buyer to receive copy of property valuation buyer pays for

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

[s 168]

- (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.

Division 3 Warning statements for proposed relevant contracts and relevant contracts

168 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

[s 169]

contract or relevant contract before the cooling-off period ends;	1 2
(d) a recommendation that the proposed buyer or buyer seek an independent valuation of the property before the cooling-off period ends;	3 4 5
(e) what will happen if the buyer terminates the relevant contract before the cooling-off period ends;	6 7
(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;	8 9 10
(g) if the seller under the proposed relevant contract or relevant contract is a property developer, that a person who suffers financial loss because of, or arising out of, the person's dealings with a property developer or the property developer's employees can not make a claim against the claim fund.	11 12 13 14 15 16
(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.	17 18 19 20
169 Warning statement etc. if proposed relevant contract is given to buyer for signing	21 22
(1) This section applies—	23
(a) if a proposed relevant contract is given to a proposed buyer by a seller for signing; and	24 25
(b) whether or not the proposed relevant contract has been signed by the seller.	26 27
(2) When the seller gives the proposed relevant contract to the proposed buyer the seller must—	28 29
(a) have a warning statement attached to the proposed relevant contract; and	30 31

[s 169]

- (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—
 - (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.	1
(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 170.	2 3 4 5
(8) If there are 2 or more proposed buyers relating to the proposed relevant contract and subsection (2) is complied with for at least 1 of the proposed buyers, the subsection is taken to have been complied with for each of the proposed buyers.	6 7 8 9
170 Defence for s 169(6)	10
(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 169(2) for the proposed relevant contract.	11 12 13 14
(2) For the defence mentioned in section 169(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.	15 16 17 18
(3) The notice must identify the failure to comply and—	19
(a) state that the proposed relevant contract is withdrawn; and	20 21
(b) advise whether new documents complying with the requirements of section 169(2) will be given to the proposed buyer.	22 23 24
171 Warning statement must be attached to relevant contract	25
(1) This section applies when a seller gives a buyer a copy of the relevant contract.	26 27
(2) The seller must—	28
(a) have the warning statement mentioned in section 169(2)(a) attached to the relevant contract; and	29 30

[s 172]

- (b) if the relevant contract relates to a unit sale, have the information sheet mentioned in section 169(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

172 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

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

173 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 for 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 for the sale, or for
promoting the sale, or for providing a service for 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.

174 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.

[s 175]

- (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 for 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 relating to the sale, or for promoting the sale, or for providing a service for 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

- 175 Buyer may terminate relevant contract in certain circumstance if clear statement is not given under s 169(2)(c)(i)**
- (1) This section applies if a seller personally or a seller's agent fails to comply with section 169(2)(c)(i).
 - (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 a signed, dated notice of termination to the seller.

[s 176]

-
- | | | |
|-----|--|----------------------------|
| (3) | The buyer may not terminate the relevant contract if the buyer signed the warning statement attached to the proposed relevant contract under section 169(2)(a) before the buyer signed the proposed relevant contract. | 1
2
3
4 |
| (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
6
7 |
| (5) | The notice of termination must state that the relevant contract is terminated under this section. | 8
9 |
| (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. | 10
11
12 |
| | Maximum penalty—200 penalty units. | 13 |
| (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 for the relevant contract after the buyer signed the relevant contract. | 14
15
16
17
18 |
| (8) | An amount payable to the buyer under this section is recoverable as a debt. | 19
20 |

176 Terminating relevant contract during cooling-off period 21

- | | | |
|-----|--|----------------------------|
| (1) | A buyer who has not waived the cooling-off period for a relevant contract under section 173 may terminate the contract at any time during the cooling-off period or, if that period has been shortened under section 174, the shortened period, by giving a signed, dated notice of termination to the seller. | 22
23
24
25
26 |
| (2) | The notice of termination must state that the relevant contract is terminated under this section. | 27
28 |
| (3) | The seller may deduct from any deposit paid under the relevant contract an amount not greater than the termination penalty. | 29
30
31 |
| (4) | The seller must, within 14 days after the relevant contract is terminated, refund to the buyer— | 32
33 |

[s 177]

- (a) any deposit paid under the relevant contract; or 1
- (b) the balance of any deposit paid under the relevant 2
contract after deducting an amount of not more than the 3
termination penalty. 4
- Maximum penalty—200 penalty units. 5
- (5) An amount payable to the buyer under subsection (4) is 6
recoverable as a debt. 7

Division 6 Accounting requirements for 8

relevant contracts 9

177 Application of div 6 10

This division applies if— 11

- (a) the seller under a relevant contract is a property 12
developer; and 13
- (b) a relevant contract provides for the payment by the 14
buyer under the relevant contract of an amount (*part* 15
payment) for the purchase of property; and 16
- (c) the buyer is not entitled under the relevant contract to 17
receive a registrable instrument of transfer of the 18
property in exchange for the part payment. 19

Example of part payment— 20

a deposit payable under the relevant contract 21

178 Part payments must be paid to particular persons 22

- (1) The part payment must be paid directly to— 23
 - (a) the public trustee; or 24
 - (b) a law practice; or 25
 - (c) a property agent; 26
- within 3 business days after the amount is paid by the buyer. 27

[s 179]

-
- (2) If the property developer receives a part payment and fails to
comply with subsection (1), the property developer commits
an offence. 1
2
3
Maximum penalty—200 penalty units or 1 year's
imprisonment. 4
5
- (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). 6
7
8
- (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). 9
10
11
- (5) In this section— 12
law practice means any of the following, within the meaning
of the *Legal Profession Act 2007*, that has an office in
Queensland— 13
14
15
- (a) an Australian legal practitioner who is a sole practitioner
but not a barrister under that Act; 16
17
- (b) a law firm; 18
- (c) an incorporated legal practice; 19
- (d) a multi-disciplinary partnership. 20

179 Part payment to be held in trust

- (1) The part payment must be held— 21
22
- (a) if the part payment is paid to the public trustee, by the
public trustee in a trust account kept for this Act by the
public trustee; or 23
24
25
- (b) if the part payment is paid to an individual, by the
individual in a trust account kept for this Act by— 26
27
- (i) the individual; or 28
- (ii) if the individual is a member of a firm or
partnership, the firm or partnership of which the
individual is a member. 29
30
31

[s 180]

(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.	1 2 3 4
Division 7	Advertising sale of particular properties—sustainability declarations	5 6 7
Subdivision 1	Preliminary	8
180	Definitions for div 7	9
	In this division—	10
	<i>Building Act</i> means the <i>Building Act 1975</i> .	11
	<i>current sustainability declaration</i> , for a residential dwelling, means the current sustainability declaration for the dwelling under the Building Act, chapter 8A, part 1.	12 13 14
	<i>publish</i> includes—	15
	(a) publish on the internet; and	16
	(b) cause to be published.	17
	<i>relevant advertisement</i> means an advertisement in any form or medium, other than—	18 19
	(a) an advertisement published in a newspaper or magazine; or	20 21
	(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.	22 23 24
	<i>residential dwelling</i> 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.	25 26 27 28

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 181(1).

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

181 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—
 - (a) the day a contract for the sale of the dwelling settles;
 - (b) the day the dwelling is withdrawn from sale.

182 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.

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.

Maximum penalty—100 penalty units.

[s 183]

- (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.

183 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 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.

184	Requirement to give copy of sustainability declaration	1
	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.	2 3 4 5
	Maximum penalty—100 penalty units.	6
185	Breach of obligation does not give rise to civil right or remedy	7 8
	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.	9 10 11
Subdivision 3	Publishing or giving incomplete or false or misleading sustainability declaration	12 13 14
186	Application of sdiv 3	15
	This subdivision applies if—	16
	(a) a seller's agent—	17
	(i) publishes a relevant advertisement for the sale of a residential dwelling that includes information about a current sustainability declaration for the dwelling; or	18 19 20 21
	(ii) gives or makes available to a person a current sustainability declaration for the dwelling; and	22 23
	(b) the declaration is incomplete or contains information that is false or misleading; and	24 25
	(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.	26 27 28 29 30

[s 187]

187	No right to terminate contract for publishing or giving declaration	1 2
	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.	3 4 5 6
188	Publishing or giving declaration does not contravene particular provisions	7 8
(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—	9 10 11 12
(a)	section 233, 234, 235 or 238(1);	13
(b)	the Australian Consumer Law (Queensland), section 18, 20, 29, 30, 151 or 152.	14 15
(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 233, 234(1), 235(1) or 238(1) for which a person may make a claim against the fund.	16 17 18 19 20
(3)	Subsection (2) applies despite section 192(1)(a).	21

Part 7 **Trust accounts** 22

189	Opening and maintaining trust accounts	23
(1)	A principal licensee must open and maintain a trust account under the Administration Act if an amount is likely to be received by the licensee for a transaction, or with written direction for its use, when performing the activities of a property agent.	24 25 26 27 28

[s 190]

Maximum penalty—200 penalty units or 2 years imprisonment.	1 2
(2) In this section—	3
<i>amount</i> —	4
(a) includes deposit and purchase money for a transaction; but	5 6
(b) does not include an amount payable to the licensee for a transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.	7 8 9 10
 Part 8	 Claims against the fund
 Division 1	 Preliminary
 190	 Definitions for pt 8
In this part—	14
<i>financial loss</i> , suffered by a person, if evidenced by a judgment of a court, does not include interest awarded on the judgment.	15 16 17
<i>licensee</i> includes a former licensee and a person who is not licensed, but who acts as a licensee.	18 19
<i>marketeering contravention</i> means a contravention of any of the following by a relevant person—	20 21
(a) section 233, 234 or 235;	22
(b) section 573A, 573B or 573C of the repealed Act.	23
<i>relevant person</i> means—	24
(a) a licensee; or	25

[s 191]

	(b) a licensee's employee or agent, or a person carrying on business with the licensee; or	1 2
	(c) a person having charge or control, or apparent charge or control, of a licensee's registered office or business.	3 4
191	What is the purchase of a <i>non-investment residential property</i>	5 6
	A person purchases a <i>non-investment residential property</i> only if—	7 8
	(a) the property is a residential property; and	9
	(b) either of the following has been assessed for the purchase—	10 11
	(i) a concession, under the <i>Duties Act 2001</i> , chapter 2, part 9, for transfer duty;	12 13
	(ii) a concession, under the repealed <i>Stamp Act 1894</i> , section 55A, for stamp duty.	14 15
Division 2	Claims against the fund	16
192	Claims	17
	(1) A person may make a claim, in the way provided under the Administration Act, against the fund if the person suffers financial loss because of the happening of any of the following events—	18 19 20 21
	(a) the contravention of any of the following provisions by a relevant person—	22 23
	• section 91	24
	• section 92	25
	• section 96(1)	26
	• section 189	27
	• section 232	28

[s 193]

- section 233 1
- section 234 2
- section 235 3
- section 238; 4

Note— 5

See, however, see section 188 for particular activities that do not
constitute a contravention of section 233, 234, 235 or 238(1) for
which a person may make a claim against the fund. 6
7
8

(b) a contravention of any of the following provisions of the 9
Land Sales Act 1984 by a licensee appointed by the 10
owner of land to which that Act applies or a relevant 11
person employed by the licensee— 12

- section 9 13
- section 11 14
- section 12 15
- section 21 16
- section 23 17
- section 24; 18

(c) a stealing, misappropriation or misapplication by a 19
relevant person of property entrusted to the person as 20
agent for someone else in the person's capacity as a 21
relevant person. 22

(2) A person may make a claim against the fund under subsection 23
(1) even if the person has made another claim for the loss 24
against a receiver and the receiver has not considered or has 25
refused the other claim. 26

193 Persons who can not claim 27

(1) A person who suffers financial loss because of, or arising out 28
of, the stealing, misappropriation or misapplication of an 29
amount that a relevant person was directed to invest under the 30
Administration Act, section 13(1)(c) can not make a claim 31
against the fund. 32

[s 194]

(2)	The following persons can not make a claim against the fund for any of the following financial losses—	1 2
(a)	a relevant person who suffers financial loss in the course of performing an activity, or carrying on business, as a relevant person;	3 4 5
(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;	6 7 8 9 10
(c)	a person who suffers financial loss because of a failure to disclose or make effective disclosure under section 84;	11 12 13
(d)	a person who suffers financial loss because of, or arising out of, a marketeering contravention relating to the purchase by the person of a residential property, other than a non-investment residential property.	14 15 16 17
194	Claims limited to realised loss	18
(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.	19 20 21 22
(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.	23 24 25

Part 9 **Jurisdiction of QCAT** 26

195	Definitions for pt 9	27
	In this part—	28

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.

196 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 relating to licensing or registration.

Part 10 Proceedings

Division 1 Disciplinary proceedings

197 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 salesperson has been convicted of an indictable offence or an offence against this Act or the Administration Act;

[s 197]

- (b) the licensee or salesperson 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 salesperson has been disqualified from holding a licence under a corresponding law;
- (d) an amount has been paid from the fund because the licensee or salesperson did, or omitted to do, something that gave rise to a claim against the fund;
- (e) the licensee or salesperson fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
- (f) the licensee or salesperson has failed to comply with an order made by a court, the former tribunal or QCAT;
- (g) for a licensee—
 - (i) the licensee is not a suitable person to hold a licence; or
 - (ii) the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or
 - (iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
 - (iv) the licensee has failed to ensure 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

[s 198]

-
- (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 for whom QCAT finds grounds exist to take disciplinary action under section 211; 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 salesperson is not eligible to be employed as a property agent salesperson; or
 - (ii) the salesperson has—in performing an activity of a licensee, been incompetent or acted in an unprofessional way.
- (2) The chief executive must not start a disciplinary proceeding against an executive officer under subsection (1)(g)(vi) if the chief executive is satisfied—
- (a) the act or omission relevant to the proceeding against the corporation was done or made without the executive officer's knowledge; and
 - (b) the executive officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.

198 Starting disciplinary proceedings

The chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under section 197 for taking disciplinary action against a licensee or property agent salesperson.

[s 199]

Division 2	Marketeer proceedings	1
199	Grounds for starting marketeer proceeding	2
	The following are grounds for starting a proceeding against a marketeer for orders under section 213 (<i>marketeer proceeding</i>)—	3 4 5
	(a) the marketeer has contravened or is contravening section 233, 234 or 235;	6 7
	(b) the marketeer is likely or proposing to engage in conduct that would contravene section 233, 234 or 235;	8 9
	(c) the marketeer is reasonably suspected of anything mentioned in paragraph (a) or (b).	10 11
200	How to start a proceeding	12
	(1) The chief executive may apply, as provided under the QCAT Act, to QCAT to conduct a marketeer proceeding.	13 14
	(2) The application must state—	15
	(a) the grounds for starting the proceeding; and	16
	(b) the conduct constituting the grounds; and	17
	(c) that an application will be made for 1 or more orders under section 213.	18 19
Division 3	Review proceedings	20
201	Person dissatisfied with chief executive's decision may seek review	21 22
	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.	23 24 25

202	Stay of operation of decisions	1
(1)	A decision of the chief executive, other than a decision made under section 65 or 155, being reviewed is stayed for the purpose of securing the effectiveness of the review.	2 3 4
(2)	However, the period of a stay does not extend past the time when QCAT decides the application.	5 6
203	QCAT may extend time	7
(1)	QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied—	8 9
(a)	the application is made within 42 days after the person receives notice of the decision to be reviewed; and	10 11
(b)	it is appropriate to extend time having regard to—	12
(i)	the application generally; and	13
(ii)	the justice of the matter generally.	14
(2)	No appeal lies against QCAT's decision under this section.	15
Division 4	Proceedings generally	16
Subdivision 1	Reference committee	17
204	Reference committee	18
(1)	A reference committee is established.	19
(2)	The reference committee consists of—	20
(a)	the commissioner for fair trading; and	21
(b)	2 community representatives who are not public service employees.	22 23
(3)	One of the community representatives must have a demonstrated interest in civil liberties and the other must be a	24 25

[s 205]

person the Minister considers has appropriate and relevant
experience in fair trading issues. 1 2

(4) Community representatives are to be appointed by the
Governor in Council. 3 4

(5) The community representatives' appointment term and
conditions are as decided by the Governor in Council. 5 6

205 Reference committee functions 7

The reference committee's function is to decide whether
conduct of a marketeer that is being investigated under this
Act should be the subject of an application to QCAT for a
public examination. 8 9 10 11

**206 Reference committee may authorise application for
public examination** 12 13

(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. 14 15 16 17

(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. 18 19 20

(3) The reference committee must not authorise the chief
executive to make the application unless satisfied— 21 22

(a) it is unlikely further investigation of the conduct by an
inspector will be effective for deciding whether to start a
marketeer proceeding; and 23 24 25

(b) a public examination may help find out whether a
marketeer has contravened section 233, 234 or 235; and 26 27

(c) it is in the public interest to make the application. 28

Subdivision 2	Public examinations	1
207	QCAT may conduct public examination	2
(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 233, 234 or 235.	3 4 5 6
(2)	The application may be made whether or not a marketeer proceeding has been started.	7 8
(3)	This division applies to a public examination as if it were a hearing before QCAT.	9 10
208	Procedure before public examination starts	11
(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.	12 13 14
(2)	On being satisfied under subsection (1), QCAT must—	15
(a)	decide a time and place for the public examination; and	16
(b)	issue an attendance notice to each person to be examined.	17 18
(3)	If a person to be examined is a corporation QCAT must issue the attendance notice requiring a named executive officer of the corporation to attend QCAT for examination.	19 20 21
(4)	The attendance notice must state—	22
(a)	the time and place for the public examination decided by QCAT; and	23 24
(b)	the person may make oral and written submissions at the public examination.	25 26
(5)	The chief executive must serve the attendance notice on the person to whom it was issued.	27 28

[s 209]

209	Person must answer particular questions	1
(1)	This section applies if a person being examined at a public examination refuses to answer any question put to the person.	2 3
(2)	If QCAT requires the person to answer the question, QCAT must advise the person of the following—	4 5
(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;	6 7 8
(b)	the effect that making the claim will have on the admissibility of the answer in any proceeding against the person.	9 10 11
(3)	The person must answer the question, unless the person has a reasonable excuse.	12 13
	Maximum penalty—500 penalty units.	14
(4)	It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person.	15 16
(5)	The answer is not admissible in any criminal or civil proceeding against the person, other than—	17 18
(a)	the public examination of a person; or	19
(b)	a proceeding to review a reviewable decision; or	20
(c)	an appeal against QCAT’s decision to require the answer; or	21 22
(d)	a perjury proceeding.	23
(6)	In this section—	24
	<i>perjury proceeding</i> means a proceeding in which the falsity or misleading nature of the answer is relevant.	25 26
	<i>reviewable decision</i> means a decision of the chief executive mentioned in schedule 1.	27 28

Subdivision 3	Stopping particular conduct	1
210	Stopping particular conduct	2
(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—	3 4 5 6
(a)	has contravened or is contravening section 233, 234 or 235; or	7 8
(b)	is likely or proposing to engage in conduct that would contravene section 233, 234 or 235.	9 10
(2)	QCAT may, by order, prohibit the marketeer from engaging in conduct that, alone or together with other conduct, is a contravention of section 233, 234 or 235, until the end of the marketeer proceeding.	11 12 13 14
(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.	15 16 17 18 19
(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.	20 21 22 23
(5)	A person must not contravene an order under this section. Maximum penalty—540 penalty units.	24 25
(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.	26 27 28
(7)	An order under this section has effect on the giving of a copy of the order to the marketeer.	29 30

[s 211]

Subdivision 4 QCAT's orders

211 Orders QCAT may make on disciplinary hearing

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

[s 212]

- (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 a court has, for the matter
giving rise to the disciplinary proceeding—
 - (a) been asked to make an order under section 256(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.

212 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 210 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 to do 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

[s 213]

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.

213 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 233, 234 or 235.

(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 period 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;

(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—
-

[s 214]

- (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 relating to the conduct in question—the officer took all reasonable steps to ensure the corporation did not contravene section 233, 234 or 235; or
 - (b) the officer was not in a position to influence the conduct of the corporation relating 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 233, 234 or 235.

214 Criteria for deciding amount to be ordered

To decide the amount a person may be ordered to pay under section 213, 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

[s 215]

-
- | | | |
|-----|--|----|
| (f) | the person's financial position; and | 1 |
| (g) | whether the conduct could have been prevented; and | 2 |
| (h) | if the person is a corporation—the extent to which the | 3 |
| | executive officers of the corporation knew or should | 4 |
| | have known of the contravention; and | 5 |
| (i) | any action the person took to remedy the contravention | 6 |
| | including, for example, compensating persons who | 7 |
| | suffered financial loss because of it; and | 8 |
| (j) | the extent to which the person cooperated with the chief | 9 |
| | executive to remedy the contravention and prevent | 10 |
| | future contraventions; and | 11 |
| (k) | any other relevant factor. | 12 |

Subdivison 5 Chief executive's right of appeal 13

215 Appeal 14

- | | | |
|-----|---|----|
| (1) | The chief executive may appeal to the appeal tribunal against | 15 |
| | any decision of QCAT, but only on the ground of error of law. | 16 |
| (2) | In this section— | 17 |
| | <i>appeal tribunal</i> means QCAT as constituted under the QCAT | 18 |
| | Act, section 166 for the purposes of an appeal. | 19 |

[s 216]

Part 11	Injunctions, undertakings, preservation of assets and civil penalties	1 2 3
Division 1	Injunctions	4
216	Injunctions	5
	An injunction under this division may be granted by the District Court against a person (<i>respondent</i>) at any time.	6 7
217	Who may apply for injunction	8
	The following persons may apply to the District Court for an injunction—	9 10
	(a) the chief executive;	11
	(b) a person aggrieved by the respondent's conduct.	12
218	Grounds for injunction	13
	The District Court may grant an injunction if the court is satisfied a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—	14 15 16
	(a) a contravention of this Act or the code of conduct; or	17
	(b) attempting to contravene this Act or the code of conduct; or	18 19
	(c) aiding, abetting, counselling or procuring a person to contravene this Act or the code of conduct; or	20 21
	(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or the code of conduct; or	22 23 24
	(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act or the code of conduct; or	25 26 27

-
- (f) conspiring with others to contravene this Act or the code of conduct. 1
2

219 Court's powers for injunctions 3

- (1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised— 4
5
6
- (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 7
8
9
- (b) whether or not the person has previously engaged in conduct of that kind. 10
11
- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised— 12
13
- (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 14
15
16
- (b) whether or not the person has previously failed to do the act or thing. 17
18
- (3) An interim injunction may be granted under this part until the application is finally decided. 19
20
- (4) The District Court may rescind or vary an injunction at any time. 21
22

220 Terms of injunction 23

- (1) The District Court may grant an injunction in the terms the court considers appropriate. 24
25
- (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)— 26
27
28
29
30
- (a) for a stated period; or 31

[s 221]

(b) other than on stated terms and conditions. 1

(3) Also, the court may grant an injunction requiring a person to 2
take stated action, including action to disclose information or 3
publish advertisements, to remedy any adverse consequences 4
of the person's contravention of this Act or the code of 5
conduct. 6

221 Undertakings as to costs 7

If the chief executive applies for an injunction under this 8
division, no undertaking as to damages or costs may be 9
required or made. 10

Division 2 Undertakings 11

222 Chief executive may seek undertaking after 12 contravention 13

(1) If the chief executive believes on reasonable grounds a person 14
has contravened or been involved in a contravention of this 15
Act or the code of conduct, the chief executive may, by 16
written notice given to the person— 17

(a) state the act or omission the chief executive believes is 18
the contravention; and 19

(b) ask the person to give the chief executive a written 20
undertaking that the person will not continue or repeat 21
the act or omission. 22

(2) If— 23

(a) the person gives the undertaking and, if the 24
contravention is conduct consisting of a series of acts or 25
omissions, the person stops the conduct; and 26

(b) the chief executive accepts the undertaking; 27

the chief executive can not start an offence proceeding against 28
the person for the contravention, unless the chief executive 29
withdraws the undertaking under section 224. 30

223	Undertaking about other matter	1
	Without limiting section 222, the chief executive may accept	2
	an undertaking given by a person about anything for which the	3
	chief executive or an inspector has a function or power.	4
	<i>Example of type of undertaking for this section—</i>	5
	an undertaking to publish corrective advertising	6
224	Variation and withdrawal of undertakings	7
(1)	If the chief executive accepts the undertaking, it may be	8
	varied or withdrawn at any time by—	9
(a)	the person who gave it, but only if the chief executive	10
	agrees to the variation or withdrawal; or	11
(b)	the chief executive, if the chief executive believes, on	12
	reasonable grounds—	13
(i)	that, before it was accepted, the person who gave it	14
	contravened this Act in a way unknown to the chief	15
	executive; and	16
(ii)	had the chief executive known about the	17
	contravention, the chief executive would not have	18
	accepted the undertaking or would not have	19
	accepted it unless its terms were changed.	20
(2)	The chief executive may also withdraw the undertaking if the	21
	chief executive believes, on reasonable grounds, it is no	22
	longer necessary.	23
(3)	If the chief executive varies or withdraws, or agrees to the	24
	variation or withdrawal of, the undertaking, the chief	25
	executive must give the person who gave it written notice of	26
	its variation or withdrawal.	27
(4)	The variation or withdrawal takes effect when written notice	28
	of the variation or withdrawal is received by the person.	29

225	Enforcement of undertakings	1
(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 3 4
(2)	If the District Court is satisfied the person has contravened the term, the court may make 1 or more of the following orders—	5 6
(a)	an order directing the person to comply with the term;	7
(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;	8 9 10 11
(c)	an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;	12 13 14
(d)	an order directing the person to give a security bond to the State for a stated period;	15 16
(e)	another order the court considers appropriate.	17
(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—	18 19 20
(a)	the chief executive applies to the court for the order; and	21
(b)	the court is satisfied the person contravened the undertaking during the period for which the bond was given.	22 23 24
226	Register of undertakings	25
(1)	The chief executive must keep a register of each undertaking given to the chief executive by a person under this division.	26 27
(2)	The register must contain a copy of the undertaking.	28
(3)	The chief executive may publish the information contained in the register on the department's website.	29 30
(4)	A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the register—	31 32

[s 227]

-
- (a) at a place or places decided by the chief executive; or 1
 - (b) by using a computer. 2
 - (5) A person may pay the fee, in advance or in arrears, under an 3
arrangement approved by the chief executive. 4
 - (6) The register may be kept in the way the chief executive 5
considers appropriate. 6

Division 3 Preservation of assets 7

227 Powers of court for preservation of assets 8

- (1) This section applies if any of the following proceedings have 9
been started against a marketeer— 10
 - (a) a proceeding before the District Court for the grant of an 11
injunction; 12
 - (b) a proceeding before the District Court about a 13
contravention of an undertaking; 14
 - (c) a marketeer proceeding; 15
 - (d) a proceeding before the District Court under division 4 16
for a civil penalty. 17
- (2) On the chief executive's application, the District Court may 18
make an order mentioned in subsection (3) if satisfied— 19
 - (a) it is necessary or desirable to preserve property held by 20
or for the marketeer because the marketeer is or may 21
become liable under this Act— 22
 - (i) to pay an amount to the chief executive; or 23
 - (ii) to pay compensation; or 24
 - (iii) to refund an amount; or 25
 - (iv) to transfer, sell or return other property; and 26
 - (b) it will not unduly prejudice the rights and interests of 27
any other person. 28
- (3) The orders the court may make are— 29

[s 227]

-
- (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 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 for 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.

<i>request</i> includes direction.	1
<i>take</i> includes the following—	2
(a) send;	3
(b) transfer.	4
<i>transferring</i> means transferring, paying or otherwise parting with possession of.	5 6
Division 4	7
Civil penalties and compensation orders for particular contraventions	8
228 Application of div 4	9
This division applies if a person contravenes section 233, 234 or 235.	10 11
229 Application for order imposing civil penalties	12
(1) The chief executive may apply to the District Court (<i>court</i>) for an order requiring the person—	13 14
(a) to pay to the State a money penalty; or	15
(b) to pay to a person who suffered financial loss because of the contravention an amount as compensation.	16 17
(2) The application may be made together with any other application the chief executive may make under this part.	18 19
230 Orders District Court may make	20
(1) This section applies if the court is satisfied the person has contravened section 233, 234 or 235.	21 22
(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.	23 24 25
(3) If satisfied another person has suffered financial loss because of the contravention, the court may order the person to pay to	26 27

[s 230]

- 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.
- (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 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 relating to the conduct in
question—the officer took all reasonable steps to ensure
the corporation did not contravene section 233, 234 or
235; or
- (b) the officer was not in a position to influence the conduct
of the corporation relating 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 233, 234 or 235.

231	Criteria for deciding amount to be ordered	1
	To decide an amount a person may be ordered to pay under	2
	section 230, the court must consider—	3
	(a) the person’s conduct before and after the contravention;	4
	and	5
	(b) whether the conduct was deliberate; and	6
	(c) the period over which the conduct happened; and	7
	(d) the amount of financial loss caused by the	8
	contravention; and	9
	(e) any similar past conduct of the person, including	10
	conduct happening before the commencement of this	11
	section; and	12
	(f) the person’s financial position; and	13
	(g) whether the conduct could have been prevented; and	14
	(h) if the person is a corporation—the extent to which the	15
	executive officers of the corporation knew or should	16
	have known of the contravention; and	17
	(i) any action the person took to remedy the contravention	18
	including, for example, compensating persons who	19
	suffered financial loss because of it; and	20
	(j) the extent to which the person cooperated with the chief	21
	executive to remedy the contravention and prevent	22
	future contraventions; and	23
	(k) any other relevant factor.	24

[s 232]

Part 12	General contraventions, evidentiary matters and legal proceedings	1 2 3
Division 1	General contraventions	4
232	Wrongful conversion and false accounts	5
(1)	This section applies if a licensee, in the performance of the activities of a licensee—	6 7
(a)	receives an amount belonging to someone else; or	8
(b)	falsely accounts for money.	9
(2)	A licensee who—	10
(a)	dishonestly converts the amount to the licensee's own or someone else's use; or	11 12
(b)	dishonestly renders an account of the amount knowing it to be false in a material particular;	13 14
	commits a crime.	15
	Maximum penalty—1000 penalty units or 5 years imprisonment.	16 17
(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.	18 19 20 21 22
(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.	23 24 25 26
	Maximum penalty—540 penalty units.	27
(5)	In this section—	28

licensee includes a former licensee and a person who is not licensed, but who acts as a licensee. 1
2

233 Misleading conduct 3

A marketeer must not, in connection with the sale, or for 4
promoting the sale, or for providing a service in connection 5
with the sale, of residential property in Queensland, engage in 6
conduct that is misleading or is likely to mislead. 7

Note— 8

For remedies for a contravention, see part 11 (Injunctions, undertakings, 9
preservation of assets and civil penalties). 10

234 Unconscionable conduct 11

- (1) A marketeer must not, in connection with the sale, or for 12
promoting the sale, or for providing a service in connection 13
with the sale, of residential property in Queensland, engage in 14
conduct that is, in all the circumstances, unconscionable. 15

Note— 16

For remedies for a contravention, see part 11 (Injunctions, undertakings, 17
preservation of assets and civil penalties). 18

- (2) Without limiting the matters to which regard may be had to 19
decide whether a marketeer has contravened subsection (1), 20
regard may be had to— 21

(a) the relative strengths of the bargaining positions of the 22
marketeer and the buyer of the property; and 23

(b) whether, because of conduct engaged in by the 24
marketeer, the buyer was required to comply with 25
conditions that were not reasonably necessary for the 26
protection of the legitimate interests of the marketeer; 27
and 28

(c) whether the buyer was able to understand any 29
documents relating to the sale, or promotion of the sale, 30
or provision of a service in connection with the sale, of 31
the property; and 32

[s 234]

- (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
 - (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

[s 235]

-
- | | |
|---|----------------------------|
| (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 | 1
2
3
4
5 |
| (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 | 6
7
8 |
| (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 | 9
10
11
12 |
| (o) whether the marketeer took measures to ensure the buyer understood the nature and implications of the transaction and, if so, the adequacy of those measures; and | 13
14
15
16 |
| (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 | 17
18
19
20
21 |
| (q) the extent to which the marketeer and the buyer acted in good faith; and | 22
23 |
| (r) any other relevant factor. | 24 |

235	False representations and other misleading conduct relating to residential property	25 26
------------	--	----------

- | | |
|---|----------------------------|
| (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. | 27
28
29
30
31 |
|---|----------------------------|

<i>Note—</i>	32
--------------	----

For remedies for a contravention, see part 11 (Injunctions, undertakings, preservation of assets and civil penalties).	33 34
--	----------

[s 235]

- (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
 - (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

[s 236]

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 relating 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.

Example—

Australian Consumer Law (Queensland), section 30 (False or
misleading representations about sale etc. of land)

(8) In this section—

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

236 Application of ss 234, 235 and 236

(1) Sections 233, 234 and 235 are in addition to, and do not limit,
any other law, written or unwritten, about conduct mentioned
in them.

(2) Sections 233, 234 and 235 apply to conduct, whether
happening in or outside Queensland, relating to residential
property in Queensland.

237 Offensive conduct relating 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.

[s 238]

Maximum penalty—540 penalty units.	1
(2) In this section—	2
<i>unduly harass</i> includes the following—	3
(a) the use of any physical force;	4
(b) coercion.	5
238 False representations about property	6
(1) A licensee or property agent salesperson must not represent in any way to someone else anything that is false or misleading relating to the letting, exchange or sale of property.	7
Maximum penalty—540 penalty units.	10
(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 relating to—	11
(a) the value of the land at the date of sale; or	17
(b) the potential income from the leasing of the land; or	18
(c) if the land has been previously sold, the date of the sale and the consideration for the sale; or	19
(d) how the purchase of the land may affect the incidence of income taxation on the buyer.	21
Maximum penalty—540 penalty units.	23
(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.	24
(4) Also, if a person makes a representation relating to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.	29

[s 239]

(5)	The onus of establishing that the person had reasonable grounds for making the representation is on the person.	1 2
(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.	3 4 5 6
(7)	This section does not limit another Act or law about false or misleading representations.	7 8
	<i>Example—</i>	9
	Australian Consumer Law (Queensland), section 30 (False or misleading representations about sale etc. of land)	10 11
(8)	In this section—	12
	<i>false or misleading</i> , for a representation, includes the wilful concealment of a material fact in the representation.	13 14
239	Representation of price of property to seller—property agent	15 16
(1)	This section applies if a person wanting to sell residential property (<i>seller</i>) 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 (<i>offered property</i>) is likely to be sold if it is sold by auction.	17 18 19 20 21
(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 (<i>reserve price</i>), the offered property will be sold for the price offered by the highest of any bids made when the property is auctioned.	22 23 24 25 26
	Maximum penalty—200 penalty units.	27
(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—	28 29 30 31
(a)	if the seller sets a reserve price—the reserve price;	32

[s 240]

- (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. 1
2
3
4
- Maximum penalty—200 penalty units. 5
- (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— 6
7
8
- (a) a copy of a comparative market analysis for the offered property; or 9
10
- (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. 11
12
13
14
- Maximum penalty—540 penalty units. 15
- (5) In this section— 16
- 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. 17
18
19
20
21

- 240 Property agent not to indicate reserve or other price to bidder** 22
23
- (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. 24
25
26
27
28
- (2) The property agent must not in any way disclose to the bidder— 29
30
- (a) whether the seller has set a reserve price for the offered property under section 239; or 31
32

[s 241]

-
- (b) the reserve price set under section 239 for the offered property; or 1
2
- (c) an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property. 3
4
5
- Maximum penalty—540 penalty units. 6
- (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— 7
8
9
10
- (a) the comparative market analysis for the offered property; 11
12
- (b) the written explanation showing how the property agent decided the market value of the property. 13
14

241 Representation of price of property—property agent 15

- (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. 16
17
18
19
20
- (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— 21
22
23
- (a) a copy of a comparative market analysis for the offered property; or 24
25
- (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. 26
27
28
29
- Maximum penalty—540 penalty units. 30

[s 242]

242	Property agent not to indicate reserve price to potential buyer	1 2
(1)	This section applies if a person wanting to buy residential property (<i>potential buyer</i>) 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, (<i>offered property</i>) is likely to be sold or is, or is likely to be, offered for sale.	3 4 5 6 7 8
(2)	If the offered property is to be offered for sale by auction, the property agent must not disclose to the potential buyer—	9 10
(a)	whether the seller has set a reserve price for the offered property; or	11 12
(b)	the reserve price set for the offered property; or	13
(c)	an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property.	14 15 16
	Maximum penalty—540 penalty units.	17
(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.	18 19 20 21 22
	Maximum penalty—540 penalty units.	23
(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—	24 25 26 27
(a)	the comparative market analysis for the offered property;	28 29
(b)	the written explanation showing how the property agent decided the market value of the property.	30 31
	Maximum penalty—540 penalty units.	32

243	Chief executive's power to ask for substantiation of representations made by licensees or property agent salespersons	1 2 3
(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 238(1) or (2).	4 5 6 7
(2)	The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.	8 9 10
(3)	The notice must—	11
(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	12 13 14
(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.	15 16 17
(4)	The person must comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.	18 19 20
	Maximum penalty—100 penalty units.	21
(5)	It is a reasonable excuse for an individual to fail to comply with subsection (4) that complying with the subsection might tend to incriminate the individual.	22 23 24
244	Chief executive to ask for substantiation of representations made by marketeers	25 26
(1)	This section applies if the chief executive believes, on reasonable grounds, that a marketeer has made a representation in contravention of section 235(1) or (2).	27 28 29
(2)	The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.	30 31 32

[s 245]

(3) The notice must—	1
(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	2 3 4
(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.	5 6 7
(4) The person must comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.	8 9 10
Maximum penalty—540 penalty units.	11
(5) It is a reasonable excuse for an individual to fail to comply with subsection (4) that complying with the subsection might tend to incriminate the individual.	12 13 14
245 Offence to charge fee for providing documents etc.	15
(1) A licensee or property agent salesperson 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.	16 17 18 19
Maximum penalty—200 penalty units or 1 year's imprisonment.	20 21
(2) Subsection (1) does not limit the <i>Legal Profession Act 2007</i> , section 24 or 25.	22 23
246 Offence to ask for, or receive, excess or improper remuneration	24 25
(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 relating 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.	26 27 28 29 30 31

[s 247]

Maximum penalty—200 penalty units or 1 year's imprisonment.	1 2
(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 4 5 6 7 8
(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.	9 10 11 12 13
(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 relating to the transaction.	14 15 16 17
247 Offence to lend or borrow licence	18
(1) A licensee must not—	19
(a) lend or hire out the licensee's licence to someone else; or	20 21
(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	22 23 24
(c) permit or allow someone else to hold out that the person is the holder of the licence issued to the licensee.	25 26
Maximum penalty—200 penalty units or 2 years imprisonment.	27 28
(2) A person must not borrow, hire or buy a licensee's licence.	29
Maximum penalty—200 penalty units or 2 years imprisonment.	30 31
(3) If a person who is not the holder of an appropriate licence or the licensee's substitute has the effective or apparent	32 33

[s 248]

management or control of a licensee's business, the licensee is 1
taken to have lent, and the person is taken to have borrowed, 2
the licensee's licence. 3

248 False or misleading statements 4

A person must not, for this Act, state anything to an official 5
the person knows is false or misleading in a material 6
particular. 7

Maximum penalty—200 penalty units or 2 years 8
imprisonment. 9

249 False or misleading documents 10

(1) A person must not, for this Act, give an official a document 11
containing information the person knows is false or 12
misleading in a material particular. 13

Maximum penalty—200 penalty units or 2 years 14
imprisonment. 15

(2) Subsection (1) does not apply to a person if the person, when 16
giving the document— 17

(a) informs the official, to the best of the person's ability, 18
how it is false or misleading; and 19

(b) if the person has, or can reasonably obtain, the correct 20
information, gives the correct information. 21

(3) A person must not make an entry in a document required or 22
permitted to be made or kept under this Act knowing the entry 23
to be false or misleading in a material particular. 24

Maximum penalty—200 penalty units or 2 years 25
imprisonment. 26

250 Prohibited practices 27

(1) A person must not, for reward, supply, or undertake to supply, 28
or advertise, or hold out in any way, that the person will 29
supply to any person addresses or other particulars of— 30

-
- (a) places of residence that are to let; or 1
- (b) places of residence or land or interests in places of 2
residence or land that are for sale. 3
- Maximum penalty—200 penalty units or 1 year’s 4
imprisonment. 5
- (2) Subsection (1) does not apply to a property agent that has 6
been appointed by the landlords or sellers of the places of 7
residence or land or interests in the places of residence or land 8
to perform an activity and has the landlord’s or seller’s 9
consent to supply the particulars. 10
- (3) A person must not make an unsolicited invitation to another 11
person to attend a property information session unless the 12
person is a property developer or a property agent or someone 13
acting for the developer or agent. 14
- Maximum penalty—200 penalty units or 2 years 15
imprisonment. 16

Division 2 Evidentiary matters 17

251 Evidentiary provisions 18

- (1) This section applies to a proceeding under this Act. 19
- (2) The appointment or power of an inspector must be presumed 20
unless a party, by reasonable notice, requires proof of— 21
- (a) the appointment; or 22
- (b) the power to do anything under this Act. 23
- (3) A signature purporting to be the signature of the chief 24
executive or an inspector is evidence of the signature it 25
purports to be. 26
- (4) A certificate purporting to be signed by the chief executive, a 27
member of QCAT, the registrar or an inspector stating any of 28
the following matters is evidence of the matter— 29
- (a) a stated document is— 30

[s 252]

(i)	an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or	1 2 3
(ii)	a notice, or a copy of a notice, given under this Act; or	4 5
(iii)	a record, or a copy of a record, kept under this Act; or	6 7
(iv)	a document, or a copy of a document, kept under this Act;	8 9
(b)	on a stated day, a stated person—	10
(i)	was, or was not, the holder of a stated licence or registration certificate under this Act; or	11 12
(ii)	was given a stated notice, order, requirement or direction under this Act.	13 14
252	Entries in licensee's documents	15
	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.	16 17 18
Division 3	Proceedings	19
253	Proceedings for an offence	20
(1)	Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the <i>Justices Act 1886</i> within the later of the following—	21 22 23
(a)	1 year after the offence is committed;	24
(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.	25 26 27
(2)	A proceeding for an indictable offence may be taken, at the prosecution's election—	28 29

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

[s 254]

- (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. 1
2
3
- (8) In this section— 4
indictable offence means an offence against this Act for which the maximum penalty of imprisonment is more than 2 years. 5
6
7

254 Responsibility for acts or omissions of representatives 8

- (1) This section applies in a proceeding for an offence against this Act. 9
10
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show— 11
12
 - (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 13
14
15
 - (b) the representative had the state of mind. 16
- (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. 17
18
19
20
21
22
- (4) In this section— 23
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. 24
25
26
representative means— 27
 - (a) of a corporation—an executive officer, employee or agent of the corporation; or 28
29
 - (b) of an individual—an employee or agent of the individual. 30
31*state of mind*, of a person, includes— 32

[s 255]

(a)	the person's knowledge, intention, opinion, belief or purpose; and	1 2
(b)	the person's reasons for the intention, opinion, belief or purpose.	3 4
255	Executive officers must ensure corporation complies with Act	5 6
(1)	The executive officers of a corporation must ensure the corporation complies with this Act.	7 8
(2)	If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.	9 10 11 12
	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.	13 14 15
(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 the corporation complies with the provision.	16 17 18 19
(4)	However, it is a defence for an executive officer to prove that—	20 21
(a)	if the officer was in a position to influence the conduct of the corporation relating to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or	22 23 24 25
(b)	the officer was not in a position to influence the conduct of the corporation relating to the offence.	26 27
(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.	28 29 30 31 32

[s 256]

256 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 227(6), 237(1) or 244(4).

257 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 227(6), 237(1) or 244(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

[s 258]

holding a licence or registration certificate under this Act for a stated period or permanently.	1 2
(2) The court may also make any other order QCAT may make in a marketeer proceeding.	3 4
<i>Note—</i>	5
For the orders QCAT may make, see section 213.	6
(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.	7 8 9
(4) The court may make an order under this section—	10
(a) on the chief executive's application; or	11
(b) on its own initiative.	12
(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.	13 14 15
258 Allegations of false or misleading representations or statements etc.	16 17
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'.	18 19 20 21 22

Part 13 General 23

259 Public warning statements	24
(1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following—	25 26 27

[s 260]

- (a) contraventions of the code of conduct that have resulted in disciplinary action and persons who commit the contraventions; 1
2
3
- (b) business practices regulated under this Act that are unfair and persons who engage in the unfair practices; 4
5
- (c) the commission of offences against this Act and persons who commit the offences. 6
7
- (2) The statement may identify particular contraventions, business practices, offences and persons. 8
9
- (3) The Minister or chief executive must not make or issue a statement under this section unless satisfied it is in the public interest to do so. 10
11
12

260 Civil remedies not affected 13

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. 14
15
16

261 Criminal Proceeds Confiscation Act 2002 not limited 17

Nothing in this Act limits the *Criminal Proceeds Confiscation Act 2002*. 18
19

262 Delegation—chief executive 20

- (1) The chief executive may delegate the chief executive's powers, other than power under section 259, to an appropriately qualified public service employee. 21
22
23
- (2) In subsection (1)— 24
 - appropriately qualified*** includes having the qualifications, experience or standing appropriate to exercise the power. 25
26
 - Example of standing—* 27
 - the level at which a person is employed within the department 28

263	Approved forms	1
	The chief executive may approve forms for use under this Act.	2
264	Review of Act	3
(1)	The Minister must ensure the operation of this Act is reviewed.	4 5
(2)	The review must be finished within 3 years after the commencement of this section.	6 7
(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.	8 9 10
265	Regulation-making power	11
(1)	The Governor in Council may make regulations under this Act.	12 13
(2)	Without limiting subsection (1), a regulation may be made about the following—	14 15
(a)	fees, including the refunding of fees payable under this Act;	16 17
(b)	the amount of fees and rate of commission that may be charged for transactions by licensees;	18 19
(c)	imposing a penalty for a contravention of a regulation of not more than 20 penalty units;	20 21
(d)	imposing a penalty for a contravention of the code of conduct of not more than 20 penalty units;	22 23
(e)	imposing limits on out-of-pocket expenses incurred in the performance of activities under a licence;	24 25
(f)	the keeping of records, including the form in which a record is kept;	26 27
(g)	the keeping of receipts and evidence of expenditure;	28
(h)	the length of time a document required to be kept under this Act is to be kept.	29 30

[s 266]

Part 14	Repeal	1
----------------	---------------	---

266	Repeal	2
------------	---------------	---

The Property Agents and Motor Dealers Act 2000, No. 62 is repealed.	3 4
---	--------

Part 15	Transitional and saving provisions	5 6
----------------	---	--------

Division 1	Preliminary	7
-------------------	--------------------	---

267	Definitions for pt 15	8
------------	------------------------------	---

In this part—	9
---------------	---

<i>Chattel Auctioneers Act</i> means the <i>Motor Dealers and Chattel Auctioneers Act 2010</i> .	10 11
--	----------

<i>commencement</i> means the day this section commences.	12
---	----

<i>existing licence</i> means any of the following licences under the repealed Act—	13 14
---	----------

(a) an auctioneer's licence;	15
------------------------------	----

(b) a pastoral house licence;	16
-------------------------------	----

(c) a pastoral house auctioneer's licence;	17
--	----

(d) a pastoral house director's licence;	18
--	----

(e) a pastoral house manager's licence;	19
---	----

(f) a real estate agent's licence;	20
------------------------------------	----

(g) a resident letting agent's licence.	21
---	----

<i>existing registration certificate</i> means a registration certificate as a real estate salesperson, pastoral house	22 23
--	----------

[s 268]

salesperson, property developer salesperson or trainee
auctioneer under the repealed Act. 1
2

transitioned licence see section 268(2). 3

transitioned registration certificate see section 269(2). 4

Division 2 Transitional provisions 5

Subdivision 1 Licences and registration certificates 6 7

268 Existing licences 8

- (1) This section applies to a person who, immediately before the
commencement, held an existing licence. 9
10
- (2) The person, on the commencement, is taken to be the holder
of the following licence or licences (each a *transitioned*
licence)— 11
12
13
- (a) if the existing licence was a pastoral house or pastoral
house director's licence—a property agent licence and a
chattel auctioneer licence; 14
15
16
- (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 licence and a chattel auctioneer licence; 17
18
19
20
21
- (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 licence that is subject to 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; 22
23
24
25
26
27
28
29

[s 268]

-
- | | | |
|------|--|--|
| (d) | if the existing licence was an auctioneer's licence or a pastoral house auctioneer's licence— | 1
2 |
| (i) | either— | 3 |
| (A) | if the person also held an existing licence that was a real estate agent's licence immediately before the commencement—a property agent licence; or | 4
5
6
7 |
| (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 licence that is subject to 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 | 8
9
10
11
12
13
14
15 |
| (ii) | a chattel auctioneer licence; | 16 |
| (e) | if the existing licence was a resident letting agent's licence—a resident letting agent licence. | 17
18 |
| (3) | If the existing licence held by the person immediately before the commencement was subject to a condition (the current condition), the transitioned licence is also taken to be subject to a condition in the same terms, so far as practicable, as the current condition. | 19
20
21
22
23 |
| (4) | A transitioned licence expires on the day it would have expired under the repealed Act unless it is sooner cancelled. | 24
25 |
| (5) | The chief executive may deal with— | 26 |
| (a) | a transitioned licence that is a chattel auctioneer licence as if it were a chattel auctioneer licence issued under the Chattel Auctioneers Act; or | 27
28
29 |
| (b) | another transitioned licence as if it were a licence issued under this Act. | 30
31 |
| | <i>Example of dealing with a transitioned licence under this Act—</i> | 32 |
| | the chief executive amending the conditions of the transitioned licence under section 60 | 33
34 |
-

269 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 the following registration certificate or certificates (each a *transitioned registration certificate*)—
- (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 under the Chattel Auctioneers Act;
 - (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 subject to 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;
 - (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 salesperson immediately before the commencement—a registration certificate as

[s 269]

- a property agent salesperson that is subject to 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 under the Chattel Auctioneers Act;
- (d) if the existing registration certificate was held as a property developer salesperson—a registration certificate as a property agent salesperson that is subject to 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 unless it is sooner cancelled.
- (5) The chief executive may deal with—
- (a) a transitioned registration certificate that is a registration certificate as a trainee chattel auctioneer as if it were a registration certificate as a trainee chattel auctioneer issued under the Chattel Auctioneers Act; or
- (b) another transitioned registration certificate as if it were a registration certificate issued under this Act.
- Example of dealing with a transitioned registration certificate under this Act—*
- the chief executive amending the conditions of the transitioned registration certificate under section 152

270	Expiry of particular licences and certificate	1
	On the commencement, the following licences and certificate under the repealed Act end—	2
		3
	(a) a property developer licence;	4
	(b) a property developer director's licence;	5
	(c) a registration certificate as a property developer salesperson.	6
		7
271	Existing applications	8
(1)	This section applies to the following applications made under the repealed Act but not decided before the commencement—	9
		10
	(a) an application for the issue of an existing licence or existing registration certificate;	11
		12
	(b) an application for the renewal of an existing licence or existing registration certificate;	13
		14
	(c) an application for the restoration of an existing licence or existing registration certificate;	15
		16
	(d) an application about amending an existing licence or existing registration certificate;	17
		18
	(e) 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.	19
		20
		21
(2)	If the application is about the issue, renewal, restoration or amendment of an existing licence or appointment of a substitute licensee for an existing licence, the application is taken to be about the issue, renewal, restoration or amendment of, or appointment of a substitute licensee for, the transitioned licence (the <i>relevant transitioned licence</i>) for the existing licence.	22
		23
		24
		25
		26
		27
		28
(3)	If the application is about the issue, renewal, restoration or amendment of an existing registration certificate, the application is taken to be about the issue, renewal, restoration or amendment of the transitioned registration certificate (the	29
		30
		31
		32

[s 271]

- relevant transitioned certificate*) for the existing registration certificate. 1
2
- (4) To the extent, if any, the relevant transitioned licence is a 3
property agent licence or resident letting agent licence or the 4
relevant transitioned certificate is a registration certificate as a 5
property agent salesperson— 6
- (a) the application must be decided under this Act; and 7
- (b) the provisions of this Act, relevant to the application, 8
apply to the application. 9
- (5) To the extent, if any, the relevant transitioned licence is a 10
chattel auctioneer licence or the relevant transitioned 11
certificate is a registration certificate as a trainee chattel 12
auctioneer— 13
- (a) the application must be decided under the Chattel 14
Auctioneers Act; and 15
- (b) the provisions of that Act, relevant to the application, 16
apply to the application. 17
- (6) However, the provisions of this Act or the Chattel 18
Auctioneers Act dealing with making an application in the 19
approved form and paying an application fee do not apply for 20
deciding an application for subsection (4) or (5). 21
- (7) If the application is about the renewal or restoration of an 22
existing licence, the relevant transitioned licence is taken to 23
continue in force from the day the licence would, apart from 24
this subsection, expire until the application for renewal or 25
restoration is decided or withdrawn. 26
- (8) If the application is about the renewal or restoration of an 27
existing registration certificate, the relevant transitioned 28
registration certificate is taken to continue in force from the 29
day the certificate would, apart from this subsection, expire 30
until the application for renewal or restoration is decided or 31
withdrawn. 32

272 Restoration of expired existing licences

(1) This section applies if a person's existing licence expired within 3 months before the commencement.

(2) To the extent, if any, the transitioned licence for the existing licence would have been a property agent's licence or resident letting agent's licence if the existing licence had been in force, the person may apply under section 51 for restoration of the licence as if the existing licence were a property agent licence or resident letting agent licence.

Note—

Section 51(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 the person the licence that would be the transitioned licence for the existing licence.

(4) To the extent, if any, the transitioned licence for the existing licence would have been a chattel auctioneer licence if the existing licence had been in force, the person may apply under the Chattel Auctioneers Act, section 42 for restoration of the licence as if the existing licence were a chattel auctioneer licence.

(5) However, if the chief executive decides to grant the application, the chief executive must, instead of restoring the existing licence, issue the person a chattel auctioneer licence.

(6) If the existing licence was subject to a condition, the licence issued under subsection (3) or (5) is also taken to be subject to a condition in the same terms, so far as practicable, as that condition.

(7) To remove any doubt, it is declared that—

(a) to the extent, if any, the transitioned licence for the existing licence is a property agent licence or resident letting agent licence, section 53 applies to the existing licence; and

[s 273]

- (b) to the extent, if any, the transitioned licence for the existing licence is a chattel auctioneer licence, the Chattel Auctioneers Act, section 44 applies to the existing licence.

273 Restoration of expired existing registration certificates

- (1) This section applies if a person's existing registration certificate expired within 3 months before the commencement.
- (2) To the extent the transitioned registration certificate for the existing registration certificate would have been a registration certificate as a property agent salesperson if the registration certificate had been in force, the person may apply under section 148 for restoration of the existing registration certificate as if it were a property agent salesperson's registration certificate.

Note—

Section 148(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 the person a registration certificate as a property agent salesperson.
- (4) To the extent, if any, the transitioned registration certificate for the existing registration certificate would have been a registration certificate as a trainee chattel auctioneer if the registration certificate had been in force, the person may apply under the Chattel Auctioneers Act, section 197 for restoration of the existing registration certificate as if it were a trainee chattel auctioneer's registration certificate.
- (5) However, if the chief executive decides to grant the application, the chief executive must, instead of restoring the existing registration certificate, issue the person a registration certificate as a trainee chattel auctioneer.
- (6) If the existing registration certificate was subject to a condition, the registration certificate issued under subsection

[s 274]

-
- (3) or (5) is also taken to be subject to a condition in the same terms, so far as practicable, as that condition. 1 2
- (7) To remove any doubt, it is declared that— 3
- (a) to the extent the transitioned registration certificate for the existing registration certificate is a registration certificate as a property agent salesperson, section 150 applies to the existing registration certificate; and 4 5 6 7
- (b) to the extent, if any, the transitioned registration certificate for the existing registration certificate is a registration certificate as a trainee chattel auctioneer, the Chattel Auctioneers Act, section 199 applies to the existing registration certificate. 8 9 10 11 12

274 Previous refusals of applications 13

- (1) This section applies to a person who made an application for an existing licence or existing registration certificate under the repealed Act and the application was refused before the commencement. 14 15 16 17
- (2) The person can not make an application for a licence or registration certificate under this Act— 18 19
- (a) for 3 months after the day the chief executive gave the person an information notice for the refusal; or 20 21
- (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. 22 23 24
- (3) This section does not apply to a person if— 25
- (a) the person is a corporation; and 26
- (b) the person satisfies the chief executive that, because of a genuine sale— 27 28
- (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 29 30 31 32 33

[s 275]

(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.	1 2 3 4
275	Deactivated existing licences	5
(1)	Subsections (2) and (3) apply to an existing licence that, immediately before the commencement, was deactivated under the repealed Act.	6 7 8
(2)	To the extent, if any, the transitioned licence for the existing licence (the <i>relevant transitioned licence</i>) is a property agent licence or resident letting agent licence—	9 10 11
(a)	the existing licence continues to be deactivated under this Act; and	12 13
(b)	section 63 applies to the existing licence as if it were a licence deactivated under this Act.	14 15
(3)	To the extent, if any, the relevant transitioned licence is a chattel auctioneer licence—	16 17
(a)	the existing licence continues to be deactivated under the Chattel Auctioneers Act; and	18 19
(b)	section 54 of that Act applies to the existing licence as if it were a chattel auctioneer licence deactivated under that Act.	20 21 22
(4)	Subsections (5) and (6) apply to a request to deactivate an existing licence, made under the repealed Act and not decided before the commencement.	23 24 25
(5)	To the extent, if any, the relevant transitioned licence is a property agent licence or resident letting agent licence—	26 27
(a)	the request must be decided under this Act; and	28
(b)	section 63 applies to the request.	29
(6)	To the extent, if any, the relevant transitioned licence is a chattel auctioneer licence—	30 31

[s 276]

(a)	the request must be decided under the Chattel Auctioneers Act; and	1 2
(b)	section 54 of that Act applies to the request.	3
276	Suspended existing licences and existing registration certificates	4 5
(1)	This section applies to an existing licence or existing registration certificate that was, immediately before the commencement, suspended under the repealed Act.	6 7 8
(2)	Subsections (3) to (5) apply—	9
(a)	to the extent, if any, the transitioned licence for the existing licence would have been a property agent licence or resident letting agent licence if the existing licence had been in force; or	10 11 12 13
(b)	to the extent, if any, the transitioned registration certificate for the existing registration certificate would have been a registration certificate as a property agent salesperson if the registration certificate had been in force.	14 15 16 17 18
(3)	The existing licence or existing registration certificate continues to be suspended under this Act.	19 20
(4)	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.	21 22 23
(5)	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.	24 25 26 27
(6)	Subsections (7) to (9) apply—	28
(a)	to the extent, if any, the transitioned licence for the existing licence would have been a chattel auctioneer licence if the existing licence had been in force; or	29 30 31
(b)	to the extent, if any, the transitioned registration certificate for the existing registration certificate would	32 33

[s 277]

- have been a registration certificate as a trainee chattel
auctioneer if the registration certificate had been in
force.
- (7) The existing licence or existing registration certificate
continues to be suspended under the Chattel Auctioneers Act.
- (8) The provisions of the Chattel Auctioneers Act relating to the
suspension of a chattel auctioneer licence apply to the existing
licence as if the existing licence were a chattel auctioneer
licence.
- (9) The provisions of the Chattel Auctioneers Act relating to the
suspension of a certificate of registration as a trainee chattel
auctioneer apply to the existing registration certificate as if the
existing registration certificate were a certificate of
registration as a trainee chattel auctioneer.

Subdivision 2 Miscellaneous provisions

277 Existing appointments

- (1) Subsections (2) to (7) apply to an appointment, engagement or
agreement mentioned in any of subsections (2) to (5) to act as
a particular agent under the repealed Act (each an *existing*
appointment), if the appointment, engagement or
agreement—
- (a) was in force immediately before the commencement;
and
- (b) complied with the repealed Act.
- (2) 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.
- (3) 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.

[s 277]

-
- (4) 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 subject to 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.
- (5) If the existing appointment was as an auctioneer or a pastoral house auctioneer, the existing appointment is taken to be as—
- (a) either—
- (i) if the person also held an existing licence that was a real estate agent's licence immediately before the commencement—a property agent; or
- (ii) 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
- (b) a chattel auctioneer.
- (6) To the extent an existing appointment is taken to be as a property agent under subsection (2), (3), (4) or (5)—
- (a) the appointment continues to be a valid appointment under this Act according to its terms; and
- (b) if the appointment is for an exclusive agency, or sole agency, within the meaning of the repealed Act, the appointment ends on the earlier of the following—
- (i) the day it ends according to its terms;
- (ii) the end of 60 days after the commencement.
- (7) To the extent an existing appointment is taken to be as a chattel auctioneer under subsection (2), (3) or (5), the appointment continues to be a valid appointment under the Chattel Auctioneers Act according to its terms.
-

[s 278]

- (8) Subsections (9) and (10) apply to 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.
- (9) To the extent, if any, the appointment relates to an existing licence for which the transitioned licence is a property agent licence or resident letting agent licence, the appointment continues to be a valid appointment under this Act according to its terms.
- (10) To the extent, if any, the appointment relates to an existing licence for which the transitioned licence is a chattel auctioneer licence, the appointment continues to be a valid appointment under the Chattel Auctioneers Act according to its terms.
- 278 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.
- 279 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 280]

- (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.

280 Continuation of reviews under the repealed Act

- (1) Subsection (2) applies if—
- (a) a person applied to QCAT, under the repealed Act, section 501, 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) Subsections (4) and (5) apply if—
- (a) a person could have applied, under the repealed Act, section 501, 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.
- (5) QCAT may hear and decide the review under the repealed Act.

281 Injunctions relating to pre-commencement conduct

- (1) Subsections (2) to (5) apply to an injunction granted by the District Court under the repealed Act and in force immediately before the commencement.
- (2) The injunction continues to be a valid injunction under this Act according to its terms.
- (3) The provisions of this Act relating to injunctions apply to the injunction.

[s 282]

- (4) If the injunction was granted against a person to whom section 270 applies and relates to the person's existing licence, from the commencement, the injunction is taken to relate to the person's transitioned licence under section 268(2).
- (5) If the injunction was granted against a person to whom section 269 applies and relates to the person's existing registration certificate, from the commencement, the injunction is taken to relate to the person's transitioned registration certificate under section 269(2).
- (6) In addition to section 218, the District Court may also grant an injunction if the court is satisfied 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.
- (7) Subsection (6) does not limit section 218.

282 Undertakings relating to pre-commencement conduct

- (1) Subsections (2) to (5) apply to an undertaking given by a person to the chief executive under the repealed Act.
- (2) The undertaking continues to be a valid undertaking under this Act according to its terms.

[s 283]

- (3) The provisions of this Act relating to undertakings apply to the undertaking. 1
2
- (4) If the undertaking was given by a person to whom section 268 applies and relates to the person's existing licence, from the commencement, the undertaking is taken to relate to the person's transitioned licence under section 268(2). 3
4
5
6
- (5) If the undertaking was given by a person to whom section 269 applies and relates to the person's existing registration certificate, from the commencement, the undertaking is taken to relate to the person's transitioned registration certificate under section 269(2). 7
8
9
10
11
- (6) Section 222 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. 12
13
14
15
- (7) If, before the commencement, the chief executive applied to the District Court for an order under the repealed Act, section 571 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. 16
17
18
19
20

283 Proceedings for particular offences under repealed Act 21

- (1) This section applies if a person is alleged to have committed an offence against a provision of any of the following provisions of the repealed Act before the commencement— 22
23
24
 - (a) chapter 2, parts 9, 10 and 11; 25
 - (b) chapter 3, parts 9, 10 and 11; 26
 - (c) chapter 4, parts 2, 3 and 4; 27
 - (d) chapters 5, 6, 7, 8, 11 and 12; 28
 - (e) chapter 14, part 2; 29
 - (f) chapter 15; 30
 - (g) chapter 16, part 3; 31
 - (h) chapter 17, parts 1 and 3. 32

[s 284]

(2)	Without limiting the <i>Acts Interpretation Act 1954</i> , section 20, proceedings for the offence may be started or continued, and a court may hear and decide the proceedings, as if the repealed Act had not been repealed.	1 2 3 4
(3)	Subsection (2) applies despite the Criminal Code, section 11.	5
284	Existing infringement notice offences	6
(1)	This section applies if—	7
(a)	an infringement notice offence under the <i>State Penalties Enforcement Act 1999</i> was committed by a person before the commencement; and	8 9 10
(b)	no infringement notice under that Act had been served before the commencement on the person for the offence.	11 12
(2)	Without limiting the <i>Acts Interpretation Act 1954</i> , section 20, 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.	13 14 15 16
(3)	Subsection (2) applies despite the Criminal Code, section 11.	17
285	Existing delegations	18
	On the commencement, a delegation of power made by the chief executive under the repealed Act, section 597 continues to have effect according to its terms as a delegation made under section 262 of the power under this Act that is equivalent or substantially similar to the delegated power under the repealed Act.	19 20 21 22 23 24
286	Reference committee—marketeers	25
(1)	If a reference committee has been formed under the repealed Act, section 528AA 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.	26 27 28 29 30

[s 287]

- (2) If the appointment was subject to a condition, the person appointed is taken to be subject to a condition in the same terms. 1
2
3
- (3) If, under the repealed Act, section 528AC, the reference committee has authorised the chief executive to make an application to QCAT for a public examination under chapter 14, part 5, division 8 of the repealed Act, the authorisation continues under this Act. 4
5
6
7
8

287 Existing registers

- (1) On the commencement— 9
10
 - (a) the licence register kept under the repealed Act is taken to be the licence register under this Act; and 11
12
 - (b) the registration certificate register kept under the repealed Act is taken to be the registration certificate register under this Act; and 13
14
15
 - (c) the register kept under the repealed Act, section 572 is taken to be the register of undertakings. 16
17
- (2) In this section— 18
register of undertakings means the register kept under section 226. 19
20

288 Existing fines and fees

- (1) A fine ordered to be paid 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. 21
22
23
24
25
26
- (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 fee. 27
28
29
30
31

[s 289]

289	Return of beneficial interest if in form of commission	1
(1)	Subsection (2) applies if, under section 283, a person is convicted of an offence against the repealed Act, section 145(2) or (3) after the commencement.	2 3 4
(2)	The repealed Act, section 145A applies to the person and the court convicting the person as if the repealed Act had not been repealed.	5 6 7
(3)	Subsection (4) applies if, under section 283, a person is convicted of an offence against the repealed Act, section 184(2) or (3) after the commencement.	8 9 10
(4)	The repealed Act, section 184A applies to the person and the court convicting the person as if the repealed Act had not been repealed.	11 12 13
(5)	Subsection (6) applies if, under section 283, a person is convicted of an offence against the repealed Act, section 222(2) or (3) after the commencement.	14 15 16
(6)	The repealed Act, section 222A applies to the person and the court convicting the person as if the repealed Act had not been repealed.	17 18 19
290	Buyer's rights if notice about land is not given under repealed Act or is materially defective	20 21
	From the commencement, the repealed Act, sections 150 and 189 continue to apply to a contract for the sale of land entered into before the commencement as if the repealed Act had not been repealed.	22 23 24 25
291	Transitional regulation-making power	26
(1)	A regulation (a <i>transitional regulation</i>) may make provision of a saving or transitional nature—	27 28
(a)	for which it is necessary to make provision to allow or facilitate the continuation of the enforcement provisions of the repealed Act under section 292; and	29 30 31

[s 292]

-
- | | | |
|-----|--|--------|
| (b) | for which this Act does not make provision or sufficient provision. | 1
2 |
| (2) | A transitional regulation may have retrospective operation to a day that is not earlier than the commencement. | 3
4 |
| (3) | A transitional regulation must declare it is a transitional regulation. | 5
6 |
| (4) | This section and any transitional regulation expire 1 year after the commencement. | 7
8 |

Division 3 Savings provision for repealed Act 9

292 Saving of enforcement provisions 10

- | | | |
|-----|--|----------------------------|
| (1) | The enforcement provisions as in force immediately before the commencement continue in force for the purposes of this Act, the Administration Act, the Chattel Auctioneers Act and the <i>Commercial Agents Act 2010</i> despite the repeal of the repealed Act. | 11
12
13
14
15 |
| (2) | Without limiting subsection (1), a person who held an appointment as an inspector under the repealed Act immediately before the commencement continues to hold office as an inspector on the conditions stated in the person's instrument of appointment. | 16
17
18
19
20 |
| (3) | For applying subsection (1), a reference in the enforcement provisions to licensee, as defined in the repealed Act, schedule 2, is taken— | 21
22
23 |
| (a) | for this Act—to be a reference to the holder of a property agent licence, or a resident letting agent licence, that is in force; or | 24
25
26 |
| (b) | for the Administration Act—to be a reference to the holder of a licence under an Agents Act or this Act, that is in force; or | 27
28
29 |
| (c) | for the Chattel Auctioneers Act—to be a reference to the holder of a motor dealer or chattel auctioneer licence that is in force; or | 30
31
32 |

[s 293]

(d)	for the <i>Commercial Agents Act 2010</i> —to be a reference to the holder of a commercial agent licence that is in force.	1 2 3
(4)	This section does not limit the <i>Acts Interpretation Act 1954</i> , section 20.	4 5
(5)	In this section— <i>enforcement provisions</i> means—	6 7
(a)	the repealed Act, chapter 15, other than section 558(1)(b) and (c); and	8 9
(b)	any provisions of the repealed Act, chapter 1 or schedule 2, that are relevant to the provisions mentioned in paragraph (a).	10 11 12
Part 16	Minor and consequential amendments	13 14
293	Minor and consequential amendments	15
	Schedule 2 amends the legislation it mentions.	16

Schedule 1	Decisions subject to review	1
	section 201	2
section 27(2)	(Chief executive must consider suitability of applicants and licensees)	
section 40(1)	(Chief executive may issue or refuse to issue licence)	
section 44(1)	(Licence—conditions)	
section 49(1)	(Chief executive may renew or refuse to renew licence)	
section 52(1)	(Chief executive may restore or refuse to restore licence)	
section 57(1)	(Chief executive may appoint or refuse to appoint substitute licensee)	
section 60(1)	(Amendment of licence conditions)	
section 64(2)	(Immediate suspension)	
section 137(2)	(Chief executive must consider suitability of applicants)	
section 143(1)	(Chief executive may issue or refuse to issue registration certificate)	
section 144(1)	(Registration certificate—conditions)	
section 146(1)	(Chief executive may renew or refuse to renew registration certificate)	
section 149(1)	(Chief executive may restore or refuse to restore registration certificate)	
section 152(1)	(Amendment of registration certificate conditions)	
section 155(2)	(Immediate suspension)	

Schedule 2	Minor and consequential amendments	1 2
	section 293	3
Part 1	Amendments of this Act	4
1	Long title, from ‘practices, and to make’— <i>omit, insert—</i> ‘practices’.	5 6 7
2	Section 9, ‘schedule 3’— <i>omit, insert—</i> ‘schedule 2’.	8 9 10
3	Schedule 3— <i>renumber</i> as schedule 2.	11 12
Part 2	Other amendments	13
	Body Corporate and Community Management Act 1997	14 15
1	Section 16(2), ‘<i>Property Agents and Motor Dealers Act 2000</i>’— <i>omit, insert—</i> ‘<i>Property Agents Act 2010</i>’.	16 17 18 19

2	Section 205A, definition <i>residential property</i>, ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 17’—	1
	<i>omit, insert—</i>	2
	‘ <i>Property Agents Act 2010</i> , section 14’.	3
		4
3	Sections 206(6) and 213(5A), note, ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 364’—	5
	<i>omit, insert—</i>	6
	‘ <i>Property Agents Act 2010</i> , section 163’.	7
		8
4	Sections 206A and 213A, heading, ‘the Property Agents and Motor Dealers Act 2000, s 368A(2)(c)(ii)’—	9
	<i>omit, insert—</i>	10
	‘ <i>Property Agents Act 2010</i> , s 169(2)(c)(ii)’.	11
		12
5	Sections 206A(1) and 213A(1), ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 368A(2)(c)(ii)’—	13
	<i>omit, insert—</i>	14
	‘ <i>Property Agents Act 2010</i> , section 169(2)(c)(ii)’.	15
		16
6	Sections 206A(3) and 213A(3), ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 368A(2)(b)’—	17
	<i>omit, insert—</i>	18
	‘ <i>Property Agents Act 2010</i> , section 169(2)(b)’.	19
		20
7	Sections 206A(9), and 213A(9), definition <i>contract form</i>, ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 368A’—	21
	<i>omit, insert—</i>	22
	‘ <i>Property Agents Act 2010</i> , section 169’.	23
		24
		25

Building Act 1975	1
1 Section 246I(1)(b), from ‘<i>Property</i>’ to ‘division 2’—	2
<i>omit, insert—</i>	3
<i>‘Property Agents Act 2010, part 6, division 7, subdivision 2’.</i>	4
 Building Units and Group Titles Act 1980	 5
1 Sections 39(3)(k) and 53(14), from ‘real’ to ‘2000’—	6
<i>omit, insert—</i>	7
<i>‘property agent, or resident letting agent, under the <i>Property Agents Act 2010</i>’.</i>	8
	9
 Integrated Resort Development Act 1987	 10
1 Section 175F(2)(a), ‘<i>Property Agents and Motor Dealers Act 2000</i>’—	11
	12
<i>omit, insert—</i>	13
<i>‘Property Agents Act 2010’.</i>	14
 Land Sales Act 1984	 15
1 Section 6, definition <i>real estate agent</i>—	16
<i>omit.</i>	17

2	Section 6—	1
	<i>insert—</i>	2
	<i>‘property agent</i> means a property agent under the <i>Property Agents Act 2010</i> .’	3
		4
3	Sections 11(1)(b) and (c) and 23(1)(b) and (c)—	5
	<i>omit, insert—</i>	6
	(b) a property agent; or	7
	(c) a real estate agency in which a property agent carries on the business of property agent;’.	8
		9
	Legal Profession Act 2007	10
1	Section 24(3A) to (3E), ‘PAMDA’—	11
	<i>omit, insert—</i>	12
	‘PAA’.	13
2	Section 24(3D), ‘Property Agents and Motor Dealers Act 2000, section 578’—	14
	<i>omit, insert—</i>	15
	‘Property Agents Act 2010, section 245’.	16
		17
3	Section 24(7), definition <i>other document</i>, ‘PAMDA’—	18
	<i>omit, insert—</i>	19
	‘PAA’.	20
4	Section 24(7), definitions <i>PAMDA employee</i> and <i>PAMDA licensee</i>—	21
	<i>omit, insert—</i>	22
		23

Schedule 2

	<i>‘PAA employee</i> means a property agent salesperson under the	1
	<i>Property Agents Act 2010</i> , whether or not the property agent	2
	salesperson is also a property agent.	3
	<i>PAA licensee</i> means a property agent or resident letting agent	4
	under the <i>Property Agents Act 2010</i> .’.	5
5	Section 24(7), definition <i>property contract</i>, paragraph (a)—	6
	<i>omit, insert—</i>	7
	‘(a) a form of contract or agreement generally recognised	8
	and accepted for use by PAA licensees when carrying	9
	out activities authorised by the <i>Property Agents Act</i>	10
	<i>2010</i> in dealing with real property or an interest in real	11
	property; or’.	12
		13
	Personal Property Securities (Ancillary Provisions)	14
	Act 2010	15
1	Chapter 4, parts 32 and 33—	16
	<i>omit.</i>	17
	Retirement Villages Act 1999	18
1	Sections 46(1)(c), 64(2) and 68(2), ‘real estate agent’—	19
	<i>omit, insert—</i>	20
	‘property agent’.	21

2	Section 68(2), ‘real estate agent’s’—	1
	<i>omit, insert—</i>	2
	‘property agent’s’.	3
3	Schedule, definition <i>real estate agent</i>—	4
	<i>omit.</i>	5
4	Schedule—	6
	<i>insert—</i>	7
	‘ <i>property agent</i> means a property agent under the <i>Property Agents Act 2010</i> .’	8
		9
	Sanctuary Cove Resort Act 1985	10
1	Section 94C(2)(a), ‘<i>Property Agents and Motor Dealers Act 2000</i>’—	11
	<i>omit, insert—</i>	12
	‘ <i>Property Agents Act 2010</i> .’	13
		14
	Second-hand Dealers and Pawnbrokers Act 2003	15
1	Section 6(2)—	16
	<i>insert—</i>	17
	‘(k) a property agent under the <i>Property Agents Act 2010</i> .’	18

Schedule 2

2	Section 6(4)—	1
	<i>insert—</i>	2
	‘(d) a property agent under the <i>Property Agents Act 2010</i> .’.	3
3	Section 35(2)—	4
	<i>insert—</i>	5
	‘(c) carrying on business at a public auction conducted by a property agent licensed under the <i>Property Agents Act</i> <i>2010</i> .’.	6 7 8

South Bank Corporation Act 1989	9
--	---

1	Schedule 4, sections 39(3)(k) and 53(14), from ‘real’ to ‘2000’—	10 11
	<i>omit, insert—</i>	12
	‘property agent, or resident letting agent, under the <i>Property</i> <i>Agents Act 2010</i> ’.	13 14

Schedule 3	Dictionary	1
	section 9	2
<i>actually expended</i> , for expenses, means the amount actually incurred after deducting—		3 4
(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		5 6 7 8
(b) if the benefit has no fixed amount—the market value of the benefit.		9 10
<i>Administration Act</i> means the <i>Agents Financial Administration Act 2010</i> .		11 12
<i>Agents Act</i> means—		13
(a) the <i>Commercial Agents Act 2010</i> ; or		14
(b) the <i>Motor Dealers and Chattel Auctioneers Act 2010</i> .		15
<i>approved form</i> see section 263.		16
<i>arrangement</i> includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).		17 18 19
<i>associate</i> , of a person, means—		20
(a) a spouse, parent, brother, sister or child of the person; or		21
(b) a child of the person's spouse.		22
<i>attached</i> , for part 6, see section 163.		23
<i>attendance notice</i> means an attendance notice issued under this Act.		24 25
<i>audit period</i> see the Administration Act, section 30.		26
<i>audit report</i> see the Administration Act, section 30.		27
<i>beneficial interest</i> , other than for section 40(6)(b)(i), see section 10.		28 29

benefit , for part 6, see section 163.	1
body corporate means—	2
(a) a body corporate under the <i>Building Units and Group Titles Act 1980</i> ; or	3 4
(b) a body corporate for a leasehold building units plan under the <i>South Bank Corporation Act 1989</i> ; or	5 6
(c) a body corporate under the <i>Body Corporate and Community Management Act 1997</i> .	7 8
Building Act , for part 6, division 7, see section 180.	9
building complex means—	10
(a) a building on a single building units plan under the <i>Building Units and Group Titles Act 1980</i> ; or	11 12
(b) a building or buildings on a single group titles plan under the <i>Building Units and Group Titles Act 1980</i> ; or	13 14
(c) a building or buildings shown on a single leasehold building units plan under the <i>South Bank Corporation Act 1989</i> ; or	15 16 17
(d) a building or buildings on scheme land in a single community titles scheme or a layered arrangement of community title schemes under the <i>Body Corporate and Community Management Act 1997</i> .	18 19 20 21
business address , of a licensee, see section 21(1)(b).	22
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.	23 24 25
business day , for part 6, see section 163.	26
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.	27 28 29
buyer , for part 6, see section 163.	30
caravan means a trailer fitted, equipped, or used principally—	31
(a) for camping; or	32

-
- (b) as a dwelling; or 1
- (c) for carrying on any trade or business. 2
- chattel auctioneer*** means a chattel auctioneer under the *Motor Dealers and Chattel Auctioneers Act 2010*. 3 4
- chattel auctioneer licence*** means a chattel auctioneer licence under the *Motor Dealers and Chattel Auctioneers Act 2010*. 5 6
- Chattel Auctioneers Act***, for part 15, see section 267. 7
- civil jurisdiction***, for 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. 8 9 10 11
- code of conduct*** means a code of conduct under section 102 or 122. 12 13
- commencement***, for part 15, see section 267. 14
- commissioner for fair trading*** means the commissioner for fair trading under the *Fair Trading Act 1989*. 15 16
- community titles scheme*** see the *Body Corporate and Community Management Act 1997*, section 10. 17 18
- comparable certificate*** means a certificate of registration as any of the following— 19 20
- (a) real estate agent salesperson; 21
- (b) pastoral house salesperson; 22
- (c) property developer salesperson; 23
- (d) trainee auctioneer. 24
- comparable licence***— 25
- (a) for a property agent licence means any of the following licences— 26 27
- (i) real estate agent's licence; 28
- (ii) pastoral house auctioneer's licence; 29
- (iii) pastoral house licence; 30
- (iv) pastoral house director's licence; 31
-

(v) pastoral house manager's licence;	1
(vi) auctioneer's licence; or	2
(b) for a resident letting agent licence, means a resident letting agent licence.	3 4
comparative market analysis , for an offered property, see section 239(5).	5 6
completes a residential property sale see section 11.	7
computer means a mechanical, electronic or other device for the processing of data.	8 9
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.	10 11 12
cooling-off period , for part 6, see section 163.	13
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.	14 15 16
criminal history , of a person, means the person's criminal history as defined under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> , other than for a conviction—	17 18 19
(a) to which the rehabilitation period under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> has expired under that Act; and	20 21 22
(b) that is not revived as prescribed by section 11 of that Act.	23 24
criminal history costs requirement see—	25
(a) generally for an applicant or licensee—section 32(2); or	26
(b) for an applicant for, or for the renewal or restoration of, registration as a property agent salesperson—section 139(2).	27 28 29
current sustainability declaration , for part 6, division 7, see section 180.	30 31
electronic communication , for part 6, see section 163.	32
employ includes—	33

-
- | | |
|---|----------------------|
| (a) engage on a contract for services or commission and use the services of, whether or not for reward; and | 1
2 |
| (b) directly engage a person as an independent contractor; and | 3
4 |
| (c) engage a person from a labour hire provider. | 5 |
| <i>employed licensee</i> means a licensee who performs the activities of a licensee as the employee of someone else. | 6
7 |
| <i>employment register</i> — | 8 |
| (a) of a property agent, see section 107(1); or | 9 |
| (b) of a resident letting agent, see section 127(1). | 10 |
| <i>exclusive agency</i> see section 16. | 11 |
| <i>executive officer</i> , 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. | 12
13
14
15 |
| <i>existing licence</i> , for part 15, see section 267. | 16 |
| <i>existing registration certificate</i> , for part 15, see section 267. | 17 |
| <i>financial loss</i> , for part 8 and part 11, division 4, see section 190. | 18
19 |
| <i>formed on a sale by auction</i> , for part 6, see section 163. | 20 |
| <i>former licensee</i> — | 21 |
| (a) generally, means a person who held a licence under this or the repealed Act; and | 22
23 |
| (b) for part 9, see section 195. | 24 |
| <i>former registered employee</i> , for part 9, see section 195. | 25 |
| <i>former tribunal</i> means the tribunal under the repealed <i>Commercial and Consumer Tribunal Act 2003</i> . | 26
27 |
| <i>fund</i> means the claim fund established under the Administration Act, section 76. | 28
29 |
| <i>holder</i> — | 30 |
-

Schedule 3

- (a) of a property agent licence, means the person in whose name the licence is issued; or

1
2
- (b) of a registration certificate as a property agent salesperson, means the person in whose name the certificate is issued.

3
4
5
- in charge** see section 12.

6
- information notice** means a notice complying with the QCAT Act, section 157(2).

7
8
- information sheet**, for part 6, see section 163.

9
- insolvent under administration** means a person who is insolvent under administration under the Corporations Act, section 9.

10
11
12
- inspector** means a person whose appointment as an inspector is continued under section 292.

13
14
- labour hire provider** means an entity that conducts a business that is or includes the supply of labour to others.

15
16
- land** includes—

17
- (a) a lot or proposed lot under the *Land Title Act 1994*; and

18
- (b) a lot shown on a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*; and

19
20
21
- (c) land under the *South Bank Corporation Act 1989*; and

22
- (d) an interest in land.

23
- lawyer** means an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

24
25
26
- letting** includes every form of leasing or letting of places of residence, land, estates, or businesses.

27
28
- letting agent** see the *Body Corporate and Community Management Act 1997*, section 16.

29
30
- licence** means a property agent licence or a resident letting agent licence.

31
32
- licence register** see section 70(1).

33

<i>licensed</i> , for a person, means licensed under this Act.	1
<i>licensee</i> —	2
(a) generally, means the holder of a property agent licence, or a resident letting agent licence, that is in force; or	3 4
(b) for part 8, see section 190; or	5
(c) for part 9, see section 195.	6
<i>management rights</i> see the <i>Body Corporate and Community Management Act 1997</i> , schedule 6.	7 8
<i>market</i> , residential property, means take action to sell the property, other than by appointing a property agent to sell the property.	9 10 11
<i>marketeer</i> —	12
(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—	13 14 15 16 17
(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	18 19 20 21
(ii) the way the property is marketed includes offering potential buyers of the property inducements intended to encourage them to purchase the property; or	22 23 24 25
(iii) any of the persons is licensed or is a property agent salesperson; or	26 27
(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	28 29 30 31
(b) includes a person who—	32

Schedule 3

- (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 190.
- marketeer proceeding** see section 199.
- misleading** includes deceptive.
- non-investment residential property**, for part 8, see section 191.
- obtain**, for part 3, division 2, subdivision 6, see section 90.
- official** means—
 - (a) the chief executive; or
 - (b) an inspector; or
 - (c) a public service employee.
- open listing** see section 13.
- 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 177.
- 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 | 1
2
3 |
| (ii) | any outbuildings or other appurtenances incidental to the use of the building or part as temporary accommodation. | 4
5
6 |
| | <i>Examples for paragraph (b)—</i> | 7 |
| | • motel | 8 |
| | • caravan park | 9 |
| | • hostel | 10 |
| | <i>principal licensee</i> means a licensee that carries on business under the licensee's licence on the licensee's own behalf. | 11
12 |
| | <i>promote</i> , the sale of residential property, means take action to increase awareness of the property with a view to increasing the likelihood of sale. | 13
14
15 |
| | <i>property agent</i> see section 72(1). | 16 |
| | <i>property agent licence</i> means a property agent licence (real estate agent and auctioneer). | 17
18 |
| | <i>property agent licence (real estate agent and auctioneer)</i> means a property agent licence (real estate agent and auctioneer) issued under this Act. | 19
20
21 |
| | <i>property agent salesperson</i> means— | 22 |
| (a) | a person who has obtained registration as a property agent salesperson under this Act; or | 23
24 |
| (b) | a person who has obtained a property agent licence and is employed, as an independent contractor, by a property agent as a property agent salesperson. | 25
26
27 |
| | <i>property developer</i> means— | 28 |
| (a) | a person who completes more than 6 residential property sales in any 12 month period; or | 29
30 |
| (b) | a person who markets residential property in which the person has an interest of at least 15%. | 31
32 |
-

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.	1 2 3 4
provider see the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> , schedule 2.	5 6
public examination means a public examination conducted under part 10, division 4, subdivision 2.	7 8
publish , for part 6, division 7, see section 180.	9
reference committee means the reference committee established under section 204.	10 11
registered office —	12
(a) of a property agent, see section 104; or	13
(b) of a resident letting agent, see section 124.	14
registrar means the principal registrar under the QCAT Act.	15
registration certificate means a registration certificate issued under section 143.	16 17
registration certificate register see section 160(1).	18
relevant advertisement , for part 6, division 7, see section 180.	19
relevant contract , for part 6, see section 163.	20
relevant person , for part 8, see section 190.	21
repealed Act means the repealed <i>Property Agents and Motor Dealers Act 2000</i> .	22 23
repealed code of conduct means any of the following codes of conduct—	24 25
(a) <i>Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001</i> ;	26 27
(b) <i>Property Agents and Motor Dealers (Property Developer Practice Code of Conduct) Regulation 2001</i> ;	28 29
(c) <i>Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001</i> ;	30 31

-
- (d) *Property Agents and Motor Dealers (Restricted Letting Agency Practice Code of Conduct) Regulation 2001.* 1
2
- representation** includes a statement, promise, publication and 3
other representation made in any way. 4
- residential dwelling**, for part 6, division 7, see section 180. 5
- residential property** see section 14. 6
- resident letting agent** see section 113(1). 7
- resident letting agent licence** means a resident letting agent 8
licence issued under this Act. 9
- resident letting agent's business** see section 99. 10
- respondent**, for part 11, division 1, see section 216. 11
- reward** includes remuneration of any kind including, for 12
example, any fee, commission or gain. 13
- rooming accommodation** see the *Residential Tenancies and* 14
Rooming Accommodation Act 2008, schedule 2. 15
- sale by auction** means the sale of property in any way 16
commonly known and understood to be by auction. 17
- sell** includes agree to sell, advertise or display for sale, 18
attempt to sell, have for sale, negotiate for a sale, and in any 19
way be concerned in selling. 20
- seller**, for part 6, see section 163. 21
- seller's agent**, for part 6, division 7, see section 180. 22
- serious offence** means any of the following offences 23
punishable by 3 or more years imprisonment— 24
- (a) an offence involving fraud or dishonesty; 25
 - (b) an offence involving the trafficking of drugs; 26
 - (c) an offence involving the use or threatened use of 27
violence; 28
 - (d) an offence of a sexual nature; 29
 - (e) extortion; 30
 - (f) arson; 31
-

(g) unlawful stalking.	1
<i>sole agency</i> see section 16.	2
<i>termination penalty</i> , for part 6, see section 163.	3
<i>trainee chattel auctioneer</i> means a trainee chattel auctioneer under the <i>Motor Dealers and Chattel Auctioneers Act 2010</i> .	4 5
<i>transitioned licence</i> , for part 15, see section 267.	6
<i>transitioned registration certificate</i> , for part 15, see section 267.	7 8
<i>trust account</i> means a trust account kept under the Administration Act.	9 10
<i>unit sale</i> , for part 6, see section 163.	11
<i>unsolicited invitation</i> see section 15.	12
<i>vacant land</i> , for part 3, division 2, subdivision 7, see section 94.	13 14
<i>warning statement</i> , for part 6, see section 163.	15