

# Property Agents Bill 2010

## Explanatory Notes

### Short Title

Property Agents Bill 2010

### General Outline

The Property Agents Bill 2010 is part of a suite of Bills that repeals the *Property Agents and Motor Dealers Act 2000* (PAMD Act) and introduces a new legislative scheme governing the functions of real estate agents, pastoral houses, property developers, motor dealers, commercial agents, and auctioneers.

### Policy Objectives

The PAMD Act provides for the licensing and regulation of resident letting agents, real estate agents, pastoral houses, auctioneers, property developers, motor dealers, and commercial agents. In addition to licensing and regulating the conduct of such persons, another object of the PAMD Act is to strike an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place.

This Bill implements the former Service Delivery and Performance Commission's (SDPC) recommendation to split the PAMD Act into occupation-specific Acts by establishing a Bill regulating the activities, licensing and conduct of property agents. Other SDPC recommendations and minor amendments to the relevant provisions of the PAMD Act continued in the Bill will also be implemented.

The main object of the Bill is to provide a system for regulating the activities, licensing and conduct of persons as property agents (including real estate agents, auctioneers of real property, and resident letting agents), and for registering and regulating persons as registered employees (property agent salespersons), that achieves an appropriate balance

between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. The Bill forms part of a suite of Bills which give effect to the splitting of the PAMD Act, with the other Bills being the Motor Dealers and Chattel Auctioneers Bill 2010, the Commercial Agents Bill 2010 and the Agents Financial Administration Bill 2010 (collectively referred to as the Agents Bills).

## **Reasons for the Bill**

### The Service Delivery and Performance Commission Review

In 2008, the Service Delivery and Performance Commission (SDPC) conducted a review of the PAMD Act with a view to reducing the regulatory burden on business while maintaining effective consumer protection. The SDPC made a number of recommendations, some of which were supported or partially supported by government.

The following SDPC recommendations are primarily relevant to the Property Agents Bill 2010:

- Split the PAMD Act into occupation-specific laws and transfer the trust account provisions to the *Fair Trading Act 1989*. It should also be noted that the Government supported the SDPC recommendations that pastoral houses transition to holding real estate agent licences and that property developers no longer be licensed.
- Remove the requirement for corporations to have a licensee as a director.
- Remove the requirement for principal licensees to display their licences at their registered offices; and
- Remove the requirement to provide photographs with licence applications, except for commercial agents.

### The National Licensing System

The splitting of the PAMD Act will enable Queensland to more readily implement the National Occupational Licensing System (NOLS) agreed to by the Council of Australian Governments. The NOLS is intended to remove overlapping and inconsistent regulation between jurisdictions in particular occupational areas. It has been agreed that property agents will fall under the NOLS. The existing PAMD Act licences for real estate agents, auctioneers (of real estate only), resident letting agents and pastoral

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houses will fall under the property agent licence as a result of the PAMD Act split. The new property agent licence will then eventually be transitioned to the NOLS. The other categories of licence will be retained by Queensland, with the exception of property developers which will be removed altogether, in accordance with the SDPC recommendations.

Given that under the NOLS, property agents will be able auction real property as part of their licence, the Government has decided to create a new category of licence—under the Motor Dealers and Chattel Auctioneers Bill 2010—to regulate chattel auctioneers. This is consistent with the Government’s decision not to support the SDPC recommendations to remove the licensing of auctioneers.

### Minor Amendments

While the Bill does not represent a full review of the provisions of the PAMD Act, minor amendments to the continued provisions of the PAMD Act in the Bill have been identified and will be implemented. In particular the use of independent contractors and on-hire labour in the real estate industry is becoming more prevalent given the potential tax and cost minimisation advantages for real estate agencies. There have been a number of business models that have been investigated by the Office of Fair Trading.

The use of independent contractors and on-hire labour presents a number of problems. For instance, the consumer would have difficulty identifying who they are dealing with. From a compliance perspective, problems may arise in respect to dual appointments, the keeping of trust monies and claims against the fund. In particular, problems arise in identifying the party or entity that should be held accountable.

Industry stakeholders are primarily concerned with the real estate industry being brought into disrepute as novice salespersons are primarily being used by on-hire agencies. There are also concerns about unfair working conditions and ‘sham’ contracting arrangements.

Legislative amendments have been made to clarify the position regarding the use of independent contractors and on-hire labour. While the definition of ‘employ’ is already wide, the definition has been amended to clarify that ‘employ’ also includes directly engaging someone as an independent contractor, and engaging on-hire labour. Additionally property agents are prohibited from directly employing, as an independent contractor, a person as a property agent or property agent salesperson unless that person holds a property agent licence.

### Red-tape reduction and regulatory simplification

The Property Agents Bill 2010 is also a red-tape reduction initiative. By simplifying a number of licensing and conduct requirements (as described above), the Bill reduces red-tape faced by the property industry and simplifies the regulatory burden for this industry sector. In doing so, it encourages greater compliance on the part of licensees by grouping together all relevant licensing and conduct provisions in one dedicated Bill, rather than across a larger Bill covering a number of industry sectors.

### **Achievement of the Objectives**

The Property Agents Bill 2010 establishes a system of licensing and regulation of the conduct of property agents, property agent salespersons and property developers by continuing the relevant provisions of the PAMD Act, and achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. The Bill achieves this mainly by:

- ensuring
  - only suitable persons with appropriate qualifications are licensed or registered; and
  - 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
  - providing protection for consumers in their dealings with licensees and their employees; and
  - a legislative framework within which persons performing activities for licensees may lawfully operate including:
    - regulating fees and commissions that can be charged for particular transactions; and
    - providing protection for consumers in their dealings with marketeers; and
    - establishing a right for persons who suffer financial loss because of their dealings with persons regulated under this Bill to apply for compensation from a claim fund; and

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- providing for the enforcement of matters involving marketeers by the tribunal and the District Court; and
  - increased flexibility in enforcement measures through codes of conduct, injunctions, undertakings, and, for contraventions by marketeers, preservation of assets and civil penalties; and
  - promoting administrative efficiency by providing that—
    - responsibility for licensing rests with the chief executive; and
    - responsibility for reviewing particular decisions of the chief executive rests with the Queensland Civil and Administrative Tribunal (QCAT); and
    - responsibility for disciplinary matters rests with QCAT.

It should be noted that the trust account and claim fund provisions in the PAMD Act will now be provided for in the Agents Financial Administration Bill while enforcement provisions dealing with inspectors' powers are proposed to be harmonised. The Property Agents Bill 2010 also implements the other SDPC recommendations and minor amendments identified earlier.

## **Alternatives to the Bill**

There is no alternative way to achieve the policy objectives other than through this Bill. The Bill is fundamental to implementing the SDPC recommendation to split the PAMD Act into separate occupation-specific laws.

## **Estimated Cost for Government Implementation**

The implementation of the new licensing framework will require the development and implementation of new licensing systems, including new business processes, new data systems and data migration, the development of new forms, Smart Service Queensland scripting to reflect the new licensing categories, and a communication campaign to inform existing licensees of the changes to the licensing framework.

Total estimated implementation costs for the split of the PAMD Act will be \$1.06 million, of which this Bill is one of four. The Department of

Employment, Economic Development and Innovation has evaluated the work required for implementation and considers that \$0.52 million can be absorbed within existing resources, with funding for the balance of \$0.54 million being granted by the Cabinet Budget Review Committee at Mid-Year Review. The total costs include licence database systems changes to reflect the new licensing categories (\$0.28 million for engaging a third party supplier to make changes to the licensing system), data migration activities (\$0.26 million), implementation and change management costs for programs and systems (\$0.11 million). A communications campaign is also required to inform licensees of the changes to the licensing framework, with scripting changes, changes to forms and other governance costs also being incurred (\$0.41 million).

### **Consistency with Fundamental Legislative Principles**

In general, the fundamental legislative principles affected by the Property Agents Bill 2010 are the same as those which were identified and addressed in the establishment of the PAMD Act. More detailed consideration of these matters is provided as follows:

#### **Rights and Liberties of Individuals**

##### *Auctioneer Licence*

This Bill may affect the rights and liberties of individuals, namely auctioneers who are currently licensed under the PAMD Act.

The inclusion of the activities currently undertaken by pastoral house licensees in the property agents licence category could be seen to adversely affect the rights of individuals who wish to be licensed to undertake these activities in the future. While existing pastoral house licensees will be transitioned to a property agents licence (with appropriate restrictions where necessary) without the need to undertake further qualifications, new applicants will need to hold qualifications consistent with undertaking all the activities of a property agents licensee. However the current restriction on pastoral house licensees selling and auctioning only rural property will be removed and they will be able to service a wider market.

*Limited property agent's licence*

This Bill may affect the rights and liberties of individuals by providing the chief executive the discretion to issue a licence with conditions and limitations on the activities a licensee may perform.

This may be viewed as a breach of fundamental legislative principles if a regulation with criteria explaining the reasons for a limited licence is not included. The administrative power to grant a limited licence is justified through the convenience it allows the licensee, in addition to maintaining a high standard of consumer protection. If a licensee only wishes to undertake certain activities prescribed under a regulation, they may be excused from undertaking particular educational requirements necessary to attain a full licence.

*Age discrimination*

The Bill provides that an individual must be at least 18 years to be eligible to obtain a property agent licence (clause 35) or a resident letting agent licence (clause 36), or registration as a property agent salesperson (clause 142). This age discrimination is justified on the grounds that consumers expect to deal with licensees and registered employees that have the necessary maturity, judgement and capacity given the pecuniary nature of the transactions involved in the purchase, sale, exchange and letting of property. Accordingly, it is for the protection of consumers that individuals are at least 18 years to be eligible to obtain a licence or registration certificate.

Does the Bill make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

*Chief executive must consider suitability of applicants and licensees*

The Bill imposes suitability and eligibility criteria for the issue of a licence or registration certificate (Part 2, Divisions 5 and 6 and Part 5, Division 4 and 5). In particular, a person must be at least 18 years of age in order to be eligible to hold a licence or registration certificate. A person who does not meet the suitability and eligibility requirements can not obtain a licence or registration certificate under the Bill. This therefore may adversely affect the rights and liberties of individuals. The imposition of suitability and eligibility criteria however, seeks to ensure only suitable and eligible persons are licensed or registered. This goes toward fulfilling the consumer protection object of the Bill. Additionally, the administrative

powers of the chief executive to consider applications for licences and registration certificates are sufficiently defined and reviewable by QCAT.

The Bill also allows the chief executive to place conditions on licences and registration certificates (clauses 44 and 144), and to suspend licences and registration certificates (clauses 64 and 155). While this may adversely affect the rights and liberties of individuals, the imposition of conditions and suspension of licences and registration certificates go toward protecting consumers. Additionally, the administrative powers of the chief executive are sufficiently defined and are reviewable by QCAT.

Is the Bill consistent with natural justice?

*Immediate suspension/cancellation of a licence/ registration certificate*

This provision replicates Chapter 2, Part 10 and Chapter 3, Part 10 of the PAMD Act, which grants the chief executive with the power to immediately suspend a person without giving them the opportunity to make representations. The exercise of this administrative power could be viewed as inconsistent with the fundamental legislative principle of having sufficient regard to the rights and liberties of individuals. Immediate suspension does not allow a person to contest the issue before the action is taken, therefore it denies the suspended person natural justice.

While the rights of an individual to contest an issue are important, immediate suspension of a licence or registration certificate is justified in cases of serious misconduct where it is of principal importance to uphold consumer protection and licensing standards. Immediate suspension applies if the chief executive reasonably considers that a licence or registration certificate was obtained because of incorrect or misleading information, or if the licence holder has contravened the Property Agents Bill or the Administration Bill. Consumer protection must not be jeopardized and immediate suspension of a licence or registration certificate serves as an effective and necessary method to enforce the principles established in the Property Agents Bill.

Appropriate protection against self-incrimination

*Person must answer particular questions/public examinations*

The Bill replicates section 528BA of the PAMD Act, which abrogates the privilege against self incrimination. Abrogating this privilege may be viewed as inconsistent with the fundamental legislative principle of having sufficient regard to the rights and liberties of individuals.



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This provision is justified, as the questions posed are particularly in the knowledge of the persons to whom they are directed and it would be difficult to establish by any alternative evidential means. Further the clause limits the use of the information, so that the answer is not admissible in criminal prosecutions.

#### Reversal of the Onus of Proof

##### *Prohibited from making false and misleading representations about property*

The Bill replicates section 574 of the PAMD Act, which prohibits a person from making false or misleading representations about property, and places the onus of proving that the person who made the representation had reasonable grounds to do so, on that person. The reversal of the onus of proof is justified on the basis that knowledge about the reasonableness or otherwise of the representation is information which is peculiarly within the knowledge of the person who made the representation, and would otherwise be difficult to establish.

##### *Ask for or receive a commission or reward greater than the maximum prescribed under a regulation*

The Bill replicates section 579 of the PAMD Act, which makes it an offence for a licensee to ask for or receive a commission or reward greater than the maximum amount prescribed under a regulation. A licensee will not commit an offence if the licensee establishes to the court's satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred. The reversal of the onus of proof is justified on the basis that the information relating to the relevant expenditure would be peculiarly within the knowledge of the licensee and would otherwise be difficult to establish.

##### *Responsibility for acts of representatives*

The Bill replicates section 590 of the PAMD Act which provides that 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. The reversal of the onus of proof is justified on the grounds that the information relating to the exercise of reasonable diligence would be peculiarly within the knowledge of the licensee and would otherwise be difficult to establish.

*If a corporation commits an offence against a provision of the Act each of the chief executive officers of the corporation also commit an offence*

The Bill replicates section 591 of the PAMD Act which provides that if a corporation commits an offence against a provision of the Bill, each of the chief executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision. It is a defence for an executive officer to prove that the officer took all reasonable steps to ensure the corporation complied with the provision, or that the officer was not in a position to influence the conduct of the corporation in relation to the offence. The reversal of the onus of proof is justified because the provisions that a corporation could contravene have the potential to cause substantial consumer detriment and it is appropriate that an executive officer who is in a position to influence the conduct of the corporation be accountable. Additionally, the information relating to the executive officer's influence on the conduct of the corporation in relation to the offence would be peculiarly within the knowledge of that person.

#### *Stopping particular conduct*

The Bill replicates section 528C of the PAMD Act which allows QCAT, on the application of the chief executive, to prohibit a marketeer from engaging in conduct that is or is likely to be a contravention of clauses 234, 235 or 236 (misleading or unconscionable conduct by a marketeer). QCAT may make the order without providing notice to the marketeer but, in that case, must allow the marketeer a reasonable opportunity to show cause why the order should not be confirmed. This constitutes a reversal of the onus of proof. In this case, the reversal is justified because of the serious nature of a marketeer engaging in misleading or unconscionable conduct or making false representations. These are instances in which a purchaser can stand to suffer losses of hundreds of thousands of dollars. If a marketeer misleads consumers, provisions must be enforced to provide consumer protection by stopping any conduct that contravenes this Bill. Therefore, it is justifiable that the onus of proof falls upon the marketeer to provide evidence and dispute any orders made by QCAT.

#### *Entries in licensee's documents*

The Bill replicates section 588 of the PAMD Act which reverses the onus of proof, providing that a licensee must disprove the validity of entries in the licensee's documents. The onus of proof is on the licensee, if a licensee disputes an entry in a document belonging to the licensee or found on the

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licensee's premises. It is reasonable to expect that a licensee would be responsible for entries in documents belonging to a licensee or found in the licensee's premises. Therefore a reverse of the onus of proof is justified.

Does the Bill in all other respects have sufficient regard to the rights and liberties of individuals?

*Responsibility for act of representatives*

The Bill replicates section 590 of the PAMD Act which provides that 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 provides the person could not, by the exercise of reasonable diligence, have prevented the act or omission. While the clause imposes liability for the actions of others, it is justified on the grounds that it follows the general law of agency in that the principal is liable for the actions of their agent. The clause is also consistent with one of the main themes of the Bill in that principal licensees must ensure their employees comply with the Bill, and are responsible for the acts and omissions of their employees.

*Executive officers must ensure corporation complies with Act*

The Bill replicates section 591 of the PAMD Act which provides that if a corporation commits an offence against a provision of the Bill, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure the corporation complies with the provision. While a corporation is a separate legal entity from its executive officers, 'piercing the corporate veil' is justified as it is in the interests of consumer protection that executive officers ensure the corporation complies with the Bill and they be held accountable. The inconsistency with the fundamental legislative principle is balanced by the defence provided. Clause 256 provides that it is a defence for an executive officer to prove that—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

To provide further justification, clause 256 is consistent with one of the main themes of the Bill in that principal licensees must ensure their

employees comply with the Bill, and are responsible for the acts and omissions of their employees. So too, should executive officers be liable for offences of a corporation, but only where the executive officer was in a position to influence the conduct of the corporation in relation to the offence. The clause is also consistent with the suitability requirements for applicants and licensees. In deciding whether a corporation is suitable, the chief executive must have regard to whether an executive officer of the corporation has been convicted of an offence against this Bill, the other Agents Bills or the Agents Financial Administration Bill. If derivative liability was not imposed, an executive officer who had influence over an offence by a corporation, and the corporation's licence was cancelled, could continue the unlawful conduct under a new corporate entity.

Another issue that may be raised in relation to clause 256 is that derivative liability can potentially apply to any offence under the Bill. However, it is not considered appropriate to limit derivative liability to certain offences, such as more serious offences. This is because there is potential for the commission of relatively minor offences in a manner that is systematic and widespread.

It is noted that the Council of Australian Governments is undertaking a review of provisions imposing liability on executive officers. The object of the review is to ensure there is sufficient justification for making directors liable for corporate fault. As the review has not yet been finalised, it is anticipated that any further assessment around the appropriateness of executive officer liability in relation to offences in the Bill would be undertaken once the review is completed.

#### *Privacy and confidentiality rights*

Clauses 31 and 138 allow the chief executive to obtain criminal history reports. The chief executive is then required to have regard to a criminal history of an individual in deciding their suitability to hold a licence or registration certificate. Obtaining criminal history reports is therefore essential to ensuring a person is suitable under the Bill.

Clause 31 also allows criminal history reports to be obtained for each business partner of the applicant or licensee, and each person with whom the applicant or licensee carries on or intends to carry on business. An argument may be raised that these business associates, being third parties, would not necessarily consent to criminal history checks. However, clause 24 makes it clear the chief executive may make investigations about such persons. Additionally, the application form for a licence requires the

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applicant to provide details of their business associates. It is therefore submitted that the business associates of the applicant or licensee would give implied consent to criminal history checks, notwithstanding the legislative power in the Bill. The ability to investigate business associates goes towards ensuring the applicant for a licence or licensee is suitable and therefore goes towards protecting consumers.

In order to protect the privacy and confidentiality rights of individuals, clauses 26 and 189 provide for the confidentiality and destruction of criminal history reports. It should also be noted that the Bill does not abrogate the rehabilitation period and the non-disclosure rights provided in the *Criminal Law (Rehabilitation of Offenders) Act 1986*. In relation to personal information generally, the chief executive and public service employees are required to comply with the *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009*.

In the Property Agents Bill 2010, consumer protection becomes an even more integral concern, as the Bill seeks to regulate conduct and activities in the buying and selling of property.

Purchasing a property is among the most significant transactions a consumer will enter into in their life. The transaction is complex, incorporating provisions from a number of statutes and there is, consequently, a high risk that consumers who do not regularly participate in real estate transactions will be at a disadvantage in the transactions as a result. Moreover, the agents involved in these transactions are in the business of marketing properties that can be worth millions of dollars and, consequently, are in the business of holding large amounts of money in trust.

For these reasons, it is reasonable for governments to regulate for real estate transactions to an extent that is more extensive and detailed than in other types of transactions and in other industry sectors. This reasoning extends to requiring details about property agents' associates. Under the Bill, applicants must provide the names of their business associates. These are persons with whom the applicant or licensee carries on, or intends carrying on, business under the licence. Given the direct involvement of business associates in a licensee's business, and their ability to influence business behaviour, investigations into the propriety of these people is a necessary step in ensuring the business operates in accordance with the law and limits the risk of consumers being subject to any detriment in their dealings with the business.

*Right not to be defamed*

Clause 260 allows the Minister or chief executive to make or issue public warning statements or information statements that may identify individuals. These public statements may have an adverse affect on individuals. However, before making a statement, the Minister or chief executive must be satisfied that it is in the public interest to do so. Accordingly, the inconsistency with the fundamental legislative principle is justified on the grounds that it is in the public interest to allow the making of warning and information statements for the protection of consumers.

A particular concern may however be raised in relation to public statements about business practices regulated under the Bill that are unfair and naming persons who engage in the unfair practices. This is because unlike making a public statement about disciplinary proceedings or the commission of an offence, determining what constitutes ‘unfair business practices’ is subjective and has greater potential to adversely affect an individual. Additionally, information about disciplinary proceedings by QCAT and court convictions are already publicly available, whereas information concerning ‘unfair business practices’ are not. Nevertheless, the Minister or chief executive (noting that this power can not be delegated pursuant to clause 263) will only make a public statement if satisfied it is in the public interest to do so.

It should be noted that this power is common in consumer protection legislation. It is a vital power as public warning statements can protect consumers from committing large amounts of money or entering into transactions in which they would suffer detriment, while information statements play an educative role in informing consumers about particular conduct or behaviour that may place consumers at risk. The power also alerts licensees to non-compliant behaviours. The public exposure of non-compliant licensees also provides a compliance incentive to other licensees wishing to avoid such negative publicity.

It is a reserve power, not able to be delegated, and used only in the rarest of circumstances where it becomes apparent to the Minister or chief executive there is a demonstrable, tangible pattern of conduct or behaviour that may cause widespread detriment to consumers. An example of where its use may be considered is where the Minister or chief executive has strong evidence that consumers may suffer financial detriment and such loss may be considerable if a public warning statement is not issued.

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Clause 261 provides that nothing in the Bill affects or limits any civil remedy that a person may have against a licensee or another person for any matter. Accordingly, the Minister and chief executive will not have immunity from legal liability in relation to public statements and this is a matter that is taken into consideration in deciding to issue a statement that identifies a person.

Does the Bill have sufficient regard to the institution of Parliament?

The Bill replicates the relevant heads of regulatory power under the PAMD Act. The matters to be prescribed under regulation are those matters usually prescribed under regulations, i.e. fees, qualification requirements and minor offences. As these are mostly administrative matters that can be subject to changes over time, it is appropriate that they are provided for in a regulation, rather than primary legislation.

Clause 291 of the Bill provides a transitional regulatory making power. The transitional-regulation power can affect the provisions of the Bill. While this transitional-regulation making power may be regarded as a Henry VIII clause it is necessary to obviate difficulties in the operation of a crucial transitional arrangement. Further, the power is not framed more widely than is necessary and is a sunset clause.

The regulation will comply with the requirements of section 4(5) of the *Legislative Standards Act 1992*.

## **Consultation**

The SDPC conducted extensive consultation as part of its review of the PAMD Act by holding meetings and workshops with industry, consumer, academic and Government stakeholders. The SDPC's recommendations subsequently arose out of this consultation process.

Consultation with key industry and consumer stakeholders was undertaken during the development of this Bill. A working party comprised of industry peak body representatives was formed to consider relevant issues in the development of the draft Bill. This group was then further consulted on a draft of this Bill and the other related Bills. The peak bodies that were consulted include the:

- Auctioneers and Valuers Association of Australia;
- Australian Livestock and Property Agents Association;
- Australian Property Institute;

- Australian Resident Accommodation Managers' Association;
- Institute of Mercantile Agents (Queensland division);
- Motor Trades Association Queensland;
- Property Council of Australia;
- Property Sales Association of Queensland;
- Queensland Law Society;
- Royal Automobile Club of Queensland;
- Real Estate Institute of Queensland; and
- Urban Development Institute of Australia (Queensland).

A consultation draft of the Bill was released for public comment during the second week of August 2010. All submissions received on the consultation draft were considered before finalisation of the Bill for introduction to Parliament.

### **Uniform or complementary legislation**

The Bill does not form part of a uniform scheme, nor is it complementary with legislation of the Commonwealth or another State. However as indicated earlier, splitting the PAMD Act will facilitate Queensland's transition to the NOLS for property agents.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Division 1                Introduction**

*Clause 1* sets out the short title of the Bill.



*Clause 2* provides for the commencement of the Bill fixed by proclamation.

*Clause 3* provides that the Bill is to apply to the State, and as far as the legislative power of the State permits, to the Commonwealth and to the other States. However, nothing in the Bill is to make the State, the Commonwealth or any other State, liable to be prosecuted for an offence.

## **Division 2            Exemptions**

*Clause 4* provides an exemption for particular auctions under Part 3 including—

- a sale made under a rule, order, or judgment of the Supreme Court or District Court; or
- 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
- a sale of an animal lawfully impounded and sold under a the *Animal Care and Protection Act 2001* or another law; or
- 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*.

*Clause 5* provides a limited exemption for –

- a person appointed under the Corporations Act as an administrator of a corporation that is authorised under a licence to perform an activity; or
- 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
- 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

- a person appointed under the Administration Bill (i.e. the Agents Financial Administration Bill 2010) as a receiver of an entity that is authorised under a licence to perform an activity.

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

- (a) part 3, division 2, subdivision 1;
- (b) clause 76;
- (c) part 3, division 3;
- (d) part 4, division 2, subdivision 1;
- (e) clause 116;
- (f) part 4, division 3.

*Clause 6* provides an exemption from part 3 for financial institutions and trustee companies.

*Clause 7* provides an exemption from part 5 and 6 for non-profit corporations, where a non-profit corporation—

- provides or locates affordable rental housing under an affordable housing scheme; or
- approved supported accommodation; and
- the providing or locating of the housing or accommodation is funded or managed by the Commonwealth, the State or a local government.

This provision does not apply where the non-profit corporation is otherwise carrying on the business of a resident letting agent or property agent. A corporation does not stop being a non-profit corporation only because it receives a reward for providing its services to another non-profit corporation.

## **Division 3            Objects**

*Clause 8* provides the objects of the Bill and how these objects are to be achieved.

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## **Division 4            Interpretation**

*Clause 9* provides that the dictionary in schedule 3 defines particular words used in this Bill.

*Clause 10* provides the meaning of ‘beneficial interest’ under the Bill other than clause 40(6)(b)(i), and provides a number of cases in which a licensee and a property salesperson of a licensee are taken to have a ‘beneficial interest’ in property. Later clauses in the Bill create offences where a property agent obtains a beneficial interest in certain circumstances.

*Clause 11* provides the meaning of ‘completes a residential property sale’ under the Bill.

*Clause 12* provides the meaning of ‘in charge’ under the Bill to be that a person is ‘in charge’ of a licensee’s business at a place where the licensee carries on business only if the person personally supervises, manages or controls the conduct of the licensee’s business at the place. Subclause (2) defines ‘licensee’s business’ to mean the licensee’s business carried on under the authority of the licensee’s licence.

This concept of ‘in charge’ is important as the Bill seeks to ensure that persons who carry on business or are in charge of a licensee’s business at a place under the authority of a property agent’s licence maintain close personal supervision of the way the business is carried on.

*Clause 13* provides the meaning of ‘open listing’ in the Bill. An open listing is a written agreement entered into between a seller and property agent, who is the selling agent. The seller appoints the selling agent under the open listing agreement and in accordance with the agreement, to sell the stated property.

Under the agreement the seller retains a right to sell the seller’s property during the term of the agreement or to appoint additional property agents as selling agents to sell the property on terms similar to those under the agreement. Under the agreement the appointed selling agent is entitled to remuneration only if the selling agent is the effective cause of the sale. The appointment of the selling agent can be ended by either the seller or the selling agent at any time.

*Clause 14* provides the meaning of ‘residential property’ under the Bill. Clause 14(3) also provides what is not residential property.

*Clause 15* provides the meaning of ‘unsolicited invitation’ under the Bill. An unsolicited invitation to a person to attend a property information session includes an invitation addressed personally to the person and sent to the person’s residential, business, postal or email address. An unsolicited invitation to a person to attend a property information session also includes an invitation made by telephoning the person, or by another personal approach to the person.

An invitation to a person to attend a property information session is not an unsolicited invitation if the person has requested an invitation, unless the request is in response to an invitation by telephone or by other personal approach to the person. An unsolicited invitation also includes one made to the public generally, or a section of the public, by media advertisement, or has been addressed non-specifically and sent to the person’s residential, business, postal or email address. *Clause 15(2)* provides examples of non-specific addresses for invitations as being addressed to ‘The owner’ and to ‘The householder’.

*Clause 16* outlines the difference between ‘exclusive agency’ and ‘sole agency’. 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.

Under an exclusive agency, a selling agent is entitled to receive an agreed commission or other reward, whether or not the selling agent is the effective cause of the sale. This is upon sale of the particular property and in accordance with the terms of an agreement with the seller of the property.

Under 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.

*Clause 16* includes an example of circumstances in which a selling agent would and wouldn’t be entitled to an agreed commission or reward.

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

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

Case 1—R

Case 2—X (another licensed property agent)

Case 3—M (S’s mother)

Case 4—S.

If the selling agent (R) 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 all 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.

For the purposes of Clause 16, a seller, of property, means the person authorising the sale of the property. A selling agent, of property, means a property agent appointed under a written agreement under this Bill by the seller to sell the property.

## **Part 2                      Licensing**

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

*Clause 17* provides the categories of licence the chief executive may issue under this Bill are a property agent licence (real estate agent and auctioneer) and a resident letting agent licence.

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

*Clause 18* provides that the chief executive may issue a limited property agent licence which authorises the performance of activities that are more limited than the activities that may be performed under an unconditional property agent licence.

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

*Clause 19* provides the steps involved in obtaining a licence. A person must first be suitable to hold a licence under division 5. The person must

apply for the licence by giving the chief executive an application showing the person is eligible to obtain the licence and paying the fees prescribed under a regulation. If before or when the application is made, a criminal history costs requirement is made of the applicant, the applicant must pay these costs also. The applicant must also give the chief executive the other information required under clause 21 and, if the person intends carrying on business is required under the licence clause 189 to keep a trust account or special trust account, clause 24.

In deciding the person's application, the chief executive must have regard to the person's suitability to hold a licence under this Bill and the person's eligibility to hold the licence.

## **Division 4            Applications for a licence**

*Clause 20* provides that an applicant for a licence must apply to the chief executive in the approved form and state—

- the category of licence being applied for;
- the term of the licence being applied for;
- establish the applicant's eligibility for the category of licence being applied for;
- state the names and addresses of the applicant's business associates; and
- provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence.

The provision also requires that the application must be accompanied by an application fee prescribed under a regulation; and a licence issue fee prescribed under a regulation; and 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.

*Clause 21* states if the applicant intends carrying on business under the licence immediately after the issue of the licence, the applicant must state in the application the place or places in Queensland where the applicant proposes to carry on business under the licence.

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If the applicant does not intend carrying on business immediately after the issue of the licence, the applicant must specify in the application—

- the capacity in which the applicant intends performing activities under the licence and the address where the activities are to be performed (this will be a business address); and
- 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).

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 principal place of business.

A place of business or an address under this clause must be a place where a document can be served personally. A place of business or an address must not be a post office box.

*Clause 22* provides that an applicant for a resident letting agent licence for a building complex must satisfy the chief executive that the applicant has prescribed approval before the chief executive may issue the licence to the applicant. Approval does not need to be provided at the same time as the application. However approval must be provided before the chief executive may issue the licence to the applicant.

This provision was introduced to the PAMD Act in the *Property Agents and Motor Dealers and Other Legislation Amendment Act 2010* and removed the requirement to provide body corporate approval with application. Body corporate approval is usually not given until the resident letting agent has purchased the letting rights to the building. This provision allows a resident letting agent licence applicant to lodge their application and have this application assessed for eligibility and suitability prior to outlaying a large amount for letting rights. Once body corporate approval is provided, the licence can then be issued.

The note to subclause (2) directs the reader to clause 40(2)(d) which provides that the chief executive may issue a licence to an applicant for a resident letting agent's licence for a building complex if the applicant has the prescribed body corporate approval under clause 22.

*Clause 23* outlines the requirement to give information or material regarding an application.

Under this provision the chief executive may, by written notice, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to consider the applicant's application for the licence within a stated reasonable time.

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

*Clause 24* provides where the applicant intends carrying on business under a licence and is required under clause 189 to keep a trust account or special trust account, the applicant must, within a stated reasonable period —

- state in the applicant's application the name and business address of an auditor appointed by the applicant to audit the trust account; and
- give the chief executive evidence that the auditor has accepted the appointment as auditor.

The Administration Bill requires a principal licensee to appoint an auditor if the principal licensee is required under the Administration Bill to keep a trust account or special trust account.

## **Division 5                      Suitability of applicants and licensees**

*Clause 25* states for individuals, the persons who are not suitable to hold a licence under the Bill.

*Clause 26* states for corporations, the persons who are not suitable to hold a licence under the Bill.

*Clause 27* sets out the matters that the chief executive must consider when deciding a person's suitability to hold a licence.

For all applicants, the person's character, character of the person's business associates and previous licence record are to be considered, including whether a claim has been paid out of the fund because of something the person did or omitted to do, whether the person has ever been disqualified under this Bill, the repealed *Property Agents and Motor Dealers Act 2000* (repealed Act) or a corresponding law from being a licensee or an executive officer of a corporation and whether within the previous 5 years, QCAT, the former tribunal or the District Court has made an order under this Bill, or



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the repealed Act, against the person because of their involvement as a marketeer of residential property.

In the case of individuals, the chief executive must consider also the person's criminal history, solvency record, convictions (if any) for an offence under a relevant Act or the Administration Bill, capability of satisfactorily performing a licensee's activities and whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act.

For a corporation, the chief executive must consider also whether the corporation has been placed in receivership or liquidation, the solvency record of the executive officers of the corporation, whether any executive officers have been convicted of an offence under the Bill or the repealed Act and whether each of the executive officers is a suitable person to hold a licence, or another thing the chief executive may consider under this Bill.

If the chief executive decides that an applicant is not a suitable person to hold a licence, the chief executive must give the applicant an information notice stating the decision within 14 days after the decision is made.

*Clause 28* provides that the corporation sole called The Public Trustee of Queensland is taken to be a suitable person to hold a licence.

*Clause 29* provides that the chief executive of a department is taken to be a suitable person to hold a licence.

*Clause 30* provides that the Defence Housing Australia is taken to be a suitable person to hold a licence.

*Clause 31* provides that when the chief executive makes investigations about the suitability of an applicant or licensee to hold a licence, the chief executive may make investigations about the following persons to help the chief executive decide whether an applicant for a licence 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.

Without limiting the chief executive's investigative powers under Clause 31, the chief executive may also ask the commissioner of the police service for a criminal history report of any of the persons. The commissioner must give the report to the chief executive. However, the report is required to only contain the criminal history in the commissioner's possession or to which the commissioner has access. If the criminal history of the person includes a conviction recorded against the person, the commissioner's report must be written.

For clause 31, an 'applicant' includes a nominated person mentioned in clause 55(3) or 56(4). This allows the chief executive to make investigations about nominated persons who act as substitute principal licensees and substitute employed licensees.

*Clause 32* provides the chief executive may require an applicant or licensee to pay the reasonable costs of obtaining a criminal history report under clause 31 about—

- the applicant or licensee;
- the applicant's or licensee's actual or intended partners;
- where the applicant or licensee is a corporation—the corporation's executive officers;
- a business associate of the applicant or licensee; or if the applicant has made an application under clause 55(3) or 56(4)—the person nominated by the applicant under clause 55(3) or 56(4).

The requirement is a criminal history costs requirement. The requirement is sufficiently made of the applicant or licensee if it is made generally of applicants or licensees of that type in the relevant approved form or notified on the department's web site for applicants or licensees of that type.

The chief executive must refund to an applicant an amount paid under the requirement if the chief executive refuses the application without asking for the report, or the applicant withdraws the application before the chief executive asks for the report.

*Clause 33* prohibits a public service employee performing functions under this Bill from, directly or indirectly, disclosing to anyone else a person's criminal history report, or information contained in the report, given under clause 31. An exception is provided where disclosure of the report or

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information to someone else is authorised by the chief executive to the extent necessary to perform a function under, or relating to, this Bill or the disclosure is otherwise required or permitted by law.

The chief executive is required to destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to hold a licence.

*Clause 34* provides that in the case of an application for the issue, renewal or restoration of a licence, the chief executive may, by written notice, require the applicant to give the chief executive, within a stated reasonable period, information or material the chief executive reasonably considers necessary to establish the applicant's suitability for the licence.

Where the applicant fails to comply with the chief executive's requirement, within the stated reasonable time, the applicant is taken to have withdrawn the application.

## **Division 6            Eligibility for licence**

### **Subdivision 1    Property agent licence**

*Clause 35* sets out the eligibility requirements to be satisfied by persons who apply for a property agent licence.

Where the applicant is an individual the applicant must be at least 18 years and have the educational or other qualifications for a property agent's licence prescribed under a regulation. An individual is taken to satisfy the educational or other qualifications prescribed under a regulation if the chief executive is satisfied the individual has a comparable qualification, or within 2 years before the day the individual's application being received by the chief executive they have been licensed as a property agent; or have been the holder of a comparable licence under the repealed Act.

A corporation is eligible to obtain a property agent's licence only if a person in charge of the corporation's business is a property agent and each director of the corporation is a suitable person under division 5 as if the director were an applicant for a licence.

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

*Clause 36* sets out the eligibility requirements to be satisfied by a person who applies for a resident letting agent licence.

If the applicant is an individual, the applicant must be at least 18 years old and must have the educational or other qualifications prescribed by regulation for a resident letting agent. An applicant who has comparable qualifications or who, within the previous 2 years, has been licensed as a resident letting agent or real estate agent under the Bill, or who has held a comparable licence under the repealed Act, may be accepted by the chief executive.

An individual applicant must satisfy the chief executive that they reside, 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 one building complex, in one of the building complexes. However, an individual who satisfies the chief executive that they will be a director of a corporation that is a resident letting agent is not required to comply with this requirement if the individual does not intend performing the activities of a resident letting agent for the building complex.

An individual applicant must also satisfy the chief executive that the individual 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 one building complex, in one of the building complexes, that will be the individual's registered office.

A corporation is only eligible to obtain a resident letting agent's licence for a building complex if a person in charge of the corporation's business is a resident letting agent and each director of the corporation is a suitable person as if the director were an applicant for a licence.

The corporation must also satisfy the chief executive that—

- the corporation has body corporate approval to carry on a business of letting lots in the building complex under the authority of a licence; and
- the individual who will perform the activities of a resident letting agent for the corporation:
  - is a resident letting agent; and

- resides, or will reside if the corporation is issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for the corporation for more than 1 building complex, in 1 of the building complexes; and
- 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.

### **Subdivision 3    Chief executives and particular corporation sole**

*Clause 37* provides that the public trustee as a corporation sole is taken to be eligible to obtain a licence.

*Clause 38* provides that the chief executive of a department is taken to be eligible to obtain a licence.

*Clause 39* provides that the Defence Housing Australia is taken to be eligible to obtain a licence.

## **Division 7            Issue of licences**

*Clause 40* provides that the chief executive may issue or refuse to issue licences. A licence may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligibility for a licence. The chief executive must also be satisfied that the application was properly made and accompanied by the relevant documents, in accordance with clause 20. If the applicant intends to carry on business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the applicant is a corporation, each executive officer of the corporation must be a suitable person to hold a licence.

Where the application is for a resident letting agent's licence for a building complex, the applicant must have the prescribed approval under clause 22.

If the chief executive refuses to issue a licence to an applicant, within 14 days of the decision the chief executive must give the applicant an information notice about the decision.

- A person who has been refused a licence is not permitted to make another application for a licence for 3 months after the day the chief executive gives the information notice under clause 40(4). Where the person applies to QCAT to review the chief executive's decision and the decision is confirmed, the person may not make another application until 3 months after the date the decision was confirmed by QCAT. This does not apply, however, if the applicant is a corporation and the applicant satisfies the chief executive that, because of a genuine sale—
  - 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
  - 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.

*Clause 41* provides that 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'.

Where issued, this licence authorises an officer of the public trustee or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence. Accordingly, an officer or employee of the public trustee is not required to be licensed or registered under this Bill to perform an activity authorised by the public trustee.

*Clause 42* provides that a licence issued to the chief executive of a department is to be issued in the name 'The Chief Executive of the (name of department)'. The licence is to be taken as being issued to the chief executive for the time being. As licensee, the chief executive is to be taken as representing the State.

A licence issued to the chief executive authorises an officer or employee of the department of which the chief executive is chief executive to perform any activity authorised by the chief executive that the chief executive may

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perform under the licence. Accordingly, an officer or employee of the relevant department performing an activity authorised by the chief executive of the relevant department as licensee, is not required to be licensed or registered under this Bill to perform the activity.

*Clause 43* provides that the chief executive may issue a licence to the Defence Housing Australia in the name 'Defence Housing Australia'.

A licence issued to the Defence Housing Authority authorises an officer or employee of the authority to perform any activity authorised by the authority that the authority may perform under the licence. Accordingly, an officer or employee of the authority performing an activity authorised by the authority is not required to be licensed or registered under this Bill to perform the activity.

*Clause 44* provides that the chief executive may issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence. A condition may limit or prohibit the performance of an activity authorised under this Bill or the Administration Bill; or require a licensee to hold insurance of a kind and in an amount prescribed under a regulation.

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

## **Division 8                      Restrictions on performing activities under licences**

*Clause 45* places restrictions on the activities that may be performed by a corporation that holds a licence. Subclause (1) provides that a corporation that holds a licence may perform an activity under its licence at a place only if the activity may be performed by—

- a licensed person who is in charge of the corporation's business at that place; or
- a liquidator or controller appointed under the Corporations Act of property of the corporation; or
- a person appointed under the Corporations Act as an administrator of the corporation; or

- a person appointed under the Corporations Act as an administrator of a deed of company arrangement for the corporation; or
- a receiver, appointed under the Administration Bill , for property of the corporation.

If the corporation performs an activity it is not authorised to perform, it is taken to be a person who acts as a licensee without a licence for the performance of the activity.

*Clause 46* places restrictions on the activities that may be performed by an individual that holds a licence. Subclause (1) provides that 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.

If the employed licensee performs an activity which the employed licensee is not authorised to perform because of subclause (1), the individual is taken to have acted without a licence for the performance of the activity.

*Clause 47* 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. The licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

## **Division 9            Renewal and restoration of licences**

### **Subdivision 1    Renewal**

*Clause 48* provides that a licensee may only apply for renewal of the licensee's licence before the licence expires. The application must be made to the chief executive in the approved form.

Clause 48 outlines the steps involved in making the renewal application, which are similar to those involved in making an application for an initial licence. The renewal application must state the term of the licence being applied for, and state the names and addresses of the licensee's business associates. It must be accompanied by the application fee as prescribed under the regulation, the licence renewal fee as prescribed under the regulation, if the licensee is required as a condition of the licensee's licence



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to hold insurance, proof of the currency of the insurance, and if, before or when the application is made, a criminal history cost requirement is made of the licensee, the amount of criminal history costs required to be paid.

The renewal application must also be accompanied by an audit report for all trust accounts kept by the licensee during the relevant audit period or a statutory declaration that the licensee did not operate a trust account during the relevant audit period. The relevant audit period is the audit period ending immediately before the licence's expiry date.

The licensee must also satisfy the chief executive that the licensee has actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation.

*Clause 49* provides that the chief executive must consider the renewal application and may renew or refuse to renew the licence.

A licence may only be renewed by the chief executive if the chief executive is satisfied—

- the licensee is a suitable person to hold a licence and—
  - if the licensee carries on business in partnership or in conjunction with other persons, each member of the partnership, or each person with whom the licensee carries on business together, must be a suitable person to hold a licence; and
  - if the licensee is a corporation, then each executive officer of the corporation must be a suitable person to hold a licence; and
- the application is properly made; and
- 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
- the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

*Clause 50* provides that if an application is made under clause 48, the licensee's licence is taken to continue in force from the day that it would, apart from this clause, have expired until the licensee's application for renewal is—

- decided under clause 49; or
- withdrawn by the licensee; or
- taken to have been withdrawn under clause 34(3).

## **Subdivision 2   Restoration**

*Clause 51* provides that if a licence expires, a licensee may apply to have the licence restored.

The application must be made within 3 months of the expiry, in the approved form, stating the term of the licence being applied for and the names and addresses of the licensee's business associates. It must be accompanied by an application fee, licence renewal and restoration fee as prescribed by regulation, proof of the currency of the insurance if the former licensee was required as a condition of the former licensee's licence to hold insurance, and if before or when the application is made, a criminal history costs requirement is made of the former licensee, then the amount of costs required to be paid for a criminal history check.

The application must also be accompanied by an audit report about all trust accounts maintained by the former licensee during the relevant audit period, or a statutory declaration that the former licensee did not operate a trust account during the relevant audit period.

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.

*Clause 52* provides that the chief executive must consider the restoration application and may restore or refuse to restore the licence.

The chief executive may restore a licence if satisfied—

- the licensee is a suitable person to hold a licence and—

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- if the licensee carries on, or intends to carry on, business in partnership or in conjunction with others, each member of the partnership or each person with whom the licensee carries on business in conjunction is a suitable person to hold a licence; and
  - if the licensee is a corporation, each executive officer of the corporation is a suitable person to hold a licence; and
  - the application is properly made (that is, if complies with clause 51 and is accompanied by the things mentioned in clause 51); and
  - 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
  - the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

Where an application is refused, the chief executive must give the licensee an information notice within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

Where the chief executive restores the licence it is taken to have been renewed on the day it would (apart from clause 53) have expired (the 'initial expiry date'). 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 is taken to have been as validly done as it would have been if the licence had been reviewed immediately before the initial expiry date.

*Clause 53* allows that where an application is made for restoration, the licence is taken to continue in force from the day that it would have expired until the licensee's application for restoration is decided, withdrawn by the licensee or taken to have been withdrawn.

## **Division 10      Dealings with licences**

### **Subdivision 1    Transfer of licence**

*Clause 54* states that a licence may not be transferred.

## **Subdivision 2    Substitute licences**

*Clause 55* makes provision for an individual who is a principal licensee to appoint a substitute licensee to take the licensee's place during the licensee's absence from the licensee's registered office.

A principal licensee is given power to appoint an adult person to be a substitute licensee for a period not longer than 30 days, if the licensee will be absent for the period of appointment and the appointee consents. If, as a condition of the licensee's licence, the licensee is required to hold insurance, the appointee must have insurance coverage that complies with that condition.

The principal licensee must ensure that the appointment, the period of appointment and the appointee's consent are set out in writing. The appointment, consent and evidence of any insurance the substitute licensee is required to have must be kept at the licensee's registered office and be made available for immediate inspection by an inspector if requested.

If a principal licensee proposes to be absent from the principal licensee's registered office for a period of more than 30 days, the principal licensee must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult as the licensee's substitute licensee.

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 for a substitute licensee. The application must be accompanied by the nominated person's signed consent to the appointment and enough information about the nominated person to enable the chief executive to decide whether the person is a suitable person to hold a licence, is sufficiently qualified to perform the licensee's activities during the period and 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. The prescribed application fee and criminal history costs must be paid on application.

*Clause 56* makes provision where an employed licensee who is in charge of a licensee's business at a place will be absent from the place for any reason, other than the employed licensee's resignation or termination of employment.

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If the employed licensee will be absent from the place for a period of not more than 30 days, the principal licensee who employs the employed licensee may appoint an adult as the employed licensee's substitute licensee for the period if the adult consents to the appointment.

The principal licensee must ensure the appointment and the person's consent to the appointment are in writing and state the period of appointment. These must be kept at the licensee's registered office and made available for immediate inspection by an inspector who asks to see them.

Where the employed licensee will be absent from the place for a period of more than 30 days, the principal licensee, who employs the employed licensee, must apply to the chief executive in the approved form, for the appointment or the extension of the appointment of a person as the licensee's substitute licensee. The application must be accompanied by the nominated person's signed consent to the appointment and enough information about the nominated person to enable the chief executive to decide whether the person is a suitable person and sufficiently qualified to perform the employed licensee's activities during the period. The prescribed application fee and criminal history costs, if made, must be paid on, in made, application.

*Clause 57* provides that the chief executive may appoint a nominated person as a substitute licensee only if satisfied the nominated person is a suitable person to hold a licence, is sufficiently qualified to perform the licensee's activities during the period of the licensee's absence and if, as a condition of the licensee's licence, the licensee is required to hold insurance, the appointee has insurance coverage that complies with that condition.

If the chief executive refuses to appoint a nominated person as a substitute licensee, within 14 days of the decision, the chief executive must give the licensee an information notice.

If the chief executive appoints a nominated person as a substitute licensee, the chief executive may make the appointment subject to conditions the chief executive considers appropriate. The chief executive must give written notice of the appointment to the licensee and the substitute licensee.

*Clause 58* provides for matters about a substitute licensee.

When a substitute licensee is appointed, the substitute licensee is to be taken as the licensee for the duration of the appointment and must act for

the licensee for whom the substitute is appointed. A licensee for whom a substitute has been appointed must not act under the licensee's licence while the substitute licensee's appointment continues.

Provision is made for the substitute licensee's appointment to end when—

- the period of appointment ends; or
- the licensee gives written notice to end the appointment from the date stated in the notice to the substitute licensee, and where the appointment has been made by the chief executive, also to the chief executive; or
- the substitute licensee gives written notice to end the appointment from the date stated in the notice to the licensee, and where the appointment has been made by the chief executive, also to the chief executive; or
- the chief executive revokes the substitute licensee's appointment; or
- the licensee's licence is suspended or cancelled; or
- if the licensee is a principal licensee, the licensee stops carrying on business as a licensee.

*Clause 59* sets the limits that are to apply on substitution periods. There are limits on appointments of substitute licensees. A principal licensee is limited to appointing a substitute licensee for himself or herself, or for an employed licensee for no more than 12 weeks in any period of 12 months. The chief executive also has limits placed. 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**

*Clause 60* provides that the chief executive may amend the conditions of a licence on the licensee's application, on the order of QCAT after a disciplinary hearing, or on the chief executive's initiative.

An application by a licensee for amendment of conditions must be made in the approved form and be accompanied by the prescribed fee. Before making the amendment applied for, the chief executive must be satisfied

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that the licensee meets the eligibility requirements the chief executive considers relevant to the amendment.

Before the chief executive amends a condition on the chief executive's initiative, the chief executive is required to give written notice of the particulars of the proposed amendment to the licensee and to advise the licensee that the licensee may make written submissions about the proposed amendment to the chief executive before a stated day, not later than 14 days after the notice is given. The chief executive must have regard to any submissions made by the licensee before the stated day. Accordingly, the chief executive's decision may be reviewed by QCAT.

The requirement to give notice to the licensee is not to apply if the amendment must be made urgently to avoid potential claims against the fund, or to ensure compliance with the Bill or the Administration Bill .

If the chief executive decides to amend licence conditions, the chief executive must give written notice of the amendment to the licensee within 14 days after the decision is made. An amendment takes effect on the day that written notice of the amendment is given to the licensee or, if a later date is stated in the notice, the later date. If the chief executive refuses to make an amendment requested by a licensee, within 14 days of the decision, the chief executive must give the licensee an information notice.

*Clause 61* provides for amendment of conditions on a licence and return of a licence that has been suspended or cancelled.

If the chief executive amends the conditions on a licence and requests the licensee to produce the licence for amendment, the licensee must produce the licence for amendment within a stated period of not less than 14 days unless the person has a reasonable excuse.

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.

*Clause 62* allows a licensee to surrender the licensee's licence by giving written notice to the chief executive and returning the licence. The licence stops having effect on the day it is surrendered.

*Clause 63* allows a licensee to ask the chief executive to deactivate the licensee's licence by applying in the approved form, accompanied by the licence and the prescribed fee.

When the application, the licence and the fee are received by the chief executive, the licence is taken to be deactivated. A licensee is not

authorised to perform an activity under the licence when it is deactivated. Deactivation does not affect the term of the licence or entitle the licensee to a refund of fees for the balance of the term. A deactivated licence may be renewed or restored as a deactivated licence under a reduced fee as prescribed.

A licensee may request the chief executive to reactivate a deactivated licence by application in the approved form, accompanied by the prescribed fee. However, if the licence has been deactivated for 5 years or longer, the licence may be reactivated only if the licensee satisfies any educational or other requirements prescribed for the licence.

## **Division 11            Immediate suspension and    cancellation of licences**

*Clause 64* permits the chief executive to immediately suspend a licence for a period of not more than 28 days if—

- the chief executive reasonably considers that a licence was obtained, or renewed or restored, because of materially incorrect or misleading information; or
- the chief executive reasonably considers that an irregularity or deficiency exists in a licensee's trust account; or
- the chief executive is satisfied a licensee who has been convicted of failing to file an audit report as required under section 36 of the Administration Bill, continues after the end of any appeal against the conviction, to fail to file the audit report; or
  - a receiver is appointed under the Administration Bill over property—
  - held by a licensee; or
  - held by another person for a licensee; or
  - recoverable by a licensee; or
- the chief executive reasonably considers that a licensee—
  - has contravened or is contravening this Bill or the Administration Bill; or
  - has contravened the repealed Act; or



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- is likely or proposing to engage in conduct that would contravene this Bill or the Administration Bill.

The chief executive may immediately suspend a licence if satisfied a licensee who has been convicted of failing to make an audit report as required under the Administration Bill, clause 36 continues, after the end of any appeal against the conviction, to fail to file the audit report. The licence is suspended until either the licensee files the required audit report or an application to QCAT for the cancellation of the licence is heard and decided.

The chief executive may suspend the licensee's licence or 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. This power may be exercised whether or not disciplinary proceedings have been started against the licensee or the employee.

When a licence has been suspended, the chief executive must give written notice of the suspension to the licensee, stating the grounds of the suspension. The licensee must return the licence to the chief executive within 14 days of receiving the suspension notice unless the licensee has a reasonable excuse.

*Clause 65* provides a licence can be immediately cancelled when—

- the licensee is convicted of a serious offence;
- if the licensee is an individual, the licensee is an insolvent under administration;
- if the licensee is a corporation, the licensee has been wound up or struck off under the Corporations Act.

On the happening of any of the defined events, the licensee must return the licence to the chief executive within 14 days of the event unless the licensee has a reasonable excuse.

## **Division 12      General provisions about licences**

*Clause 66* provides for a licence to be issued in an approved form that contains the name of the licensee, the date the licence is issued, the expiry date of the licence and any other prescribed particulars. An approved form

may be of a type suitable for office display or for personal identification. For licensed corporations, the chief executive may also issue a corporation form of licence that is endorsed with the categories of licence issued in the corporation's name.

*Clause 67* provides that a principal licensee must display the licensee's licence at the licensee's principal place of business in the way prescribed.

*Clause 68* provides that a licence may be issued for a 1 year or a 3 year term.

*Clause 69* provides that if a licence is lost, stolen, destroyed or damaged the licensee may apply for a replacement by using the approved form and paying the prescribed fee.

*Clause 70* requires the chief executive to keep a register of licences and licence applications.

Specified particulars that must be contained in the register –

- for applications are:
  - the name of an applicant;
  - the place, if any, where an applicant intends to carry on business under a licence;
  - the category of licence applied for;
  - the date of the application; and
  - the application number.
- for licences are:
  - the name of a licensee;
  - the licensee's registered office address;
  - the category of a licensee's licence;
  - the issue and expiry dates of a licence;
  - the conditions imposed on a licence;
  - the name of an individual in charge of a corporation licensee's business at the licensee's registered office;
  - for a licensee director, the name of the corporation licensee;

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- for an employed licensee, the name of the licensee's employer;
  - licence numbers; and
  - particulars about any surrender, suspension or cancellation of the licensee's licence.

A person may inspect, or obtain a copy of the information contained in the register on payment of the prescribed fee. A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive

Provision is made for access to be made available at a place or places decided by the chief executive or by using a computer.

The register may be kept in any way the chief executive considers appropriate.

*Clause 71* provides that a licensee must give written notice to the chief executive of a prescribed change in the licensee's circumstances within 14 days of the change.

## **Part 3                      Property agents**

### **Division 1                      Property agents' authorisation and responsibility**

*Clause 72* provides that a property agent licence authorises the holder of the licence for reward—

- to buy, sell, exchange, let or negotiate for the buying, selling, exchanging, or letting, or attempt to sell or offer for sale or resale by way of auction places of residence or land or interests in places of residence or land or to sell; or
- to buy, sell, exchange, or let or to negotiate for the buying, selling, exchanging, or letting businesses or interests in businesses; or
- to collect rents.

A property agent licence also authorises the holder of the licence to perform the activity of selling or attempting to sell or offering for sale or resale goods by way of auction if the sale or resale is directly connected with a sale by auction of a place of residence or land performed by the property agent. An auction of goods may be directly connected with a sale by auction of a place of residence or land despite the auction of the goods being conducted separately from the auction of the place of residence or land.

A property agent may perform these activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

*Clause 73* allows that a property agent who is a principal licensee must take reasonable steps to ensure each property agent salesperson employed by the agent is properly supervised and complies with this Bill.

A property agent who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each property agent salesperson employed at the place is properly supervised and complies with this Bill.

## **Division 2            Conduct provisions**

### **Subdivision 1    Carrying on business**

*Clause 74* provides a person who does not hold a property agent licence can carry on the business of a property agent with others so long as at least one of the other people in that business holds a property agent licence and the unlicensed person does not perform the activities of a property agent. The unlicensed person must also be a suitable person to hold a property agent licence.

*Clause 75* provides an individual property agent who is a principal licensee must be in charge of their business at their registered office. The registered office is the principal licensee's principal place of business as defined in clause 104 for property agents and clause 124 for resident letting agents. Also, if the principal licensee has more than 1 place of business, the principal licensee must ensure the following at each other place of business—

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- 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;
  - otherwise—a property agent who is an individual is in charge of the property agent’s business at the place of business.

A property agent that is a corporation and a principal licensee must ensure the individual in charge of the corporate agent’s business at its registered office is a licensed property agent. The registered office is the corporate principal licensee’s principal place of business as defined in clause 104 for property agents and clause 124 for resident letting agents. Also, if the corporate principal licensee has more than 1 place of business, ensure the following at each other place of business—

- 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;
- otherwise—a property agent who is an individual is in charge of the corporate agent’s business at the place of business.

It is an offence for an individual to be in charge of a property agent’s business at more than 1 place. However, it is not an offence 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.

Land is contiguous with other land only if the parcels of land have a common boundary that is not separated by a public road.

## **Subdivision 2    Appointment**

*Clause 76* provides that a property agent must not act for a person unless the client first appoints the property agent in writing or a previous appointment by the client is assigned to the property agent under the terms of that appointment and the appointment is in force.

The appointment may be for the performance of a particular service or a number of services over a period. The appointment for each service must—

- state the service to be performed by the property agent and how it is to be performed; and
- state the day set for auction if the service is an auction; and
- 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
- state—
  - the fees, charges and any commission payable for the service; and
  - 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
  - the source and the estimated amount or value of any rebate, discount, commission or benefit that the agent may receive for any expenses that the agent may incur in connection with the performance of the service; and
  - any condition, limitation or restriction on the performance of the service; and
- state when the fees, charges and any commission for the service become payable;
- if the service to be performed is the sale or letting of property or the collecting of rents, and commission is payable 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
- if the appointment is for a sole or exclusive agency, state the date the appointment ends. Clause 79 may be referred to for additional requirement for an appointment for a sole or exclusive agency.

A continuing appointment must state the date the appointment ends and that the appointment, other than to the extent it relates to the sale of land or interests in land, may be revoked on 90 days notice, or the lesser period (not less than 30 days) agreed by the parties.

The notice revoking a continuing appointment must be by signed writing given to the other party.

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The revocation of a continuing appointment does not affect existing contracts entered into by the property agent on behalf of the client.

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.

The property agent must give a copy of the signed appointment to the client.

*Clause 77* provides that an appointment must be in the approved form, including a prominent statement that the client should seek independent legal advice before signing the appointment.

*Clause 78* provides that where an 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 information in the form of appointment about—

- the effect of the following—
  - an open listing;
  - an exclusive agency;
  - a sole agency; and
- the difference between sole agency and exclusive agency.

The commission of an offence against this clause also renders the appointment ineffective under clause 83(3) which states that 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 under this clause or clause 79(1).

*Clause 79* provides that, if the appointment is for a sole or exclusive agency, before the appointment is signed the property agent must discuss with the client and specifically bring to the client's notice the information in the form of appointment about—

- the proposed term of the appointment; and
- 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

- the difference between sole agency and exclusive agency, unless the information has been brought to the client's notice under clause 78; and
- the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

The commission of an offence against this clause also renders the appointment ineffective under clause 83(3) which states that 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 under this clause or clause 78.

The appointment is permitted to include a provision that, at the end of the term of the sole or exclusive agency, the appointment continues under an open listing that may be terminated at any time by either party.

Clause 79(1)(b) in relation to the maximum term does not apply in the case of a sale of 3 or more residential properties, or 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.

*Clause 80* provides where a property agent who holds appointments proposes to assign the appointments to another property agent without changing the terms of the appointments, the agent must give each client written notice of the proposed assignment at least 14 days before the property agent assigns the appointments.

The notice must state the proposed assignee's name, that the appointments are to be assigned without changing the terms of the appointment and when the proposed assignment is to take effect. The client may agree or refuse to agree to the proposed assignment.

If a client agrees to the assignment and the property agent assigns the appointment, it is taken to be an appointment by the client of the proposed assignee and is to continue to have effect according to its terms.

However, this clause does not apply to the assignment of an appointment if the terms of the appointment authorise the assignment of the appointment and the assignment is made under the terms of the appointment.

*Clause 81* permits a property agent to be reappointed for a sole or exclusive agency for 1 or more further terms of not more than 60 days each. A reappointment must not be made earlier than 14 days before the preceding appointment is to end.



*Clause 82* provides that to be effective, reappointment of a property agent must be made in the approved form.

*Clause 83* states that 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, where the property agent commits an offence against clause 78, 79(1), or 81(3).

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

*Clause 84* provides that a residential property agent for the sale of residential property must disclose to any prospective buyer—

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

The disclosure must be given to the prospective buyer in the approved form, acknowledged by the prospective buyer in writing on the approved form and given and acknowledged before a contract for the sale of the residential property is entered into.

### **Subdivision 4      Auction of Goods**

*Clause 85* provides that where an auction of goods is conducted by a property agent, it is an offence for the property agent to charge the buyer of the goods a buyer's premium unless—

- the property agent—

- before the auction, obtains the written consent of the owner of the goods; and
- discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the goods; and
- the premium is not more than the amount prescribed or worked out under a regulation.

The property agent does not act for the buyer of the goods only because the agent accepts a buyer's premium from the buyer.

## **Subdivision 5 Recovery of reward or expense**

*Clause 86* provides that a property agent, for the payment of a commission, a service of selling or letting property or collecting rents, must not claim commission worked out on an amount more than the actual sale price of the property or the amount collected

*Clause 87* provides that 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 held a property agent licence; and was authorised under the person's licence to perform the activity; and had been properly appointed by the person to be charged with the reward or expense.

*Clause 88* provides that 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. However, where 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.

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 and actually expended. 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.

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*Clause 89* provides that if a person is convicted of an offence under clause 86(2), 87(2) or 88(6) and the court is satisfied on the balance of probabilities that the person recovered or retained an amount to which the person was not entitled, the court must order the person to pay the amount to the client, whether or not any penalty has been imposed for the offence.

The order of the court may be filed by the client in a court having jurisdiction for the recovery of a debt of equal amount and enforced as a judgment of that court.

## **Subdivision 6     Interests in property**

*Clause 90* provides that for this division, the term “obtain” includes being in any way concerned in obtaining.

*Clause 91* provides that, if a property agent obtains an option to purchase property in which the agent has a beneficial interest, from a client who has placed the property with the agent for sale, the agent has committed an offence.

A property agent salesperson employed by the property agent commits an offence if the salesperson obtains from the client an option to purchase the property in which the salesperson has a beneficial interest.

It is an offence if a property agent sells the property if the agent obtains a beneficial interest in an option to purchase the property.

*Clause 92* applies where property is placed by a person with a property agent for sale, but does not apply if clause 91 applies.

Clause 92 provides the property agent commits an offence if the agent obtains a beneficial interest in the property.

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

However a person does not commit an offence under subclauses (2) or (3) if—

- the person—
  - before a contract for the sale of the property is entered into, obtains the client’s written acknowledgement in the approved form that the client—

- (A) is aware that the person is interested in obtaining a beneficial interest in the property; and
- (B) consents to the person obtaining the interest; and
- acts fairly and honestly in relation to the sale; and
- no commission or other reward is payable for the sale; and
- the client is in substantially as good a position as the client would be if the property were sold at fair market value.

*Clause 93* provides that where a person is convicted of an offence against clause 92(2) or (3) and the court convicting the person is satisfied, on the balance of probabilities, that the person has recovered or retained an amount of commission to which the person was not entitled, the court must order the person to pay the amount to the client.

The order must be made whether or not any penalty is imposed on the conviction. 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 7    Lands not lawfully useable for residential purposes**

*Clause 94* states that, for this division, the term “vacant land” means land on which there are no structural improvements other than fencing.

*Clause 95* provides that the subdivision applies to a sale or proposed sale of vacant land if—

- the sale is by a property agent either as agent for another or as principal; and
- the land is within a local government area; and
- the land can not, as at the day of sale, be lawfully used for residential purposes.

*Clause 96* requires an agent selling such land must provide a written statement signed and dated by the property agent and the proposed buyer before the contract is signed for the sale.

The statement must include—

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

The property agent must keep a copy of the signed statement at the property agent's registered office and make it available for immediate inspection by an inspector who asks to see it.

*Clause 97* provides that a buyer may avoid a contract for the sale of land by providing written notice to the seller of the land or the property agent, where the buyer has not been given the notice under clause 96 or the notice has been given to the buyer, but the notice was defective in a material way.

The avoidance notice must be given to the seller or property agent within 6 months after the day the buyer entered into the contract.

If the contract is avoided by the buyer under clause 97 (1), the seller and the property agent are joint and severally liable to the buyer for all amounts paid by the buyer under the contract and for legal and other expenses for the contract after it was signed.

A property agent who is liable at law under clause 97(3) for the repayment to the buyer of an amount paid by the buyer under, or in relation to, the contract must repay the amount within 14 days after becoming liable.

The buyer may recover an amount as a debt.

Judgment recovered against either person liable to an amount repayable does not bar an action against the other person.

However, if separate actions are brought—

- the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

- 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.

If the buyer avoids the contract after it is completed, the buyer must, after repayment of all amounts recoverable by the buyer under clause 97(3), 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 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.

The buyer is not liable for any costs associated with a conveyance under clause 97 (8) and may recover from the seller and the property agent as a debt the buyer's reasonable costs associated with the conveyance.

The liability of the seller and the property agent under subclauses (3) and (9) is joint and several.

*Clause 98* provides that liability to punishment under clauses 96 or 97 is in addition to other liabilities at law imposed under clause 97.

## **Subdivision 8 Sales of particular businesses**

*Clause 99* provides that this subdivision applies to the sale of a business for which a resident letting agent licence is required.

*Clause 100* requires a property agent, who is authorised by a seller to sell a resident letting agent's business, to give a proposed buyer of the business a written statement before the buyer signs a contract relating to the sale. The statement must contain the following particulars—

- identification of the business;
- the names and addresses of the seller and the proposed buyer;
- a clear statement that, to carry on the business, the buyer must have the approval of the body corporate of the building complex in which the activities of a residential letting agent are to be;
- performed; and
- a clear statement that a person who performs the activities of a residential letting agent must hold a residential letting agent's

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licence or be otherwise authorised under the Bill to perform the date of the statement.

The statement must be signed and dated by the property agent and 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.

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.

## **Subdivision 9 Auctions of goods**

*Clause 101* provides that it is an offence for a property agent, during an auction of goods, to charge the buyer of goods a buyer's premium unless—

before the auction the property agent obtains the written consent of the owner of the goods and discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the goods; and

the premium is not more than the amount prescribed or worked out under a regulation.

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.

## **Subdivision 10 Code of conduct**

*Clause 102* permits a regulation to be made prescribing a code of conduct about setting conduct standards for property agents, employed licensees and property agent salespersons, establishing principles for fair trading, providing for a system of complaint resolution and providing that contraventions of some provisions of the code are an offence.

*Clause 103* entitles a person aggrieved by the conduct of a property agent or property agent salesperson to make a written complaint to the chief executive about the conduct.

The chief executive is given power to investigate the complaint, and if satisfied the code of conduct has been breached, to take action against the

property agent or property agent salesperson, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer a property agent or a property agent salespersons.

## **Division 3            General**

*Clause 104* defines the registered office of a property agent who is a principal licensee, as the place specified by the agent as the agent's principal place of business in the agent's licence application, or another place notified to the chief executive by the agent in the approved form as the agent's principal place of business. The registered office is the agent's principal place of business as noted on the agent's licence application form. If, since that application, the agent's principal place of business has changed, then this will be the agent's registered office. The agent would have been required under clause 105 to notify the chief executive of the change.

For a property agent who is an employed licensee, the registered office is the place the agent states in the licensee's application for a property agent licence as the agent's business address or another place notified to the chief executive by the agent in the approved form as the agent's business address.

*Clause 105* requires a property agent who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the agent's registered office, the closing of any place where the agent carries on business and the opening of any new place of business.

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.

*Clause 106* requires a property agent who is a principal licensee to display at each place the agent carries on business, the prescribed manner the agent's name, 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 the other particulars prescribed under a regulation.

A property agent who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the agent's business without stating in the advertisement the particulars prescribed under a regulation.



A property agent who conducts an auction must display at the auction, in the prescribed manner the property agent's name and the other particulars prescribed under a regulation.

*Clause 107* requires a property agent who is a principal licensee to keep an employment register where the agent carries on business. The agent must enter in the register the name and other prescribed particulars of every person who is employed as an employed licensee or property agent salesperson at the place. 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.

The property agent must also 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 if there is a change in an employee's particulars or activities, correct the entry in the prescribed manner immediately after the change.

## **Division 4            Offences**

*Clause 108* provides that a person commits an offences if, as an agent for someone else for reward, they perform an activity that may be done under the authority of a property agent licence unless-

- the person holds a property agent licence and the performance of the activity is authorised under the person's licence; or
- is otherwise permitted under this Bill or another Act to perform the activity.

It is an offence to act as a property agent unless the person holds a property agent licence and the act is done under the authority of the person's licence or the act is otherwise permitted under this Bill or another Act.

Without limiting the ways a person may act as a property agent, a person acts as a property agent if the person—

- performs an activity mentioned in clause 72(1); or
- advertises or notifies or states that the person performs an activity mentioned in clause 72(1) or is willing to perform an activity mentioned in clause 72(1); or

- in any way holds out as being ready to perform an activity mentioned in clause 72(1).

However –

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

*Clause 109* provides that it is an offence for a person to act as a property salesperson unless the person holds a registration certificate as a property agent salesperson. However, 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 collects and issues receipts for rents or gives a person a list, prepared by or for the property agent, of premises available for rent; or does something of an administrative nature in relation to a thing the property agent does as a property agent.

*Clause 110* provides that it is an offence for a property agent to act for more than 1 party to a transaction, unless the transaction is an exchange of property.

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. However, where the transaction is an exchange of property, this does not apply to the extent that the agent acts for each of the parties to the transaction.

*Clause 111* requires that a property agent must, if asked by a person with whom the agent is dealing, produce the agent licence for inspection by the person.

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

*Clause 112* provides it is an offence for a property agent to 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.

It is an offence for a property agent to directly engage a person as a property agent or property agent salesperson as an independent contractor unless the person holds a property agent licence.

It is an offence for 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.

It is an offence for 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.

## **Part 4                      Resident letting agents**

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

*Clause 113* states that a resident letting agent licence authorises the holder to let lots in a building complex and to collect rents for lots in a building complex either alone or with others, or as an employee of someone else for reward.

As a condition of a resident letting agent licence, the chief executive must limit the performance of the authorised activities by the licensee to one or more stated building complexes.

However, the chief executive has power to authorise a resident letting agent to perform the activities in more than one building complex if—

- the chief executive is satisfied—
  - 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
  - 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
- both of the following apply—
  - immediately before the commencement of section 607 of the repealed Act, a person held a real estate agent's licence or corporation licence (with a director holding a real estate agent's licence) for all the building complexes;
  - 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.

Land is contiguous with other land only if the parcels of land have a common boundary that is not separated by a public road.

## **Division 2            Conduct provisions**

### **Subdivision 1    Carrying on business**

*Clause 114* provides that 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—

- at least one of the persons with whom the individual carries on business is a resident letting agent or property agent; and

- 
- the individual does not perform the activities of a resident letting agent; and
  - the individual is a suitable person to hold a licence.

A resident letting agent who is an individual, with an active licence, must reside permanently in the building complex or, if the letting agent is authorised to perform activities for more than one building complex, one of the building complexes for which the letting agent is authorised to perform activities.

A resident letting agent that is a corporation, with an active licence, 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 activities for more than one building complex, one of the building complexes for which the letting agent is authorised to perform activities.

*Clause 115* requires a resident letting agent who is an individual and a principal licensee to be in charge of the agent's business at the agent's registered office. If the resident letting agent is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is a resident letting agent or a property agent.

If a resident letting agent who is an individual and a principal licensee is authorised to carry on business in more than 1 building complex, and has a place of business in each building complex, the agent must ensure that an individual who is a resident letting agent or a property agent is in charge of the agent's business at the other place.

## **Subdivision 2 Appointment**

*Clause 116* provides that a resident letting agent must not act for a client in performing an activity authorised by the licence unless the client has first appointed the agent in writing.

The written appointment (for a single particular service or a continuing appointment) is required to—

- state the service to be performed by the letting agent and how it is to be performed; and

- 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
  - for a single appointment, if commission is payable and expressed as a percentage of rent, the amount of commission expressed in dollars based on the listed rental charge; and
- state—
  - the fees, charges and commission payable for the service; and
  - the expenses, including advertising and marketing expenses, the letting agent is authorised to incur in connection with the performance of the service; and
  - 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
  - any condition, limitation or restriction on the performance of the service; and state when the fees, charges and commission for the service become payable; and
- if a service to be performed is the letting of lots or the collecting of rent and commission is payable in relation to for the service and expressed as a percentage, state that the commission is worked out only on the actual amount of rent collected.

If the appointment is a continuing appointment, it must state the date the appointment ends, and that the appointment may be revoked on the giving of 90 days written notice, or some lesser period (not less than 30 days) agreed by the parties. The notice must be signed and given to the other party.

The revocation of a continuing appointment does not affect existing contracts entered into by the resident letting agent on behalf of the client. 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.

The resident letting agent must give a copy of the appointment, signed by the agent and client, to the client.

*Clause 117* requires an appointment to be in the approved form and to contain a prominent statement that the client should seek independent legal advice before signing the appointment. An appointment that does not comply is ineffective.

*Clause 118* provides that where a resident letting agent holds appointments to perform services under clause 116 for a building complex proposes, to assign the appointments to another person who is to become the resident letting agent for the complex without changing the terms of the appointment, 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.

The notice must state the following—

- the proposed assignee's name;
- the appointments are to be assigned without changing the terms of the appointment;
- the client may agree or refuse to agree to the proposed assignment;
- when the proposed assignment is to take effect.

If a client agrees to the assignment and the resident letting agent assigns the appointment under this clause, the appointment is taken, for clause 116, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

However, this clause does not apply to the assignment of an appointment if—

- the terms of the appointment authorise the assignment of the appointment; and
- the assignment is made in compliance with the terms of the appointment.

### **Subdivision 3 Recovery of reward or expense**

*Clause 119* provides that a resident letting agent who performs, for the payment of a commission, a service of letting lots or collecting rents must not claim commission worked out on an amount more than the actual amount collected.

*Clause 120* provides that a person is not entitled to sue for, or recover or retain, a reward or expense for the performance of an activity as a resident letting agent unless, at the time the activity was performed, the person—

- held a resident letting agent's licence; and
- was authorised under the person's licence to perform the activity; and
- had been properly appointed under subdivision 2 by the person to be charged with the reward or expense.

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 clause 116.

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. This 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.

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 clause 116 and actually expended.

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.

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 clause commits an offence.



*Clause 121* provides that where a person is convicted of an offence against clause 119(2) or 120(7) and the court is satisfied on the balance of probabilities that the person has recovered or retained from a client an amount to which the person was not entitled the court must order the person to pay the amount to the client.

## **Subdivision 4    Code of conduct**

*Clause 122* permits a regulation to be made prescribing a code of conduct about resident letting agent practice, including setting conduct standards, establishing principles for fair trading and providing for a system of complaint resolution, providing that contraventions of some provisions of the code are an offence.

*Clause 123* entitles a person aggrieved by the conduct of a resident letting agent to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the agent, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer licensed as a restricted letting agent.

## **Division 3            General**

*Clause 124* defines the registered office of a resident letting agent who is a principal licensee as the place stated by the agent as the agent's principal place of business in the agent licence application, or another place notified to the chief executive in the approved form. For an employed licensee, the registered office is the place stated by the employee in the employee's licence application, as the employee's business address, or another place notified to the chief executive in the approved form.

*Clause 125* requires a resident letting agent who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the principal place of business, the closing of any place where the agent carries on business and the opening of any new place of business.

A principal licensee must also notify the chief executive in the approved form, within 14 days, of any change in, or revocation of, a body corporate approval for the agent to carry on the business of a letting agent.

An employed licensee must notify the chief executive in the approved form, within 14 days, of any change in the letting agent's business address.

*Clause 126* requires a resident letting agent who is a principal licensee to display the agent's name and any prescribed particulars, at each place the agent carries on business. If the agent is not the person in charge of the agent's business at a place, the agent must also display the name of the restricted letting agent who is in charge of the agent's business at that place.

If the agent publishes an advertisement about the agent's business in a newspaper, or elsewhere, the advertisement is required to include all the particulars prescribed under a regulation.

*Clause 127* requires a resident letting agent who is a principal licensee to keep an employment at each place where the letting agent carries on business. The agent must enter in the register the name and other prescribed particulars of every person who is employed as a resident letting agent at the place. The resident letting agent must enter the particulars about each employee immediately after the employee is employed at the place.

A regulation may prescribe the form of the register.

*Clause 128* provides that when entering into a contract to sell management rights for the community titles scheme a resident letting agent must, at least 14 days before the management rights are to pass to the buyer under the contract, make available to the new letting agent the existing letting agent's trust account records for the community titles scheme to which the management rights relate for the prescribed period before the intended date of the sale of the management rights.

The new letting agent may avoid the contract if the existing letting agent fails to comply.

## **Division 4                      Offences**

*Clause 129* prohibits a person from acting as a resident letting agent unless the person has a resident letting agent licence and the licence authorises the

performance of the particular activity or is otherwise permitted under this Bill or another Act to perform the activity.

If a lawyer, in the course of the lawyer's practice, collects rents for lots in a building complex, the lawyer is not taken to have acted as a resident letting agent if the lawyer complies with the requirements of the *Legal Profession Act 2007*.

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

*Clause 130* prohibits a resident letting agent from accepting an appointment to act for more than 1 party to a transaction. If an agent fails to comply, the appointments are taken to be ineffective from the time they were made.

*Clause 131* requires a resident letting agent, if asked by a person with whom the agent is dealing, to produce the agent licence for the person's inspection.

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

### **Division 1                Registered employees' authorisation**

*Clause 132* provides 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.

However, the registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform because of a condition to which the certificate is subject.

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

*Clause 133* provides that a person who wishes to obtain registration as a property agent salesperson must apply to the chief executive showing, among other things, the person is suitable and eligible to obtain registration, and pay the prescribed fees.

When deciding the person's application, the chief executive must have regard, among other things, to the person's suitability to hold a registration certificate and the person's eligibility to hold the registration certificate.

## **Division 3            Applications for registration**

*Clause 134* provides that an application for registration of an individual as a property agent salesperson must be to the chief executive in the approved form stating the term of the registration being applied for, the applicant's suitability and eligibility and provide any information the chief executive may reasonably require to decide whether the applicant is suitable and eligible to be a property agent salesperson.

The application must be accompanied by an application fee, a registration issue fee and a criminal history costs requirement.

*Clause 135* provides that the chief executive may, by written notice, require the applicant to give information or material the chief executive reasonably considers is needed to consider the applicant's application for the registration within a stated reasonable period. The applicant is taken to have withdrawn the application if the applicant fails to comply with the chief executive's requirement within the stated reasonable period.

## **Division 4            Suitability of applicants**

*Clause 136* provides that a person is not a suitable person to obtain registration as a property agent salesperson if the person -

- has been convicted in Queensland or elsewhere within the preceding 5 years of a serious offence;

- 
- is currently disqualified from holding a licence or registration certificate; or
  - is person the chief executive decides is not a suitable person to obtain registration.

An individual who is not a suitable person can not obtain registration as a property agent salesperson.

*Clause 137* provides that 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—

- the person's character;
- whether the person held a licence or registration under a relevant Act that was suspended or cancelled under the relevant Act;
- 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;
- 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 the holder of a registration certificate within the meaning of the relevant Act or an executive officer of a corporation;
- whether, within the previous 5 years, QCAT, the former tribunal or the District Court has made an order under this Bill against the person because of the person's involvement as a marketeer of residential property;
- the person's criminal history;
- if the person is an insolvent under administration—
  - the circumstances giving rise to the person being an insolvent under administration;
  - whether the person took all reasonable steps to avoid the circumstances that resulted in the person being an insolvent under administration; and
  - whether the person is in a position to influence significantly the management of a licensee's business;

- whether the person has been convicted of an offence against a relevant Act or the Administration Bill, whether the person is capable of satisfactorily performing the activities of a registered property agent salesperson;
- whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act; and
- another thing the chief executive may consider under this Bill.

If the chief executive must give the person an information notice within 14 days after the decision is made if they decide a person is not a suitable person to obtain registration as a property agent salesperson.

*Clause 138* provides that when the chief executive makes investigations about the suitability of an applicant or licensee to hold a licence, the chief executive may make an investigation to help decide whether the applicant is a suitable person to obtain registration as a property agent salesperson.

Without limiting the chief executive's investigative powers the chief executive may also ask the commissioner of the police service for a report about the criminal history of the applicant. The commissioner must give the report to the chief executive and is required to contain the criminal history in the commissioner's possession or to which the commissioner has access. Where the criminal history of the person includes a conviction recorded against the person, the commissioner's report must be written.

*Clause 139* provides a criminal history cost requirement whereby the chief executive may require an applicant to pay the reasonable costs of obtaining a report about the applicant. 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.

Where the chief executive refuses the application without asking for the report, or the applicant withdraws the application before the chief executive asks for the report, the chief executive must provide a refund to the applicant.

*Clause 140* prohibits a public service employee performing functions under this Bill from, directly or indirectly, disclosing a person's criminal history report, or information contained in the report. An exception is provided where 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 Bill, or the disclosure is otherwise required or permitted by law.

The chief executive is required to destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to obtain registration.

*Clause 141* provides that in the case of an application for the issue, renewal or restoration of a licence, the chief executive may, by written notice, require the applicant to give the chief executive, within a stated reasonable period, information or material the chief executive reasonably considers necessary to establish the applicant's suitability to obtain registration.

Where the applicant fails to comply with the chief executive's requirement, within the stated reasonable period, the applicant is taken to have withdrawn the application.

## **Division 5                    Eligibility for registration**

*Clause 142* sets out the eligibility requirements to be satisfied by persons who wish to obtain registration as a property agent salesperson.

Where the applicant is an individual the applicant must be at least 18 years and have the educational or other qualifications for registration, prescribed under a regulation.

An individual is taken to satisfy the educational or other qualifications prescribed under a regulation if the chief executive is satisfied the individual has a comparable qualification, or within 2 years before the day the individual's application being received by the chief executive they have been licensed as a property agent; or have been the holder of a comparable licence under the repealed Act.

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

*Clause 143* provides that the chief executive may issue or refuse to issue a registration certificate to an applicant.

A registration certificate may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligible for a licence.

The chief executive must also be satisfied that the application was properly made and accompanied by the relevant documents. If the chief executive refuses to issue a registration certificate to an applicant, within 14 days of the decision, the chief executive must give the applicant an information notice.

A person who has been refused a registration certificate is not permitted to make another application for a registration certificate for 3 months after the day the chief executive gives the information notice. Where the person applies to the QCAT to review the chief executive's decision and the decision is confirmed, the person may not make another application until 3 months after the date of the QCAT decision.

*Clause 144* provides that the chief executive may issue a registration certificate on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the certificate or for another purpose consistent with the achievement of the objects of this Bill or the Administration Bill. A condition may limit or prohibit the performance of an activity authorised under this Bill or the Administration Bill.

If the chief executive decides to issue the certificate on condition, the chief executive must give the applicant an information notice within 14 days after the decision is made.

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

### **Subdivision 1      Renewal**

*Clause 145* provides that a property agents salesperson may only apply for renewal of a registration certificate by application before the registration certificate expires. The application must be made in the approved form and stating the term of the registration certificate being applied for. It must be accompanied by the application fee, the registration certificate renewal fee, and, before or when the application is made, criminal history costs.

*Clause 146* provides that the chief executive must consider the renewal application and may renew or refuse to renew the registration certificate.



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- A registration certificate may only be renewed by the chief executive if satisfied -
  - the property agent salesperson is a suitable person to obtain registration;
  - the application is properly made and complies with clause 145(2) and is accompanied by the things mentioned in that subclause; and
  - the property agents salesperson meets the eligibility requirements for the certificate.

If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice within 14 days after the decision is made.

*Clause 147* provides that if an application is made under clause 146, the property agent salesperson's registration certificate is taken to continue in force from the day that it would have expired, until the property agent salesperson's application for renewal is decided or taken to have been withdrawn.

## **Subdivision 2 Restoration**

*Clause 148* provides that if a property agent salesperson's registration certificate expires, a licensee may apply to have the registration certificate restored.

The application must be made within 3 months of expiry, in the approved form, stating the term of the registration being applied for and be accompanied by an application fee, a registration renewal fee and a registration restoration fee, the criminal history costs requirement, where made, and if the former salesperson was required as a condition of the former salesperson's licence to hold insurance—proof of the currency of the insurance.

*Clause 149* states that the chief executive must consider the restoration application and may restore or refuse to restore the registration certificate.

The chief executive may restore a registration certificate if satisfied -

- the property agent salesperson is a suitable person to obtain registration;

- the application is properly made and is accompanied by the things mentioned in 148(2); and
- the property agent salesperson meets the eligibility requirements for the certificate.

Where the chief executive refuses the application the chief executive must provide the applicant an information notice within 14 days after the decision is made.

If the chief executive decides to restore the certificate the certificate is taken to have been renewed on the day it would have expired.

*Clause 150* provides that if an application for restoration is made, the property agent salesperson's registration certificate is taken to continue in force from the day that it would, apart from this clause, have expired until the application for restoration is decided or taken to have been withdrawn.

## **Division 8          Dealings with registration certificates**

### **Subdivision 1      Transfer of registration certificate**

*Clause 151* provides that a registration certificate may not be transferred.

### **Subdivision 2      General**

*Clause 152* provides that the chief executive may amend the conditions of a registration certificate -

- on the property agent salesperson's application,
- on the order of QCAT after a disciplinary hearing; or
- on the chief executive's own initiative.

An application on the property agent salesperson's application must be made to the chief executive in the approved form and be accompanied by the application fee prescribed under a regulation. Before making this amendment the chief executive must be satisfied the property agent

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salesperson meets the eligibility requirements the chief executive considers as relevant to the amendment of the condition.

Before making an amendment on the chief executive's own initiative the chief executive must—

- give written notice to the property agent salesperson—
  - of the particulars of the proposed amendment; and
  - that the property agent salesperson 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 salesperson; and
- have regard to submissions made to the chief executive by the property agent salesperson before the stated day.

However this provision does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Bill or the Administration Bill.

If the chief executive decides to amend the conditions of a registration certificate on their own initiative, the chief executive must give the property agent salesperson an information notice within 14 days after the decision is made.

The amendment takes effect—

- on the day the written notice of the amendment is given to the property agent salesperson; or
- if a later day is stated in the notice, on the stated day.

If the chief executive decides to refuse to make an amendment requested on the property agent salesperson's application, the chief executive must give the property agent salesperson an information notice within 14 days after the decision is made.

Clause 153 provides that if the chief executive amends the conditions of a registration 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, unless the person has a reasonable excuse.

*Clause 154* provides that a property agent salesperson may surrender the salesperson's registration certificate by giving written notice, and returning the certificate, to the chief executive. A registration certificate surrendered under this clause stops having effect on the day it is surrendered.

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

*Clause 155* provides a property agent salesperson's registration certificate may be suspended for not more than 28 days on the conditions of the chief executive, where the chief executive reasonable believes that a property agent salesperson's registration certificate, or a renewal or restoration of the registration certificate, was obtained because of -

- materially incorrect or misleading information; or
- both an irregularity or deficiency exists in a licensee's trust account; and a property agent salesperson of the licensee may be responsible for the irregularity or deficiency; or
- a property agent salesperson has contravened or is contravening this Bill or the Administration Bill; or
- a property agent or salesperson is likely or proposing to engage in conduct that would contravene this Bill or the Administration Bill.

The chief executive may suspend a property agent salesperson's registration certificate whether or not disciplinary proceedings have been started.

The chief executive must give the property agent salesperson an information notice within 14 days after suspending the salesperson's registration. The employee must return the certificate to the chief executive within 14 days after the property agent salesperson receives the notice, unless the salesperson has a reasonable excuse.

*Clause 156* provides that the registration certificate of a property agent salesperson is cancelled if the salesperson is convicted of a serious offence. The property agent salesperson must return the certificate to the chief executive within 14 days after the conviction, unless the salesperson has a reasonable excuse.

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## **Division 10            General provisions about employee registration**

*Clause 157* states that a registration certificate must be in the approved form. However, the chief executive may approve a form of certificate for office display purposes and a form of certificate for personal identification purposes.

The certificate must contain the following particulars—

- the name of the property agent salesperson;
- the date of issue of the certificate;
- the expiry date of the certificate;
- other particulars that may be prescribed under a regulation.

*Clause 158* states that a registration certificates may be issued for a 1-year or 3-year term.

*Clause 159* provides that a property agent salesperson may apply to the chief executive in the approved form for the replacement of a lost, stolen, destroyed or damaged registration certificate. The application must be accompanied by the prescribed fee. Where satisfied the certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement, the chief executive must grant the application and issue another certificate.

*Clause 160* provides that the chief executive must keep a register of registration certificates and applications for registration certificates.

The register must contain for each applicant for a registration certificate the applicant's name, the date of the application and the application number. The register for each property agent salesperson must contain the salesperson's name, the dates of issue and expiry of the salesperson's current registration certificate, any conditions imposed on the certificate, the salesperson's registration certificate number and particulars of any surrender, suspension or cancellation of the salesperson's registration certificate or any licence or certificate issued to the employee under this Bill or the repealed Act.

The registration certificate register may form part of the licence register.

Upon payment of a prescribed fee a person may inspect, or get a copy of details of the register at a place or places decided by the chief executive or

by using a computer. A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive. The register may be kept in any way the chief executive considers appropriate.

*Clause 161* provides that a property agent salesperson must give written notice to the chief executive of a prescribed change in the saleperson's circumstances within 14 days after the change.

## **Part 6                      Residential property sales**

### **Division 1                Preliminary**

*Clause 162* provides the purpose of this part which are—

- to give buyers who enter into relevant contracts a cooling-off period;
- to require all proposed relevant contracts or relevant contracts to have consumer protection information attached;
- to ensure the independence of lawyers acting for buyers; and
- to impose certain obligations on seller's agents in relation to information on sustainable housing measures for the sale of particular residential property.

*Clause 163* provides the definitions for this part.

*Clause 164* states that 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*.

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

*Clause 165* requires a lawyer engaged by a buyer for the proposed purchase or the purchase of a residential property to provide the proposed buyer or buyer with a lawyer's certificate in the approved form and explain the purpose and nature of this certificate to the buyer. The certificate must be

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signed and dated by the lawyer, and must contain certain information, including whether the lawyer is independent of the seller, the seller's agent or anyone else involved in the sale, and whether the lawyer has or will receive any benefit, other than professional costs and disbursements payable by the buyer, in relation to the sale of the property. The signed certificate must also state that the lawyer has explained to the buyer the purpose and nature of the certificate.

*Clause 166* provides that a property developer marketing residential property must disclose to any prospective buyer—

- any relationship, and the nature of the relationship (whether personal or commercial, for example a family relationship or a fiduciary relationship), the property developer has with anyone to whom the property developer refers the buyer for professional services associated with the sale;
- 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;
- 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.

Disclosure is only effective if it is given to the prospective buyer in the approved form, acknowledged by the prospective buyer in writing on the approved form and given and acknowledged before a contract for the sale of the residential property is entered into.

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.

*Clause 167* ensures that a buyer is to receive a copy of a property valuation that the buyer has paid for, before the relevant contract is entered into. Where a term of a relevant contract requires a buyer to pay for a valuation of the property, or the seller or seller's agent otherwise requires that the buyer must pay for a valuation, the buyer must receive a copy of the property valuation from the seller or seller's agent before the relevant contract is entered into, regardless of whether this is a term of the relevant contract or otherwise required by the seller or seller's agent. Failure to do

this is an offence which attracts a penalty of up to 200 penalty units, but it does not affect the validity of the relevant contract. The term of the relevant contract or requirement is only effective if the buyer receives the valuation and acknowledges receipt of the valuation in writing. This must occur before the buyer enters into the relevant contract.

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

Division 3 provides for the provision of a warning statement, the content and effectiveness of a warning statement, that a warning statement must be attached to a proposed relevant contract when given to a buyer for signing, and that the warning statement must be attached to the relevant contract when the seller gives the buyer a copy of the relevant contract.

*Clause 168* sets out the information which must be included on a warning statement. Clause 168(2) provides that the warning statement is of no effect unless the words are presented in substantially the same way as the words are presented on the approved form.

*Clause 169* applies when a proposed relevant contract is given to a proposed buyer by a seller, for the buyer to sign. For the purposes of this section, it does not matter whether the proposed relevant contract has been signed by the seller. Clause 169 requires that where a seller or seller's agent gives a proposed relevant contract to a buyer for signing, a warning statement, and, if the property is a unit, an information sheet must be attached to the proposed relevant contract. It requires a seller to give a proposed buyer a clear statement directing the buyer's attention to the warning statement, information sheet (if the property is a unit) and the proposed relevant contract. The clear statement may be made orally or in writing.

An example of a written clear statement (in this example for the sale of a unit) is that it could be a paragraph drawing the buyer's attention to the proposed relevant contract, warning statement and information sheet included in a covering letter that is given to the buyer with the proposed relevant contract, warning statement and information sheet. The statement in the letter could read as follows—'Your attention is drawn to the warning statement, information sheet and proposed relevant contract accompanying



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this letter.' A statement given orally could be an appropriately modified verbal statement to the same effect.

The new clause 169(3) declares that a clear statement has not been given if, at the time the statement is given, the warning statement, or information sheet (for unit sales) is not attached to the proposed relevant contract.

Clause 169(4) and (5) makes it clear that a proposed relevant contract does not become another proposed relevant contract if the residential property concerned and the parties to the contract remain the same. This is regardless of whether the terms and conditions of the proposed relevant contract change, either textually amended on the original proposed relevant contract or another proposed relevant contract form is prepared to incorporate the changes.

Clause 169(6) provides that if a warning statement, and an information sheet, if a unit sale, are not attached to the proposed relevant contract and a clear statement is not given directing the proposed buyer's attention to the proposed relevant contract, warning statement, and information sheet where it is a unit sale, then an offence has been committed to which a penalty of up to 200 penalty units applies. If it was the seller who gave the proposed relevant contract to the buyer, then it is the seller who has committed the offence. If it was the seller's agent who gave the proposed relevant contract to the buyer, then it is the seller's agent who has committed the offence.

If there are 2 or more proposed buyers relating to the proposed relevant contract and clause 169 (2) is complied with in relation to at least 1 of the proposed buyers, then clause 169 (2) is taken to have been complied with in relation to each of the proposed buyers.

*Clause 170* provides a defence for the offence in clause 169. The defence applies where the seller or the seller's agent notifies the proposed buyer of the failure to comply and withdraws the proposed relevant contract at any time before the proposed relevant contract becomes a relevant contract. The notice must identify the failure to comply, and state the proposed relevant contract is withdrawn and whether or not new documents complying with the requirements will be given.

*Clause 171* provides that the warning statement must also be attached to a copy of the relevant contract when the seller gives the buyer a copy. If the relevant contract is in relation to a unit sale, then the information sheet must also be attached. Failure to attach the warning statement, or for a unit sale failing to attach either the warning statement or the information sheet,

is an offence attracting a penalty of up to 200 penalty units. If it was the seller personally who gave the copy of the relevant contract to the buyer, then it is the seller personally who has committed the offence. If it was the seller's agent who gave the copy of the relevant contract to the buyer, then it is the seller's agent who has committed the offence. Clause 171 only applies in relation to clause 169, and specifically does not apply in the circumstance where a buyer initiates the sale by giving the seller a signed proposed relevant contract. Clause 171 only applies in relation to clause 169 where the seller has given the buyer a proposed relevant contract. In the circumstances outlined above, where the buyer signs the contract and gives it to the seller to sign, when the seller signs and returns the contract to the buyer, it is then a relevant contract and the seller has not given the buyer a proposed relevant contract in the process.

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

Division 4 defines a cooling-off period and outlines how a buyer may waive or shorten the cooling-off period.

*Clause 172* defines the cooling-off period for a relevant contract to be five business days. A business day is defined as being any day other than a Saturday, Sunday or public holiday. The five day cooling-off period commences on the day the buyer receives a copy of the relevant contract from the seller. If the buyer receives a copy of the relevant contract on a Saturday, Sunday or public holiday, the period commences on the first business day after that day. The five day cooling-off period ends at 5p.m. on the fifth business day.

Clause 172 gives a simple example of a cooling-off period. A further example is where a copy of the relevant contract is given to a buyer at 7p.m. on a day that is a business day. Assume this day is a Thursday and that the Friday is a public holiday. The cooling-off period would end at 5p.m. on the following Thursday.

Clause 172(2) clarifies when a buyer is taken to receive a copy of the relevant contract from the seller for the purpose of calculating the cooling-off period in the circumstance where the seller signs a proposed relevant contract first and gives it to the buyer to sign. In this case, the cooling-off period will not commence until the buyer has both signed the

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proposed relevant contract and communicated the buyer's acceptance of the seller's offer to the seller.

*Clause 173* permits a person to waive the cooling-off period for a relevant contract by giving the seller, under the proposed relevant contract, a lawyer's certificate in the approved form. The lawyer's certificate must be given to the seller before the buyer and the seller enter into the relevant contract.

The lawyer's certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—

- 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 relating to the sale, of the property and has no business, family or other relationship with any of those persons;
- 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 in relation to the sale, of the property, other than professional costs and disbursements payable by the buyer;
- the lawyer has explained to the buyer, the effect of a relevant contract in terms of the proposed relevant contract; the purpose and nature of the certificate and the legal effect of the buyer giving the certificate to the seller.

*Clause 174* allows a buyer, under a relevant contract, to shorten the cooling-off period for the relevant contract to 5p.m. (or another stated time) on the day stated in the certificate, by giving the seller a lawyer's certificate in the approved form.

The lawyer's certificate must be signed and dated by the lawyer giving the certificate and state that—

- the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in relation to the sale, of the property and has no business, family or other relationship with any of those persons;
- the lawyer has not received, is not receiving, and does not expect to receive a benefit in relation to the sale, or for promoting the sale, or for providing a service in relation to the sale, of the

property, other than professional costs and disbursements payable by the buyer; and

- the lawyer has explained to the buyer the effect of the relevant contract, the purpose and nature of the certificate and the legal effect of the buyer giving the certificate to the seller.

## **Division 5 Terminating relevant contracts**

*Clause 175* provides that a buyer may terminate a relevant contract where a clear statement under clause 169(2)(c)(i) has not been given to the buyer. A buyer may terminate a relevant contract any time before the relevant contract settles by giving a signed and dated notice to the seller that the contract is terminated under this clause. However, limitations have been placed on this right. The buyer may not terminate the relevant contract under this section if the buyer has signed the warning statement attached to the proposed relevant contract before the buyer signed the proposed relevant contract. Also, the termination must be exercised within 90 days after the day the buyer receives the relevant contract. Clause 175 requires the seller to refund any deposit paid under the relevant contract to the buyer within 14 days of the termination. Failure to comply with this requirement attracts a maximum penalty of 200 penalty units. The section prescribes that the seller personally or the seller's agent is liable to the buyer for the buyer's reasonable legal and other expenses incurred in relation to the relevant contract after it was signed. Under this clause, any amount payable to the buyer is recoverable as a debt.

*Clause 176* gives buyers a right to terminate a relevant contract during the cooling-off period. The clause provides that where a buyer has not waived the cooling-off period under clause 173, the buyer may terminate a relevant contract at any time during the cooling-off period. If the cooling-off period has been shortened in accordance with clause 174, then notice to terminate may be given at any time during this shortened period. Such a termination is effected by the buyer giving to the seller a signed and dated notice of termination, stating that the relevant contract is terminated under section 176. The seller is permitted to deduct from any deposit paid an amount not greater than the termination penalty, which is defined as an amount equal to 0.25% of the purchase price under the relevant contract. The seller must refund to the buyer, any deposit that has been paid under the relevant contract within 14 days of the termination of the contract under this clause.

If the seller is deducting a termination penalty, then this may be deducted from the deposit before the balance of the deposit is refunded. There is a maximum penalty of 200 penalty units for not making the refund within 14 days of the termination of the contract, and any amount payable to the buyer under clause 176(4) is recoverable as a debt.

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

*Clause 177* provides that this division applies if:

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

*Clause 178* provides that a property developer commits an offence where they receive part payment and fail to pay it directly to the public trustee, or a law practice, or a property agent, within 3 business days after the amount is paid by the buyer. Any provision of a relevant contract, or an instrument made in connection with the relevant contract, that otherwise provides for payment of the part payment is void.

*Clause 179* provides that part payments are to be held in trust. If the part payment is paid to the public trustee, it is to be held by the public trustee in a trust account kept for this Bill. If the part payment is paid to an individual, it is to be held by the individual in a trust account kept for this Bill by the individual or, if the individual is a member of a firm or partnership, the firm or partnership of which the individual is a member.

The part payment must be dealt with by the public trustee, individual, firm or partnership in accordance with the law governing the operation of the public trustee's, individual's, firm's or partnership's trust account.

## **Division 7            Advertising sale of particular properties—sustainability declarations**

### **Subdivision 1    Preliminary**

*Clause 180* provides definitions for this division.

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

*Clause 181* provides that this subdivision applies to an entity appointed to sell a residential dwelling under a written agreement under this Bill by the person authorising the sale of the dwelling.

However, this subdivision applies to the seller's agent only until the earlier of the following days – the day a contract for the sale of the dwelling settles, or the day the dwelling is withdrawn from sale.

*Clause 182* prohibits the seller's agent from publishing 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.

The seller's agent must not give a person a document advertising the sale of the residential dwelling unless the person has a copy of the current sustainability declaration for the dwelling or a copy of the declaration accompanies the document. However, this does not apply to the seller's agent if the document is given to the person at—

- the residential dwelling; and
- a time it is generally open to the public for inspection by potential buyers of the dwelling.

*Clause 183* provides that at any time the residential dwelling is generally open to the public for inspection by potential buyers, the seller's agent must

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ensure a copy of the current sustainability declaration is conspicuously displayed so anyone entering the dwelling can easily read the declaration.

Where a potential buyer inspects a residential dwelling other than when it is open to the public for inspection, the seller's agent must ensure—

- the person has a copy of the current sustainability declaration before the person enters the dwelling; or
- 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
- a copy of the declaration is conspicuously displayed at the dwelling so the person can easily read it.

*Clause 184* requires a seller's agent to give a potential buyer a copy of the current sustainability declaration for a dwelling as soon as practicable after they ask for it.

*Clause 185* provides that a breach of an obligation under this subdivision does not of itself give rise to an action for breach of statutory duty or another civil right or remedy.

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

*Clause 186* provides that this subdivision applies if -

- a seller's agent publishes a relevant advertisement for the sale of a residential dwelling that includes information about a current sustainability declaration for the dwelling, or gives, or makes available to a person a current sustainability declaration for the dwelling; and
- the declaration is incomplete or contains information that is false or misleading; and
- 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.

*Clause 187* prohibits the buyer under a relevant contract, or a contract formed on a sale by auction, for the sale of the residential dwelling from terminating the contract only because the declaration is incomplete or contains information that is false or misleading.

*Clause 188* provides that merely publishing the advertisement, or giving or making available the declaration, does not constitute a contravention of clauses 233, 234, 235 or 238(1) for which a person may make a claim against the fund, or *Fair Trading Act 1989*, section 38, 39, 40 or 40A.

In order to remove any doubt and despite clause 192(1)(a) of this Bill, it is declared that merely publishing the advertisement, or giving or making available the declaration, does not constitute a contravention of clauses 233, 234(1), 235(1) or 238(1) of this Bill, for which a person may make a claim against the fund.

## **Part 7                      Trust accounts**

*Clause 189* provides that it is an offence for a principal licensee not to open and maintain a trust account under the Administration Bill if an amount for a transaction is likely to be received by the licensee for a transaction, or with written direction for its use,. This 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.

## **Part 8   Claims against the fund**

### **Division 1                      Preliminary**

*Clause 190* defines the terms used in this division.

*Clause 191* provides that a person purchases a non-investment residential property only if the property is a residential property and an assessment for



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the purchase a concession has been made, under the *Duties Act 2001*, chapter 2, part 9, for transfer duty or the repealed *Stamp Act 1894*, section 55A, for stamp duty.

## **Division 2            Claims against the fund**

*Clause 192* provides that a person may make claim against the fund if financial loss is suffered because of the following -

- the contravention by a relevant person of clauses 91, 92, 96(1), 189, 232, 233, 234, 235 and 238. In the event of contravention against these provisions a person may make a claim against the fund even if the person has made another claim for the loss against a receiver and the receiver has not considered or has refused the other claim;
- a contravention of any of the following provisions of the *Land Sales Act 1984* by a licensee appointed by the owner of land to which that Act applies or a relevant person employed by the licensee: sections 9, 11, 12, 21, 23, 24;
- stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as agent for someone else in the person's capacity as a relevant person.

*Clause 193* provides that where a person suffers financial loss because of, or arising out of, the stealing, misappropriation or misapplication of an amount that a relevant person was directed to invest under the Administration Bill section 13(1)(c) can not make a claim against the fund.

The following persons cannot make a claim against the fund for any of the following financial losses—

- a relevant person who suffers financial loss in the course of performing an activity, or carrying on business, as a relevant person;
- a person holding a licence, however described, under a corresponding law that is similar to a licence under this Bill who suffers financial loss in the course of performing an activity, or carrying on business, under the person's licence;

- a person who suffers financial loss because of a failure to disclose or make effective disclosure under clause 84;
- a person who suffers financial loss because of, or arising out of, a marketeering contravention in relation to the purchase by the person of a residential property, other than a non-investment residential property.

*Clause 194* provides that 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.

Capital loss may also be claimed only if the loss has been realised as mentioned in the Administration Bill, section 102.

## **Part 9                      Jurisdiction of QCAT**

*Clause 195* provides definitions for this part.

*Clause 196* provides that for this Bill, QCAT has the jurisdiction to hear and decide disciplinary matters involving a licensee, property agent salesperson or a former registered employee; to hear and decide applications under this Bill relating to marketeers and to review decisions of the chief executive relating to licensing or registration.

## **Part 10                    Proceedings**

### **Division 1                Disciplinary proceedings**

*Clause 197* states the following are grounds for starting a disciplinary proceeding against a licensee or property agent salesperson—

- the licensee or salesperson has been convicted of an indictable offence or an offence against this Bill or the Administration Bill ;

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- the licensee or salesperson has contravened or breached this Bill, including a code of conduct; or the Administration Bill ; or an undertaking given under part 11, division 2; or a corresponding law;
  - the licensee or salesperson has been disqualified from holding a licence under a corresponding law;
  - 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;
  - the licensee or salesperson fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
  - the licensee or salesperson has failed to comply with an order made by a court, the former tribunal or QCAT;
  - for a licensee—
    - the licensee is not a suitable person to hold a licence; or
    - 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
    - the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
    - the licensee has failed to ensure that the licensee's employed licensees or property agent salespersons, or employees under the licensee's supervision are properly supervised in the performance of their duties; or comply with this Bill; or
    - the licensee has failed to comply with a condition of the licensee's licence; or
    - the licensee is an executive officer of a corporation for whom QCAT finds grounds exist to take disciplinary action under clause 211; or
    - if the licensee is a corporation an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or an executive officer of the
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corporation is disqualified under this Bill from being an executive officer of a corporation;

- for a property agent salesperson—
  - the salesperson is not eligible to be employed as a property agent salesperson; or
  - the salesperson has in performing an activity of a licensee, been incompetent or acted in an unprofessional way

The chief executive must not start a disciplinary proceeding against a licensee who is an executive officer of a corporation in relation to whom QCAT finds grounds exist to take disciplinary action under clause 212, if the chief executive is satisfied—

- the act or omission relevant to the proceeding against the corporation was done or made without the executive officer's knowledge; and
- the executive officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.

*Clause 198* provides the chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under clause 196 for taking disciplinary action against a licensee or property agent salesperson.

## **Division 2            Marketeer proceedings**

*Clause 199* provides the following are grounds for starting a proceeding against a marketeer for orders under clause 213 -

- the marketeer has contravened or is contravening clauses 233, 234 or 235;
- the marketeer is likely or proposing to engage in conduct that would contravene clauses 233, 234 or 235;
- the marketeer is reasonably suspected of the above.

*Clause 200* provides that the chief executive may apply, as provided under the QCAT Act, to QCAT to conduct a marketeer proceeding. The application must state the grounds for starting the proceeding, the conduct constituting the grounds and that an application will be made for 1 or more orders under clause 213.

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## **Division 3            Review proceedings**

*Clause 201* provides that 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.

*Clause 202* provides that a decision of the chief executive, other than a decision made under clause 65 or 155 being reviewed is stayed for the purpose of securing the effectiveness of the review.

However, the period of a stay does not extend past the time when QCAT decides the application.

*Clause 203* provides that QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied —

- the application is made within 42 days after the person receives notice of the decision to be reviewed; and
- it is appropriate to extend time having regard to the application generally, and the justice of the matter generally.

No appeal lies against QCAT's decision under this clause.

## **Division 4            Proceedings generally**

### **Subdivision 1    Reference committee**

*Clause 204* establishes reference committee consisting of the commissioner for fair trading; and 2 community representatives who are not public service employees.

One of the community representatives must have a demonstrated interest in civil liberties and the other must be a person the Minister considers has appropriate and relevant experience in fair trading issues. Community representatives' appointments and terms and conditions of appointment are to be decided by the Governor in Council.

*Clause 205* provides that it is the reference committee's function is to decide whether conduct of a marketeer that is being investigated under this

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

*Clause 206* provides that where the chief executive considers that a public examination may help decide whether or not to start a marketeer proceeding against a marketeer, the chief executive may refer the conduct to the reference committee. After considering all relevant issues, the reference committee may authorise the chief executive to make an application to QCAT for a public examination.

The reference committee must not authorise the chief executive to make the application unless satisfied -

- it is unlikely further investigation of the conduct by an inspector will be effective for deciding whether to start a marketeer proceeding; and
- a public examination may help find out whether a marketeer has contravened clauses 233, 234 or 235; and
- it is in the public interest to make the application.

## **Subdivision 2 Public examinations**

*Clause 207* provides that 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 clauses 233, 234 or 235. The application may be made whether or not a marketeer proceeding has been started.

This division applies to a public examination as if it were a hearing before QCAT.

*Clause 208* provides that before the start of a public examination, QCAT must be satisfied each person to be examined has received written grounds for the public examination. On being satisfied QCAT must decide a time and place for the public examination and issue an attendance notice to each person to be examined.

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. The attendance notice must state the time

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and place for the public examination decided by QCAT and the person may make oral and written submissions at the public examination.

The chief executive must serve the attendance notice on the person to whom it was issued.

*Clause 209* provides that where a person being examined at a public examination refuses to answer any question, and QCAT requires the person to answer the question, QCAT must advise the person –

- that if the answer might incriminate the person, the person may claim, before giving the answer, that giving the answer might incriminate the person; and
- the effect that making the claim will have on the admissibility of the answer in any proceeding against the person.

The person must answer the question, unless the person has a reasonable excuse. It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person.

The answer is not admissible in any criminal or civil proceeding against the person, other than—

- the public examination of a person; or
- a proceeding to review a reviewable decision; or
- an appeal against QCAT’s decision to require the answer; or
- a perjury proceeding.

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

*Clause 210* provides that QCAT may, by order, prohibit the marketeer from engaging in conduct that, alone or together with other conduct, is a contravention of clauses 233, 234 or 235, where 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 has contravened or is contravening clauses 233, 234 or 235; or is likely or proposing to engage in conduct that would contravene clauses 233, 234 or 235.

It is an offence for a person to contravene an order under this clause.

QCAT may make an order under this clause 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. 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.

In a proceeding against a person the making of an order under this clause is evidence of the facts or circumstances giving rise to the making of the order. An order under this clause has effect on the giving of a copy of the order to the marketeer.

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

*Clause 211* allows QCAT to make 1 or more of the following orders against a person for whom QCAT finds grounds exist to take disciplinary action under this Bill—

- an order reprimanding the person;
- an order that the person pay to the State, within the period stated in the order, a fine of not more than 200 penalty units for an individual or 1000 penalty units for a corporation;
- 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;
- an order that the person's licence or registration certificate be suspended for the period stated in the order;
- an order that the licence or registration certificate be cancelled, if the person is the holder of a licence or registration certificate when the order is made, or that the person be disqualified permanently, or for the period stated in the order, from holding a licence or registration certificate whether or not the person is the holder of a licence or registration certificate when the order is made;
- an order, for a licensed individual who is an executive officer of a corporation, that the individual be disqualified permanently, or



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for the period stated in the order, from being an executive officer of a corporation that holds a licence;

- an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate; or
- another order QCAT considers appropriate to ensure the person complies with this Bill.

However, where an order is made that a person be disqualified permanently, or for the period stated in an order, from holding a licence or registration certificate, whether or not the person is the holder of a licence or registration certificate at the time the order is made, QCAT may not make an order disqualifying a person from holding a licence or registration certificate if QCAT is satisfied that a court has, for the matter giving rise to the disciplinary proceeding—

- been asked to make an order under clause 256(2) disqualifying the person from holding a licence or registration certificate; and
- declined to do so.

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.

*Clause 212* provides that 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, 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 Bill. However, this clause does not apply if clause 210 applies.

QCAT may make an order under this clause 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.

If QCAT, after considering the prohibited person's evidence and submissions, if any, and any further evidence or submissions of the chief executive, is not satisfied the order should continue in force, QCAT must rescind the order.

Contravention of an order under this clause is an offence. An order under this clause has effect on the giving of a copy of the order to the prohibited person.

*Clause 213* states that if, in a marketeer proceeding, QCAT is satisfied a marketeer has contravened clauses 233, 234 or 235, QCAT may make 1 or more of the following orders against the marketeer—

- 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, 200 penalty units for an individual; or 1000 penalty units for a corporation
- an order that the person's licence or registration certificate, if any, be suspended for the period stated in the order;
- an order 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 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;
- 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;
- an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate, if any;
- 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;
- 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;
- 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;
- another order QCAT considers appropriate to ensure the person complies with this Bill.

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However, QCAT may make an order 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, where QCAT may make orders –

- against the marketeer that the person pay to the chief executive, within the time stated in the order, an amount of not more than the money value of for an individual—200 penalty units or for a corporation—1000 penalty units; and
- 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.

If QCAT proposes to order a marketeer to pay an amount to the chief executive and compensation under these provisions and the marketeer does not have enough financial resources to pay both, QCAT must prefer to make an order for compensation.

If QCAT orders a corporation to pay:

- an amount to the chief executive within the time stated in the order, an amount of not more than the money value of 1000 penalty units; or
- 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; and
- 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.

It is a defence to liability for an executive officer to prove that— relating to the conduct in question—the officer took all reasonable steps to ensure the corporation:

- did not contravene clauses 233, 234 or 235 (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 clauses 233, 234 or 235); or

- the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.

*Clause 214* provides that to decide the amount a person may be ordered to pay under clause 213, QCAT must consider—

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

## **Subdivision 5 Chief executive's right of appeal**

*Clause 215* provides that the chief executive may appeal to the appeal tribunal against any decision of QCAT, but only on the ground of error of law.

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## **Part 11                      Injunctions, undertakings,    preservation of assets and civil    penalties**

### **Division 1                      Injunctions**

*Clause 216* provides that an injunction under this division may be granted by the District Court against a person (respondent) at any time.

*Clause 217* provides the chief executive and a person aggrieved by the respondent's conduct may apply to the District Court for an injunction.

*Clause 218* states that 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—

- a contravention of this Bill or the Code of Conduct; or
- attempting to contravene this Bill or a Code of Conduct; or
- aiding, abetting, counselling or procuring a person to contravene this Bill or the Code of Conduct; or
- inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Bill or the Code of Conduct; or
- being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Bill or the Code of Conduct; or
- conspiring with others to contravene this Bill or the Code of Conduct.

*Clause 219* provides that the power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- 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
- whether or not the person has previously engaged in conduct of that kind.

The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—

- 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
- whether or not the person has previously failed to do the act or thing.

An interim injunction may be granted under this part until the application is finally decided. The District Court may rescind or vary an injunction at any time.

*Clause 220* allows the District Court to grant an injunction in the terms the court considers appropriate. Without limiting the court's power 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)—

- for a stated period; or
- other than on stated terms and conditions.

Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Bill or the code of conduct.

*Clause 221* provides if the chief executive applies for an injunction under this division, no undertaking as to damages or costs may be required or made.

## **Division 2                      Undertakings**

*Clause 222* states if the chief executive believes, on reasonable grounds, a person has contravened or been involved in a contravention of this Bill or the code of conduct, the chief executive may, by written notice given to the person—

- state the act or omission the chief executive believes is the contravention; and
- ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.

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If the person gives the undertaking and, if the contravention is conduct consisting of a series of acts or omissions, the person stops the conduct and the chief executive accepts the undertaking the chief executive can not start an offence proceeding against the person for the contravention, unless the chief executive withdraws the undertaking under clause 224.

*Clause 223* provides that the chief executive may accept an undertaking given by a person for this clause about anything for which the chief executive or an inspector has a function or power.

*Clause 224* provides that if the chief executive accepts an undertaking, it may be varied or withdrawn at any time by -

- the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or
- the chief executive, if the chief executive believes, on reasonable grounds that, before it was accepted, the person who gave it contravened this Bill in a way unknown to the chief executive; and had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.

The chief executive may also withdraw the undertaking if the chief executive believes, on reasonable grounds, it is no longer necessary. If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave it written notice of its variation or withdrawal.

The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.

*Clause 225* provides that 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 clause.

If the District Court is satisfied that the person has contravened the term, the court may make 1 or more of the following orders—

- an order directing the person to comply with the term;
- 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;

- an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;
- an order directing the person to give a security bond to the State for a stated period; or
- another order the court considers appropriate.

The District Court may order the forfeiture to the State of all or part of a security bond given by a person if the chief executive applies to the court for the order and the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

*Clause 226* provides that the chief executive must keep a register of each undertaking given to the chief executive by a person under this division. The register must contain a copy of the undertaking.

The chief executive may publish the information contained in the register on the department's website and the information may be kept in any way the chief executive considers appropriate.

A person may, on payment of the prescribed fee, inspect, or get a copy of details in, the register at a place or places decided by the chief executive or by using a computer. A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.

## **Division 3                      Preservation of assets**

*Clause 227* applies where any of the following proceedings have been started against a marketeer:

- a proceeding before the District Court for the grant of an injunction;
- a proceeding before the District Court about a contravention of an undertaking;
- a marketeer proceeding;
- a proceeding before the District Court under division 4 for a civil penalty.

On the chief executive's application, the District Court may make an order discussed below, if satisfied that—



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- it is necessary or desirable to preserve property held by or for the marketeer because the marketeer is or may become liable under this Bill—
    - to pay an amount to the chief executive; or
    - to pay compensation; or
    - to refund an amount; or
    - to transfer, sell or return other property; and
  - it will not unduly prejudice the rights and interests of any other person.

The orders the District Court may make are—

- 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
- 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
- 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
- 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.

An application and an order may be made 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. Subject to the requirements of an ex-parte order, the order may be expressed to operate—

- for a stated period; or
- until proceedings under any other provision of this Bill in relation to which the order was made have ended.

It is an offence for a person to whom an order is directed under this clause not to comply with the order.

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

*Clause 228* provides that this part applies if a person contravenes clauses 233, 234 or 235.

*Clause 229* provides that the chief executive may apply to the District Court for an order requiring the person to pay to the State a money penalty or to pay to a person who suffered financial loss because of the contravention an amount as compensation.

The application may be made together with any other application the chief executive may make under this part.

*Clause 230* provides that this clause applies if the court is satisfied the person has contravened clauses 233, 234 or 235. The court may order the person to pay to the State a money penalty for each contravention up to the limit of the court's civil jurisdiction.

If satisfied another person has suffered financial loss because of the contravention, the court may order the person to pay as compensation, an amount decided by the court, up to the limit of the court's civil jurisdiction. Where the court proposes to order an individual to pay a money penalty and compensation and the person does not have the resources to pay both, the court must prefer to make an order for compensation.

If the court orders a corporation to pay a money penalty or compensation and 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.

It is a defence to a liability for an executive officer to prove that if the officer was in a position to influence the conduct of the corporation in relation to the conduct in question the officer took all reasonable steps to ensure the corporation did not contravene clauses 233, 234 or 235. 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.

It is a defence to a liability for an executive officer to prove that the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.

*Clause 231* provides that, to decide an amount a person may be ordered to pay under clause 230, the court must consider—

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

## **Part 12                      General contraventions, evidentiary matters and legal proceedings**

### **Division 1                      General contraventions**

*Clause 232* provides that a licensee commits an offence if a licensee receives an amount belonging to someone else or falsely accounts for money in the performance of their activities.

It is an offence for a licensee to dishonestly convert the amount to the licensee's own or someone else's use, or dishonestly render an account of the amount knowing it to be false in a material particular. To prosecute a licensee who has dishonestly converted an amount to the licensee's own or someone else's use, 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.

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.

*Clause 233* provides that a marketeer must not engage in conduct that is misleading or is likely to mislead, 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.

*Clause 234* provides that a marketeer must not engage in conduct that is, in all the circumstances, unconscionable, 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. Without limiting the matters to which regard may be had when deciding whether a marketeer has engaged in unconscionable conduct regard may be had to—

- the relative strengths of the bargaining positions of the marketeer and the buyer of the property; and
- whether, because of conduct engaged in by the marketeer, the buyer was required to comply with conditions that were not

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reasonably necessary for the protection of the legitimate interests of the marketeer; and

- whether the buyer was able to understand any documents relating to the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; and
- 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
- the amount for which, and the circumstances under which, the buyer could have acquired an equivalent or similar property from another person; and
- 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
- the requirements of any applicable code of conduct; and
- the extent to which the marketeer unreasonably failed to disclose to the buyer any intended conduct of the marketeer that might affect the interests of the buyer and 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
- the extent to which the marketeer failed to disclose to the buyer 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 anything required to be disclosed under this Bill; and
- 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
- 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
- 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

- 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
- 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
- whether the marketer took measures to ensure that the buyer understood the nature and implications of the transaction and, if so, the adequacy of those measures; and
- whether at the time the contract was entered into, the marketer 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
- the extent to which the marketer and the buyer acted in good faith; and
- any other relevant factor.

*Clause 235* provides that a marketer must not represent in any way to someone else anything that is false or misleading, 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, including —

- representing that the person has a sponsorship, approval or affiliation the person does not have; or
- making a false or misleading representation about the nature of the interest in the property, or the price payable for the property; or the location of the property; or the characteristics of the property; or the use to which the property is capable of being put or may lawfully be put; or the existence or availability of facilities associated with the property; or the value of the property at the date of the sale; or the potential income from the leasing of the property; or if the property has been previously sold, the date of the sale and the consideration for the sale; or how the purchase of the property may affect the incidence of income taxation on the buyer; or

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- offering gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

*Clause 236* provides that Clauses 233, 234 and 235 which apply to conduct, whether happening in or outside Queensland, relating to residential property in Queensland are in addition to, and do not limit, any other law, written or unwritten, about conduct mentioned in them.

*Clause 237* provides that a marketeer commits an offence if they unduly harass another person in connection with the sale or possible sale of residential property in Queensland.

*Clause 238* provides that a licensee or property agent salesperson commits an offence if they represent in any way to someone else anything that is false or misleading in relation to the letting, exchange or sale of property including but not limited to—

- the value of the land at the date of sale; or
- the potential income from the leasing of the land; or
- if the land has been previously sold, the date of the sale and the consideration for the sale; or
- how the purchase of the land may affect the incidence of income taxation on the buyer.

Without limiting the matters to which regard may be had under this clause, a representation is taken 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. Also, if a person makes a representation in relation to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.

The onus of establishing that the person had reasonable grounds for making the representation is on the person. It is not a defence to a prosecution 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.

This clause does not limit another Bill or law about false or misleading representations.

*Clause 239* applies where 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 by auction is likely to be sold if it is sold by auction.

The property agent commits an offence if they do not give the seller a written notice stating that if the seller does not set a price at which the seller agrees to sell the property, the property will be sold for the price offered by the highest of any bids made when the property is auctioned;

Where the seller appoints the property agent to sell the property, the property agent commits an offence if they do not obtain from the seller before the property is auctioned a written notice stating the if the seller sets a reserve price what the reserve price is, or if the seller does not set a reserve price, that the seller understands that the property will be sold for the highest of any bids made when the property is auctioned;

A property agent commits an offence if they help a seller decide the reserve price for property unless, before the seller decides the price, the property agent gives the seller a copy of a comparative market analysis for the property or if a comparative market analysis can not be prepared for the property, a written explanation showing how the property agent decided the market value of the property.

*Clause 240* provides that where a person wanting to bid for residential property that is to be, or may be, offered for sale by auction asks a property agent for information about the price at which the offered property is likely to be sold when it is auctioned, the property agent commits an offence if they disclose to the bidder—

- whether the seller has set a reserve price for the offered property under clause 239;
- the reserve price set under clause 239 for the offered property; or
- an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property.

The property agent does not commit an offence if, on the seller's written instructions, the property agent gives the bidder whichever of the following was given to the seller—

- the comparative market analysis for the offered property;
- the written explanation showing how the property agent decided the market value of the property.

*Clause 241* provides that where a person wanting to sell residential property asks a property agent for information about the price at which



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residential property that is to be, or may be, offered for sale, whether or not by auction, is likely to be sold and the property agent decides to give the person the information, the property agent must, when giving the person the information, give the person—

- a copy of a comparative market analysis for the offered property; or
- 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.

*Clause 242* applies where a person wanting to buy 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, is likely to be sold or is, or is likely to be, offered for sale.

If the offered property is to be offered for sale by auction, it is an offence for the property agent to disclose to the potential buyer—

- whether the seller has set a reserve price for the offered property; or
- the reserve price set for the offered property; or
- an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property.

If the property is not to be offered for sale by auction and the seller has instructed the property agent not to disclose the price at which the seller is willing to sell the offered property, it is an offence for the property agent to disclose to the potential buyer the price at which the seller is willing to sell the offered property. However, the property agent does not commit an offence 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—

- the comparative market analysis for the offered property;
- the written explanation showing how the property agent decided the market value of the property.

*Clause 243* provides that where the chief executive reasonable believes a licensee or property agent salesperson has made a representation in contravention of clause 238(1) or (2), the chief executive may ask the person by written notice to give written proof supporting the representation. The notice must—

- 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
- 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.

The person commits an offence if they fail to comply with the notice by the stated day, unless they have a reasonable excuse for the failure to comply. Self-incrimination is deemed a reasonable excuse.

*Clause 244* provides that where the chief executive reasonably believes that a marketeer has made a representation in contravention of clause 235(1) or (2), the chief executive may ask the person by written notice to give to the chief executive written proof that supports the representation. The notice must—

- 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
- 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.

The person commits an offence if they fail to comply with the notice by the stated day, unless they have a reasonable excuse for the failure to comply. Self-incrimination is deemed a reasonable excuse.

*Clause 245* provides that a licensee or a property agent salesperson commits an offence if they 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.

*Clause 246* provides that if an amount is prescribed under a regulation as the maximum amount allowed to a licensee for the performance of activities relating to a stated transaction, it is an offence for a licensee to ask for, or receive, a commission or reward for the transaction greater than the amount allowed under the regulation. However, this does not prevent the licensee asking for or receiving an amount more than the maximum amount allowed under the regulation if the amount is for GST payable for a supply in relation to the transaction.

If, in a proceeding, an amount is alleged to be payable to the licensee for recouping expenditure lawfully incurred by the licensee in connection with

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the transaction, the licensee must establish to the court's satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred.

Where a licensee is convicted of asking for, or receiving, a commission or reward for the transaction greater than the amount allowed under the regulation, or fails to satisfy the court about expenditure incurred, the convicting court must order the licensee to refund the amount to which the licensee was not entitled to the person from whom it was obtained.

*Clause 247* provides that it is an offence for a licensee to—

- lend or hire out the licensee's licence to someone else; or
- 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
- permit or allow someone else to hold out that the person is the holder of the licence issued to the licensee.

It is an offence for a person to borrow, hire or buy a licensee's licence.

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

*Clause 248* provides that it is an offence for a person to state anything to an official the person knows is false or misleading in a material particular.

*Clause 249* provides that it is an offence for a person to give an official a document containing information the person knows is false or misleading in a material particular. However, this does not apply to a person if the person, when giving the document—

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

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

*Clause 250* provides that it is an offence for a person to, for reward, supply, or undertake to supply, or advertise, or hold out in any way that the person will supply to any person addresses or other particulars of—

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

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

It is an offence for a person to make an unsolicited invitation to another person to attend a property information session unless the person is a property developer or a property agent or someone acting for the developer or agent.

## **Division 2            Evidentiary matters**

*Clause 251* provides that for a proceeding under this Bill, a signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

A certificate purporting to be signed by the chief executive, a member of QCAT, the registrar or an inspector stating any of the following matters is evidence of the matter—

- a stated document is—
  - an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Bill; or
  - a notice, or a copy of a notice, given under this Bill; or
  - a record, or a copy of a record, kept under this Bill; or
  - a document, or a copy of a document, kept under this Bill;
- on a stated day, a stated person—
  - was, or was not, the holder of a stated licence or registration certificate under this Bill; or
  - was given a stated notice, order, requirement or direction under this Bill.

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The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of—

- the appointment; or
- the power to do anything under this Bill.

*Clause 252* provides that an entry in a document kept by or belonging to a licensee or found in the licensee's premises is evidence that the entry has been made by or with the authority of the licensee.

## **Division 3            Proceedings**

*Clause 253* states that subject to prosecution electing an indictable offence being preferred summarily under the *Justices Act 1886* or on indictment, a proceeding for an offence against this Bill must be preferred summarily under the *Justices Act 1886* within the later of the following—

- 1 year after the offence is committed;
- 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

- for the summary conviction of the person; or
- for a public examination of witnesses for the charge.

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*.

Where 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 the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment; the magistrate—

- must not decide the charge as a summary offence; and
- must proceed by way of a committal proceeding.

If a magistrate acts under subclause (5)—

- any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- any evidence brought in the proceeding before the magistrate decided to act under subclause (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- 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).

The maximum penalty that may be imposed on a summary conviction of an indictable offence is 200 penalty units or 1 year's imprisonment.

*Clause 254* provides that in a proceeding for an offence against this Bill, if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- 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
- the representative had the state of mind.

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.

*Clause 255* provides that the executive officers of a corporation must ensure that the corporation complies with this Bill.

If a corporation commits an offence against a provision of this Bill, each of the executive officers of the corporation commits the offence of failing to ensure that the corporation complies with the provision.

Evidence that the corporation has been convicted of an offence against a provision of this Bill is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

If the executive officer was in a position to influence the conduct of the corporation in relation to the offence, it is a defence if the officer took all reasonable steps to ensure the corporation complied with the provision. It is also sufficient for the executive officer to prove that the offence was done

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or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

It is also a defence for an executive officer to prove that the officer was not in a position to influence the conduct of the corporation in relation to the offence.

*Clause 256* provides that a court may, in addition to any 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 Bill. This does not apply to an offence against clauses 227(6), 237(1) or 244(4).

The court may also order that a person convicted of an offence against this Bill be disqualified from holding a licence or registration certificate under this Bill for a stated period or permanently. The court may make an order on the chief executive's application or on its own initiative.

Where an order is made by a court on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

*Clause 257* provides that a court may, in addition to any other penalty it may impose on a person convicted of an offence against clauses 227(6), 27(1) or 244(4), order that—

- if the person is a licensee or a property agent salesperson the licensee's licence or property agent salesperson's registration certificate be suspended for a stated period or cancelled; or the person be disqualified from holding a licence or registration certificate under this Bill for a stated period or permanently; or
- whether or not the person is a licensee or a property agent salesperson—the person be disqualified from holding a licence or registration certificate under this Bill for a stated period or permanently.

The court may also make any other order QCAT may make in a marketeer proceeding. 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.

The court may make an order under this clause on the chief executive's application or on its own initiative. If an order is made by a court under this clause on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

*Clause 258* provides that in a proceeding for an offence against this Bill involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state that the statement, representation, entry or information was ‘false or misleading’.

## **Part 13                      General**

*Clause 259* provides that if the Minister or chief executive are satisfied it is in the public interest to do so, they may make or issue a public statement identifying and giving warnings or information about—

- contraventions of the code of conduct that have resulted in disciplinary action and persons who commit the contraventions;
- business practices regulated under this Bill that are unfair and persons who engage in the unfair practices;
- the commission of offences against this Bill, and persons who commit the offences.

The statement may identify particular contraventions, business practices, offences and persons.

*Clause 260* provides that nothing in this Bill affects or limits any civil remedy that a person may have against a licensee or another person in relation to any matter.

*Clause 261* provides that nothing in this Bill limits the *Criminal Proceeds Confiscation Act 2002*.

*Clause 262* provides that the chief executive may delegate the chief executive’s powers, other than power under clause 259, to an appropriately qualified public service employee.

*Clause 263* provides that the chief executive may approve forms for use under this Bill.

*Clause 264* provides that the Minister must ensure the operation of this Bill is reviewed. The review must be finished within 3 years after the commencement of this clause. 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.



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*Clause 265* provides that the Governor in Council may make regulations under this Bill. Without limiting this ability, a regulation may be made about the following—

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

## **Part 14                      Repeal**

*Clause 266* provides that the *Property Agents and Motor Dealers Act 2000* is repealed.

## **Part 15                      Transitional and saving provisions**

### **Division 1                      Preliminary**

*Clause 267* provides the definitions for part 15.

## **Division 2            Transitional provisions**

### **Subdivision 1    Licences and registration certificates**

*Clause 268* provides that if, immediately before the commencement of this Bill, a person held a licence, on the commencement, the person is taken to be the holder of the following licence or licences (each a transitioned licence)—

- if the existing licence was a pastoral house or pastoral house director's licence—a property agent licence and a chattel auctioneer licence;
- 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;
- if the existing licence was a real estate agent's licence or pastoral house manager's licence and the person did not hold an existing licence that was an auctioneer's licence immediately before the commencement—a property agent's licence that is 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;
- if the existing licence was an auctioneer's licence or a pastoral house auctioneer's licence—
  - either—
    - (A) if the person also held an existing licence that was a real estate agent's licence immediately before the commencement—a property agent licence; or
    - (B) if the person did not hold an existing licence that was a real estate agent's licence immediately before the commencement—a property agent licence that is on the condition that the activities authorised to be performed under the licence are limited to the sale,

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attempted sale or offering for sale or resale of any property by way of auction; and

— a chattel auctioneer licence; or

- if the existing licence was a resident letting agent's licence—a resident letting agent licence.

If the existing licence held immediately before the commencement was subject to a 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.

A transitioned licence expires on the day it would have expired under the repealed Act unless it is sooner cancelled.

The chief executive may deal with—

- a transitioned licence that is a chattel auctioneer licence as if it were a chattel auctioneer licence issued under the Chattel Auctioneers Bill; or
- another transitioned licence as if it were a licence issued under this Bill.

*Clause 269* provides that a person who, immediately before the commencement, held an existing registration certificate under the repealed Act, on the commencement, is taken to be the holder of the following registration certificate (each a transitioned registration certificate) —

- 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 Bill;
- 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;

- if the existing registration certificate was held as a trainee auctioneer—
  - 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 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
  - a registration certificate as a trainee chattel auctioneer under the Chattel Auctioneers Bill;
- 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.

If the existing registration certificate held by the person immediately before the commencement was subject to a 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.

A transitioned registration certificate expires on the day it would have expired under the repealed Act unless sooner cancelled.

The chief executive may deal with—

- 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 Bill; or
- another transitioned registration certificate as if it were a registration certificate issued under this Bill.

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*Clause 270* provides on commencement, the following licences and certificate, under the repealed Act end—

- a property developer licence;
- a property developer director's licence;
- a registration certificate as a property developer salesperson.

*Clause 271* refers to the following applications made under the repealed Act but not decided before the commencement—

- an application for the issue of an existing licence or existing registration certificate;
- an application for the renewal of an existing licence or existing registration certificate;
- an application for the restoration of an existing licence or existing registration certificate;
- an application about amending an existing licence or existing registration certificate;
- an application about appointing a nominated person mentioned in clause 64(3) or 65(4) of the repealed Act as a licensee's substitute licensee

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 for the existing licence.

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 for the existing certificate.

To the extent, if any, the relevant transitioned licence is a property agent licence or resident letting agent licence or the relevant transitioned certificate is a registration certificate as a property agent salesperson—

- the application must be decided under this Bill; and
- the provisions of this Bill, relevant to the application, apply to the application.

To the extent, if any, the relevant transitioned licence is a chattel auctioneer licence or the relevant transitioned certificate is a registration certificate as a trainee chattel auctioneer—

- the application must be decided under the Chattel Auctioneers Bill; and
- the provisions of that Act, relevant to the application, apply to the application.

However, the provisions of this Bill or the Chattel Auctioneers Bill dealing with making an application in the approved form and paying an application fee do not apply for deciding an application for subclauses (4) or (5).

If the application is about the renewal or restoration of an existing licence, the relevant transitioned licence is taken to continue in force from the day the licence would, apart from this subclause, expire until the application for renewal or restoration is decided or withdrawn.

If the application is about the renewal or restoration of an existing registration certificate, the relevant transitioned registration certificate is taken to continue in force from the day the certificate would, apart from this subclause, expire until the application for renewal or restoration is decided or withdrawn.

*Clause 272* provides that if a person's existing licence expired within 3 months before the commencement, 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 clause 51 for restoration of the licence as if the existing licence were a property agent licence or resident letting agent licence.

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.

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 Bill, section 42 for restoration of the licence as if the existing licence were a chattel auctioneer licence.

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. If the existing licence was subject to a condition,

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the licence issued is also taken to be subject to a condition in the same terms, so far as practicable, as that condition.

To remove any doubt, it is declared that—

- to the extent, if any, the transitioned licence for the existing licence is a property agent licence or resident letting agent licence, clause 53 applies to the existing licence; and
- to the extent, if at all, the transitioned licence for the existing licence is a chattel auctioneer licence, the Chattel Auctioneers Bill, clause 44 applies to the existing licence.

*Clause 273* states that this provision applies if a person's existing registration certificate expired within 3 months before the commencement.

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 clause 148 for restoration of the existing registration certificate as if it were a property agent salesperson's registration certificate.

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

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 clause 197 of the Chattel Auctioneers Bill for restoration of the existing registration certificate as if it were a trainee chattel auctioneer's registration certificate.

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. If the existing registration certificate was subject to a condition, the registration certificate issued is also taken to be subject to a condition in the same terms, so far as practicable, as that condition.

- To remove any doubt, it is declared that—
- to the extent the transitioned registration certificate for the existing registration certificate is a registration certificate as a

property agent salesperson, clause 150 applies to the existing registration certificate; and

- to the extent, if at all, the transitioned registration certificate for the existing registration certificate is a registration certificate as a trainee chattel auctioneer, clause 199 of the Chattel Auctioneers Bill applies to the existing registration certificate.

*Clause 274* provides that where a person made an application for an existing licence or existing registration certificate under the repealed Act, and the application was refused before the commencement, the person may not make another application for another licence or registration certificate under this Bill—

- for 3 months after the day the chief executive gave the person an information notice for the refusal; or
- 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.

However, this does not apply to a person if—

- the person is a corporation; and
- the person satisfies the chief executive that, because of a genuine sale—
  - 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
  - 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.

*Clause 275* provides where an existing licence was deactivated under the repealed Act, immediately before commencement:

- to the extent, if any, the transitioned licence for the existing licence is a property agent licence or resident letting agent licence—
  - the existing licence continues to be deactivated under this Bill; and



- 
- clause 63 applies to the existing licence as if it were a licence deactivated under this Bill.
  - To the extent, if any, the relevant transitioned licence is a chattel auctioneer licence—
    - the existing licence continues to be deactivated under the Chattel Auctioneers Bill; and
    - clause 54 of that Bill applies to the existing licence as if it were a chattel auctioneer licence deactivated under that Bill.

Where a request to deactivate an existing licence, made under the repealed Act and not decided before the commencement:

- to the extent, if at all, the relevant transitioned licence is a property agent licence or resident letting agent licence—
  - the request must be decided under this Bill; and
  - clause 63 applies to the request.
- to the extent, if at all, the relevant transitioned licence is a chattel auctioneer licence—
  - the request must be decided under the Chattel Auctioneers Bill; and
  - clause 54 of that Bill applies to the request.

*Clause 276* provides where there is an existing licence or existing registration certificate that was, immediately before the commencement, suspended under the repealed Act—

- 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; or
- 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;
  - the existing licence or existing registration certificate continues to be suspended under this Bill.
  - the provisions of this Bill relating to the suspension of a licence apply to the existing licence as if the existing licence were a licence under this Bill.

- the provisions of this Bill 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 Bill.

To the extent, if at all, the transitioned licence for the existing licence would have been a chattel auctioneer licence if the existing licence had been in force, or to the extent, if at all, 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 existing licence or existing registration certificate continues to be suspended under the Chattel Auctioneers Bill.
- the provisions of the Chattel Auctioneers Bill relating to the suspension of a chattel auctioneer licence apply to the existing licence as if the existing licence were a chattel auctioneer licence.
- the provisions of the Chattel Auctioneers Bill 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**

*Clause 277* provides where there is an appointment, engagement or agreement to act as a particular agent under the repealed Act, if the appointment, engagement or agreement was in force immediately before the commencement and complied with the repealed Act—

- 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;
- 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;

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- 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;
  - if the existing appointment was as an auctioneer or a pastoral house auctioneer, the existing appointment is taken to be as—
    - 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
    - a chattel auctioneer.

To the extent an existing appointment is taken to be as a property agent—

- the appointment continues to be a valid appointment under this Bill according to its terms; and
- 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—
  - the day it ends according to its terms;
  - the end of 60 days after the commencement.

To the extent an existing appointment is taken to be as a chattel auctioneer under subclauses (2), (3) or (5) the appointment continues to be a valid appointment under the Chattel Auctioneers Bill according to its terms.

Where there is 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 to the extent the appointment relates to an existing licence—

- for which the transitioned licence is a property agent's licence or resident letting agent's licence, the appointment continues to be a valid appointment under this Bill according to its terms.
- for which the transitioned licence is a chattel auctioneer licence, the appointment continues to be a valid appointment under the Chattel Auctioneers Bill according to its terms.

*Clause 278* provides that 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 Bill as if the ground were a ground for starting disciplinary proceedings under this Bill.

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.

*Clause 279* provides if, before the commencement, a ground existed for starting a marketeer proceeding against a person under the repealed Act, a marketeer proceeding may be taken against the person on that ground under the repealed Act as if that Act had not been repealed.

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.

*Clause 280* allows that where a person applied to QCAT, under section 501 of the repealed Act, for a review of a decision of the chief executive, and the review had not been decided before the commencement, QCAT may hear, or continue to hear, and decide the review under the repealed Act as if that Act had not been repealed.

Where a person could have applied, under section 501 of the repealed Act, for a review of a decision of the chief executive but the person had not applied before the commencement, QCAT may hear and decide the review under the repealed Act.

*Clause 281* provides an injunction granted by the District Court under the repealed Act and in force immediately before the commencement continues to be a valid injunction under this Bill according to its terms. The provisions of this Bill relating to injunctions apply to the injunction.

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If the injunction was granted against a person to whom clause 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 clause 268(2). If the injunction was granted against a person to whom clause 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 clause 269(2).

In addition to clause 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 contravention of the repealed Act or the repealed Code of conduct; or
- an attempt to contravene the repealed Act or the repealed Code of Conduct; or
- aiding, abetting, counselling or procuring a person to contravene the repealed Act or the repealed Code of conduct; or
- 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
- 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
- conspiring with others to contravene the repealed Act or the repealed Code of Conduct.

*Clause 282* provides an undertaking given by a person to the chief executive under the repealed Act continues to be a valid undertaking under this Bill according to its terms. The provisions of this Bill relating to undertakings apply to the undertaking.

If the undertaking was given by a person to whom clause 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 clause 268(2). If the undertaking was given by a person to whom clause 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 clause 269(2).

Clause 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. If, before the commencement, the chief executive applied to the District Court for an order under section 571 of the repealed Act and the District Court has not decided the application, the application may be heard under the repealed Act as if that Act had not been repealed.

*Clause 283* states that this clause applies if a person is alleged to have committed an offence against any of the following provisions of the repealed Act before the commencement—

- chapter 2, parts 9, 10 and 11;
- chapter 3, parts 9, 10 and 11;
- chapter 4, parts 2, 3 and 4;
- chapters 5, 6, 7, 8, 11 and 12;
- chapter 14, part 2;
- chapter 15;
- chapter 16, part 3;
- chapter 17, parts 1 and 3.

Without limiting the *Acts Interpretation Act 1954*, section 20 and despite the Criminal Code, section 11, 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.

*Clause 284* provides that where an infringement notice offence under the *State Penalties Enforcement Act 1999* was committed by a person before the commencement and no infringement notice under that Act had been served before the commencement on the person for the offence, without limiting the *Acts Interpretation Act 1954*, section 20, and despite the Criminal Code, section 11, an infringement notice may be served on the person and the infringement notice may be dealt with as if the repealed Act had not been repealed.

*Clause 285* states that 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 clause 262 of the power under this Bill that is equivalent or substantially similar to the delegated power under the repealed Act.

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*Clause 286* provides that 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 Bill for the unexpired term of the appointment.

If the appointment was subject to a condition, the person appointed is taken to be subject to a condition in the same terms.

If, under section 528AC of the repealed Act, 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 Bill.

*Clause 287* provides that on the commencement—

- the licence register kept under the repealed Act is taken to be the licence register under this Bill; and
- the registration certificate register kept under the repealed Act is taken to be the registration certificate register under this Bill; and
- the register kept under section 572 of the repealed Act is taken to be the register of undertakings.

*Clause 288* states that 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.

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.

*Clause 289* provides that if, under clause 283, a person is convicted of an offence against section 145(2) or (3) of the repealed Act after the commencement, section 145A of the repealed Act applies to the person and the court convicting the person as if the repealed Act had not been repealed.

If, under clause 283, a person is convicted of an offence against section 184(2) or (3) of the repealed Act after the commencement, section 184A of the repealed Act applies to the person and the court convicting the person as if the repealed Act had not been repealed.

If, under clause 283, a person is convicted of an offence against section 222(2) or (3) of the repealed Act after the commencement, section 222A of the repealed Act applies to the person and the court convicting the person as if the repealed Act had not been repealed.

*Clause 290* provides that from commencement, sections 150 and 189 of the repealed Act 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.

*Clause 291* provides that transitional regulations may make provision of a saving or transitional nature—

- 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
- for which this Bill does not make provision or sufficient provision.

A transitional regulation must declare it is a transitional regulation and may have retrospective operation to a day that is not earlier than the commencement.

This provision and any transitional regulations expire 1 year after the commencement.

## **Division 3                      Savings provision for repealed Act**

*Clause 292* provides that the enforcement provisions, as in force immediately before commencement, continue in force for the purposes of this Bill, the Administration Bill, the Chattel Auctioneers Bill and the Commercial Agents Bill 2010 (the Commercial Agents Bill) despite the repeal of the repealed Act and a reference in the enforcement provisions to licensee, as defined in schedule 2 of the repealed Act, is taken:

- for this Bill—to be a reference to the holder of a property agent licence, or a resident letting agent licence, that is in force; or
- for the Administration Bill—to be a reference to the holder of a licence under an Agents Act (namely, the Chattel Auctioneers Bill, the Commercial Agents Bill or this Bill), that is in force; or
- for the Chattel Auctioneers Bill—to be a reference to the holder of a motor dealer or chattel auctioneer licence that is in force; or



- for the Commercial Agents Bill—to be a reference to the holder of a commercial agent licence that is in force.

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.

This clause does not limit the *Acts Interpretation Act 1954*, section 20.

## **Part 16            Minor and consequential amendments**

*Clause 293* states schedule 2 makes minor and consequential amendments to the legislation it mentions.

### **Schedule 1            Decisions subject to review**

Schedule 1 lists the decisions that are subject to review

### **Schedule 2            Minor and consequential amendments**

Part 1 provides for amendments of this Bill

Part 2 makes minor and consequential amendments to the following Acts:

- *Body Corporate and Community Management Act 1997*
- *Building Act 1975*
- *Building Units and Group Titles Act 1980*
- *Integrated Resort Development Act 1987*
- *Land Sales Act 1984*
- *Legal Profession Act 2000*

- *Personal Property Securities (Ancillary Provisions) Act 2010*
- *Retirement Villages Act 1999*
- *Sanctuary Cove Resort Act 1985*
- *Second-hand Dealers and Pawnbrokers Act 2003*
- *South Bank Corporation Act 1989*

## **Schedule 3      Dictionary**

Schedule 3 contains definitions for the Bill.

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