



Queensland

Motor Dealers and Chattel Auctioneers Bill 2010



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Motor Dealers and Chattel Auctioneers Bill 2010

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	14
2	Commencement	14
3	Act binds all persons	14
4	Exemption—auctions	14
5	Exemption—liquidators, controllers and receivers	15
6	Exemption—financial institutions and trustee companies	16
Division 2	Object	
7	Main object	17
Division 3	Interpretation	
8	Definitions	18
9	Meaning of beneficial interest	18
10	Meaning of in charge	21
11	Meaning of motor vehicle	21
Part 2	Licensing	
Division 1	Categories of licence	
12	Categories of licence	23
Division 2	Limited motor dealer licence	
13	Limited motor dealer licence	23
Division 3	How to obtain a licence	
14	Steps involved in obtaining a licence	24
Division 4	Applications for licence	
15	Application for licence	24
16	Applicant must state business address	25
17	Requirement to give information or material about application	26

Contents

18	Applicant intending to carry on business to advise name of auditor	26
Division 5	Suitability of applicants and licensees	
19	Suitability of applicants and licensees—individuals	27
20	Suitability of applicants and licensees—corporations	27
21	Chief executive must consider suitability of applicants and licensees	28
22	Public trustee is a suitable person	29
23	Chief executive of department is a suitable person	30
24	Investigations about suitability of applicants and licensees	30
25	Costs of criminal history report.	31
26	Confidentiality of criminal history	32
27	Requirement to give chief executive information or material about suitability.	32
Division 6	Eligibility for licence	
Subdivision 1	Motor dealer licence	
28	Eligibility for motor dealer licence.	33
Subdivision 2	Chattel auctioneer licence	
29	Eligibility for chattel auctioneer licence.	34
Subdivision 3	Chief executives and corporation sole	
30	Public trustee is eligible to obtain licences	35
31	Chief executive of department is eligible to obtain licences	35
Division 7	Issue of licences	
32	Chief executive may issue or refuse to issue licence	35
33	Licence—public trustee	36
34	Licence—chief executive of department.	37
35	Licence—conditions	37
Division 8	Restrictions on performing activities under licences	
36	Restriction—corporations.	38
37	Restriction—individuals	39
38	Restriction—conditions.	39
Division 9	Renewal and restoration of licences	
Subdivision 1	Renewal	
39	Application for renewal	40
40	Chief executive may renew or refuse to renew licence.	41
41	Licence taken to be in force while application for renewal is considered	42

Subdivision 2	Restoration	
42	Application for restoration	42
43	Chief executive may restore or refuse to restore licence	43
44	Licence taken to be in force while application for restoration is considered	44
Division 10	Dealings with licences	
Subdivision 1	Transfer of licence	
45	Transfer of licence prohibited	45
Subdivision 2	Substitute licences	
46	Appointment of substitute licensee—principal licensee—individual	45
47	Appointment of substitute licensee—employed licensee in charge of a licensee’s business at a place	47
48	Chief executive may appoint or refuse to appoint substitute licensee	48
49	Substitute licensee	49
50	Limitation on period of substitution	50
Subdivision 3	General	
51	Amendment of licence conditions	51
52	Return of licence for amendment of conditions or when suspended or cancelled	52
53	Surrender of licence	52
54	Licence may be deactivated	53
Division 11	Immediate suspension and cancellation of licences	
55	Immediate suspension	54
56	Immediate cancellation	55
Division 12	General provisions about licences	
57	Form of licence	56
58	Display of licence	56
59	Term of licence	57
60	Replacement licences	57
61	Register of licences	57
62	Licensees to notify chief executive of changes in circumstances	58
Part 3	Motor dealers	
Division 1	Motor dealers’ authorisation and responsibilities	
63	What a motor dealer licence authorises	59
64	Responsibility for acts and omissions of motor salespersons	60

Contents

Division 2	Conduct provisions	
Subdivision 1	Carrying on business	
65	Carrying on of business under motor dealer licence	61
66	Licensee to be in charge of motor dealer's business at a place . .	61
67	Motor dealer dealing in motor vehicles	62
Subdivision 2	Consignment selling	
68	Appointment—sale on consignment	63
69	Form of appointment	64
70	Proposal for assignment of appointments	65
71	Trade-ins	65
Subdivision 3	Recovery of reward or expense	
72	Commission may be claimed only for actual amounts	66
73	Restriction on remedy for reward or expense	66
74	Excess commission etc. to be repaid	66
Subdivision 4	Interests in motor vehicles	
75	Definition for sdiv 4	67
76	Beneficial interest—options	67
77	Beneficial interest—other than options	68
78	Return of beneficial interest if in form of commission	69
Subdivision 5	Code of conduct	
79	Code of conduct	69
80	Complaints about conduct and action chief executive may take .	70
Subdivision 6	Sales of used motor vehicles that are written-off vehicles	
81	Notice to be given about used motor vehicle—written-off vehicle	70
Division 3	Sale of motor vehicles by motor dealer	
82	Obligations of motor dealer	71
Division 4	Cooling-off period	
83	Definitions for div 4	73
84	Meaning of cooling-off period	73
85	Application of div 4	75
86	Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period	75
87	Notice to be given about used motor vehicle—no prior contract .	75
88	Option to purchase during cooling-off period	76
89	Buyer's rights if notice not given or materially defective	78

90	Contract must contain cooling-off clause	78
91	Consideration for cooling-off period	79
92	Consideration for option	80
93	Harassment or coercion	81
94	Property does not pass during cooling-off period.	81
95	Buyer may avoid contract during cooling-off period	81
96	Procedure for avoidance	81
97	What happens when contract avoided	82
98	Consideration for used motor vehicle during cooling-off period . .	82
Division 5	Statutory warranty	
99	Definitions for div 5	83
100	Meaning of defect	83
101	Meaning of warranty period	84
102	Application of div 5	85
103	Unwarranted and restorable vehicles to be identified when offered for sale	85
104	Waiver of statutory warranty for restorable vehicles	86
105	Motor dealer to give proposed buyer notice about statutory warranty	86
106	Statutory warranty	87
107	Defects not covered by statutory warranty	87
108	Buyer's obligations under statutory warranty	88
109	Warrantor to record particulars of extension of warranty period . .	89
110	Warrantor to advise whether defect covered by statutory warranty	89
111	Warrantor's obligation to repair defects	90
112	Warrantor's failure to repair	90
113	Applications for more than prescribed amount	92
Division 6	General	
114	Registered office	92
115	Motor dealer must notify chief executive of change in place of business etc.	93
116	Display and publication of licensee's name	93
117	Principal licensee to keep employment register	94
118	Motor dealer to keep transactions register	95
119	Motor dealer to obtain statement from seller of vehicle	96
120	Motor dealer to give statement to buyer of vehicle	97

Contents

121	Contract of sale	97
Division 7	Offences	
122	Acting as motor dealer	98
123	Pretending to be motor salesperson	98
124	Motor dealer must not act for more than 1 party	99
125	Production of licence or registration certificate.	99
126	Employment of persons in motor dealer business	99
Part 4	Chattel auctioneers	
Division 1	Chattel auctioneers' authorisation and responsibilities	
127	What a chattel auctioneer licence authorises.	100
128	Responsibility for acts and omissions of trainee chattel auctioneers	101
Division 2	Conduct provisions	
Subdivision 1	Carrying on business	
129	Carrying on of business under chattel auctioneer licence	101
130	Licensee to be in charge of chattel auctioneer's business at a place	101
Subdivision 2	Appointment	
131	Appointment of chattel auctioneer	102
132	Form of appointment	104
133	Proposal for assignment of appointments	105
Subdivision 3	Auctions of goods	
134	Buyer's premium.	105
Subdivision 4	Recovery of reward or expense	
135	Commission may be claimed only for actual amounts	106
136	Restriction on remedy for reward or expense.	107
137	Restriction on recovery of reward or expense above amount allowed	107
138	Excess commission etc. to be repaid.	108
Subdivision 5	Interests in goods	
139	Definition for sdiv 5.	108
140	Beneficial interest—options	109
141	Beneficial interest—other than options.	109
142	Return of beneficial interest if in form of commission.	111
143	Non-application of s 141 for particular livestock sales	111
Subdivision 6	Sales of livestock	
144	Sales of livestock	111

145	Protection for chattel auctioneer	112
Subdivision 7	Code of conduct	
146	Code of conduct	113
147	Complaints about conduct and action chief executive may take	113
Subdivision 8	Sales of written-off vehicles	
148	Announcements before auction—written-off vehicle	114
Division 3	Sale of motor vehicles by auction	
149	Obligations of chattel auctioneer	114
Division 4	Statutory warranty	
150	Definitions for div 4	116
151	Meaning of defect	116
152	Meaning of warranty period	117
153	Application of div 4	118
154	Unwarranted and restorable vehicles to be identified when offered for sale	118
155	Bidders to register for auction of restorable vehicles	119
156	Announcements before auction	119
157	Effect of sale of restorable vehicle to registered bidder	120
158	Warrantor	121
159	Chattel auctioneer to give buyer notice about statutory warranty	121
160	Statutory warranty	121
161	Defects not covered by statutory warranty	122
162	Buyer's obligations under statutory warranty	122
163	Warrantor to record particulars of extension of warranty period	123
164	Warrantor to advise whether defect covered by statutory warranty	124
165	Warrantor's obligation to repair defects	124
166	Warrantor's failure to repair	125
167	Applications for more than prescribed amount	126
Division 5	General	
168	Registered office	127
169	Chattel auctioneer must notify chief executive of change in place of business etc.	128
170	Display and publication of licensee's name	128
171	Principal licensee must keep employment register	129
172	Chattel auctioneer to obtain statement from seller of vehicle	130
173	Chattel auctioneer to give statement to buyer of vehicle	130

Contents

Division 6	Offences	
174	Acting as chattel auctioneer	131
175	Pretending to be trainee chattel auctioneer	132
176	Chattel auctioneer must not act for more than 1 party	132
177	Production of licence or registration certificate	133
178	Employment of persons in chattel auctioneer's business	133
Part 5	Employee registration	
Division 1	Categories of registered employees	
179	Categories of registered employees	133
180	Limited motor salesperson registration certificate	134
Division 2	Registered employees' authorisation	
181	What a registration certificate authorises	134
Division 3	How to obtain registration	
182	Steps involved in obtaining registration	135
Division 4	Applications for registration	
183	Application for registration	135
184	Requirement to give chief executive information or material about application	136
Division 5	Suitability of applicants	
185	Suitability of applicants	136
186	Chief executive must consider suitability of applicants	137
187	Investigations about suitability of applicants	138
188	Costs of criminal history report	139
189	Confidentiality of criminal history	139
190	Requirement to give chief executive information or material about suitability	140
Division 6	Eligibility for registration	
191	Eligibility for registration as registered employee	140
Division 7	Issue of registration certificate	
192	Chief executive may issue or refuse to issue registration certificate	141
193	Registration certificate—conditions	142
Division 8	Renewal and restoration of registration certificates	
Subdivision 1	Renewal	
194	Application for renewal	143
195	Chief executive may renew or refuse to renew registration certificate	143

196	Registration certificate taken to be in force while application for renewal is considered	144
Subdivision 2	Restoration	
197	Application for restoration	144
198	Chief executive may restore or refuse to restore registration certificate	145
199	Registration certificate taken to be in force while application for restoration is considered	146
Division 9	Dealings with registration certificates	
Subdivision 1	Transfer of registration certificate	
200	Transfer of registration certificate prohibited.	146
Subdivision 2	General	
201	Amendment of registration certificate conditions	146
202	Return of registration certificate for amendment of conditions	148
203	Surrender of registration certificate	148
Division 10	Immediate suspension and cancellation of registration certificates	
204	Immediate suspension	148
205	Immediate cancellation.	149
Division 11	General provisions about employee registration	
206	Form of registration certificate	150
207	Term of registration certificate	150
208	Replacement certificates	150
209	Register of registration certificates	151
210	Registered employees to notify chief executive of changes in circumstances	152
Part 6	Trust accounts	
211	Opening and maintaining trust accounts	152
Part 7	Claims against the fund	
Division 1	Preliminary	
212	Definitions for pt 7.	153
Division 2	Who can claim	
213	Claims	154
214	Persons who can not claim.	155
Part 8	Jurisdiction of QCAT	
Division 1	Preliminary	
215	Definitions for pt 8.	156

Contents

216	Jurisdiction	156
Division 2	Disciplinary proceedings	
217	Grounds for starting disciplinary proceedings	157
218	Starting disciplinary proceedings	159
Division 3	Review proceedings	
219	Person dissatisfied with chief executive's decision may seek review	159
220	Stay of operation of decisions	159
221	QCAT may extend time.	159
Division 4	Proceedings generally	
Subdivision 1	QCAT's orders	
222	Orders QCAT may make on disciplinary hearing	160
223	Stopping contraventions	161
Subdivision 2	Chief executive's right of appeal	
224	Appeal	162
Part 9	Injunctions and undertakings	
Division 1	Injunctions	
225	Injunctions	162
226	Who may apply for injunction	163
227	Grounds for injunction	163
228	Court's powers for injunctions	163
229	Terms of injunction	164
230	Undertakings as to costs	164
Division 2	Undertakings	
231	Chief executive may seek undertaking after contravention	165
232	Undertaking about other matter	165
233	Variation and withdrawal of undertakings	166
234	Enforcement of undertakings	166
235	Register of undertakings	167
Part 10	General contraventions, evidentiary matters and legal proceedings	
Division 1	General contraventions	
236	Wrongful conversion and false accounts	168
237	False representations about property.	169
238	Chief executive's power to ask for substantiation of representations made by licensees or registered employees.	169
239	False representations about mileage	170

240	Tampering with odometers	170
241	Offence to charge fee for providing documents etc.	171
242	Offence to ask for, or receive, excess or improper remuneration	171
243	Offence to lend or borrow licence.	172
244	False or misleading statements	173
245	False or misleading documents	173
Division 2	Evidentiary matters	
246	Evidence of tampering by a motor dealer or chattel auctioneer	174
247	Continuing false representation—tampered with odometer	174
248	Evidentiary provisions	175
249	Entries in licensee’s documents	176
Division 3	Proceedings	
250	Proceedings for an offence.	176
251	Responsibility for acts or omissions of representatives	178
252	Executive officers must ensure corporation complies with Act.	179
253	Power of court	179
254	Allegations of false or misleading representations or statements etc.	180
Part 11	General	
255	Public warning statements	180
256	Civil remedies not affected	181
257	Criminal Proceeds Confiscation Act 2002 not limited.	181
258	Delegation—chief executive	181
259	Approved forms	181
260	Review of Act	182
261	Regulation-making power.	182
Part 12	Transitional provisions	
Division 1	Preliminary	
262	Definitions for pt 12.	183
Division 2	Licences and registration certificates	
263	Transitioned licences for existing licences	184
264	Transitioned registration certificates for existing registration certificates	184
265	Existing applications.	185
266	Restoration of expired existing licences	186
267	Restoration of expired existing registration certificates	187

Contents

268	Previous refusals of applications	187
269	Deactivated existing licences	188
270	Suspended existing licences and existing registration certificates	188
Division 3	Miscellaneous provisions	
271	Existing appointments	189
272	Disciplinary action relating to pre-commencement conduct.	189
273	Continuation of reviews under repealed Act.	189
274	Injunctions relating to pre-commencement conduct.	190
275	Undertakings relating to pre-commencement conduct.	191
276	Proceedings for particular offences under repealed Act.	192
277	Existing infringement notice offences.	192
278	Existing delegations	193
279	Existing registers	193
280	Existing fines and fees	193
281	Return of beneficial interest if in form of commission.	194
Part 13	Minor and consequential amendments	
282	Minor and consequential amendments	194
Schedule 1	Decisions subject to review	195
Schedule 2	Consequential amendments	196
Part 1	Amendments of this Act	
Part 2	Other amendments	
	Criminal Organisation Act 2009	196
	Duties Act 2001	197
	Forestry Act 1959.	197
	Motor Vehicles and Boats Securities Act 1986.	197
	Police Powers and Responsibilities Act 2000.	198
	Queensland Civil and Administrative Tribunal Act 2009.	198
	Second-hand Dealers and Pawnbrokers Act 2003.	199
	Transport Operations (Road Use Management) Act 1995.	199
Schedule 3	Dictionary	200

2010

A Bill

for

An Act to comprehensively provide for the regulation of the activities, licensing and conduct of motor dealers and chattel auctioneers and their employees, to protect consumers against particular undesirable practices, and to make minor and consequential amendments of the *Criminal Organisation Act 2009*, the *Duties Act 2001*, the *Forestry Act 1959*, the *Motor Vehicles and Boats Securities Act 1986*, the *Police Powers and Responsibilities Act 2000*, the *Queensland Civil and Administrative Tribunal Act 2009*, the *Second-hand Dealers and Pawnbrokers Act 2003* and the *Transport Operations (Road Use Management) Act 1995*

[s 1]

The Parliament of Queensland enacts—	1
Part 1 Preliminary	2
Division 1 Introduction	3
1 Short title	4
This Act may be cited as the <i>Motor Dealers and Chattel Auctioneers Act 2010</i> .	5 6
2 Commencement	7
This Act commences on a day to be fixed by proclamation.	8
3 Act binds all persons	9
(1) This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the Commonwealth and the other States.	10 11 12
(2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.	13 14
4 Exemption—auctions	15
Part 4 does not apply to—	16
(a) a sale ordered by the sheriff, or a bailiff of the Supreme Court, the District Court or a Magistrates Court, under any process issued out of a court; or	17 18 19
(b) a sale made under a rule, order, or judgment of the Supreme Court or District Court; or	20 21
(c) a sale made by a person obeying an order of, or a process issued by, a court, judge or justice, or the	22 23

registrar of the State Penalties Enforcement Registry for the recovery of a fine, penalty, or award; or	1 2
(d) a sale of an animal lawfully impounded and sold under a law about impounding; or	3 4
(e) a sale of goods distrained for rent or arrears of rent; or	5
(f) a sale by postal bids of stamps or coins; or	6
(g) a sale conducted for a charity, a religious denomination, or an organisation formed for a community purpose, within the meaning of the <i>Collections Act 1966</i> (a relevant entity) if—	7 8 9 10
(i) the person conducting the sale does not receive from the relevant entity a reward for the person’s services; and	11 12 13
(ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts; or	14 15 16 17
(h) a sale conducted by or for Magic Millions Sales Pty Limited ACN 078 396 317 as part of the event known as the Gold Coast Horses in Training Sale if the sale is conducted by a person approved by the chief executive before the sale as a suitable person to conduct the sale; or	18 19 20 21 22 23
(i) a sale of goods directly connected with a sale by way of auction of a place of residence or land performed by a property agent appointed under the <i>Property Agents Act 2010</i> , part 3, division 2, subdivision 2.	24 25 26 27
5 Exemption—liquidators, controllers and receivers	28
(1) This section applies to—	29
(a) a person, appointed under the Corporations Act, as an administrator of a corporation that is authorised under a licence to perform an activity; or	30 31 32

[s 6]

- (b) a person, appointed under the Corporations Act, as an administrator of a deed of company arrangement for a corporation that is authorised under a licence to perform an activity; or 1
2
3
4
- (c) a person, appointed under the Corporations Act, as a liquidator, or controller of property, of a corporation that is authorised under a licence to perform an activity; or 5
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7
8
- (d) a person, appointed under the Administration Act, as a receiver of an entity that is authorised under a licence to perform an activity. 9
10
11
- (2) The person is exempt from the following provisions while performing the activity in relation to any business carried on under a licence in accordance with the conditions applying to the licence— 12
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14
15
- section 63, part 3, division 2, subdivision 1 and section 68 16
17
 - section 114 18
 - section 115 19
 - section 116 20
 - section 117 21
 - section 127, part 4, division 2, subdivision 1, section 131 and part 4, division 5. 22
23
- 6 Exemption—financial institutions and trustee companies** 24
- (1) Part 3 does not apply to a financial institution or trustee company. 25
26
- (2) In this section— 27
- trustee company* means— 28
- (a) a trustee company under the *Trustee Companies Act 1968*; or 29
30
- (b) the public trustee when the public trustee is— 31

(i)	performing the activities that may be performed by a trustee company; or	1 2
(ii)	exercising the powers that may be exercised by a trustee company; or	3 4
(iii)	holding an office that may be held by a trustee company.	5 6
Division 2	Object	7
7	Main object	8
(1)	The main object of this Act is to provide a system for licensing and regulating persons as motor dealers and chattel auctioneers, and for registering and regulating persons as registered employees, that achieves an appropriate balance between—	9 10 11 12 13
(a)	the need to regulate for the protection of consumers; and	14
(b)	the need to promote freedom of enterprise in the market place.	15 16
(2)	The object is to be achieved mainly by—	17
(a)	ensuring—	18
(i)	only suitable persons with appropriate qualifications are licensed or registered; and	19 20
(ii)	persons who carry on business or are in charge of a licensee's business at a place under the authority of a motor dealer licence or chattel auctioneer licence maintain close personal supervision of the way the business is carried on; and	21 22 23 24 25
(b)	providing—	26
(i)	protection for consumers in their dealings with licensees and their employees; and	27 28

[s 8]

- (ii) a legislative framework within which persons performing activities for licensees may lawfully operate; and
- (c) regulating fees and commissions that can be charged for particular transactions; and
- (d) promoting administrative efficiency by providing that—
 - (i) responsibility for licensing rests with the chief executive; and
 - (ii) responsibility for reviewing particular decisions of the chief executive rests with QCAT; and
 - (iii) responsibility for disciplinary matters rests with QCAT; and
- (e) establishing a right for persons who suffer financial loss because of their dealings with persons regulated under this Act to apply for compensation from the fund; and
- (f) providing increased flexibility in enforcement measures through codes of conduct, injunctions and undertakings.

Division 3 Interpretation 18

8 Definitions 19

The dictionary in schedule 3 defines particular words used in this Act. 20
21

9 Meaning of *beneficial interest* 22

(1) For this Act, other than section 32(6)(b)(i), a licensee is taken to have a *beneficial interest* in property in each of the following cases— 23
24
25

Case 1 26

The purchase of the property is made for the licensee or an associate of the licensee. 27
28

Case 2	1
An option to purchase the property is held by the licensee or an associate of the licensee.	2 3
Case 3	4
The purchase of the property is made for a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member.	5 6 7
Case 4	8
An option to purchase the property is held by a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member.	9 10 11
Case 5	12
The purchase of the property is made for a corporation of which the licensee or an associate of the licensee is an executive officer.	13 14 15
Case 6	16
An option to purchase the property is held by a corporation of which the licensee or an associate of the licensee is an executive officer.	17 18 19
Case 7	20
If the licensee is a corporation, the purchase of the property is made for an executive officer of the licensee or an associate of the executive officer.	21 22 23
Case 8	24
If the licensee is a corporation, an option to purchase the property is held by an executive officer of the licensee or an associate of the executive officer.	25 26 27
Case 9	28
The purchase of the property is made for a member of a firm or partnership of which the licensee or an associate of the licensee is also a member.	29 30 31

[s 9]

- | | |
|---|-----------------------|
| Case 10 | 1 |
| The purchase of the property is made for a person carrying on a business for profit or gain and the licensee or an associate of the licensee has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property. | 2
3
4
5
6 |
| (2) For this Act, other than section 32(6)(b)(i), a registered employee of a licensee is taken to have a <i>beneficial interest</i> in property in each of the following cases— | 7
8
9 |
| Case 1 | 10 |
| The purchase of the property is made for the registered employee or an associate of the employee. | 11
12 |
| Case 2 | 13 |
| The registered employee or an associate of the employee has an option to purchase the property. | 14
15 |
| Case 3 | 16 |
| The purchase of the property is made for a corporation (having not more than 100 members) of which the registered employee or an associate of the employee is a member. | 17
18
19 |
| Case 4 | 20 |
| An option to purchase the property is held by a corporation (having not more than 100 members) of which the registered employee or an associate of the employee is a member. | 21
22
23 |
| Case 5 | 24 |
| The purchase of the property is made for a corporation of which the registered employee or an associate of the employee is an executive officer. | 25
26
27 |
| Case 6 | 28 |
| An option to purchase the property is held by a corporation of which the registered employee or an associate of the employee is an executive officer. | 29
30
31 |

Case 7	1	
The purchase of the property is made for an executive officer of a corporation of which the registered employee or an associate of the registered employee is an executive officer.	2 3 4	
Case 8	5	
An option to purchase the property is held by an executive officer of a corporation of which the registered employee or an associate of the registered employee is an executive officer.	6 7 8 9	
Case 9	10	
The purchase of the property is made for a member of a firm or partnership of which the registered employee or an associate of the employee is also a member.	11 12 13	
Case 10	14	
The purchase of the property is made for a person carrying on a business for profit or gain and the registered employee or an associate of the employee has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.	15 16 17 18 19	
10	Meaning of <i>in charge</i>	20
(1)	A person is <i>in charge</i> of a licensee's business at a place where the licensee carries on business only if the person personally supervises, manages or controls the conduct of the licensee's business at the place.	21 22 23 24
(2)	In this section—	25
	<i>licensee's business</i> means the licensee's business carried on under the authority of the licensee's licence.	26 27
11	Meaning of <i>motor vehicle</i>	28
(1)	A <i>motor vehicle</i> means—	29
(a)	a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle, whether or not the	30 31

[s 11]

- vehicle is capable of being operated or used in a normal way; or 1
2
- (b) a caravan. 3
- (2) However, a **motor vehicle** does not include any of the following— 4
5
- (a) a hovercraft; 6
- (b) a motorised golf buggy; 7
- (c) a motorised scooter; 8
- (d) a motorised wheelchair; 9
- (e) a trailer, other than a caravan; 10
- (f) a tractor or farm machinery; 11
- (g) a vehicle designed for use exclusively in the mining industry; 12
13
- (h) a vehicle designed for use exclusively on a railway or tramway. 14
15
- (3) In this section— 16
- motorised golf buggy** means a motorised golf buggy under the *Transport Operations (Road Use Management) Act 1995*. 17
18
- motorised scooter** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4. 19
20
- motorised wheelchair** means a motorised wheelchair under the *Transport Operations (Road Use Management) Act 1995*. 21
22

Part 2	Licensing	1
Division 1	Categories of licence	2
12	Categories of licence	3
	The chief executive may issue the following categories of licence under this Act—	4 5
	(a) a motor dealer licence;	6
	(b) a chattel auctioneer licence.	7
Division 2	Limited motor dealer licence	8
13	Limited motor dealer licence	9
(1)	The chief executive may issue a motor dealer licence (a <i>limited motor dealer licence</i>) of a type prescribed under a regulation, that authorises the performance of activities that are more limited than the activities that may be performed under an unconditional motor dealer licence.	10 11 12 13 14
(2)	A regulation may prescribe—	15
	(a) the activities that may be performed under a limited motor dealer licence; and	16 17
	(b) the educational requirements for obtaining a limited motor dealer licence.	18 19

[s 14]

Division 3	How to obtain a licence	1
14	Steps involved in obtaining a licence	2
(1)	A person who wishes to obtain a licence must be a suitable person to hold a licence under division 5.	3 4
(2)	The person must apply for the licence by—	5
(a)	giving the chief executive an application showing, among other things, the person is eligible to obtain the licence; and	6 7 8
(b)	paying—	9
(i)	the fees prescribed under a regulation; and	10
(ii)	if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and	11 12 13 14
(c)	giving the chief executive the other information required under section 16 and, if the person is required under section 211 to keep a trust account, section 18.	15 16 17
(3)	In deciding the application, the chief executive must have regard to, among other things—	18 19
(a)	the person’s suitability to hold a licence under this Act; and	20 21
(b)	the person’s eligibility to hold the licence.	22
Division 4	Applications for licence	23
15	Application for licence	24
(1)	An applicant for a licence must—	25
(a)	apply to the chief executive in the approved form; and	26
(b)	state the category of licence being applied for; and	27
(c)	state the term of the licence being applied for; and	28

-
- (d) establish the applicant’s eligibility for the category of licence being applied for; and 1
2
- (e) state the names and addresses of the applicant’s business associates; and 3
4
- (f) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence. 5
6
7
- (2) The application must be accompanied by— 8
- (a) the application fee prescribed under a regulation; and 9
- (b) the licence issue fee prescribed under a regulation; and 10
- (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid. 11
12
13
- 16 Applicant must state business address 14**
- (1) The applicant must also state in the applicant’s application— 15
- (a) if the applicant intends carrying on business under the licence immediately after the issue of the licence—the place or places in Queensland where the applicant proposes to carry on business under the licence; or 16
17
18
19
- (b) if the applicant does not intend carrying on business under the licence immediately after the issue of the licence— 20
21
22
- (i) the capacity in which the applicant intends performing activities under the licence and the address where the activities are to be performed (*business address*); and 23
24
25
26
- (ii) if the applicant intends to be a person in charge of a licensee’s business at a place of business—the name of the person’s employer and the address of the place of business where the person is to be in charge (also a *business address*). 27
28
29
30
31

[s 17]

<i>Examples of capacity in which activities may be performed—</i>	1
• person in charge of a corporation’s business	2
• licensed employee of a licensee	3
<i>Example of business address of an employed licensee—</i>	4
• the address of the person’s employer’s place of business where the person generally reports for work	5 6
(2) If the applicant intends to carry on business under the licence at more than 1 place, the applicant must state in the application the place the applicant intends to be the applicant’s principal place of business.	7 8 9 10
(3) A place of business or an address under this section must be a place where a document can be served personally.	11 12
(4) A place of business or an address must not be a post office box.	13 14
17 Requirement to give information or material about application	15 16
(1) This section applies to an applicant for a licence.	17
(2) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the applicant’s application for the licence.	18 19 20 21 22
(3) The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive’s requirement.	23 24 25
18 Applicant intending to carry on business to advise name of auditor	26 27
(1) If the applicant intends carrying on business under a licence and is required under section 211 to keep a trust account, the applicant must—	28 29 30

-
- (a) state in the applicant's application the name and business address of an auditor appointed by the applicant to audit the trust account; and
- Note—*
See the Administration Act, section 26 (Principal licensee must appoint auditor).
- (b) give the chief executive evidence that the auditor has accepted the appointment as auditor.
- (2) In this section—
auditor see the Administration Act, section 25.

Division 5 Suitability of applicants and licensees

19 Suitability of applicants and licensees—individuals

- (1) An individual is not a suitable person to hold a licence if the person is—
- (a) an insolvent under administration; or
- (b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
- (c) currently disqualified from holding a licence or registration certificate; or
- (d) a person the chief executive decides under section 21 is not a suitable person to hold a licence.
- (2) An individual who is not a suitable person can not hold a licence.

20 Suitability of applicants and licensees—corporations

- (1) A corporation is not a suitable person to hold a licence if an executive officer of the corporation is—
- (a) an insolvent under administration; or

[s 21]

- (b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or 1
2
3
 - (c) a person the chief executive decides under section 21 is not a suitable person to hold a licence. 4
5
 - (2) A corporation that is not a suitable person can not hold a licence. 6
7

- 21 Chief executive must consider suitability of applicants and licensees** 8
9
- (1) The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider all of the following things— 10
11
12
 - (a) the character of the person; 13
 - (b) the character of the person’s business associates; 14
 - (c) whether the person held a licence under a relevant Act that was suspended or cancelled under the relevant Act; 15
16
 - (d) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund; 17
18
19
 - (e) whether the person has been disqualified under a relevant Act from being the holder of a licence within the meaning of the relevant Act, or an executive officer of a corporation; 20
21
22
23
 - (f) for an individual— 24
 - (i) the person’s criminal history; and 25
 - (ii) whether the person has been an insolvent under administration; and 26
27
 - (iii) whether the person has been convicted of an offence against a relevant Act or the Administration Act; and 28
29
30
 - (iv) whether the person is capable of satisfactorily performing the activities of a licensee; and 31
32

(v)	whether the person’s name appears in the register of disqualified company directors and other officers under the Corporations Act;	1 2 3
	<i>Note—</i>	4
	See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).	5 6
(g)	for a corporation—	7
(i)	whether the corporation has been placed in receivership or liquidation; and	8 9
(ii)	whether an executive officer of the corporation has been an insolvent under administration; and	10 11
(iii)	whether an executive officer of the corporation has been convicted of an offence against a relevant Act or the Administration Act; and	12 13 14
(iv)	whether each executive officer of the corporation is a suitable person to hold a licence;	15 16
(h)	another thing the chief executive may consider under this Act.	17 18
(2)	If the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an information notice about the decision within 14 days after the decision is made.	19 20 21 22
(3)	In this section—	23
	<i>fund</i> includes the claim funds under the repealed Act and the repealed <i>Agents and Auctioneers Act 1971</i> .	24 25
	<i>relevant Act</i> means this Act, an Agents Act, the repealed Act or a corresponding law.	26 27
22	Public trustee is a suitable person	28
	The corporation sole called The Public Trustee of Queensland is taken to be a suitable person to hold a licence.	29 30

[s 23]

23	Chief executive of department is a suitable person	1
	The chief executive of a department is taken to be a suitable person to hold a licence.	2 3
24	Investigations about suitability of applicants and licensees	4 5
(1)	The chief executive may make investigations about the following persons to help the chief executive decide whether an applicant or licensee is a suitable person to hold a licence—	6 7 8 9
	(a) the applicant or licensee;	10
	(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;	11 12 13 14 15
	(c) if the applicant or licensee is a corporation—the corporation’s executive officers;	16 17
	(d) a business associate of the applicant or licensee.	18
(2)	Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a report about the criminal history of any of the persons.	19 20 21
(3)	The commissioner must give the report to the chief executive.	22
(4)	However, the report is required to contain only criminal history in the commissioner’s possession or to which the commissioner has access.	23 24 25
(5)	If the criminal history of the person includes a conviction recorded against the person, the commissioner’s report must be written.	26 27 28
(6)	In this section—	29
	<i>applicant</i> includes a nominated person mentioned in section 46(3) or 47(4).	30 31

25	Costs of criminal history report	1
(1)	The chief executive may require an applicant or licensee to pay the reasonable, but no more than actual, costs of obtaining a report under section 24 about—	2 3 4
(a)	the applicant or licensee; or	5
(b)	if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction; or	6 7 8 9 10 11
(c)	if the applicant or licensee is a corporation—the corporation’s executive officers; or	12 13
(d)	a business associate of the applicant or licensee; or	14
(e)	if the applicant has made an application under section 46(3) or 47(4)—the person nominated by the applicant under section 46(3) or 47(4).	15 16 17
(2)	The requirement is a <i>criminal history costs requirement</i> .	18
(3)	The requirement is sufficiently made of the applicant or licensee if it is made generally of applicants of that type in the relevant approved form or notified on the department’s website for applicants or licensees of that type.	19 20 21 22
(4)	The chief executive must refund to an applicant an amount paid under the requirement if—	23 24
(a)	the chief executive refuses the application without asking for the report; or	25 26
(b)	the applicant withdraws the application before the chief executive asks for the report.	27 28
(5)	In this section— <i>applicant</i> includes proposed applicant.	29 30

[s 26]

26	Confidentiality of criminal history	1
(1)	A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 24.	2 3 4 5
	Maximum penalty—100 penalty units.	6
(2)	However, the person does not contravene subsection (1) if—	7
(a)	disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or for this Act; or	8 9 10
(b)	the disclosure is otherwise required or permitted by law.	11
(3)	The chief executive must destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to hold a licence.	12 13 14
27	Requirement to give chief executive information or material about suitability	15 16
(1)	This section applies to an applicant for the issue of a licence or the renewal or restoration of a licence.	17 18
(2)	The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the licence.	19 20 21 22 23
(3)	The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.	24 25 26

Division 6	Eligibility for licence	1
Subdivision 1	Motor dealer licence	2
28	Eligibility for motor dealer licence	3
(1)	An individual is eligible to obtain a motor dealer licence only if the individual—	4 5
(a)	is at least 18 years; and	6
(b)	has the educational or other qualifications for a motor dealer licence prescribed under a regulation.	7 8
(2)	An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—	9 10 11
(a)	has a comparable qualification; or	12
(b)	within 2 years before the day the individual's application for a motor dealer licence is received by the chief executive—	13 14 15
(i)	has been licensed as a motor dealer; or	16
(ii)	has been the holder of a comparable licence under the repealed Act.	17 18
(3)	A corporation is eligible to obtain a motor dealer licence only if—	19 20
(a)	a person in charge of the corporation's business is a motor dealer; and	21 22
(b)	each director of the corporation would be a suitable person under division 5 if the director were an applicant for a licence.	23 24 25

[s 29]

Subdivision 2	Chattel auctioneer licence	1
29	Eligibility for chattel auctioneer licence	2
(1)	An individual is eligible to obtain a chattel auctioneer licence only if the individual—	3 4
(a)	is at least 18 years; and	5
(b)	has the educational or other qualifications for a chattel auctioneer licence prescribed under a regulation.	6 7
(2)	An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—	8 9 10
(a)	has a comparable qualification; or	11
(b)	within 2 years before the day the individual's application for a chattel auctioneer licence is received by the chief executive—	12 13 14
(i)	has been licensed as a chattel auctioneer; or	15
(ii)	has been the holder of a comparable licence under the repealed Act.	16 17
(3)	A corporation is eligible to obtain a chattel auctioneer licence only if—	18 19
(a)	a person in charge of the corporation's business is a chattel auctioneer; and	20 21
(b)	each director of the corporation would be a suitable person under division 5 if the director were an applicant for a licence.	22 23 24

Subdivision 3	Chief executives and corporation sole	1 2
30	Public trustee is eligible to obtain licences	3
	The public trustee as a corporation sole is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.	4 5
31	Chief executive of department is eligible to obtain licences	6 7
	The chief executive of a department is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.	8 9
Division 7	Issue of licences	10
32	Chief executive may issue or refuse to issue licence	11
(1)	The chief executive may issue or refuse to issue a licence to an applicant.	12 13
(2)	The chief executive may issue a licence to an applicant only if the chief executive is satisfied that—	14 15
(a)	the applicant is a suitable person to hold a licence and—	16
(i)	if the applicant intends carrying on business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant intends carrying on business in conjunction is a suitable person to hold a licence; and	17 18 19 20 21 22
(ii)	if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and	23 24 25
(b)	the applicant is eligible to obtain a licence of the category of licence being applied for; and	26 27
(c)	the application is properly made.	28

[s 33]

- (3) For subsection (2)(c), an application is properly made only if it complies with section 15 and is accompanied by the things mentioned in that section. 1
2
3
- (4) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. 4
5
6
- (5) If the applicant's application for a licence is refused, the applicant may not make another application for a licence— 7
8
- (a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or 9
10
- (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed. 11
12
13
- (6) Subsection (5) does not apply if— 14
- (a) the applicant is a corporation; and 15
- (b) the applicant satisfies the chief executive that, because of a genuine sale— 16
17
- (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the applicant corporation; and 18
19
20
21
22
- (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the applicant corporation. 23
24
25
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- 33 Licence—public trustee 28**
- (1) The chief executive may issue a licence to the public trustee in the public trustee's capacity as a corporation sole in the name 'The Public Trustee of Queensland'. 29
30
31
- (2) A licence issued to the public trustee authorises an officer or employee of the public trustee to perform any activity 32
33

authorised by the public trustee that the public trustee may
perform under the licence. 1
2

- (3) To remove any doubt, it is declared that an officer or
employee performing an activity authorised by the public
trustee is not required to be licensed or registered under this
Act to perform the activity. 3
4
5
6

34 Licence—chief executive of department 7

- (1) The chief executive may issue a licence to the chief executive
of a department in the name ‘The Chief Executive of the
(name of department)’. 8
9
10
- (2) The licence is taken to be issued to the chief executive for the
time being of the department. 11
12
- (3) The chief executive of a department, as licensee, is taken to
represent the State. 13
14
- (4) A licence issued to the chief executive authorises an officer or
employee of the department of which the chief executive is
chief executive to perform any activity authorised by the chief
executive that the chief executive may perform under the
licence. 15
16
17
18
19
- (5) To remove any doubt, it is declared that an officer or
employee performing an activity authorised by the chief
executive is not required to be licensed or registered under
this Act to perform the activity. 20
21
22
23

35 Licence—conditions 24

- (1) The chief executive may issue a licence on the conditions the
chief executive considers necessary or desirable for the proper
performance of the activities authorised by the licence. 25
26
27
- (2) Without limiting subsection (1), a condition may— 28
- (a) limit or prohibit the performance of an activity
authorised under this Act or the Administration Act; or 29
30
- (b) require a licensee to hold insurance of a kind and in an
amount prescribed under a regulation. 31
32

[s 36]

- (3) If the chief executive decides to issue a licence on condition, 1
the chief executive must give the applicant an information 2
notice about the decision within 14 days after the decision is 3
made. 4

Division 8 **Restrictions on performing** 5
 activities under licences 6

36 **Restriction—corporations** 7

- (1) A corporation that holds a licence may perform an activity 8
under its licence at a place only if the activity may be 9
performed by— 10
- (a) a licensed person in charge of the corporation’s business 11
at the place; or 12
 - (b) a liquidator or controller appointed under the 13
Corporations Act of property of the corporation; or 14
 - (c) an administrator of a corporation appointed under the 15
Corporations Act; or 16
 - (d) an administrator of a deed of company arrangement for 17
a corporation appointed under the Corporations Act; or 18
 - (e) a receiver, appointed under the Administration Act, for 19
property of the corporation. 20
- (2) However, subsection (1) does not prevent a corporation that 21
holds a motor dealer licence selling or attempting to sell or 22
offering for sale or resale a used motor vehicle by way of 23
auction if the auction is conducted by a chattel auctioneer who 24
is an employed licensee of the corporation. 25
- (3) If the corporation performs an activity it is not authorised to 26
perform, it is taken to be a person who acts as a licensee 27
without a licence for the performance of the activity. 28

37	Restriction—individuals	1
(1)	An individual who is an employed licensee may perform an activity authorised under the individual’s licence only if the activity may also be performed by the individual’s employer under the employer’s licence.	2 3 4 5
	<i>Example—</i>	6
	E is a licensed employee of P, a licensed motor dealer. E’s licence is not subject to a condition. However, P’s licence is subject to a condition that P deal only in motorcycles. Because of the condition, E is only authorised to deal in motorcycles under E’s licence during E’s employment with P and while P is subject to the condition.	7 8 9 10 11
(2)	However, subsection (1) does not prevent an individual who holds a chattel auctioneer licence selling or attempting to sell or offering for sale or resale any goods by way of auction for the individual’s licensed employer.	12 13 14 15
(3)	If the employed licensee performs an activity the employed licensee is not authorised to perform because of subsection (1), the employed licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.	16 17 18 19 20
38	Restriction—conditions	21
(1)	This section applies to a licensee who performs an activity under the licensee’s licence that the licensee is not authorised to perform because of a condition on the licensee’s licence.	22 23 24
(2)	The licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.	25 26
	<i>Note—</i>	27
	For the consequences of a licensee performing an activity that the licensee is not authorised to perform because of a condition on the licensee’s licence see sections 73 and 122, 136 and 174.	28 29 30

[s 39]

Division 9	Renewal and restoration of licences	1
Subdivision 1	Renewal	2
39	Application for renewal	3
(1)	A licensee may only apply for renewal of the licensee's licence before the licence expires.	4 5
(2)	The application must—	6
(a)	be made to the chief executive in the approved form; and	7 8
(b)	state the term of the licence being applied for; and	9
(c)	state the names and addresses of the licensee's business associates; and	10 11
(d)	be accompanied by—	12
(i)	the application fee prescribed under a regulation; and	13 14
(ii)	the licence renewal fee prescribed under a regulation; and	15 16
(iii)	if the licensee is required as a condition of the licensee's licence to hold insurance, proof of the currency of the insurance; and	17 18 19
(iv)	if, before or when the application is made, a criminal history costs requirement is made of the licensee—the amount of the costs required to be paid.	20 21 22 23
(3)	The application must also be accompanied by—	24
(a)	an audit report for all trust accounts kept by the licensee during the relevant audit period; or	25 26
(b)	a statutory declaration that the licensee did not operate a trust account during the relevant audit period.	27 28

-
- (4) The licensee must also satisfy the chief executive that the licensee has actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation.
- (5) In this section—
relevant audit period, for a licensee’s licence, means the audit period ending immediately before the licence’s expiry date.

40 Chief executive may renew or refuse to renew licence

- (1) The chief executive must consider the renewal application and may renew or refuse to renew the licence.
- (2) The chief executive may renew the licence only if the chief executive is satisfied—
- (a) the licensee is a suitable person to hold a licence and—
 - (i) if the licensee carries on business in partnership or in conjunction with others—each member of the partnership or each person with whom the licensee carries on business in conjunction is a suitable person to hold a licence; and
 - (ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the application is properly made; and
 - (c) the licensee has, as a principal licensee, a licensee in charge of a corporation’s business or an employed licensee, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation; and
 - (d) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.
- (3) For subsection (2)(b), an application is properly made only if it complies with section 39 and is accompanied by the things mentioned in that section.

[s 41]

- (4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. 1
2
3
- 41 Licence taken to be in force while application for renewal is considered** 4
5
- If an application is made under section 39, the licensee's licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee's application for renewal is— 6
7
8
9
- (a) decided under section 40; or 10
(b) withdrawn by the licensee; or 11
(c) taken to have been withdrawn under section 27(3). 12

Subdivision 2 Restoration 13

- 42 Application for restoration** 14
- (1) If a licensee's licence expires, the person (*former licensee*) may apply for restoration of the licence. 15
16
- (2) The application must— 17
- (a) be made within 3 months after the expiry; and 18
(b) be made to the chief executive in the approved form; and 19
20
(c) state the term of the licence being applied for; and 21
(d) state the names and addresses of the former licensee's business associates; and 22
23
(e) be accompanied by— 24
- (i) the application fee prescribed under a regulation; and 25
26
(ii) the licence renewal fee prescribed under a regulation; and 27
28

-
- (iii) the licence restoration fee prescribed under a regulation; and 1
2
- (iv) if the former licensee was required as a condition 3
of the former licensee's licence to hold insurance, 4
proof of the currency of the insurance; and 5
- (v) if, before or when the application is made, a 6
criminal history costs requirement is made of the 7
former licensee—the amount of the costs required 8
to be paid. 9
- (3) The application must also be accompanied by— 10
- (a) an audit report about all trust accounts maintained by 11
the former licensee during the relevant audit period; or 12
- (b) a statutory declaration that the former licensee did not 13
operate a trust account during the relevant audit period. 14
- (4) The former licensee must also satisfy the chief executive that 15
the former licensee has, as a licensee or salesperson, actively 16
carried out the activities authorised under the licence for a 17
period, and within the period, prescribed under a regulation. 18
- (5) In this section— 19
- relevant audit period*, for a former licensee's licence, means 20
the audit period ending immediately before the former 21
licence's expiry date. 22
- 43 Chief executive may restore or refuse to restore licence 23**
- (1) The chief executive must consider the restoration application 24
and may restore or refuse to restore the licence. 25
- (2) The chief executive may restore the licence only if the chief 26
executive is satisfied— 27
- (a) the licensee is a suitable person to hold a licence and— 28
- (i) if the licensee carries on, or intends to carry on, 29
business in partnership or in conjunction with 30
others—each member of the partnership or each 31
person with whom the licensee carries on business 32
-

[s 44]

in conjunction is a suitable person to hold a licence; and	1 2
(ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and	3 4 5
(b) the application is properly made; and	6
(c) the licensee has, as a principal licensee or employed licensee, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation; and	7 8 9 10
(d) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.	11 12 13
(3) For subsection (2)(b), an application is properly made only if it complies with section 42 and is accompanied by the things mentioned in that section.	14 15 16
(4) If the chief executive decides to refuse the application, the chief executive must give the licensee an information notice about the decision within 14 days after the decision is made.	17 18 19
(5) If the chief executive restores the licence—	20
(a) the licence is taken to have been renewed on the day it would, apart from section 44, have expired (the <i>initial expiry date</i>); and	21 22 23
(b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the licence is restored under this section is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.	24 25 26 27 28 29
44 Licence taken to be in force while application for restoration is considered	30 31
If an application is made under section 42, the licensee's licence is taken to continue in force from the day that it	32 33

-
- would, apart from this section, have expired until the
licensee's application for restoration is—
- (a) decided under section 43; or
 - (b) withdrawn by the licensee; or
 - (c) taken to have been withdrawn under section 27(3).

Division 10 Dealings with licences

Subdivision 1 Transfer of licence

45 Transfer of licence prohibited

A licence may not be transferred.

Subdivision 2 Substitute licences

46 Appointment of substitute licensee—principal licensee—individual

- (1) A principal licensee may appoint an adult as the licensee's substitute licensee for a period of not more than 30 days only if—
 - (a) the licensee will be absent from the licensee's registered office for the period; and
 - (b) the adult consents to the appointment; and
 - (c) if the licensee is required as a condition of the licensee's licence to hold insurance, the adult is covered by the insurance or holds insurance that complies with the requirements of the condition.
- (2) The principal licensee must ensure—
 - (a) an appointment under subsection (1) and the substitute licensee's consent to the appointment are in writing and state the period of appointment; and

[s 46]

- (b) the appointment, consent and evidence of any insurance the substitute licensee is required to have are—
- (i) kept at the licensee’s registered office; and
 - (ii) made available for immediate inspection by an inspector who asks to see them.
- Maximum penalty—100 penalty units.
- (3) A principal licensee who will be absent from the licensee’s registered office for a period of more than 30 days must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult (***nominated person***) as the licensee’s substitute licensee.
- Maximum penalty—200 penalty units.
- (4) If the principal licensee is a person for whom an administrator has been appointed under the *Guardianship and Administration Act 2000* or is deceased, the licensee’s representative may make the application under subsection (3).
- (5) The application must be accompanied by—
- (a) the nominated person’s signed consent to the appointment; and
 - (b) enough information about the nominated person to enable the chief executive to decide whether the person—
 - (i) is a suitable person to hold a licence; and
 - (ii) is sufficiently qualified to perform the licensee’s activities during the period; and
 - (iii) if the licensee is required as a condition of the licensee’s licence to hold insurance, is covered by the insurance or holds insurance that complies with the requirements of the condition; and
 - (c) the application fee prescribed under a regulation; and
 - (d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.

-
- (6) In this section— 1
principal licensee means a principal licensee who is an 2
individual. 3
representative, of a principal licensee, means— 4
(a) for a licensee for whom an administrator has been 5
appointed under the *Guardianship and Administration* 6
Act 2000—the licensee’s administrator; or 7
(b) for a deceased licensee—the licensee’s personal 8
representative. 9

**47 Appointment of substitute licensee—employed licensee 10
in charge of a licensee’s business at a place 11**

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

[s 48]

extension of the appointment of a person (<i>nominated person</i>) as the licensee’s substitute licensee.	1 2
Maximum penalty—200 penalty units.	3
(5) The application must be accompanied by—	4
(a) the nominated person’s signed consent to the appointment; and	5 6
(b) enough information about the nominated person to enable the chief executive to decide whether the person is—	7 8 9
(i) a suitable person to hold a licence; and	10
(ii) sufficiently qualified to perform the employed licensee’s activities during the period; and	11 12
(c) the application fee prescribed under a regulation; and	13
(d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.	14 15 16
(6) In this section—	17
<i>principal licensee</i> includes—	18
(a) for a licensee for whom an administrator has been appointed under the <i>Guardianship and Administration Act 2000</i> —the licensee’s administrator; and	19 20 21
(b) for a deceased licensee—the licensee’s personal representative.	22 23
48 Chief executive may appoint or refuse to appoint substitute licensee	24 25
(1) The chief executive may appoint or refuse to appoint a nominated person mentioned in section 46(3) or 47(4) as a licensee’s substitute licensee.	26 27 28
(2) The chief executive may appoint the nominated person only if the chief executive is satisfied that the person—	29 30

-
- (a) is, under division 5, a suitable person to hold a licence;
and
 - (b) is sufficiently qualified to perform the licensee's
activities during the period of the licensee's absence;
and
 - (c) if the licensee is required as a condition of the licensee's
licence to hold insurance, is covered by the insurance or
holds insurance that complies with the requirements of
the condition.
- (3) An appointment under this section may be made subject to the
conditions the chief executive considers appropriate.
 - (4) The chief executive must give written notice of the
appointment to the licensee and the substitute licensee.
 - (5) If the chief executive decides to refuse the application or to
impose conditions on the appointment, the chief executive
must give the licensee an information notice about the
decision within 14 days after the decision is made.

49 Substitute licensee

- (1) On appointment, a substitute licensee—
 - (a) must act as substitute for the licensee for whom the
substitute is appointed; and
 - (b) is taken to be the licensee during the period of
appointment.
- (2) A licensee for whom a substitute has been appointed must not
act under the authority of the licensee's licence while the
appointment of the substitute licensee continues.
Maximum penalty—200 penalty units.
- (3) The appointment of the substitute licensee ends if—
 - (a) the period of appointment ends; or
 - (b) the principal licensee gives written notice to end the
appointment from a date stated in the notice—

[s 50]

(i)	for a substitute licensee appointed under section 46(1) or 47(2)—to the substitute licensee; or	1 2
(ii)	for a substitute licensee appointed under section 48—to the chief executive and the substitute licensee; or	3 4 5
(c)	the substitute licensee gives written notice to end the appointment from a date stated in the notice—	6 7
(i)	for a substitute licensee appointed under section 46(1) or 47(2)—to the principal licensee making the appointment; or	8 9 10
(ii)	for a substitute licensee appointed under section 48—to the chief executive and the principal licensee who applied for the appointment; or	11 12 13
(d)	the chief executive revokes the substitute licensee’s appointment; or	14 15
(e)	the licensee’s licence is suspended or cancelled; or	16
(f)	if the licensee is a principal licensee, the licensee stops carrying on business as a licensee.	17 18
50	Limitation on period of substitution	19
(1)	A principal licensee may not appoint a substitute licensee for himself or herself for more than 12 weeks in any period of 12 months.	20 21 22
(2)	A principal licensee may not appoint a substitute licensee for an employed licensee for more than 12 weeks in any period of 12 months.	23 24 25
(3)	The chief executive may not appoint a substitute licensee for any licensee for more than 26 weeks in any period of 12 months.	26 27 28

Subdivision 3 General

- 51 Amendment of licence conditions** 2
- (1) The chief executive may amend the conditions of a licence— 3
- (a) on the licensee’s application; or 4
 - (b) on the order of QCAT after a disciplinary hearing; or 5
 - (c) on the chief executive’s own initiative. 6
- Note—* 7
- QCAT may deal with the conditions of a person’s licence under section 8
 222. 9
- (2) An application under subsection (1)(a) must be made in the 10
approved form and be accompanied by the application fee 11
prescribed under a regulation. 12
- (3) Before making an amendment under subsection (1)(a), the 13
chief executive must be satisfied the licensee meets the 14
eligibility requirements the chief executive considers relevant 15
to the amendment of the condition. 16
- (4) Before making an amendment under subsection (1)(c), the 17
chief executive must— 18
- (a) give written notice to the licensee— 19
 - (i) of the particulars of the proposed amendment; and 20
 - (ii) that the licensee may make written submissions to 21
the chief executive about the proposed amendment 22
before a stated day, not later than 14 days after the 23
notice is given to the licensee; and 24
 - (b) have regard to submissions made to the chief executive 25
by the licensee before the stated day. 26
- (5) Subsection (4) does not apply if the chief executive decides 27
that the amendment must be made urgently— 28
- (a) to avoid potential claims against the fund; or 29
 - (b) to ensure compliance with this Act or the 30
Administration Act. 31

[s 52]

- (6) If the chief executive decides to amend the conditions of a licence under subsection (1)(c), the chief executive must give the licensee an information notice about the decision within 14 days after the decision is made. 1
2
3
4
- (7) The amendment takes effect— 5
- (a) on the day the written notice of the amendment is given to the licensee; or 6
7
- (b) if a later day is stated in the notice, on the stated day. 8
- (8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. 9
10
11
12
- 52 Return of licence for amendment of conditions or when suspended or cancelled** 13
14
- (1) If the chief executive amends the conditions of a licence under section 51, the chief executive may require the licensee to produce the licence for amendment within a stated period of not less than 14 days. 15
16
17
18
- (2) The licensee must comply with the requirement unless the person has a reasonable excuse. 19
20
Maximum penalty—100 penalty units. 21
- (3) A person whose licence has been suspended or cancelled must return the licence to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse. 22
23
24
25
Maximum penalty—100 penalty units. 26
- 53 Surrender of licence** 27
- (1) A licensee may surrender the licensee’s licence by giving written notice to the chief executive and returning the licence. 28
29
- (2) A licence surrendered under this section stops having effect on the day it is surrendered. 30
31

54	Licence may be deactivated	1
(1)	A licensee may ask the chief executive to deactivate the licensee's licence.	2 3
(2)	A request under subsection (1) must be made in the approved form and be accompanied by the licensee's licence and the fee prescribed under a regulation.	4 5 6
(3)	The licence is taken to be deactivated when the request, the licence and the prescribed fee are received by the chief executive under subsection (2).	7 8 9
(4)	A licence that is deactivated does not authorise the licensee to perform an activity under the authority of the licence.	10 11
(5)	The deactivation of a licence under this section does not—	12
	(a) affect the term of the licence; or	13
	(b) entitle the licensee to a refund of fees for the licence for the balance of the licence's term.	14 15
(6)	The holder of a deactivated licence may apply to have the licence renewed under section 39 or restored under section 42 as a deactivated licence at a reduced fee prescribed under a regulation.	16 17 18 19
(7)	A licensee may ask the chief executive to reactivate the licence.	20 21
(8)	However, if the licence has been deactivated for 5 years or more, the licence may be reactivated only if the licensee satisfies any educational or other requirements prescribed under a regulation for the issue of the licence.	22 23 24 25
(9)	A request under subsection (7) must be made in the approved form and be accompanied by the fee prescribed under a regulation.	26 27 28

[s 55]

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

-
- (a) suspend the licensee’s licence; or 1
- (b) without limiting paragraph (a), for subsection (1)(b), 2
suspend a licence held by an employee of the licensee if 3
the chief executive considers, on reasonable grounds, 4
the employee is responsible in any way for the 5
irregularity or deficiency in the licensee’s trust account. 6
- (3) If the chief executive suspends a licence for a reason 7
mentioned in subsection (1)(a), (b), (d) or (e), the licence may 8
be suspended for the period, of not more than 28 days, and on 9
the conditions, the chief executive decides. 10
- (4) If the chief executive suspends the licence for the reason 11
mentioned in subsection (1)(c), the licence is suspended until 12
whichever of the following happens first— 13
- (a) the licensee files the required audit report; 14
- (b) an application to QCAT for the cancellation of the 15
licence is heard and decided. 16
- (5) The chief executive must give the licensee an information 17
notice for the suspension within 14 days after suspending the 18
licensee’s licence. 19
- (6) The licensee must return the licence to the chief executive 20
within 14 days after the licensee receives the notice, unless 21
the person has a reasonable excuse. 22
- Maximum penalty for subsection (6)—100 penalty units. 23
- 56 Immediate cancellation 24**
- (1) A licensee’s licence is cancelled on the happening of any of 25
the following events— 26
- (a) the licensee is convicted of a serious offence; 27
- (b) if the licensee is an individual, the licensee is an 28
insolvent under administration; 29
- (c) if the licensee is a corporation, the licensee has been 30
wound up or struck off under the Corporations Act. 31

[s 57]

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

Division 12 General provisions about licences 5

57 Form of licence 6

- (1) A licence must be in the approved form. 7
- (2) However, the chief executive may approve— 8
- (a) a form of licence for office display purposes; and 9
- Example—* 10
- a licence in the form of a certificate that may be framed and 11
 displayed in an office 12
- (b) a form of licence for personal identification purposes. 13
- (3) The chief executive may also issue a form of licence for a corporation endorsed with the categories of licence issued in the corporation's name. 14
15
16
- (4) The licence must contain the following particulars— 17
- (a) the name of the licensee; 18
- (b) the date of issue of the licence; 19
- (c) the expiry date of the licence; 20
- (d) other particulars prescribed under a regulation. 21

58 Display of licence 22

- A principal licensee must display the licensee's licence at the licensee's principal place of business in the way prescribed under a regulation. 23
24
25
- Maximum penalty—100 penalty units. 26

59	Term of licence	1
	A licence may be issued for a 1 year or 3 year term.	2
60	Replacement licences	3
(1)	A licensee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence.	4 5
(2)	The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.	6 7
(3)	The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen or destroyed, or damaged in a way to require its replacement.	8 9 10
(4)	If the chief executive grants the application, the chief executive must issue another licence to the applicant to replace the lost, stolen, destroyed or damaged licence.	11 12 13
61	Register of licences	14
(1)	The chief executive must keep a register of licences and applications for licences (<i>licence register</i>).	15 16
(2)	The licence register must contain the following particulars—	17
(a)	for each applicant for a licence—	18
(i)	the applicant’s name; and	19
(ii)	if the applicant intends to carry on business under the licence, the place where the applicant intends to carry on business; and	20 21 22
(iii)	the category of licence applied for; and	23
(iv)	the date of the application; and	24
(v)	the application number;	25
(b)	for each licensee—	26
(i)	the licensee’s name; and	27
(ii)	the licensee’s registered office; and	28
(iii)	the category of the licensee’s licence; and	29

[s 62]

(iv)	the dates of issue and expiry of the licensee's current licence; and	1 2
(v)	any conditions imposed on the licence; and	3
(vi)	if the licensee is a corporation, the name of the individual in charge of the licensee's business at the licensee's registered office; and	4 5 6
(vii)	if the licensee is a director of a licensed corporation, the name of the licensed corporation; and	7 8 9
(viii)	if the licensee is an employee of another licensee, the name of the licensee's employer; and	10 11
(ix)	the licensee's licence number; and	12
(x)	particulars of any surrender, suspension or cancellation of the licensee's licence.	13 14
(3)	A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (2)—	15 16 17 18
(a)	at a place or places decided by the chief executive; or	19
(b)	by using a computer.	20
(4)	A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.	21 22
(5)	The register may be kept in any way the chief executive considers appropriate.	23 24
(6)	In this section—	25
	<i>contain</i> includes record and store.	26
62	Licenses to notify chief executive of changes in circumstances	27 28
(1)	A licensee must give written notice to the chief executive of a prescribed change in the licensee's circumstances within 14 days after the change.	29 30 31

Maximum penalty—100 penalty units.	1
(2) In this section—	2
<i>prescribed change</i> means a change prescribed under a regulation.	3 4
Part 3	Motor dealers 5
Division 1	Motor dealers' authorisation and responsibilities 6 7
63	What a motor dealer licence authorises 8
(1) A motor dealer licence authorises the holder of the licence (a <i>motor dealer</i>) to perform the following activities in the carrying on of a business of motor dealing—	9 10 11
(a) to acquire, primarily for resale, used motor vehicles;	12
(b) to sell used motor vehicles;	13
(c) to sell used motor vehicles on consignment as an agent for others for reward;	14 15
(d) to sell a leased motor vehicle to the lessee under the terms of the lease;	16 17
(e) to acquire used motor vehicles, whether or not as complete units, to break up for sale as parts;	18 19
(f) to sell used motor vehicles mentioned in paragraph (e) as parts;	20 21
(g) to negotiate, under a consultancy arrangement, for a person who is not a motor dealer or chattel auctioneer for the purchase or sale of a used motor vehicle for the person.	22 23 24 25

[s 64]

- (2) A motor dealer may perform the activities as an employee of another motor dealer who carries on the business of motor dealing. 1
2
3
- (3) In this section— 4
- business of motor dealing* does not include the business of a financier. 5
6
- consultancy arrangement*, for the purchase or sale of a used motor vehicle, means an arrangement under which a person advises someone else— 7
8
9
- (a) where or from whom the other person can buy a used motor vehicle; or 10
11
- (b) where or to whom the other person can sell a used motor vehicle. 12
13
- 64 Responsibility for acts and omissions of motor salespersons** 14
15
- (1) A motor dealer who is a principal licensee must take reasonable steps to ensure each motor salesperson employed by the dealer is properly supervised and complies with this Act. 16
17
18
19
- (2) A motor dealer who is an employed licensee in charge of a licensee’s business at a place of business must take reasonable steps to ensure each motor salesperson employed at the place is properly supervised and complies with this Act. 20
21
22
23
- (3) A motor dealer who fails to comply with subsection (1) or (2) is liable to disciplinary action under part 8, division 2. 24
25

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

[s 67]

Maximum penalty—	1
(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 252—200 penalty units; or	2 3 4
(b) for a corporation—1000 penalty units.	5
(3) An individual must not be in charge of a motor dealer’s business at more than 1 place.	6 7
Maximum penalty—200 penalty units.	8
(4) It is not an offence against this section for a motor dealer 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.	9 10 11 12
(5) For subsection (4), land is <i>contiguous</i> with other land only if the parcels of land have a common boundary that is not separated by a public road.	13 14 15
67 Motor dealer dealing in motor vehicles	16
(1) A motor dealer who is performing an activity the motor dealer is authorised under section 63(1) to perform in relation to a used motor vehicle is taken to be performing the activities of a motor dealer whether or not—	17 18 19 20
(a) the motor dealer is the registered operator, as defined under the <i>Transport Operations (Road Use Management) Act 1995</i> , of the motor vehicle; or	21 22 23
(b) the motor dealer or the motor dealer’s associate used the motor vehicle for private purposes.	24 25
(2) The motor dealer must disclose to a potential buyer or seller of a vehicle that the licensee is a licensed motor dealer.	26 27
Maximum penalty—400 penalty units.	28
(3) Also, if a person agrees to purchase a motor vehicle from, or sell a motor vehicle to, the motor dealer, the person must sign a written acknowledgement stating the motor dealer disclosed to the person that the licensee is a licensed motor dealer.	29 30 31 32

Subdivision 2	Consignment selling	1
68	Appointment—sale on consignment	2
(1)	A motor dealer must not act as a motor dealer for a person (<i>client</i>) to sell the client’s motor vehicle on consignment unless—	3 4 5
(a)	the client first appoints the motor dealer in writing under this section; or	6 7
(b)	a previous appointment is assigned to the motor dealer under the terms of the appointment or under section 70 and the appointment is in force.	8 9 10
	Maximum penalty—200 penalty units.	11
(2)	The appointment may be for the performance of—	12
(a)	a particular service (<i>single appointment</i>); or	13
(b)	a number of services over a period (<i>continuing appointment</i>).	14 15
(3)	The appointment must—	16
(a)	state the term of the appointment; and	17
(b)	state the service to be performed by the motor dealer and how it is to be performed; and	18 19
(c)	state—	20
(i)	the fees, charges and any commission payable for the service; and	21 22
(ii)	the expenses, including advertising expenses and the costs of preparing the vehicle for sale, the motor dealer is authorised to incur in connection with—	23 24 25 26
(A)	for a single appointment—the performance of the service; or	27 28
(B)	for a continuing appointment—the performance of each service or category of service; and	29 30 31

[s 69]

(iii)	the source and the estimated amount or value of any rebate, discount, commission or benefit that the motor dealer may receive for any expenses the motor dealer is authorised to incur in connection with the performance of the service; and	1 2 3 4 5
(iv)	any condition, limitation or restriction on the performance of the service; and	6 7
(d)	state when the fees, charges and any commission for the service become payable.	8 9
(4)	A continuing appointment must state—	10
(a)	the date the appointment ends; and	11
(b)	the appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.	12 13 14
(5)	The notice revoking a continuing appointment must be by signed writing given to the other party.	15 16
(6)	The appointment must be signed and dated by the client and the motor dealer or someone authorised or apparently authorised to sign for the dealer.	17 18 19
(7)	The motor dealer must give a copy of the signed appointment to the client.	20 21
	Maximum penalty—200 penalty units.	22
(8)	If an appointment under this section authorises a sale by auction, an appointment under section 131 is not required.	23 24
69	Form of appointment	25
(1)	The appointment must be in the approved form.	26
(2)	The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.	27 28 29
(3)	An appointment that does not comply with subsection (1) is ineffective from the time it is made.	30 31

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- 70 Proposal for assignment of appointments** 1
- (1) This section applies if a motor dealer who holds appointments 2
from clients to sell motor vehicles on consignment under 3
section 68 proposes to assign the appointments to another 4
motor dealer (*proposed assignee*) without changing the terms 5
of the appointment. 6
- (2) However, this section does not apply to the assignment of an 7
appointment if— 8
- (a) the terms of the appointment authorise the assignment 9
of the appointment; and 10
- (b) the assignment is made under the terms of the 11
appointment. 12
- (3) At least 14 days before the motor dealer assigns the 13
appointments, the motor dealer must give each client written 14
notice of the proposed assignment. 15
- (4) The notice must state the following— 16
- (a) the proposed assignee’s name; 17
- (b) that the appointments are to be assigned without 18
changing the terms of the appointment; 19
- (c) the client may agree or refuse to agree to the proposed 20
assignment; 21
- (d) when the proposed assignment is to take effect. 22
- (5) If the client agrees to the assignment and the motor dealer 23
assigns the appointment under this section, the appointment is 24
taken, for section 69, to be an appointment by the client of the 25
proposed assignee and to continue to have effect according to 26
its terms. 27
- 71 Trade-ins** 28
- (1) A motor dealer must not accept a trade-in from the buyer of a 29
motor vehicle being sold on consignment. 30
- Maximum penalty—200 penalty units or 1 year’s 31
imprisonment. 32

[s 72]

- (2) However, the motor dealer does not contravene subsection (1) 1
if the dealer purchases the motor vehicle offered as a trade-in 2
as part of a separate transaction between the dealer and the 3
buyer. 4

Subdivision 3 Recovery of reward or expense 5

72 Commission may be claimed only for actual amounts 6

- (1) This section applies to a motor dealer who sells a motor 7
vehicle on consignment for the payment of a commission. 8
- (2) The motor dealer must not claim commission worked out on 9
an amount that is more than the actual sale price of the 10
vehicle. 11
- Maximum penalty—200 penalty units. 12

73 Restriction on remedy for reward or expense 13

- (1) A person is not entitled to sue for, or recover or retain, a 14
reward or expense for a sale of a motor vehicle on 15
consignment unless, at the time the sale happened, the 16
person— 17
- (a) held a motor dealer licence; and 18
- (b) was authorised under the person’s licence to sell motor 19
vehicles on consignment; and 20
- (c) had been properly appointed under subdivision 2 by the 21
person to be charged with the reward or expense. 22
- (2) A person who sues for, or recovers or retains, a reward or 23
expense for a sale of a motor vehicle other than as provided by 24
subsection (1) commits an offence. 25
- Maximum penalty for subsection (2)—200 penalty units. 26

74 Excess commission etc. to be repaid 27

- (1) This section applies if— 28

-
- (a) a person is convicted of an offence against section 72(2) or 73(2); and
 - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount to which the person was not entitled.
- (2) The court must order the person to pay the amount to the client.
 - (3) The order must be made whether or not any penalty is imposed on the conviction.
 - (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Subdivision 4 Interests in motor vehicles

75 Definition for sdiv 4

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

76 Beneficial interest—options

- (1) A motor dealer commits an offence if the dealer obtains from the owner of a used motor vehicle, other than another motor dealer, an option to purchase the vehicle in which the dealer has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.
- (2) A motor salesperson commits an offence if the salesperson obtains from the owner of a used motor vehicle, other than a motor dealer, an option to purchase the vehicle in which the salesperson has a beneficial interest.

[s 77]

Maximum penalty—200 penalty units or 3 years imprisonment. 1
2

- (3) A motor dealer must not sell a motor vehicle if the motor dealer has a beneficial interest in an option to purchase the vehicle, other than an option to purchase given by another motor dealer. 3
4
5
6

Maximum penalty—200 penalty units or 3 years imprisonment. 7
8

77 Beneficial interest—other than options 9

- (1) This section applies to a motor vehicle placed by a person (*client*) with a motor dealer for sale on consignment, but does not apply if section 76 applies. 10
11
12

- (2) The motor dealer commits an offence if the motor dealer obtains a beneficial interest in the vehicle. 13
14

Maximum penalty—200 penalty units or 3 years imprisonment. 15
16

- (3) A motor salesperson employed by the motor dealer commits an offence if the salesperson obtains a beneficial interest in the vehicle. 17
18
19

Maximum penalty—200 penalty units or 3 years imprisonment. 20
21

- (4) A person does not contravene subsection (2) or (3) if— 22

(a) the person— 23

(i) before a contract for the sale of the motor vehicle is entered into, obtains the client's written acknowledgment in the approved form that the client— 24
25
26
27

(A) is aware that the person is interested in obtaining a beneficial interest in the motor vehicle; and 28
29
30

(B) consents to the person obtaining the interest; and 31
32

	(ii) acts fairly and honestly in relation to the sale; and	1
(b)	no commission or other reward is payable for the sale; and	2 3
(c)	the client is in substantially as good a position as the client would be if the motor vehicle were sold at fair market value.	4 5 6
78	Return of beneficial interest if in form of commission	7
(1)	This section applies if—	8
(a)	a person is convicted of an offence against section 77(2) or (3); and	9 10
(b)	the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (<i>client</i>) for whom the person performed an activity an amount of commission to which the person was not entitled.	11 12 13 14 15 16
(2)	The court must order the person to pay the amount to the client.	17 18
(3)	The order must be made whether or not any penalty is imposed on the conviction.	19 20
(4)	The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.	21 22 23

Subdivision 5 Code of conduct 24

79 Code of conduct 25

A regulation may prescribe a code of conduct about motor dealing practice that may include the following— 26
27

- (a) setting conduct standards for motor dealers, employed licensees and motor salespersons; 28
29

[s 80]

	(b) establishing principles for fair trading;	1
	(c) providing for a system of complaint resolution;	2
	(d) providing that contraventions of some provisions of the code are an offence.	3 4
80	Complaints about conduct and action chief executive may take	5 6
	(1) A person aggrieved by the conduct of a motor dealer or motor salesperson may complain in writing to the chief executive about the conduct.	7 8 9
	(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.	10 11 12
	<i>Note—</i>	13
	Breach of a code of conduct may be an offence and is a ground for starting disciplinary proceedings under section 217 (Grounds for starting disciplinary proceedings).	14 15 16
	(3) The investigation may take place and action may be taken against a person who was a motor dealer or motor salesperson even though the person complained about is no longer a motor dealer or motor salesperson.	17 18 19 20
	Subdivision 6 Sales of used motor vehicles that are written-off vehicles	21 22
81	Notice to be given about used motor vehicle—written-off vehicle	23 24
	(1) This section applies if a used motor vehicle that is an unregistered written-off vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (<i>buyer</i>).	25 26 27
	(2) Before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a written-off vehicle and state—	28 29 30

-
- (a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or
- (b) if the vehicle is a statutory write-off—that the vehicle can not be registered.
- Maximum penalty—200 penalty units.
- (3) The motor dealer must also ask the buyer to sign an acknowledgement, printed in type no smaller than 12 point, that—
- (a) identifies the used motor vehicle as a written-off vehicle; and
- (b) states whether the vehicle is a repairable write-off or a statutory write-off.
- Maximum penalty—200 penalty units.
- (4) The motor dealer must—
- (a) give the original of the acknowledgement to the buyer; and
- (b) keep a copy of the acknowledgement; and
- (c) make a copy available for immediate inspection by an inspector who asks to see it.
- Maximum penalty—200 penalty units.

Division 3 **Sale of motor vehicles by motor dealer**

82 **Obligations of motor dealer**

- (1) This section applies if a used motor vehicle is to be sold by or for a motor dealer (*selling agent*) to someone else (*buyer*), other than by auction.

[s 82]

- Note*— 1
- For a sale by auction, see section 149. 2
- (2) The following person (the ***responsible motor dealer***) must 3
ensure the buyer gains clear title to the motor vehicle at the 4
time property in the vehicle passes to the buyer— 5
- (a) if the selling agent owns the motor vehicle or is 6
appointed to sell the vehicle on consignment for 7
someone other than another motor dealer or chattel 8
auctioneer—the selling agent; 9
- (b) if the selling agent is selling the motor vehicle for 10
another motor dealer or chattel auctioneer—the other 11
motor dealer or chattel auctioneer for whom the selling 12
agent is selling the vehicle. 13
- Maximum penalty—200 penalty units. 14
- (3) In a proceeding for an offence against subsection (2), it is a 15
defence for the defendant to prove that the defendant took all 16
reasonable steps to ensure subsection (2) was complied with. 17
- (4) The selling agent must, immediately after property in the 18
vehicle passes to the buyer— 19
- (a) give the buyer an approved form stating— 20
- (i) particulars about the vehicle, including its 21
odometer reading at the time property passes; and 22
- (ii) the responsible motor dealer guarantees the buyer 23
gains clear title to the vehicle at the time property 24
passes; and 25
- (iii) any other particulars prescribed under a regulation; 26
and 27
- (b) ask the buyer to sign an approved form acknowledging 28
receipt of the form mentioned in paragraph (a); and 29
- (c) give the original of the form mentioned in paragraph (a) 30
to the buyer and keep a copy of the form. 31
- Maximum penalty—200 penalty units. 32

-
- (5) A proceeding against a motor dealer or chattel auctioneer for an offence against this section does not affect any civil liability of any person, including the motor dealer or chattel auctioneer, arising out of the same facts that constitute the offence. 1
2
3
4
5
- (6) Subsections (2) and (4)(a)(ii) do not apply to the extent that a security interest in the motor vehicle is registered under the *Personal Property Securities Act 2009* (Cwlth). 6
7
8
- (7) In this section— 9
sold includes sold on consignment. 10

Division 4 Cooling-off period 11

83 Definitions for div 4 12

In this division— 13

business day, for a motor dealer, means a day, other than a Sunday or public holiday, when the motor dealer's place of business is open for business. 14
15
16

cooling-off period see section 84. 17

non-refundable deposit see sections 91(1) and 92(1). 18

used motor vehicle does not include— 19

(a) an unregistered motor vehicle— 20

(i) that is incapable of being registered in Queensland because of its design; or 21
22

(ii) intended to be used for wrecking or dismantling; or 23

(b) a commercial vehicle; or 24

(c) a caravan. 25

84 Meaning of *cooling-off period* 26

- (1) The *cooling-off period* for the purchase of a used motor vehicle from a motor dealer starts on the day a contract for the 27
28

[s 84]

purchase of the vehicle is enforceable against the motor dealer. 1
2

(2) The *cooling-off period* for the purchase of a used motor vehicle ends— 3
4

(a) if the motor dealer’s actual close of business on the motor dealer’s next business day is 5p.m. or later—at the time of the motor dealer’s actual close of business on that business day; or 5
6
7
8

Example 1— 9

Assume the contract is entered into on Friday and is immediately enforceable. Assume also the cooling-off period is not affected by public holidays and that, on each day the motor dealer is open for business, the motor dealer’s actual close of business is not before 5p.m. The cooling-off period ends at the time of the motor dealer’s actual close of business on the following Saturday. 10
11
12
13
14
15
16

Example 2— 17

Assume the contract is entered into on Friday afternoon, but is conditional on a prior contract to purchase the vehicle not being proceeded with by 5p.m. Saturday. Assume that the prior contract is avoided at 4p.m. Saturday. Assume also the cooling-off period is not affected by public holidays and that, on each day the motor dealer is open for business, the motor dealer’s actual close of business is not before 5p.m. The cooling-off period ends at the time of the motor dealer’s actual close of business on the following Monday. 18
19
20
21
22
23
24
25
26

(b) if the motor dealer’s actual close of business on the motor dealer’s next business day is earlier than 5p.m.—at the time of the motor dealer’s usual close of business on the business day immediately following the next business day; or 27
28
29
30
31

Example— 32

Assume the contract is entered into on Tuesday and the motor dealer closes for business on Wednesday at 1p.m. Assume also the cooling-off period is not affected by public holidays and that the contract is immediately enforceable. The cooling-off period ends at the time of the motor dealer’s usual close of business on the following Thursday. 33
34
35
36
37
38

-
- (c) at any earlier time the person contracting for the purchase of the vehicle (*buyer*) takes physical possession of the vehicle for a purpose other than—
- (i) a vehicle inspection; or
 - (ii) a test drive.
- 85 Application of div 4**
- (1) This division applies to sales of used motor vehicles by motor dealers.
 - (2) However, this division does not apply to any of the following sales of used motor vehicles by a motor dealer—
 - (a) a sale by auction;
 - (b) a sale on consignment, unless the owner of the vehicle is a motor dealer or chattel auctioneer;
 - (c) a sale to another motor dealer.
- 86 Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period**
- (1) A motor dealer must not advertise or display for sale a motor vehicle for sale on consignment unless it is advertised or displayed for sale as a vehicle that is not subject to a cooling-off period in the way provided under a regulation.
Maximum penalty—100 penalty units.
 - (2) Subsection (1) does not apply to a sale on consignment of a motor vehicle owned by a motor dealer or chattel auctioneer.
- 87 Notice to be given about used motor vehicle—no prior contract**
- (1) This section applies if a used motor vehicle is not subject to any prior contract with a prospective buyer for its sale.

[s 88]

- (2) A motor dealer must give to the prospective buyer of the vehicle a written statement in the approved form under this section. 1
2
3
Maximum penalty—200 penalty units. 4
- (3) The statement must include the following— 5
- (a) the motor vehicle, clearly identified, to which the statement relates; 6
7
 - (b) the names and addresses of the motor dealer and prospective buyer; 8
9
 - (c) a clear statement that the prospective buyer may avoid any contract for the purchase of the vehicle from the motor dealer during the cooling-off period; 10
11
12
 - (d) the day and time when the statement is given; 13
 - (e) the day and time the cooling-off period ends; 14
 - (f) the amount of non-refundable deposit forfeited by the prospective buyer if the buyer avoids the contract. 15
16
- (4) The statement must be signed and dated by the prospective buyer and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer. 17
18
19
- (5) The motor dealer or authorised person must give the original of the statement to the prospective buyer immediately before the buyer signs any contract for the purchase of the vehicle. 20
21
22
Maximum penalty—200 penalty units. 23
- (6) The motor dealer must keep a copy of the statement and make it available for immediate inspection by an inspector who asks to see it. 24
25
26
Maximum penalty—100 penalty units. 27

88 Option to purchase during cooling-off period 28

- (1) This section applies if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable. 29
30
31

-
- (2) The motor dealer may give not more than 1 other person (*option holder*) an option to purchase the vehicle even though the vehicle is subject to a prior contract. 1
2
3
- (3) If the motor dealer gives an option to purchase the motor vehicle to someone else while an option to purchase is still current, the dealer commits an offence. 4
5
6
Maximum penalty—100 penalty units. 7
- (4) The motor dealer must give the option holder a written statement in the approved form under this section. 8
9
Maximum penalty—200 penalty units. 10
- (5) The statement must include the following— 11
- (a) the motor vehicle, clearly identified, to which the statement relates; 12
13
 - (b) the names and addresses of the motor dealer and option holder; 14
15
 - (c) the option to purchase is conditional on a prior contract for the sale of the vehicle being avoided by the buyer under the prior contract; 16
17
18
 - (d) the option holder has no legally enforceable rights under the option to purchase the vehicle, unless the prior contract is avoided; 19
20
21
 - (e) when the option holder may exercise the holder's rights under the option; 22
23
 - (f) the day and time when the statement is given; 24
 - (g) the amount of non-refundable deposit forfeited by the option holder if the holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided; 25
26
27
28
 - (h) any other thing prescribed under a regulation. 29
- (6) The statement must be signed and dated by the option holder and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer. 30
31
32

[s 89]

- (7) The motor dealer or authorised person must give the statement to the option holder immediately before the option holder signs the option to purchase the vehicle. 1
2
3
Maximum penalty—200 penalty units. 4
- (8) The motor dealer must keep a copy of the statement and make it available for immediate inspection by an inspector who asks to see it. 5
6
7
Maximum penalty—100 penalty units. 8
- 89 Buyer's rights if notice not given or materially defective 9**
- (1) This section applies if a person (*buyer*) has purchased a used motor vehicle and— 10
11
- (a) the buyer has not been given the statement under section 12
87; or 13
- (b) the statement has been given to the buyer, but the statement is defective in a material particular. 14
15
- (2) The buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle. 16
17
- (3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer. 18
19
- (4) If the contract is avoided under this section, the motor dealer— 20
21
- (a) must do everything in the motor dealer's power to return the buyer to the position the buyer was in before the vehicle was purchased; or 22
23
24
- (b) if the buyer can not be returned to that position, is liable for any financial loss suffered by the buyer because the buyer can not be returned to that position. 25
26
27
- 90 Contract must contain cooling-off clause 28**
- (1) A contract for the sale of a used motor vehicle by a motor dealer must contain a clause clearly headed 'COOLING-OFF PERIOD' stating the following— 29
30
31

-
- (a) the day and time the cooling-off period starts; 1
 - (b) the day and time the cooling-off period ends; 2
 - (c) property in the motor vehicle does not pass to the buyer 3
until the end of the cooling-off period, unless the buyer 4
takes physical possession of the vehicle for a purpose 5
other than— 6
 - (i) a vehicle inspection; or 7
 - (ii) a test drive; 8
 - (d) the buyer or the buyer’s agent may possess the vehicle 9
during the cooling-off period, but only to have the 10
vehicle independently inspected or to test drive the 11
vehicle; 12
 - (e) the buyer may avoid the contract at any time during the 13
cooling-off period by giving written notice to that effect 14
to the dealer in accordance with this Act; 15
 - (f) the amount of any non-refundable deposit paid by the 16
buyer if the contract is avoided during the cooling-off 17
period; 18
 - (g) if the contract is avoided during the cooling-off period, 19
the motor dealer must return to the buyer— 20
 - (i) any trade-in vehicle offered by the buyer that the 21
motor dealer has taken possession of; and 22
 - (ii) any deposit paid by the buyer, less the amount of 23
non-refundable deposit. 24
 - (2) If the contract does not comply with subsection (1), the buyer, 25
by written notice given to the motor dealer, may avoid the 26
contract for the sale of the used motor vehicle. 27
 - (3) The notice must be given to the motor dealer within 7 days 28
after the day property in the vehicle passes to the buyer. 29

91 Consideration for cooling-off period 30

- (1) The consideration payable for the cooling-off period for the 31
purchase of a used motor vehicle (the *non-refundable* 32

[s 92]

- deposit*) is the amount prescribed or worked out under a regulation. 1
2
- (2) The non-refundable deposit may be paid as the deposit or part 3
of the deposit for the vehicle. 4
- (3) If the contract is not avoided during the cooling-off period, 5
the non-refundable deposit must be deducted from the 6
purchase price of the vehicle. 7
- (4) If a deposit is paid for the vehicle— 8
- (a) if the amount of the deposit is more than the amount of 9
the non-refundable deposit—the deposit is taken to 10
include the non-refundable deposit; or 11
- (b) if the amount of the deposit is equal to or less than the 12
amount of the non-refundable deposit—the deposit is 13
taken to be the non-refundable deposit. 14
- (5) If no deposit is paid for the vehicle, the motor dealer is taken 15
to have waived the payment of the non-refundable deposit. 16
- 92 Consideration for option 17**
- (1) The consideration payable for an option for the purchase of a 18
used motor vehicle (also a *non-refundable deposit*) under 19
section 88 is the amount prescribed or worked out under a 20
regulation. 21
- (2) If the option holder declines to enter into a contract for the 22
purchase of the vehicle for any reason other than because the 23
prior contract was not avoided, the amount of non-refundable 24
deposit is forfeited by the option holder. 25
- (3) If the option holder enters into a contract for the purchase of 26
the vehicle, the amount of non-refundable deposit paid for the 27
option is taken to be the non-refundable deposit for the 28
cooling-off period. 29
- (4) If no consideration is paid for the option— 30
- (a) the motor dealer is taken to have waived the payment of 31
the non-refundable deposit for the option; and 32

	(b) the option is enforceable by the option holder against the motor dealer despite the absence of consideration.	1 2
93	Harassment or coercion	3
	A motor dealer or other person must not harass or coerce a person for the purpose of dissuading or preventing the person from exercising a right conferred on the person by this division.	4 5 6 7
	Maximum penalty—200 penalty units or 2 years imprisonment.	8 9
94	Property does not pass during cooling-off period	10
	(1) Property in a used motor vehicle subject to a cooling-off period does not pass to the buyer of the vehicle until the end of the cooling-off period.	11 12 13
	(2) Property in a motor vehicle offered to the motor dealer as a trade-in does not pass to the dealer until the end of the cooling-off period.	14 15 16
	(3) A deposit, other than a non-refundable deposit, given to a motor dealer by a buyer of a used motor vehicle from the dealer remains the property of the buyer until the end of the cooling-off period.	17 18 19 20
95	Buyer may avoid contract during cooling-off period	21
	The buyer of a used motor vehicle may avoid the contract to purchase the vehicle during the cooling-off period.	22 23
96	Procedure for avoidance	24
	(1) A buyer of a used motor vehicle who wishes to avoid the contract to purchase the vehicle must give the motor dealer or a person apparently working for the motor dealer at the motor dealer's place of business a written notice indicating that the buyer terminates the contract.	25 26 27 28 29

[s 97]

(2)	The notice must be given before the cooling-off period ends.	1
(3)	Subsection (1) does not limit the <i>Acts Interpretation Act 1954</i> , part 10.	2 3
97	What happens when contract avoided	4
(1)	Notice given under section 96 brings the contract, and any related contract, to an end.	5 6
(2)	If the motor dealer to whom notice is given has given an option to purchase the motor vehicle to an option holder under section 88, the motor dealer must immediately advise the option holder that—	7 8 9 10
(a)	the prior contract has been avoided; and	11
(b)	a contract to purchase the vehicle must be entered into before the end of the motor dealer’s next business day or any non-refundable deposit is forfeited.	12 13 14
(3)	In this section—	15
	<i>related contract</i> includes—	16
(a)	a contract about the provision of finance to purchase the vehicle; and	17 18
(b)	a contract of insurance for the vehicle.	19
98	Consideration for used motor vehicle during cooling-off period	20 21
(1)	A motor dealer may accept a trade-in or other consideration from a buyer of a used motor vehicle before the end of the cooling-off period.	22 23 24
(2)	However, the motor dealer must not deal in the trade-in or other consideration during the cooling-off period.	25 26
	Maximum penalty—200 penalty units or 1 year’s imprisonment.	27 28

-
- (3) The motor dealer must return the trade-in or other consideration immediately to the buyer, at no cost to the buyer, if the buyer avoids the contract under section 96.
Maximum penalty—200 penalty units or 1 year’s imprisonment.
- (4) Subsection (3) does not require the return to the buyer of any non-refundable deposit paid as consideration for the cooling-off period.

Division 5 Statutory warranty 9

99 Definitions for div 5 10

In this division— 11

defect see section 100. 12

defect notice see section 108(1). 13

motor dealer, for the sale of used motor vehicles, includes a person carrying on the business of a motor dealer without a licence. 14
15
16

repair period see section 111(2). 17

statutory warranty means the warranty under section 106. 18

time of taking possession, of a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase from the motor dealer. 19
20
21

warrantor, of a warranted vehicle, means the motor dealer who owns the vehicle immediately before the time of taking possession. 22
23
24

warranty advice see section 110(2). 25

warranty period see section 101. 26

100 Meaning of *defect* 27

A warranted vehicle has a *defect* for this division if— 28

[s 101]

- (a) a part of the vehicle does not perform its intended function; or 1
2
- (b) a part of the vehicle has deteriorated to an extent where it can not reasonably be relied on to perform its intended function. 3
4
5

101 Meaning of *warranty period* 6

- (1) Subject to subsection (3), the *warranty period* of a class A warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached— 7
8
9
 - (a) the vehicle travels 5000km since the time of taking possession; 10
11
 - (b) 5p.m. on— 12
 - (i) the day 3 months after the time of taking possession if that day— 13
14
 - (A) is not a Sunday or public holiday; and 15
 - (B) the motor dealer’s place of business is open for business; or 16
17
 - (ii) the first day, after the day 3 months after the time of taking possession, that— 18
19
 - (A) is not a Sunday or public holiday; and 20
 - (B) the motor dealer’s place of business is open for business. 21
22
- (2) Subject to subsection (3), the *warranty period* of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached— 23
24
25
 - (a) the vehicle travels 1000km since the time of taking possession; 26
27
 - (b) 5p.m. on— 28
 - (i) the day 1 month after the time of taking possession if that day— 29
30
 - (A) is not a Sunday or public holiday; and 31

(B)	the motor dealer’s place of business is open for business; or	1 2
(ii)	the first day, after the day 1 month after the time of taking possession, that—	3 4
(A)	is not a Sunday or public holiday; and	5
(B)	the motor dealer’s place of business is open for business.	6 7
(3)	The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—	8 9 10
(a)	the buyer has complied with section 108(1); and	11
(b)	a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.	12 13 14
102	Application of div 5	15
(1)	This division applies to each warranted vehicle sold by a motor dealer as owner of the vehicle or on consignment for another motor dealer or chattel auctioneer.	16 17 18
(2)	This division does not apply to the sale of a motor vehicle by a motor dealer—	19 20
(a)	to another motor dealer or a chattel auctioneer; or	21
(b)	on consignment for a person who is not a motor dealer or chattel auctioneer.	22 23
103	Unwarranted and restorable vehicles to be identified when offered for sale	24 25
(1)	A motor dealer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale, in the way provided under a regulation, as a vehicle that does not have a statutory warranty.	26 27 28 29
	Maximum penalty—100 penalty units.	30

[s 104]

- (2) Also, a motor dealer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way prescribed under a regulation. 1
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Maximum penalty—100 penalty units. 4
- (3) This section does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle. 5
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- 104 Waiver of statutory warranty for restorable vehicles 7**
- (1) A motor dealer must, before a proposed buyer enters into a contract for the purchase of a restorable vehicle, give the proposed buyer a written notice stating that the buyer may waive the statutory warranty for the vehicle. 8
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- (2) If the proposed buyer agrees to purchase the vehicle, the proposed buyer may waive the statutory warranty for the vehicle by signing the notice before the proposed buyer enters into a contract for the sale of the vehicle. 12
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- (3) The notice must clearly identify the vehicle to which it relates. 16
- (4) On the signing of the notice, the proposed buyer is taken to waive the statutory warranty for the vehicle when the contract for its purchase is entered into. 17
18
19
- 105 Motor dealer to give proposed buyer notice about statutory warranty 20**
- (1) A motor dealer must, before a contract for the purchase of a warranted vehicle from the motor dealer is entered into, give the proposed buyer of the vehicle a notice in the approved form. 21
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Maximum penalty—100 penalty units. 26
- (2) A motor dealer must, before a contract for the purchase of an unwarranted vehicle, or a restorable vehicle for which the proposed buyer has signed a notice waiving the statutory warranty under section 104, from the motor dealer is entered into, give the proposed buyer of the vehicle notice in the 27
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approved form that the vehicle does not have a statutory warranty.	1 2
Maximum penalty—100 penalty units.	3
(3) The proposed buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.	4 5
106 Statutory warranty	6
(1) The warrantor of a warranted vehicle warrants that—	7
(a) the vehicle is free from defects at the time of taking possession and for the warranty period; and	8 9
(b) defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.	10 11
(2) In this section—	12
<i>defects</i> does not include defects not covered by the statutory warranty.	13 14
107 Defects not covered by statutory warranty	15
The following defects in a warranted vehicle are not covered by the statutory warranty—	16 17
(a) a defect in the vehicle’s paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the time of taking possession;	18 19 20
(b) a defect after the time of taking possession—	21
(i) arising from or incidental to any accidental damage to the vehicle; or	22 23
(ii) arising from the buyer’s misuse or negligence; or	24
(iii) in an accessory to the vehicle not fitted to the vehicle when sold to the buyer;	25 26
(c) a defect in something else prescribed by regulation.	27

[s 108]

108	Buyer's obligations under statutory warranty	1
(1)	If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this division, the buyer must give the warrantor written notice of the defect (<i>defect notice</i>) before the end of the warranty period and—	2 3 4 5 6
(a)	if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given, deliver the vehicle to—	7 8 9
(i)	the warrantor to repair the defect; or	10
(ii)	a qualified repairer nominated by the warrantor, by signed writing given to the buyer of the vehicle, to repair the defect; or	11 12 13
(b)	if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—	14 15 16
(i)	deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or	17 18 19 20
(ii)	deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.	21 22 23 24
(2)	The buyer is taken to deliver the vehicle and the warrantor is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle under this section but is unable to do so because the warrantor, or the qualified repairer nominated by the warrantor, refuses to accept delivery of the vehicle.	25 26 27 28 29 30
(3)	The place of delivery under subsection (1)(a)(ii) must not be more than 20km from the warrantor's place of business, unless the warrantor and the buyer otherwise agree.	31 32 33
(4)	In this section—	34

qualified repairer, for a warranted vehicle the subject of a defect notice, means a person who is, or holds the qualifications necessary to be appointed under the *Transport Operations (Road Use Management) Act 1995*, section 21 to be, an accredited person to perform vehicle safety inspections for the vehicle.

warrantor includes someone apparently working for the warrantor at the warrantor's place of business.

109 Warrantor to record particulars of extension of warranty period

The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under section 108 and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

110 Warrantor to advise whether defect covered by statutory warranty

(1) This section applies if a defect notice is given, and the vehicle is delivered, under section 108.

(2) The warrantor must advise the buyer in writing (*warranty advice*) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty.

(3) If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.

(4) In this section—

business day, for the giving of a warranty advice by a warrantor, means a day, other than Sunday or a public holiday, when the warrantor's place of business is open for business.

[s 111]

- 111 Warrantor's obligation to repair defects** 1
- (1) If the warrantor accepts that the defect is covered by the statutory warranty, the warrantor must repair the defect at the warrantor's expense. 2
3
4
- (2) The warrantor must ensure that the defect is repaired within 5
14 days after the warrantor accepts that the defect is covered 6
by the statutory warranty (the *repair period*), unless the 7
warrantor has a reasonable excuse. 8
Maximum penalty—200 penalty units. 9
- (3) If the warrantor nominates someone else to repair the vehicle, 10
the warrantor must advise the buyer of the other person's 11
name and the address where the defect is to be repaired. 12
- (4) The warrantor is taken to have repaired the defect if the part of 13
the vehicle affected by the defect is repaired so that it can be 14
reasonably relied on to perform its intended function. 15
- (5) The warrantor's obligation to repair the defect under this 16
section continues even though the warrantor is no longer 17
carrying on the business, or performing the activities, of a 18
motor dealer or chattel auctioneer. 19
- 112 Warrantor's failure to repair** 20
- (1) This section applies if the warrantor has by warranty advice or 21
otherwise— 22
- (a) refused to accept that the defect is covered by the 23
statutory warranty; or 24
- (b) accepted that the defect is covered by the statutory 25
warranty but— 26
- (i) failed to repair a defect within the repair period; or 27
- (ii) failed to repair the defect so that the defective part 28
can be reasonably relied on to perform its intended 29
function. 30
- (2) The buyer may apply, as provided under the QCAT Act, to 31
QCAT for an order under this section. 32

-
- (3) Without limiting the orders QCAT may make under the QCAT Act, section 13, QCAT may make the following orders—
- (a) an order that the defect is or is not a defect covered by the statutory warranty;
 - (b) an order extending the warranty period for the warranted vehicle to a specified date;
 - (c) an order declaring the warranted vehicle is covered by the statutory warranty until a specified date.
- (4) Also, QCAT may make an order that the warrantor pay to the buyer a stated amount QCAT decides is the reasonable cost of having a defect repaired if—
- (a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and
 - (b) the buyer has had the defect repaired by another person; and
 - (c) QCAT decides that the defect was one to which the statutory warranty applied.
- (5) QCAT may make an order under subsection (3)(b) or (c) only if it is satisfied—
- (a) the vehicle was not able to be used by the buyer for a period during the warranty period; and
 - (b) the period from which the order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than—
 - (i) for a class A warranted vehicle—3 months; or
 - (ii) for a class B warranted vehicle—1 month.
- (6) If, after the matter is heard by QCAT, an order is made by QCAT in the buyer's favour and the warrantor contravenes

[s 113]

the order, the contravention is a ground for starting disciplinary proceedings under section 217.	1 2
(7) Subsection (6) does not limit any right the buyer may have to enforce the order.	3 4
113 Applications for more than prescribed amount	5
(1) This section applies if—	6
(a) an application under section 112 may be made to QCAT; and	7 8
(b) the application seeks the payment of an amount (<i>application amount</i>) greater than the prescribed amount.	9 10 11
(2) In a provision of this division about the application—	12
(a) a reference to QCAT is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the application amount; and	13 14 15
(b) the provision applies with necessary changes as if QCAT were the court.	16 17
(3) In this section—	18
<i>prescribed amount</i> means the prescribed amount as defined under the QCAT Act.	19 20
Division 6 General	21
114 Registered office	22
A motor dealer's <i>registered office</i> is—	23
(a) for a motor dealer who is a principal licensee—	24
(i) the place the dealer states in the dealer's application for a motor dealer licence as the dealer's principal place of business; or	25 26 27

(ii)	another place notified to the chief executive by the motor dealer in the approved form as the dealer's principal place of business; and	1 2 3
(b)	for a motor dealer who is an employed licensee—	4
(i)	the place the dealer states in the dealer's application for a motor dealer licence as the dealer's business address; or	5 6 7
(ii)	another place notified to the chief executive by the dealer in the approved form as the dealer's business address.	8 9 10
115	Motor dealer must notify chief executive of change in place of business etc.	11 12
(1)	A motor dealer who is a principal licensee must notify the chief executive in the approved form of—	13 14
(a)	any change in the dealer's principal place of business within 14 days after the change; and	15 16
(b)	the closure of any place where the dealer carries on business within 14 days after the closure; and	17 18
(c)	the opening of any place where the dealer carries on business within 14 days after the opening.	19 20
	Maximum penalty—200 penalty units.	21
(2)	A motor dealer who is an employed licensee must notify the chief executive in the approved form of any change in the motor dealer's business address within 14 days after the change.	22 23 24 25
	Maximum penalty—200 penalty units.	26
116	Display and publication of licensee's name	27
(1)	A motor dealer who is a principal licensee must display at each place the motor dealer carries on business, in the way prescribed under a regulation—	28 29 30
(a)	the dealer's name; and	31

[s 117]

(b) if the dealer is not the person in charge of the dealer's business at the place, the name of the motor dealer who is in charge at the place; and 1
2
3

(c) the other particulars prescribed under a regulation. 4

Maximum penalty—100 penalty units. 5

(2) A motor dealer must not publish in a newspaper or elsewhere an advertisement for the dealer's business without stating in the advertisement the particulars prescribed under a regulation. 6
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Maximum penalty—100 penalty units. 10

117 Principal licensee to keep employment register 11

(1) A motor dealer who is a principal licensee must keep a register of employees (*employment register*) at each place where the licensee carries on business. 12
13
14

Maximum penalty—200 penalty units. 15

(2) The motor dealer must enter, and keep entered, in the employment register— 16
17

(a) the name, and the other particulars prescribed under a regulation, of each person (*employee*) who is employed as an employed licensee or motor salesperson at the place; and 18
19
20
21

(b) if the employee is a motor salesperson, the activities the salesperson is authorised to perform for the dealer during the salesperson's employment by the motor dealer. 22
23
24
25

Maximum penalty—200 penalty units. 26

(3) The motor dealer must— 27

(a) enter the particulars about each employee, and for each motor salesperson, the activities the salesperson is authorised to perform, immediately after the employee is employed at the place; and 28
29
30
31

(b) if there is a change in an employee's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change. 1
2
3

Maximum penalty—200 penalty units. 4

(4) The form of the register may be prescribed under a regulation. 5

118 Motor dealer to keep transactions register 6

(1) A motor dealer must keep, at each place the motor dealer carries on business, a register of transactions (*transactions register*). 7
8
9

Maximum penalty—200 penalty units or 1 year's imprisonment. 10
11

(2) The motor dealer must enter, and keep entered, in the transactions register the particulars prescribed under a regulation for each transaction entered into in the course of business within 24 hours after the transaction is completed. 12
13
14
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Maximum penalty—200 penalty units or 1 year's imprisonment. 16
17

(3) The form of the register may be prescribed under a regulation. 18

(4) If the register is kept in electronic form, the motor dealer is taken to comply with subsection (1) if information in the register can be accessed electronically and as hard copy from the place of business. 19
20
21
22

(5) In this section— 23

motor dealer— 24

(a) means a motor dealer who is a principal licensee or a person in charge of a licensee's business at a place; but 25
26

(b) does not include a motor dealer whose licence is conditioned to allow the dealer to perform only the activity of negotiating, under a consultancy arrangement, for a person who is not a motor dealer or chattel auctioneer for the purchase of a motor vehicle for the person. 27
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[s 119]

- transaction* means any of the following— 1
- (a) a sale; 2
 - (b) a purchase; 3
 - (c) accepting a deposit; 4
 - (d) giving an option to purchase; 5
 - (e) accepting a trade-in; 6
 - (f) accepting a motor vehicle for sale on consignment; 7
 - (g) a transfer of a motor vehicle from 1 place of business to 8
another place of business. 9

119 Motor dealer to obtain statement from seller of vehicle 10

- (1) A motor dealer must, when buying a motor vehicle or 11
accepting a motor vehicle for sale on consignment from a 12
person (*seller*) in the course of carrying on the motor dealer's 13
business, obtain from the seller a statement, signed by the 14
seller, stating the particulars about the seller and the vehicle 15
prescribed under a regulation. 16

Maximum penalty—200 penalty units. 17

- (2) The motor dealer must— 18
- (a) keep a copy of the statement at the motor dealer's place 19
of business; and 20
 - (b) give a copy to the seller; and 21
 - (c) make a copy available for immediate inspection by an 22
inspector who asks to see it. 23

Maximum penalty—200 penalty units. 24

- (3) This section does not apply if the seller is— 25
- (a) a financier of the business of the motor dealer; or 26
 - (b) another motor dealer or chattel auctioneer. 27

120	Motor dealer to give statement to buyer of vehicle	1
(1)	A motor dealer must, when selling a motor vehicle, including when selling on consignment, to a person (<i>buyer</i>), give to the buyer a statement, signed by the motor dealer, stating the particulars about the vehicle's owner immediately before the sale and the vehicle prescribed under a regulation.	2 3 4 5 6
	Maximum penalty—200 penalty units.	7
(2)	The motor dealer must—	8
(a)	keep a copy of the statement at the motor dealer's place of business; and	9 10
(b)	give a copy of the statement to the buyer immediately after it is signed; and	11 12
(c)	make a copy available for immediate inspection by an inspector who asks to see it.	13 14
	Maximum penalty—200 penalty units.	15
(3)	Nothing in this section prevents the statement being contained in the contract for sale of the vehicle.	16 17
121	Contract of sale	18
(1)	A motor dealer must ensure that a contract for the sale of a motor vehicle by the motor dealer—	19 20
(a)	is in writing; and	21
(b)	contains the particulars prescribed under a regulation in the way prescribed under the regulation.	22 23
	Maximum penalty—200 penalty units.	24
(2)	The motor dealer must—	25
(a)	give 1 copy of the contract to each other person signing the contract immediately after it is signed; and	26 27
(b)	make a copy available for immediate inspection by an inspector who asks to see it.	28 29
	Maximum penalty—200 penalty units.	30

[s 122]

- (3) A contract for the sale of a motor vehicle by a motor dealer that is not in writing is not enforceable against the buyer of the motor vehicle. 1
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Division 7 Offences 4

122 Acting as motor dealer 5

- (1) A person must not carry on the business of a motor dealer unless— 6
7
- (a) the person holds a motor dealer licence; and 8
 - (b) the activities performed in the carrying on of business as a motor dealer are authorised under the person’s licence. 9
10
- Maximum penalty—400 penalty units or 2 years imprisonment. 11
12
- (2) Without limiting the ways a person may carry on the business of a motor dealer, a person *carries on business* as a motor dealer if the person— 13
14
15
- (a) advertises or notifies or states that the person carries on the business of motor dealing, either generally or for a single transaction; or 16
17
18
 - (b) in any way holds out as being ready to carry on the business of motor dealing, either generally or for a single transaction. 19
20
21
- (3) This section does not apply to a person who carries on a business that is primarily concerned with the hiring out or leasing of motor vehicles. 22
23
24

123 Pretending to be motor salesperson 25

- (1) A person must not act as a motor salesperson unless the person holds a registration certificate as a motor salesperson. 26
27
- Maximum penalty—200 penalty units. 28
- (2) In this section— 29

	<i>act as a motor salesperson</i> , for a person, includes hold out that the person is a motor salesperson.	1 2
124	Motor dealer must not act for more than 1 party	3
(1)	A motor dealer must not act for more than 1 party to a transaction. Maximum penalty—200 penalty units.	4 5 6
(2)	If the motor dealer 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.	7 8 9
125	Production of licence or registration certificate	10
(1)	A motor dealer must, if asked by a person with whom the dealer is dealing, produce the dealer licence for inspection by the person. Maximum penalty—100 penalty units.	11 12 13 14
(2)	A motor salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson's registration certificate for inspection by the person. Maximum penalty—100 penalty units.	15 16 17 18
126	Employment of persons in motor dealer business	19
(1)	A motor dealer must not employ, as a motor salesperson, a person the motor dealer knows, or ought to know, does not hold a registration certificate as a motor salesperson. Maximum penalty—200 penalty units.	20 21 22 23
(2)	A principal licensee who is an individual and carries on the business of a motor dealer must not employ, as a registered employee for the business, himself or herself or another individual with whom the principal licensee carries on business as a motor dealer. Maximum penalty—200 penalty units.	24 25 26 27 28 29

[s 127]

(3)	A principal licensee that is a corporation and carries on business as a motor dealer must not employ an executive officer of the corporation as a motor salesperson for the business.	1 2 3 4
	Maximum penalty—	5
(a)	for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 252—200 penalty units; or	6 7 8
(b)	for a corporation—1000 penalty units.	9
Part 4	Chattel auctioneers	10
Division 1	Chattel auctioneers' authorisation and responsibilities	11 12
127	What a chattel auctioneer licence authorises	13
(1)	A chattel auctioneer licence authorises the holder of the licence (a <i>chattel auctioneer</i>) to perform the activity of selling or attempting to sell or offering for sale or resale any goods by way of auction.	14 15 16 17
(2)	A chattel auctioneer licence also authorises the chattel auctioneer to sell the goods by any means during the auction period.	18 19 20
(3)	A chattel auctioneer may perform the activity—	21
(a)	in the carrying on of a business, either alone or with others; or	22 23
(b)	as an employee of—	24
(i)	a chattel auctioneer; or	25
(ii)	a motor dealer.	26
(4)	In this section—	27

	<i>auction period</i> , for a chattel auctioneer for the sale of goods, means a period for which the chattel auctioneer is appointed under section 131 or otherwise authorised or permitted under this or another Act to sell the goods.	1 2 3 4
128	Responsibility for acts and omissions of trainee chattel auctioneers	5 6
	(1) A chattel auctioneer must take reasonable steps to ensure each trainee chattel auctioneer under the chattel auctioneer’s supervision and instruction is properly supervised and instructed and complies with this Act.	7 8 9 10
	(2) A chattel auctioneer who fails to comply with subsection (1) is liable to disciplinary action under part 8, division 2.	11 12
Division 2	Conduct provisions	13
Subdivision 1	Carrying on business	14
129	Carrying on of business under chattel auctioneer licence	15
	An individual who carries on the business of a chattel auctioneer with others is not required to hold a chattel auctioneer licence if—	16 17 18
	(a) at least 1 of the persons with whom the individual carries on business is a chattel auctioneer; and	19 20
	(b) the individual does not perform the activity of a chattel auctioneer; and	21 22
	(c) the individual is a suitable person to hold a licence.	23
130	Licensee to be in charge of chattel auctioneer’s business at a place	24 25
	(1) A chattel auctioneer who is an individual and a principal licensee must—	26 27

[s 131]

- (a) be in charge of the chattel auctioneer’s business at the chattel auctioneer’s registered office; and 1
2
- (b) if the chattel auctioneer has more than 1 place of business, ensure that at each other place of business an individual who is a chattel auctioneer is in charge of the chattel auctioneer’s business at the place. 3
4
5
6
- Maximum penalty—200 penalty units. 7
- (2) A chattel auctioneer that is a corporation and a principal licensee (*corporate chattel auctioneer*) must ensure that— 8
9
- (a) the individual in charge of the corporate chattel auctioneer’s business at its registered office is a chattel auctioneer; and 10
11
12
- (b) if the corporate chattel auctioneer has more than 1 place of business, at each other place of business an individual who is a chattel auctioneer is in charge of the corporate chattel auctioneer’s business at the place. 13
14
15
16
- Maximum penalty— 17
- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 252—200 penalty units; or 18
19
20
- (b) for a corporation—1000 penalty units. 21
- (3) An individual must not be in charge of a chattel auctioneer’s business at more than 1 place of business. 22
23
- Maximum penalty—200 penalty units. 24

Subdivision 2 Appointment 25

131 Appointment of chattel auctioneer 26

- (1) A chattel auctioneer who is asked by a person (*client*) to perform an activity (*service*) for the client must not act for the client unless— 27
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- (a) the client first appoints the chattel auctioneer in writing under this section; or 1
2
- (b) a previous appointment by the client is assigned to the chattel auctioneer under the terms of the appointment or under section 133 and the appointment is in force. 3
4
5
- Maximum penalty—200 penalty units. 6
- (2) The appointment may be for the performance of— 7
- (a) a particular service (*single appointment*); or 8
- (b) a number of services over a period (*continuing appointment*). 9
10
- (3) The appointment must, for each service— 11
- (a) state the service to be performed by the chattel auctioneer and how it is to be performed; and 12
13
- (b) state the day set for the auction; and 14
- (c) state, in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount prescribed under a regulation; and 15
16
17
18
- (d) state— 19
- (i) the fees, charges and any commission payable for the service; and 20
21
- (ii) the expenses, including advertising, marketing and travelling expenses, the chattel auctioneer is authorised to incur in connection with the performance of each service or category of service; and 22
23
24
25
26
- (iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the chattel auctioneer may receive for any expenses the chattel auctioneer is authorised to incur in connection with the performance of the service; and 27
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[s 132]

(iv)	any condition, limitation or restriction on the performance of the service; and	1 2
(e)	state when the fees, charges and any commission for the service become payable; and	3 4
(f)	if the service to be performed is the sale of goods and commission is payable for the service and expressed as a percentage of an estimated sale price, state that the commission is worked out only on the actual sale price.	5 6 7 8
(4)	A continuing appointment must state—	9
(a)	the date the appointment ends; and	10
(b)	that the appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.	11 12 13
(5)	The notice revoking a continuing appointment must be by signed writing given to the other party.	14 15
(6)	The appointment must be signed and dated by the client and the chattel auctioneer or someone authorised or apparently authorised to sign for the chattel auctioneer.	16 17 18
(7)	The chattel auctioneer must give a copy of the signed appointment to the client. Maximum penalty—200 penalty units.	19 20 21
(8)	This section does not apply if the service to be performed is the sale of livestock.	22 23
132	Form of appointment	24
(1)	The appointment must be in the approved form.	25
(2)	The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.	26 27 28
(3)	An appointment that does not comply with subsection (1) is ineffective from the time it is made.	29 30

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- 133 Proposal for assignment of appointments** 1
- (1) This section applies if a chattel auctioneer who holds 2
appointments from clients to perform services for the clients 3
under section 131 proposes to assign the appointments to 4
another chattel auctioneer (*proposed assignee*) without 5
changing the terms of the appointment. 6
- (2) However, this section does not apply to the assignment of an 7
appointment if— 8
- (a) the terms of the appointment authorise the assignment 9
of the appointment; and 10
- (b) the assignment is made in compliance with the terms of 11
the appointment. 12
- (3) At least 14 days before the chattel auctioneer assigns the 13
appointments, the chattel auctioneer must give each client 14
written notice of the proposed assignment. 15
- (4) The notice must state the following— 16
- (a) the proposed assignee’s name; 17
- (b) that the appointments are to be assigned without 18
changing the terms of the appointment; 19
- (c) the client may agree or refuse to agree to the proposed 20
assignment; 21
- (d) when the proposed assignment is to take effect. 22
- (5) If the client agrees to the assignment and the chattel 23
auctioneer assigns the appointment under this section, the 24
appointment is taken, for section 131, to be an appointment by 25
the client of the proposed assignee and to continue to have 26
effect according to its terms. 27

Subdivision 3 Auctions of goods 28

- 134 Buyer’s premium** 29
- (1) This section applies to an auction of goods. 30

[s 135]

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

Subdivision 4 Recovery of reward or expense 21

135 Commission may be claimed only for actual amounts 22

- (1) This section applies to a chattel auctioneer who performs, for the payment of a commission, a service of selling goods. 23
24
- (2) The chattel auctioneer must not claim commission worked out on an amount more than the actual sale price of the goods. 25
26
- Maximum penalty—200 penalty units. 27

-
- 136 Restriction on remedy for reward or expense** 1
- (1) A person is not entitled to sue for, or recover or retain, a 2
reward or expense for the performance of an activity as a 3
chattel auctioneer unless, at the time the activity was 4
performed, the person— 5
- (a) held a chattel auctioneer licence; and 6
- (b) was authorised under the person’s licence to perform the 7
activity; and 8
- (c) had been properly appointed under subdivision 2 by the 9
person to be charged with the reward or expense. 10
- (2) A person who sues for, or recovers or retains, a reward or 11
expense for the performance of an activity as a chattel 12
auctioneer other than as provided by subsection (1) commits 13
an offence. 14
- Maximum penalty for subsection (2)—200 penalty units. 15
- 137 Restriction on recovery of reward or expense above 16
amount allowed** 17
- (1) A person is not entitled to sue for, or recover or retain, a 18
reward for the performance of an activity as a chattel 19
auctioneer that is more than the amount of the reward stated in 20
the appointment given under section 131. 21
- (2) However, if the reward for the performance of the activity is 22
limited under a regulation, the person is not entitled to sue for, 23
or recover or retain, a reward more than the amount allowed 24
under the regulation. 25
- (3) A person is not entitled to sue for, or recover or retain, 26
expenses for the performance of an activity as a chattel 27
auctioneer that are more than the amount of the expenses 28
stated in the appointment given under section 131 and actually 29
expended. 30
- (4) However, if the amount of expenses that may be incurred for 31
the performance of the activity is limited under a regulation, 32
the person is not entitled to sue for, or recover or retain, 33
an amount more than the amount allowed under the regulation. 34

[s 138]

- (5) Subsection (2) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply. 1
2
3
4
- (6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a chattel auctioneer other than as provided by this section commits an offence. 5
6
7
8
- Maximum penalty for subsection (6)—200 penalty units. 9

138 Excess commission etc. to be repaid 10

- (1) This section applies if— 11
- (a) a person is convicted of an offence against section 135(2), 136(2) or 137(6); and 12
13
- (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount to which the person was not entitled. 14
15
16
17
18
- (2) The court must order the person to pay the amount to the client. 19
20
- (3) The order must be made whether or not any penalty is imposed on the conviction. 21
22
- (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court. 23
24
25

Subdivision 5 Interests in goods 26

139 Definition for sdiv 5 27

- In this subdivision— 28
- obtain* includes being in any way concerned in obtaining. 29

140	Beneficial interest—options	1
(1)	This section applies to goods placed by a person (<i>client</i>) with a chattel auctioneer for sale.	2 3
(2)	The chattel auctioneer commits an offence if the chattel auctioneer obtains from the client an option to purchase the goods in which the chattel auctioneer has a beneficial interest.	4 5 6
	Maximum penalty—200 penalty units or 3 years imprisonment.	7 8
(3)	A trainee chattel auctioneer employed by the chattel auctioneer or under the supervision and instruction of the chattel auctioneer commits an offence if the trainee obtains from the client an option to purchase the goods in which the trainee has a beneficial interest.	9 10 11 12 13
	Maximum penalty—200 penalty units or 3 years imprisonment.	14 15
(4)	A chattel auctioneer must not sell goods if the chattel auctioneer obtains a beneficial interest in an option to purchase the goods.	16 17 18
	Maximum penalty—200 penalty units or 3 years imprisonment.	19 20
141	Beneficial interest—other than options	21
(1)	This section applies to goods placed by a person (<i>client</i>) with a chattel auctioneer for sale, but does not apply if section 140 applies.	22 23 24
(2)	The chattel auctioneer commits an offence if the chattel auctioneer obtains a beneficial interest in the goods.	25 26
	Maximum penalty—200 penalty units or 3 years imprisonment.	27 28
(3)	A trainee chattel auctioneer employed by the chattel auctioneer or under the supervision and instruction of the chattel auctioneer commits an offence if the trainee obtains a beneficial interest in the goods.	29 30 31 32

[s 141]

- Maximum penalty—200 penalty units or 3 years imprisonment. 1
2
- (4) A person does not contravene subsection (2) or (3) if— 3
- (a) the person— 4
- (i) before the earlier of the auction of the goods or a 5
contract for the sale of the goods is entered into, 6
obtains the client’s written acknowledgement in 7
the approved form that the client— 8
- (A) is aware that the person is interested in 9
obtaining a beneficial interest in the goods; 10
and 11
- (B) consents to the person obtaining the interest; 12
and 13
- (ii) acts fairly and honestly in relation to the sale; and 14
- (b) no commission or other reward is payable for the sale; 15
and 16
- (c) the client is in substantially as good a position as the 17
client would be if the goods were sold for fair market 18
value. 19
- (5) If the chattel auctioneer or trainee chattel auctioneer has not 20
obtained the acknowledgement mentioned in subsection 21
(4)(a)(i) and the chattel auctioneer or trainee knows, or ought 22
to know, an associate of the chattel auctioneer or trainee 23
intends bidding at the auction, the chattel auctioneer or trainee 24
must, immediately before the auction— 25
- (a) identify the associate to those present at the auction; and 26
- (b) announce to those present that the person is an associate 27
of the chattel auctioneer or trainee and intends bidding 28
at the auction. 29
- (6) If the chattel auctioneer or trainee chattel auctioneer complies 30
with subsection (5), the chattel auctioneer or trainee is taken 31
to have satisfied subsection (4)(a)(i). 32

142	Return of beneficial interest if in form of commission	1
(1)	This section applies if—	2
(a)	a person is convicted of an offence against section 141(2) or (3); and	3 4
(b)	the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (<i>client</i>) for whom the person performed an activity an amount of commission to which the person was not entitled.	5 6 7 8 9 10
(2)	The court must order the person to pay the amount to the client.	11 12
(3)	The order must be made whether or not any penalty is imposed on the conviction.	13 14
(4)	The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.	15 16 17
143	Non-application of s 141 for particular livestock sales	18
	Section 141 does not apply to livestock sales if the chattel auctioneer obtains the client's written acknowledgement that the client—	19 20 21
(a)	is aware that the chattel auctioneer or trainee chattel auctioneer is interested in obtaining a beneficial interest in the livestock; and	22 23 24
(b)	consents to the chattel auctioneer or trainee obtaining the interest.	25 26
Subdivision 6	Sales of livestock	27
144	Sales of livestock	28
(1)	This section applies to sales of livestock by a chattel auctioneer.	29 30

[s 145]

- (2) The chattel auctioneer may pay over the proceeds from the sale to the person (*client*) appointing the chattel auctioneer to conduct the auction only if—
- (a) the chattel auctioneer—
 - (i) has known the client for at least 1 year; and
 - (ii) considers the client is a person of good repute; and
 - (iii) has no reason to believe the client is not lawfully entitled to sell the livestock; or
 - (b) the chattel auctioneer receives a certificate for the client from a referee.
- (3) A referee may give a certificate for the client only if the referee—
- (a) has known the client for at least 1 year; and
 - (b) considers the client is a person of good repute; and
 - (c) has no reason to believe the client is not lawfully entitled to sell the livestock.
- (4) In this section—
- referee* means a person whom the chattel auctioneer has known for at least 1 year and considers is a person of good repute.

145 Protection for chattel auctioneer

- (1) This section applies if a court finds, in relation to livestock sold by a chattel auctioneer, that the client was not lawfully entitled to sell the livestock.
- (2) A chattel auctioneer who, acting in good faith and without negligence, complies with section 144 is not liable to the owner of the livestock only because the chattel auctioneer took possession or gave delivery of the livestock.

Subdivision 7	Code of conduct	1
146	Code of conduct	2
	A regulation may prescribe a code of conduct about chattel auctioneering practice that may include the following—	3 4
	(a) setting conduct standards for chattel auctioneers, employed licensees and trainee chattel auctioneers;	5 6
	(b) establishing principles for fair trading;	7
	(c) providing for a system of complaint resolution;	8
	(d) providing that contraventions of some provisions of the code are an offence.	9 10
147	Complaints about conduct and action chief executive may take	11 12
	(1) A person aggrieved by the conduct of a chattel auctioneer or trainee chattel auctioneer may complain in writing to the chief executive about the conduct.	13 14 15
	(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.	16 17 18
	<i>Note—</i>	19
	Breach of the code of conduct may be an offence and is a ground for starting disciplinary proceedings under section 217.	20 21
	(3) The investigation may take place and action may be taken against a person who was a chattel auctioneer or trainee chattel auctioneer even though the person is no longer a chattel auctioneer or trainee chattel auctioneer.	22 23 24 25

[s 148]

Subdivision 8	Sales of written-off vehicles	1
148	Announcements before auction—written-off vehicle	2
(1)	A chattel auctioneer must announce, immediately before the auction of a motor vehicle that is an unregistered written-off vehicle, that the vehicle is a written-off vehicle and state—	3 4 5
(a)	if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the <i>Transport Operations (Road Use Management) Act 1995</i> before it can be registered; or	6 7 8 9 10
(b)	if the vehicle is a statutory write-off—that the vehicle can not be registered.	11 12
	Maximum penalty—100 penalty units.	13
(2)	A chattel auctioneer does not contravene subsection (1) if—	14
(a)	2 or more written-off vehicles that are repairable write-offs are to be auctioned in consecutive lots; and	15 16
(b)	immediately before the first vehicle is to be auctioned, the chattel auctioneer—	17 18
(i)	identifies the vehicles; and	19
(ii)	announces that the identified vehicles are repairable write-offs and must pass a written-off vehicle inspection under a regulation under the <i>Transport Operations (Road Use Management) Act 1995</i> before they can be registered.	20 21 22 23 24
Division 3	Sale of motor vehicles by auction	25
149	Obligations of chattel auctioneer	26
(1)	This section applies if a used motor vehicle is to be sold by a chattel auctioneer (the <i>selling agent</i>) at auction to someone else (the <i>buyer</i>).	27 28 29

-
- (2) The following person must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer—
- (a) if the selling agent owns the vehicle or is auctioning the vehicle for someone other than a motor dealer or another chattel auctioneer—the selling agent;
 - (b) if the selling agent is auctioning the vehicle for a motor dealer or another chattel auctioneer—the motor dealer or other chattel auctioneer for whom the selling agent is auctioning the vehicle.
- Maximum penalty—200 penalty units.
- (3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.
- (4) The selling agent must, immediately after property in the vehicle passes to the buyer, give the buyer an approved form stating—
- (a) particulars about the vehicle, including its odometer reading at the time property passes; and
 - (b) the responsible licensee guarantees the buyer gains clear title to the vehicle at the time property passes; and
 - (c) any other particulars prescribed under a regulation.
- Maximum penalty—200 penalty units.
- (5) The selling agent must ask the buyer to sign an approved form acknowledging receipt of the form mentioned in subsection (4).
- (6) The selling agent must—
- (a) give the original of the form mentioned in subsection (4) to the buyer; and
 - (b) keep a copy of the form; and
 - (c) make the copy available for immediate inspection by an inspector who asks to see it.
- Maximum penalty—200 penalty units.
-

[s 150]

- (7) A proceeding against a chattel auctioneer or motor dealer for an offence against this section does not affect any civil liability of any person, including the chattel auctioneer or dealer, arising out of the same facts that constitute the offence. 1
2
3
4
- (8) Subsections (2) and (4)(b) do not apply to the extent that a security interest in the motor vehicle is registered under the *Personal Property Securities Act 2009* (Cwlth). 5
6
7
- (9) In this section— 8
responsible licensee means the licensee who, under subsection (2), must ensure that the buyer of a motor vehicle gains clear title to the vehicle. 9
10
11

Division 4 Statutory warranty 12

150 Definitions for div 4 13

In this division— 14

chattel auctioneer includes a person performing the activities of a chattel auctioneer without a licence. 15
16

defect see section 151. 17

defect notice see section 162(1). 18

repair period see section 165(2). 19

statutory warranty means the warranty under section 160. 20

time of taking possession, of a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase. 21
22
23

warrantor, of a warranted vehicle, see section 158. 24

warranty advice see section 164(2). 25

warranty period see section 152. 26

151 Meaning of *defect* 27

A warranted vehicle has a *defect* for this part if— 28

-
- (a) a part of the vehicle does not perform its intended function; or 1
2
 - (b) a part of the vehicle has deteriorated to an extent where it can not be reasonably relied on to perform its intended function. 3
4
5

152 Meaning of *warranty period* 6

- (1) Subject to subsection (3), the *warranty period* of a class A warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached— 7
8
9
 - (a) the vehicle travels 5000km since the time of taking possession; 10
11
 - (b) 5p.m. on— 12
 - (i) the day 3 months after the time of taking possession if that day— 13
14
 - (A) is not a Sunday or public holiday; and 15
 - (B) the warrantor’s place of business is open for business; or 16
17
 - (ii) the first day, after the day 3 months after the time of taking possession, that— 18
19
 - (A) is not a Sunday or public holiday; and 20
 - (B) the warrantor’s place of business is open for business. 21
22
- (2) Subject to subsection (3), the *warranty period* of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached— 23
24
25
 - (a) the vehicle travels 1000km since the time of taking possession; 26
27
 - (b) 5p.m. on— 28
 - (i) the day 1 month after the time of taking possession if that day— 29
30
 - (A) is not a Sunday or public holiday; and 31

[s 153]

	(B) the warrantor's place of business is open for business; or	1 2
	(ii) the first day, after the day 1 month after the time of taking possession, that—	3 4
	(A) is not a Sunday or public holiday; and	5
	(B) the warrantor's place of business is open for business.	6 7
(3)	The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—	8 9 10
	(a) the buyer has complied with section 162; and	11
	(b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.	12 13 14
153	Application of div 4	15
(1)	This division applies to each warranted vehicle sold by a chattel auctioneer as owner of the vehicle or on consignment for another chattel auctioneer or a motor dealer.	16 17 18
(2)	This division, other than sections 154, 155 and 156, does not apply to the sale of a motor vehicle by the chattel auctioneer—	19 20 21
	(a) to another chattel auctioneer or a motor dealer; or	22
	(b) on consignment for a person who is not a chattel auctioneer or motor dealer.	23 24
154	Unwarranted and restorable vehicles to be identified when offered for sale	25 26
(1)	A chattel auctioneer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale, in the way provided under a regulation, as a vehicle that does not have a statutory warranty.	27 28 29 30
	Maximum penalty—100 penalty units.	31

(2)	Also, a chattel auctioneer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way prescribed under a regulation.	1 2 3
	Maximum penalty—100 penalty units.	4
(3)	This section does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.	5 6
155	Bidders to register for auction of restorable vehicles	7
(1)	Before a restorable vehicle is offered for sale, a chattel auctioneer must invite persons intending to bid for the vehicle when it is offered for sale to register as bidders (<i>registered bidders</i>) for the sale.	8 9 10 11
(2)	The chattel auctioneer must also inform potential bidders that by registering as a bidder, the person agrees to purchase the restorable vehicle on the condition that the person is taken to waive its statutory warranty when the contract for its purchase is entered into.	12 13 14 15 16
156	Announcements before auction	17
(1)	A chattel auctioneer must announce, immediately before the auction of any unwarranted vehicle, that the vehicle does not have a statutory warranty.	18 19 20
	Maximum penalty—100 penalty units.	21
(2)	A chattel auctioneer does not contravene subsection (1) if—	22
(a)	2 or more vehicles that do not have a statutory warranty are to be auctioned in consecutive lots; and	23 24
(b)	immediately before the first vehicle is to be auctioned, the chattel auctioneer identifies the vehicles and announces that the identified vehicles do not have a statutory warranty.	25 26 27 28
	<i>Example—</i>	29
	Lots 10 to 25 are vehicles that do not have a statutory warranty.	30
	The chattel auctioneer does not contravene subsection (1) if, immediately before the auction of lot 10, the chattel auctioneer	31 32

[s 157]

- announces lots 10 to 25 are vehicles that do not have a statutory
warranty. 1
2
- (3) Also, a chattel auctioneer must announce, immediately before 3
the auction of any restorable vehicle— 4
- (a) that the vehicle is a restorable vehicle because it is more 5
than 20 years old and is for sale for restoration; and 6
- (b) that it is a condition of the sale of a restorable vehicle 7
that if the vehicle is sold, the registered bidder to whom 8
it is sold is taken to waive the statutory warranty for the 9
vehicle when the contract for its purchase is entered 10
into; and 11
- (c) that the chattel auctioneer will not accept bids from a 12
person who is not a registered bidder. 13
- Maximum penalty—100 penalty units. 14
- (4) A chattel auctioneer does not contravene subsection (3) if— 15
- (a) 2 or more restorable vehicles are to be auctioned in 16
consecutive lots; and 17
- (b) immediately before the first of the vehicles in the 18
consecutive lots is to be auctioned, the chattel 19
auctioneer identifies the vehicles and announces that it 20
is a condition of each of the sales that a registered bidder 21
who purchases the vehicle is taken to waive its statutory 22
warranty when the contract for its purchase is entered 23
into. 24
- 157 Effect of sale of restorable vehicle to registered bidder 25**
- If a restorable vehicle is sold to a registered bidder at auction, 26
the statutory warranty for the vehicle stops having effect when 27
the contract for its purchase is entered into and the vehicle is 28
taken, for section 159, to be an unwarranted vehicle. 29

158	Warrantor	1
	For this division, the <i>warrantor</i> of a warranted vehicle is the chattel auctioneer or motor dealer who owns the vehicle immediately before the time of taking possession.	2 3 4
	<i>Examples—</i>	5
	1 A, a chattel auctioneer, sells a warranted vehicle owned by A at auction. A is the warrantor of the vehicle.	6 7
	2 A, a chattel auctioneer, sells a warranted vehicle owned by D, a motor dealer, at auction. D is the warrantor of the vehicle.	8 9
159	Chattel auctioneer to give buyer notice about statutory warranty	10 11
	(1) A chattel auctioneer who sells a warranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle a notice in the approved form.	12 13 14
	Maximum penalty—100 penalty units.	15
	(2) A chattel auctioneer who sells an unwarranted vehicle or a restorable vehicle that is taken under section 157 to be an unwarranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle notice in the approved form that the vehicle does not have a statutory warranty.	16 17 18 19 20 21
	Maximum penalty—100 penalty units.	22
	(3) The buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.	23 24
160	Statutory warranty	25
	(1) The warrantor of a warranted vehicle warrants that—	26
	(a) the vehicle is free from defects at the time of taking possession and for the warranty period; and	27 28
	(b) defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.	29 30

[s 161]

(2)	In this section—	1
	<i>defects</i> does not include defects not covered by the statutory warranty.	2 3
161	Defects not covered by statutory warranty	4
	The following defects in a warranted vehicle are not covered by the statutory warranty—	5 6
(a)	a defect in the vehicle’s paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the time of taking possession;	7 8 9
(b)	a defect after the time of taking possession—	10
	(i) arising from or incidental to any accidental damage to the vehicle; or	11 12
	(ii) arising from the buyer’s misuse or negligence; or	13
	(iii) in an accessory to the vehicle not fitted to the vehicle when sold to the buyer;	14 15
(c)	a defect in something else prescribed by regulation.	16
162	Buyer’s obligations under statutory warranty	17
(1)	If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this division, the buyer must give the warrantor written notice of the defect (<i>defect notice</i>) before the end of the warranty period and—	18 19 20 21 22
(a)	if the warranted vehicle is 200km or less from the warrantor’s place of business when the defect notice is given, deliver the warranted vehicle to—	23 24 25
	(i) the warrantor to repair the defect; or	26
	(ii) a qualified repairer nominated by the warrantor, by signed writing given to the buyer of the vehicle, to repair the defect; or	27 28 29

(b)	if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—	1 2 3
(i)	deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or	4 5 6 7
(ii)	deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.	8 9 10 11
(2)	The buyer is taken to deliver the vehicle and the warrantor is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle under this section but is unable to do so because the warrantor, or the qualified repairer nominated by the warrantor, refuses to accept delivery of the vehicle.	12 13 14 15 16 17
(3)	The place of delivery under subsection (1)(a)(ii) must not be more than 20km from the warrantor's place of business, unless the warrantor and the buyer otherwise agree.	18 19 20
(4)	In this section—	21
	<i>qualified repairer</i> , for a warranted vehicle the subject of a defect notice, means a person who is, or holds the qualifications necessary to be appointed under the <i>Transport Operations (Road Use Management) Act 1995</i> , section 21 to be, an accredited person to perform vehicle safety inspections for the vehicle.	22 23 24 25 26 27
	<i>warrantor</i> includes someone apparently working for the warrantor at the warrantor's place of business.	28 29
163	Warrantor to record particulars of extension of warranty period	30 31
	The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer	32 33 34

[s 164]

under section 162 and the day the vehicle is returned to the
buyer. 1
2

Maximum penalty—100 penalty units. 3

**164 Warrantor to advise whether defect covered by statutory
warranty** 4
5

(1) This section applies if a defect notice is given, and the vehicle
is delivered, under section 162. 6
7

(2) The warrantor must advise the buyer in writing (*warranty
advice*) whether the warrantor accepts or refuses to accept that
the defect is covered by the statutory warranty. 8
9
10

(3) If the warrantor fails to give the warranty advice within 5
business days after receiving the defect notice and delivery of
the vehicle, the warrantor is taken to have given a warranty
advice accepting that the defect is covered by the statutory
warranty. 11
12
13
14
15

(4) In this section— 16
business day, for the giving of a warranty advice by a
warrantor, means a day, other than Sunday or a public
holiday, when the warrantor's place of business is open for
business. 17
18
19
20

165 Warrantor's obligation to repair defects 21

(1) If the warrantor accepts that the defect is covered by the
statutory warranty, the warrantor must repair the defect at the
warrantor's expense. 22
23
24

(2) The warrantor must ensure that the defect is repaired within
14 days after the warrantor accepts that the defect is covered
by the statutory warranty (the *repair period*), unless the
warrantor has a reasonable excuse. 25
26
27
28

Maximum penalty—200 penalty units. 29

(3) If the warrantor nominates a qualified repairer to repair the
vehicle, the warrantor must advise the buyer of the qualified 30
31

repairer's name and the address where the defect is to be repaired. 1
2

(4) The warrantor is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function. 3
4
5

(5) The warrantor's obligation to repair the defect under this section continues even though the warrantor is no longer performing the activities of a licensee. 6
7
8

166 Warrantor's failure to repair 9

(1) This section applies if the warrantor has by warranty advice or otherwise— 10
11

(a) refused to accept that the defect is covered by the statutory warranty; or 12
13

(b) accepted that the defect is covered by the statutory warranty but— 14
15

(i) failed to repair a defect within the repair period; or 16

(ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function. 17
18
19

(2) The buyer may apply, as provided under the QCAT Act, to QCAT for an order under this section. 20
21

(3) Without limiting the orders QCAT may make under the QCAT Act, section 13, QCAT may make the following orders— 22
23
24

(a) an order that the defect is or is not a defect covered by the statutory warranty; 25
26

(b) an order extending the warranty period for the warranted vehicle to a specified date; 27
28

(c) an order declaring the warranted vehicle is covered by the statutory warranty until a specified date. 29
30

[s 167]

- (4) Also, QCAT may make an order that the warrantor pay to the buyer a stated amount QCAT decides is the reasonable cost of having a defect repaired if—
- (a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and
 - (b) the buyer has had the defect repaired by another person; and
 - (c) QCAT decides that the defect was one to which the statutory warranty applied.
- (5) QCAT may make an order under subsection (3)(b) or (c) only if it is satisfied—
- (a) the vehicle was not able to be used by the buyer for a period during the warranty period; and
 - (b) the period from which the order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than—
 - (i) for a class A warranted vehicle—3 months; or
 - (ii) for a class B warranted vehicle—1 month.
- (6) If, after the matter is heard by QCAT, an order is made by QCAT in the buyer's favour and the warrantor contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 217.
- (7) Subsection (6) does not limit any right the buyer may have to enforce the order.

167 Applications for more than prescribed amount

- (1) This section applies to an application if—
- (a) an application under section 166 may be made to QCAT; and

-
- (b) the application seeks the payment of an amount
(*application amount*) greater than the prescribed
amount. 1
2
3
- (2) In a provision of this division about the application— 4
- (a) a reference to QCAT is taken to be a reference to a court 5
having jurisdiction for the recovery of a debt equal to 6
the application amount; and 7
- (b) the provision applies with necessary changes as if 8
QCAT were the court. 9
- (3) In this section— 10
- prescribed amount* means the prescribed amount as defined 11
under the QCAT Act. 12

Division 5 General 13

168 Registered office 14

- A chattel auctioneer's *registered office* is— 15
- (a) for a chattel auctioneer who is a principal licensee— 16
- (i) the place the auctioneer states in the auctioneer's 17
application for a chattel auctioneer licence as the 18
auctioneer's principal place of business; or 19
- (ii) another place notified to the chief executive by the 20
chattel auctioneer in the approved form as the 21
auctioneer's principal place of business; and 22
- (b) for a chattel auctioneer who is an employed licensee— 23
- (i) the place the auctioneer states in the auctioneer's 24
application for a chattel auctioneer licence as the 25
auctioneer's business address; or 26
- (ii) another place notified to the chief executive by the 27
auctioneer in the approved form as the auctioneer's 28
business address. 29

[s 169]

169	Chattel auctioneer must notify chief executive of change in place of business etc.	1 2
(1)	A chattel auctioneer who is a principal licensee must—	3
(a)	notify the chief executive in the approved form of any change in the chattel auctioneer’s principal place of business within 14 days after the change; and	4 5 6
(b)	notify the chief executive in the approved form of the closure of any place where the chattel auctioneer carries on business within 14 days after the closure; and	7 8 9
(c)	notify the chief executive in the approved form of the opening of any place where the chattel auctioneer carries on business within 14 days after the opening.	10 11 12
	Maximum penalty—200 penalty units.	13
(2)	A chattel auctioneer who is an employed licensee must notify the chief executive in the approved form of any change in the chattel auctioneer’s business address within 14 days after the change.	14 15 16 17
	Maximum penalty—200 penalty units.	18
170	Display and publication of licensee’s name	19
(1)	A chattel auctioneer who is a principal licensee must display at each place the chattel auctioneer carries on business, in the way prescribed under a regulation—	20 21 22
(a)	the chattel auctioneer’s name; and	23
(b)	if the chattel auctioneer is not the person in charge of the chattel auctioneer’s business at the place, the name of the chattel auctioneer who is in charge at the place; and	24 25 26
(c)	the other particulars prescribed under a regulation.	27
	Maximum penalty—100 penalty units.	28
(2)	A chattel auctioneer who conducts an auction must display at the auction, in the way and for the period prescribed under a regulation—	29 30 31
(a)	the chattel auctioneer’s name; and	32

(b)	the other particulars prescribed under a regulation.	1
	Maximum penalty—100 penalty units.	2
(3)	A chattel auctioneer who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the chattel auctioneer's business without stating in the advertisement the particulars prescribed under a regulation.	3 4 5 6 7
	Maximum penalty—100 penalty units.	8
171	Principal licensee must keep employment register	9
(1)	A chattel auctioneer who is a principal licensee must keep a register (<i>employment register</i>) at each place where the chattel auctioneer carries on business.	10 11 12
	Maximum penalty—200 penalty units.	13
(2)	The chattel auctioneer must enter, and keep entered, in the employment register—	14 15
(a)	the name, and the other particulars prescribed under a regulation, of each of the following persons—	16 17
(i)	a person who is employed by the chattel auctioneer as an employed licensee;	18 19
(ii)	a trainee chattel auctioneer who is under the supervision and instruction of the chattel auctioneer at the place; and	20 21 22
(b)	the activities the trainee chattel auctioneer is authorised to perform for the chattel auctioneer while the trainee is under the supervision and instruction of the chattel auctioneer.	23 24 25 26
	Maximum penalty—200 penalty units.	27
(3)	The chattel auctioneer must—	28
(a)	enter the particulars about each employed licensee or trainee chattel auctioneer, and the activities the employed licensee or trainee is authorised to perform, immediately after the chattel auctioneer starts to employ	29 30 31 32

[s 172]

- the employed licensee or supervise and instruct the
trainee chattel auctioneer at the place; and
- (b) if there is a change in an employed licensee's or trainee
chattel auctioneer's particulars or activities, correct the
entry in the way prescribed under a regulation
immediately after the change.
- Maximum penalty—200 penalty units.
- (4) The form of the register may be prescribed under a regulation.
- 172 Chattel auctioneer to obtain statement from seller of
vehicle**
- (1) A chattel auctioneer must, when buying a motor vehicle or
accepting a motor vehicle for sale on consignment from a
person (*seller*) in the course of carrying on the chattel
auctioneer's business, obtain from the seller a statement,
signed by the seller, stating the particulars about the seller and
the vehicle prescribed under a regulation.
- Maximum penalty—200 penalty units.
- (2) The chattel auctioneer must—
- (a) keep a copy of the statement at the chattel auctioneer's
registered office; and
- (b) give a copy to the seller; and
- (c) make a copy available for immediate inspection by an
inspector who asks to see it.
- Maximum penalty—200 penalty units.
- (3) This section does not apply if the seller is—
- (a) a financier of the business of the chattel auctioneer; or
- (b) another chattel auctioneer or motor dealer.
- 173 Chattel auctioneer to give statement to buyer of vehicle**
- (1) A chattel auctioneer must, immediately after the sale of a
motor vehicle to a person (*buyer*) in the course of carrying on

the chattel auctioneer's business, give to the buyer a statement, signed by the chattel auctioneer, stating the particulars about the vehicle's owner immediately before the sale and the vehicle prescribed under a regulation.

Maximum penalty—200 penalty units.

- (2) The chattel auctioneer must—
- (a) keep a copy of the statement at the chattel auctioneer's registered office; and
 - (b) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

- (3) Nothing in this section prevents the statement being contained in the contract for sale of the vehicle.

Division 6 Offences

174 Acting as chattel auctioneer

- (1) A person must not perform an activity that may be done under the authority of a chattel auctioneer licence unless the person—
- (a) holds a chattel auctioneer licence and the performance of the activity is authorised under the person's licence; or
 - (b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not act as a chattel auctioneer unless—
- (a) the person holds a chattel auctioneer licence and the act is done under the authority of the person's licence; or
 - (b) the act is otherwise permitted under this or another Act.

[s 175]

Maximum penalty—200 penalty units or 2 years imprisonment.	1 2
(3) Without limiting the ways a person may act as a chattel auctioneer, a person <i>acts</i> as a chattel auctioneer if the person—	3 4 5
(a) performs an auction for the sale or resale of goods; or	6
(b) advertises or notifies or states that the person performs auctions or is willing to perform auctions for the sale or resale of goods; or	7 8 9
(c) in any way holds out as being ready to perform auctions for the sale or resale of goods.	10 11
175 Pretending to be trainee chattel auctioneer	12
(1) A person must not act as a trainee chattel auctioneer unless the person holds a registration certificate as a trainee chattel auctioneer.	13 14 15
Maximum penalty—200 penalty units.	16
(2) In this section—	17
<i>act as a trainee chattel auctioneer</i> , for a person, includes hold out that the person is a trainee chattel auctioneer.	18 19
176 Chattel auctioneer must not act for more than 1 party	20
(1) A chattel auctioneer must not act for more than 1 party to a transaction.	21 22
Maximum penalty—200 penalty units.	23
(2) If a chattel auctioneer 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.	24 25 26
(3) A chattel auctioneer does not contravene subsection (1) and subsection (2) does not apply if the transaction is a livestock sale.	27 28 29

177	Production of licence or registration certificate	1
(1)	A chattel auctioneer must, if asked by a person with whom the chattel auctioneer is dealing, produce the chattel auctioneer licence for inspection by the person.	2 3 4
	Maximum penalty—100 penalty units.	5
(2)	A trainee chattel auctioneer must, if asked by a person with whom the trainee is dealing, produce the trainee’s registration certificate for inspection by the person.	6 7 8
	Maximum penalty—100 penalty units.	9
178	Employment of persons in chattel auctioneer’s business	10
	A chattel auctioneer must not employ, as a trainee chattel auctioneer, a person the chattel auctioneer knows, or ought to know, does not hold a registration certificate as a trainee chattel auctioneer.	11 12 13 14
	Maximum penalty—200 penalty units.	15
Part 5	Employee registration	16
Division 1	Categories of registered employees	17
179	Categories of registered employees	18
	The following categories of registered employees are prescribed for this Act—	19 20
(a)	motor salesperson;	21
(b)	trainee chattel auctioneer.	22

[s 180]

180	Limited motor salesperson registration certificate	1
(1)	The chief executive may issue a registration certificate for a motor salesperson (a <i>limited motor salesperson registration certificate</i>) of a type prescribed under a regulation, that authorises the performance of activities that are more limited than the activities that may be performed under an unconditional registration certificate for a motor salesperson.	2 3 4 5 6 7
(2)	A regulation may prescribe—	8
(a)	the activities that may be performed under a limited motor salesperson registration certificate; and	9 10
(b)	the educational requirements for obtaining a limited motor salesperson registration certificate.	11 12
Division 2	Registered employees' authorisation	13 14
181	What a registration certificate authorises	15
(1)	A registration certificate held by a motor salesperson authorises the salesperson to perform any activity that may be performed by the motor dealer who employs the salesperson.	16 17 18
(2)	A registration certificate held by a trainee chattel auctioneer authorises the trainee to perform any activity that may be performed by the chattel auctioneer who supervises the trainee.	19 20 21 22
(3)	However, a 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.	23 24 25 26

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

[s 184]

- (2) The application must be accompanied by— 1
 - (a) the application fee prescribed under a regulation; and 2
 - (b) the registration issue fee prescribed under a regulation; 3
and 4
 - (c) if, before or when the application is made, a criminal 5
history costs requirement is made of the applicant—the 6
amount of the costs required to be paid. 7

- 184 Requirement to give chief executive information or 8
material about application 9**
- (1) The chief executive may, by written notice given to an 10
applicant for registration, require the applicant to give the 11
chief executive within a stated reasonable period information 12
or material the chief executive reasonably considers is needed 13
to consider the applicant’s application for the registration. 14
- (2) The applicant is taken to have withdrawn the application if the 15
applicant fails to comply with the chief executive’s 16
requirement within the stated reasonable period. 17

- Division 5 Suitability of applicants 18**

- 185 Suitability of applicants 19**
- (1) A person is not a suitable person to obtain registration as a 20
registered employee if the person is— 21
 - (a) a person who has been convicted, in Queensland or 22
elsewhere, within the preceding 5 years of a serious 23
offence; or 24
 - (b) currently disqualified from holding a licence or 25
registration certificate; or 26
 - (c) a person the chief executive decides under section 186 is 27
not a suitable person to obtain registration as a 28
registered employee. 29

(2)	An individual who is not a suitable person can not obtain registration as a registered employee.	1 2
186	Chief executive must consider suitability of applicants	3
(1)	The chief executive must, when deciding whether a person is a suitable person to obtain registration as a registered employee, consider all of the following things—	4 5 6
(a)	the person’s character;	7
(b)	whether the person held a licence or registration under a relevant Act that was suspended or cancelled under the relevant Act;	8 9 10
(c)	whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund;	11 12 13
(d)	whether the person has been disqualified under a relevant Act from being—	14 15
(i)	the holder of a licence within the meaning of the relevant Act; or	16 17
(ii)	the holder of a registration certificate within the meaning of the relevant Act; or	18 19
(iii)	an executive officer of a corporation;	20
(e)	the person’s criminal history;	21
(f)	if the person is an insolvent under administration—	22
(i)	the circumstances giving rise to the person being an insolvent under administration; and	23 24
(ii)	whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being an insolvent under administration; and	25 26 27 28
(iii)	whether the person is in a position to influence significantly the management of a licensee’s business;	29 30 31

[s 187]

(g)	whether the person has been convicted of an offence against a relevant Act or the Administration Act;	1 2
(h)	whether the person is capable of satisfactorily performing the activities of a registered employee;	3 4
(i)	whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;	5 6 7
	<i>Note—</i>	8
	See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).	9 10
(j)	another thing the chief executive may consider under this Act.	11 12
(2)	If the chief executive decides a person is not a suitable person to obtain registration as a registered employee, the chief executive must give the person an information notice about the decision within 14 days after the decision is made.	13 14 15 16
(3)	In this section—	17
	<i>fund</i> includes the claim fund under the repealed Act.	18
	<i>relevant Act</i> means this Act, an Agents Act, the repealed Act or a corresponding law.	19 20
187	Investigations about suitability of applicants	21
(1)	The chief executive may make investigations about the applicant to help the chief executive decide whether the applicant is a suitable person to obtain registration as a registered employee.	22 23 24 25
(2)	Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a report about the applicant's criminal history.	26 27 28
(3)	The commissioner must give the report to the chief executive.	29
(4)	However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.	30 31 32

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- (5) If the criminal history of the applicant includes a conviction recorded against the applicant, the commissioner's report must be written. 1
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- 188 Costs of criminal history report** 4
- (1) The chief executive may require an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under section 187 about the applicant. 5
6
7
- (2) The requirement is a *criminal history costs requirement*. 8
- (3) The requirement is sufficiently made of the applicant if it is made generally of applicants for, or for the renewal or restoration of, registration in the relevant approved form or notified on the department's web site for applications of that type. 9
10
11
12
13
- (4) The chief executive must refund to the applicant an amount paid under the requirement if— 14
15
- (a) the chief executive refuses the application without asking for the report; or 16
17
- (b) the applicant withdraws the application before the chief executive asks for the report. 18
19
- (5) In this section— 20
applicant includes proposed applicant. 21
- 189 Confidentiality of criminal history** 22
- (1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 187. 23
24
25
26
Maximum penalty—100 penalty units. 27
- (2) However, the person does not contravene subsection (1) if— 28
- (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or for this Act; or 29
30
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[s 190]

	(b) the disclosure is otherwise required or permitted by law.	1
(3)	The chief executive must destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to obtain registration as a registered employee.	2 3 4 5
190	Requirement to give chief executive information or material about suitability	6 7
(1)	This section applies to an applicant for registration as a registered employee or the renewal or restoration of the registration.	8 9 10
(2)	The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the registration.	11 12 13 14 15
(3)	The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.	16 17 18
Division 6	Eligibility for registration	19
191	Eligibility for registration as registered employee	20
(1)	An individual is eligible to obtain registration as a registered employee only if the individual—	21 22
(a)	is at least 18 years; and	23
(b)	has the educational or other qualifications prescribed under a regulation for the relevant category of registration.	24 25 26
(2)	An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—	27 28 29
(a)	has a comparable qualification; or	30

-
- (b) within 2 years before the day the individual's application for registration is received by the chief executive—
 - (i) has been the holder of a registration certificate under this Act for the relevant category of registration; or
 - (ii) has been the holder of a comparable certificate under the repealed Act.

Division 7 Issue of registration certificate 9

192 Chief executive may issue or refuse to issue registration certificate 10 11

- (1) The chief executive may issue or refuse to issue a registration certificate to an applicant. 12
13
- (2) The chief executive may issue a registration certificate to an applicant only if the chief executive is satisfied— 14
15
 - (a) the applicant is a suitable person to obtain registration; 16
and 17
 - (b) the applicant is eligible to obtain registration; and 18
 - (c) the application is properly made. 19
- (3) For subsection (2)(c), the application is properly made only if it complies with section 183 and is accompanied by the things mentioned in that section. 20
21
22
- (4) If the chief executive decides to refuse to issue the registration certificate, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. 23
24
25
26
- (5) If the applicant's application for a registration certificate is refused, the applicant may not make another application for a registration certificate— 27
28
29
 - (a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or 30
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[s 193]

- (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed. 1
2
3

193 Registration certificate—conditions 4

- (1) The chief executive may issue a registration certificate on the conditions the chief executive considers necessary or desirable— 5
6
7

- (a) for the proper performance of the activities authorised by the certificate; or 8
9

- (b) for another purpose consistent with the achievement of the objects of this Act or the Administration Act. 10
11

Example— 12

If the chief executive decides to issue a registration certificate to a person who is or has been an insolvent under administration, the chief executive may issue the certificate subject to a condition that the person not receive, bank or otherwise be responsible for dealing with trust account moneys. 13
14
15
16
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- (2) A condition may limit or prohibit the performance of an activity authorised under this Act or the Administration Act. 18
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- (3) If the chief executive decides to issue the certificate on condition, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. 20
21
22
23

Division 8	Renewal and restoration of registration certificates	1 2
Subdivision 1	Renewal	3
194	Application for renewal	4
(1)	A registered employee may only apply for renewal of the employee's registration certificate before the certificate expires.	5 6 7
(2)	The application must—	8
(a)	be made to the chief executive in the approved form; and	9 10
(b)	state the term of the registration being applied for; and	11
(c)	be accompanied by—	12
(i)	the application fee prescribed under a regulation; and	13 14
(ii)	the registration certificate renewal fee prescribed under a regulation; and	15 16
(iii)	if, before or when the application is made, a criminal history costs requirement is made of the registered employee—the amount of the costs required to be paid.	17 18 19 20
195	Chief executive may renew or refuse to renew registration certificate	21 22
(1)	The chief executive must consider the renewal application and may renew or refuse to renew the registration certificate.	23 24
(2)	The chief executive may renew the certificate only if the chief executive is satisfied—	25 26
(a)	the registered employee is a suitable person to obtain the registration; and	27 28
(b)	the application is properly made; and	29

[s 196]

(c)	the employee meets the eligibility requirements for the certificate.	1 2
(3)	For subsection (2)(b), an application is properly made only if it complies with section 194(2) and is accompanied by the things mentioned in that subsection.	3 4 5
(4)	If the chief executive decides to refuse the application, the chief executive must give the employee an information notice about the decision within 14 days after the decision is made.	6 7 8
196	Registration certificate taken to be in force while application for renewal is considered	9 10
	If an application is made under section 194, the registered employee's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for renewal is decided under section 195 or taken to have been withdrawn under section 190(3).	11 12 13 14 15 16
Subdivision 2	Restoration	17
197	Application for restoration	18
(1)	If a registered employee's registration certificate expires, the person (<i>former employee</i>) may apply for restoration of the certificate.	19 20 21
(2)	The application must—	22
(a)	be made within 3 months after the expiry; and	23
(b)	be made to the chief executive in the approved form; and	24 25
(c)	state the term of the registration being applied for; and	26
(d)	be accompanied by—	27
(i)	the application fee prescribed under a regulation; and	28 29

(ii) the registration renewal fee prescribed under a regulation; and	1 2
(iii) the registration restoration fee prescribed under a regulation; and	3 4
(iv) if, before or when the application is made, a criminal history costs requirement is made of the former employee—the amount of the costs required to be paid.	5 6 7 8
198 Chief executive may restore or refuse to restore registration certificate	9 10
(1) The chief executive must consider the restoration application and may restore or refuse to restore the registration certificate.	11 12
(2) The chief executive may restore the certificate only if the chief executive is satisfied—	13 14
(a) the applicant is a suitable person to obtain registration; and	15 16
(b) the application is properly made; and	17
(c) the applicant meets the eligibility requirements for the certificate.	18 19
(3) For subsection (2)(b), an application is properly made only if it complies with section 197(2) and is accompanied by the things mentioned in that subsection.	20 21 22
(4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.	23 24 25
(5) If the chief executive decides to restore the certificate—	26
(a) the certificate is taken to have been renewed on the day it would, apart from section 199, have expired (the <i>initial expiry date</i>); and	27 28 29
(b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the certificate is restored under this section is taken to have been as validly done as it would have been if the	30 31 32 33

[s 199]

	certificate had been renewed immediately before the initial expiry date.	1 2
199	Registration certificate taken to be in force while application for restoration is considered	3 4
	If an application is made under section 197, the applicant's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for restoration is decided under section 198 or taken to have been withdrawn under section 190(3).	5 6 7 8 9 10
Division 9	Dealings with registration certificates	11 12
Subdivision 1	Transfer of registration certificate	13
200	Transfer of registration certificate prohibited	14
	A registration certificate may not be transferred.	15
Subdivision 2	General	16
201	Amendment of registration certificate conditions	17
	(1) The chief executive may amend the conditions of a registration certificate—	18 19
	(a) on the registered employee's application; or	20
	(b) on the order of QCAT after a disciplinary hearing; or	21
	(c) on the chief executive's own initiative.	22
	<i>Note—</i>	23
	QCAT may deal with the conditions of a person's registration certificate under section 222.	24 25

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

[s 202]

202	Return of registration certificate for amendment of conditions	1 2
(1)	If the chief executive amends the conditions of a registration certificate under section 201, the chief executive may require the registered employee to produce the certificate for amendment within a stated period of not less than 14 days.	3 4 5 6
(2)	The employee must comply with the requirement, unless the person has a reasonable excuse.	7 8
	Maximum penalty for subsection (2)—100 penalty units.	9
203	Surrender of registration certificate	10
(1)	A registered employee may surrender the employee's registration certificate by giving written notice, and returning the certificate, to the chief executive.	11 12 13
(2)	A registration certificate surrendered under this section stops having effect on the day it is surrendered.	14 15
Division 10	Immediate suspension and cancellation of registration certificates	16 17 18
204	Immediate suspension	19
(1)	This section applies if the chief executive believes, on reasonable grounds, that—	20 21
(a)	a registered employee's registration certificate, or a renewal or restoration of the registration certificate, was obtained because of materially incorrect or misleading information; or	22 23 24 25
(b)	both—	26
(i)	an irregularity or deficiency exists in a licensee's trust account; and	27 28
(ii)	a registered employee of the licensee may be responsible for the irregularity or deficiency; or	29 30

(c) a registered employee—	1
(i) has contravened or is contravening this Act or the Administration Act; or	2 3
(ii) has contravened the repealed Act; or	4
(iii) is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.	5 6 7
(2) The chief executive may suspend the registered employee’s registration certificate, whether or not disciplinary proceedings have been started under this Act.	8 9 10
(3) The certificate may be suspended for the period (not more than 28 days), and on the conditions, the chief executive decides.	11 12 13
(4) The chief executive must give the employee an information notice about the decision to suspend the employee’s registration within 14 days after the suspension.	14 15 16
(5) The employee must return the certificate to the chief executive within 14 days after the employee receives the notice, unless the employee has a reasonable excuse.	17 18 19
Maximum penalty for subsection (5)—100 penalty units.	20
205 Immediate cancellation	21
(1) The registration certificate of a registered employee is cancelled if the employee is convicted of a serious offence.	22 23
(2) The employee must return the certificate to the chief executive within 14 days after the conviction, unless the employee has a reasonable excuse.	24 25 26
Maximum penalty for subsection (2)—100 penalty units.	27

[s 206]

Division 11	General provisions about employee registration	1 2
206	Form of registration certificate	3
(1)	A registration certificate must be in the approved form.	4
(2)	However, the chief executive may approve—	5
(a)	a form of certificate for office display purposes; and	6
	<i>Example—</i>	7
	a form of a certificate that may be framed and displayed in an office	8 9
(b)	a form of certificate for personal identification purposes.	10
(3)	The certificate must contain the following particulars—	11
(a)	the name of the registered employee;	12
(b)	the date of issue of the certificate;	13
(c)	the expiry date of the certificate;	14
(d)	other particulars prescribed under a regulation.	15
207	Term of registration certificate	16
	A registration certificate may be issued for a 1 year or 3 year term.	17 18
208	Replacement certificates	19
(1)	A registered employee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate.	20 21 22
(2)	The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.	23 24
(3)	The chief executive must grant the application if the chief executive is satisfied the certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.	25 26 27

-
- (4) If the chief executive grants the application, the chief executive must issue another certificate to the applicant to replace the lost, stolen, destroyed or damaged certificate.

209 Register of registration certificates

- (1) The chief executive must keep a register of registration certificates and applications for registration certificates (*registration certificate register*).
- (2) The registration certificate register may form part of the licence register.
- (3) The registration certificate register must contain the following particulars—
- (a) for each applicant for a registration certificate—
 - (i) the applicant’s name; and
 - (ii) the date of the application; and
 - (iii) the application number;
 - (b) for each registered employee—
 - (i) the employee’s name; and
 - (ii) the dates of issue and expiry of the employee’s current registration certificate; and
 - (iii) any conditions imposed on the certificate; and
 - (iv) the employee’s registration certificate number; and
 - (v) particulars of any surrender, suspension or cancellation of the employee’s registration certificate or any licence or certificate issued to the employee under this or the repealed Act.
- (4) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (3)—
- (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.

[s 210]

- (5) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive. 1
2
- (6) The register may be kept in any way the chief executive considers appropriate. 3
4
- (7) In this section— 5
contain includes record and store. 6
- 210 Registered employees to notify chief executive of changes in circumstances** 7
8
- (1) A registered employee must give written notice to the chief executive of a prescribed change in the employee's circumstances within 14 days after the change. 9
10
11
Maximum penalty—100 penalty units. 12
- (2) In this section— 13
prescribed change means a change prescribed under a regulation. 14
15

Part 6 Trust accounts 16

- 211 Opening and maintaining trust accounts** 17
- (1) A principal licensee must open and maintain a trust account under the Administration Act if an amount is likely to be received by the licensee for a transaction, or with written direction for its use, when performing the activities of a motor dealer or chattel auctioneer. 18
19
20
21
22
Maximum penalty—200 penalty units or 2 years imprisonment. 23
24
- (2) However, subsection (1) does not apply to a del credere agent for selling livestock under a del credere agreement while the agreement is in force. 25
26
27

(3) In this section—	1
<i>amount</i> —	2
(a) includes deposit and purchase monies for a transaction; but	3 4
(b) does not include an amount payable to the licensee for a transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.	5 6 7 8
<i>del credere agreement</i> means a written agreement between a del credere agent and a livestock seller under which the agent agrees to sell the livestock for the seller and guarantees payment of the purchase price of the livestock to the seller.	9 10 11 12
Part 7 Claims against the fund	13
Division 1 Preliminary	14
212 Definitions for pt 7	15
In this part—	16
<i>claimant</i> means a person who makes a claim against the fund.	17
<i>financial loss</i> , suffered by a person, if evidenced by a judgment of a court, does not include interest awarded on the judgment.	18 19 20
<i>licensee</i> includes a former licensee and a person who is not licensed, but who acts as a licensee.	21 22
<i>relevant person</i> means—	23
(a) a licensee; or	24
(b) a licensee’s employee or agent, or a person carrying on business with the licensee; or	25 26

[s 213]

- (c) a person having charge or control, or apparent charge or control, of a licensee's registered office or business. 1
2

Division 2 Who can claim 3

213 Claims 4

- (1) A person may, in the way provided under the Administration Act, make a claim against the fund if the person suffers financial loss because of the happening of any of the following events— 5
6
7
8
- (a) the contravention of any of the following provisions by a relevant person— 9
10
- section 76 or 77 11
 - section 82(2) 12
 - section 89(4) 13
 - section 98 14
 - section 140 or 141 15
 - section 149(2) 16
 - section 211 17
 - section 236 18
 - section 237; 19
- (b) a failure of a motor dealer to ensure a person who has bought a motor vehicle sold by or for the dealer gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the motor dealer contravenes section 82 or 149; 20
21
22
23
24
- (c) a failure of an auctioneer to ensure a person who has bought a motor vehicle sold by the auctioneer (other than a motor vehicle sold for another auctioneer or a motor dealer) gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the auctioneer contravenes section 149; 25
26
27
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-
- (d) a stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as agent for someone else in the person's capacity as a relevant person.
- (2) A person may make a claim against the fund even if the person has made another claim for the loss against a receiver and the receiver has not considered or has refused the other claim.

214 Persons who can not claim

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

- (a) a seller of livestock who suffers financial loss in relation to the sale of the livestock if—
- (i) the livestock are received by a relevant person from the seller; and
 - (ii) the relevant person and the seller agree in writing that the relevant person guarantees payment to the seller of the livestock's purchase price;
- Editor's note—*
- The practice described in subparagraph (ii) is commonly referred to as 'del credere'.
- (b) a relevant person who suffers financial loss in the course of performing an activity, or carrying on business, as a relevant person;
- (c) a person holding a licence, however described, under a corresponding law that is similar to a licence under this Act who suffers financial loss in the course of performing an activity, or carrying on business, under the person's licence;
- (d) a financier of a motor dealer's business who suffers financial loss because of financing the motor dealer's business;

[s 215]

- (e) a person who suffers financial loss because the person 1
guaranteed a motor dealer's obligations under a 2
financial arrangement made by the motor dealer. 3

Part 8 Jurisdiction of QCAT 4

Division 1 Preliminary 5

215 Definitions for pt 8 6

In this part— 7

former licensee means a person who held a licence under this 8
or the repealed Act at any time within 3 years before a 9
proceeding under this part is started involving the person. 10

former registered employee means a person who was a 11
registered employee, or the holder of a registration certificate 12
under the repealed Act, at any time within 1 year before a 13
proceeding under this part is started involving the person. 14

licensee includes a former licensee. 15

registered employee includes a former registered employee. 16

216 Jurisdiction 17

For this Act, QCAT has the following jurisdiction— 18

- (a) to hear and decide disciplinary matters involving 19
licensees and registered employees; 20
- (b) to review decisions of the chief executive about 21
licensing and registration. 22

Division 2	Disciplinary proceedings	1
217	Grounds for starting disciplinary proceedings	2
(1)	The following are grounds for starting a disciplinary proceeding against a licensee or registered employee—	3 4
(a)	the licensee or employee has been convicted of—	5
(i)	an indictable offence; or	6
(ii)	an offence against this Act or the Administration Act;	7 8
(b)	the licensee or employee has contravened or breached—	9
(i)	this Act, including a code of conduct; or	10
(ii)	the Administration Act; or	11
(iii)	an undertaking given under part 9, division 2; or	12
(iv)	a corresponding law;	13
(c)	the licensee or employee has been disqualified from holding a licence under a corresponding law;	14 15
(d)	an amount has been paid from the fund because the licensee or employee did, or omitted to do, something that gave rise to a claim against the fund;	16 17 18
(e)	the licensee or employee fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;	19 20 21
(f)	the licensee or employee has failed to comply with an order made by a court, the former tribunal or QCAT;	22 23
(g)	for a licensee—	24
(i)	the licensee is not a suitable person to hold a licence; or	25 26
(ii)	the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or	27 28 29

[s 217]

- (iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
 - (iv) the licensee has failed to ensure that the licensee's employed licensees or registered employees, or employees under the licensee's supervision—
 - (A) are properly supervised in the performance of their duties; or
 - (B) comply with this Act; or
 - (v) the licensee has failed to comply with a condition of the licensee's licence; or
 - (vi) the licensee is an executive officer of a corporation against whom QCAT finds grounds exist to take disciplinary action under section 222; or
 - (vii) if the licensee is a corporation—
 - (A) an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or
 - (B) an executive officer of the corporation is disqualified under this Act from being an executive officer of a corporation;
 - (h) for a registered employee—
 - (i) the employee is not eligible to be employed as a registered employee; or
 - (ii) the employee has, in performing an activity of a licensee, been incompetent or acted in an unprofessional way.
- (2) The chief executive must not start a disciplinary proceeding against an executive officer under subsection (1)(g)(vi) if the chief executive is satisfied—
 - (a) the act or omission relevant to the proceeding against the corporation was done or made without the executive officer's knowledge; and

(b)	the executive officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.	1 2 3
218	Starting disciplinary proceedings	4
	The chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under section 217 for taking disciplinary action against a licensee or registered employee.	5 6 7 8
Division 3	Review proceedings	9
219	Person dissatisfied with chief executive's decision may seek review	10 11
	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 (<i>application for review</i>).	12 13 14 15
220	Stay of operation of decisions	16
(1)	A decision of the chief executive, other than a decision made under section 55 or 204, being reviewed is stayed for securing the effectiveness of the review.	17 18 19
(2)	However, the period of a stay does not extend past the time when QCAT decides the application.	20 21
221	QCAT may extend time	22
(1)	QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied—	23 24
(a)	the application is made within 42 days after the person receives notice of the decision to be reviewed; and	25 26
(b)	it is appropriate to extend time having regard to—	27

[s 222]

(i)	the application generally; and	1
(ii)	the justice of the matter generally.	2
(2)	No appeal lies against QCAT’s decision under this section.	3
Division 4	Proceedings generally	4
Subdivision 1	QCAT’s orders	5
222	Orders QCAT may make on disciplinary hearing	6
(1)	QCAT may make 1 or more of the following orders against a person in relation to whom QCAT finds grounds exist to take disciplinary action under this Act—	7 8 9
(a)	an order reprimanding the person;	10
(b)	an order that the person pay to the State, within the period stated in the order, a fine of not more than—	11 12
(i)	for an individual—200 penalty units; or	13
(ii)	for a corporation—1000 penalty units;	14
(c)	an order that the person pay compensation (inclusive of any commission to which the person is not entitled) to someone else who has suffered loss or damage because of the act or omission that resulted in the finding;	15 16 17 18
(d)	an order that the person’s licence or registration certificate be suspended for the period stated in the order;	19 20 21
(e)	an order—	22
(i)	if the person is the holder of a licence or registration certificate when the order is made—that the licence or registration certificate be cancelled; or	23 24 25 26
(ii)	whether or not the person is the holder of a licence or registration certificate when the order is	27 28

-
- made—that the person be disqualified 1
permanently, or for the period stated in the order, 2
from holding a licence or registration certificate; 3
- (f) an order, for a licensed individual who is an executive 4
officer of a corporation, that the individual be 5
disqualified permanently, or for the period stated in the 6
order, from being an executive officer of a corporation 7
that holds a licence; 8
- (g) an order imposing conditions on, or amending or 9
revoking the conditions of, the person’s licence or 10
registration certificate; 11
- (h) another order QCAT considers appropriate to ensure the 12
person complies with this Act. 13
- (2) QCAT may not make an order under subsection (1)(e)(ii) 14
disqualifying the person from holding a licence or registration 15
certificate if QCAT is satisfied that a court has, in relation to 16
the matter giving rise to the disciplinary proceeding— 17
- (a) been asked to make an order under section 253(2) 18
disqualifying the person from holding a licence or 19
registration certificate; and 20
- (b) declined to do so. 21
- (3) The chief executive may recover a fine, ordered by QCAT to 22
be paid by the person to the chief executive, as a debt owing 23
to the chief executive in a court with jurisdiction to recover 24
debts up to the amount of the fine. 25

223 Stopping contraventions 26

- (1) This section applies if QCAT is satisfied, on application by 27
the chief executive, that a person is doing, or is about to do, 28
something in contravention of this Act. 29
- (2) QCAT may, by order, prohibit the person who is doing, or is 30
about to do, the thing (the *prohibited person*) from starting or 31
continuing to do the thing. 32

[s 224]

- (3) QCAT may make an order under this section on the chief executive's application made without notice to the prohibited person but, in that case, QCAT must allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed. 1
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3
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5
- (4) If QCAT, after considering the prohibited person's evidence and submissions, if any, and any further evidence or submissions of the chief executive, is not satisfied the order should continue in force, QCAT must rescind the order. 6
7
8
9
- (5) A person must not contravene an order under this section. 10
Maximum penalty—540 penalty units. 11
- (6) An order under this section has effect on the giving of a copy of the order to the prohibited person. 12
13

Subdivision 2 Chief executive's right of appeal 14

224 Appeal 15

- (1) The chief executive may appeal to the appeal tribunal against any decision of QCAT, but only on the ground of error of law. 16
17
- (2) In this section— 18
appeal tribunal means QCAT as constituted under the QCAT Act, section 166 for the purposes of an appeal. 19
20

Part 9 Injunctions and undertakings 21

Division 1 Injunctions 22

225 Injunctions 23

An injunction under this division may be granted by the District Court against a person (*respondent*) at any time. 24
25

226	Who may apply for injunction	1
	The following persons may apply to the District Court for an injunction—	2
		3
	(a) the chief executive;	4
	(b) a person aggrieved by the respondent’s conduct.	5
227	Grounds for injunction	6
	The District Court may grant an injunction if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—	7
		8
		9
	(a) a contravention of this Act or the code of conduct; or	10
	(b) attempting to contravene this Act or the code of conduct; or	11
		12
	(c) aiding, abetting, counselling or procuring a person to contravene this Act or the code of conduct; or	13
		14
	(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or the code of conduct; or	15
		16
		17
	(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act or the code of conduct; or	18
		19
		20
	(f) conspiring with others to contravene this Act or the code of conduct.	21
		22
228	Court’s powers for injunctions	23
	(1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—	24
		25
		26
	(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and	27
		28
		29

[s 229]

- (b) whether or not the person has previously engaged in conduct of that kind. 1
2
 - (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised— 3
4
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and 5
6
7
 - (b) whether or not the person has previously failed to do the act or thing. 8
9
 - (3) An interim injunction may be granted under this part until the application is finally decided. 10
11
 - (4) The District Court may rescind or vary an injunction at any time. 12
13
- 229 Terms of injunction** 14
 - (1) The District Court may grant an injunction in the terms the court considers appropriate. 15
16
 - (2) Without limiting the court’s power under subsection (1), an injunction may be granted restraining a person from carrying on a business as a licensee (whether or not the person is licensed or the business is carried on as part of, or incidental to, the carrying on of another business)— 17
18
19
20
21
 - (a) for a stated period; or 22
 - (b) except on stated terms and conditions. 23
 - (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person’s contravention of this Act or a code of conduct. 24
25
26
27
- 230 Undertakings as to costs** 28
 - If the chief executive applies for an injunction under this division, no undertaking as to damages or costs may be required or made. 29
30
31

Division 2	Undertakings	1
231	Chief executive may seek undertaking after contravention	2 3
(1)	This section applies if the chief executive reasonably believes a person has contravened or been involved in a contravention of this Act or the code of conduct.	4 5 6
(2)	The chief executive may, by written notice given to the person—	7 8
(a)	state the act or omission the chief executive believes is the contravention; and	9 10
(b)	ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.	11 12 13
(3)	If—	14
(a)	the person gives the undertaking and, if the contravention is conduct consisting of a series of acts or omissions, the person stops the conduct; and	15 16 17
(b)	the chief executive accepts the undertaking;	18
	the chief executive can not start an offence proceeding against the person for the contravention, unless the chief executive withdraws the undertaking under section 233.	19 20 21
232	Undertaking about other matter	22
	Without limiting section 231, the chief executive may accept an undertaking given by a person about anything for which the chief executive or an inspector has a function or power.	23 24 25
	<i>Example of type of undertaking for this section—</i>	26
	an undertaking to publish corrective advertising	27

[s 233]

233	Variation and withdrawal of undertakings	1
(1)	If the chief executive accepts the undertaking, it may be varied or withdrawn at any time by—	2 3
(a)	the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or	4 5
(b)	the chief executive, if the chief executive believes, on reasonable grounds—	6 7
(i)	that, before it was accepted, the person who gave it contravened this Act, or the repealed Act, in a way unknown to the chief executive; and	8 9 10
(ii)	had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.	11 12 13 14
(2)	The chief executive may also withdraw the undertaking if the chief executive believes, on reasonable grounds, it is no longer necessary.	15 16 17
(3)	If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave it written notice of its variation or withdrawal.	18 19 20 21
(4)	The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.	22 23
234	Enforcement of undertakings	24
(1)	If the chief executive believes on reasonable grounds a person has contravened a term of an undertaking, the chief executive may apply to the District Court for an order under this section.	25 26 27
(2)	If the District Court is satisfied that the person has contravened the term, the court may make 1 or more of the following orders—	28 29 30
(a)	an order directing the person to comply with the term;	31
(b)	an order directing the person to pay to the State an amount that is not more than the direct or indirect	32 33

[s 235]

financial benefit obtained by the person from, and reasonably attributable to, the contravention;	1 2
(c) an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;	3 4 5
(d) an order directing the person to give a security bond to the State for a stated period;	6 7
(e) another order the court considers appropriate.	8
(3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—	9 10 11
(a) the chief executive applies to the court for the order; and	12
(b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.	13 14 15
235 Register of undertakings	16
(1) The chief executive must keep a register of each undertaking given to the chief executive by a person under this division.	17 18
(2) The register must contain a copy of the undertaking.	19
(3) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the register—	20 21
(a) at a place or places decided by the chief executive; or	22
(b) by using a computer.	23
(4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.	24 25
(5) The register may be kept in the way the chief executive considers appropriate.	26 27
(6) The chief executive may publish information contained in the register on the department’s website.	28 29

[s 236]

Part 10	General contraventions, evidentiary matters and legal proceedings	1 2 3
Division 1	General contraventions	4
236	Wrongful conversion and false accounts	5
(1)	Subsection (2) applies if a licensee, in the performance of the activities of a licensee, receives an amount belonging to someone else.	6 7 8
(2)	The licensee must not—	9
(a)	dishonestly convert the amount to the licensee’s own or someone else’s use; or	10 11
(b)	dishonestly render an account of the amount knowing it to be false in a material particular.	12 13
	Maximum penalty—1000 penalty units or 5 years imprisonment.	14 15
(3)	For a prosecution under subsection (2)(a), it is enough for the prosecution to prove that the licensee dishonestly converted an amount belonging to someone else to the licensee’s own use or someone else’s use without having to prove that the amount belonged to a particular person.	16 17 18 19 20
(4)	A licensee must not represent that the licensee has received an amount if the licensee knows the licensee did not receive the amount including, for example, by rendering an account for the amount.	21 22 23 24
	Maximum penalty—540 penalty units.	25
(5)	In this section—	26
	<i>licensee</i> includes a former licensee and a person who is not licensed, but who acts as a licensee.	27 28

237	False representations about property	1
(1)	A licensee or registered employee must not represent in any way to someone else anything that is false or misleading about the sale or auction of property.	2 3 4
	Maximum penalty—540 penalty units.	5
(2)	Without limiting subsection (1), a representation is taken, for the subsection, to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates that that state of affairs does exist.	6 7 8 9 10
(3)	Also, if a person makes a representation about a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.	11 12 13
(4)	The onus of establishing that the person had reasonable grounds for making the representation is on the person.	14 15
(5)	It is not a defence to a prosecution under subsection (1) 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.	16 17 18 19
(6)	This section does not limit another Act or law about false or misleading representations.	20 21
	<i>Note—</i>	22
	See, for example, the <i>Fair Trading Act 1989</i> , section 40 and the <i>Trade Practices Act 1974</i> (Cwlth), section 53.	23 24
(7)	In this section—	25
	<i>false or misleading</i> , in relation to a representation, includes the wilful concealment of a material fact in the representation.	26 27
238	Chief executive's power to ask for substantiation of representations made by licensees or registered employees	28 29 30
(1)	This section applies if the chief executive believes, on reasonable grounds, that a licensee or registered employee has made a representation in contravention of section 237(1).	31 32 33

[s 239]

(2)	The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.	1 2 3
(3)	The notice must—	4
(a)	state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and	5 6 7
(b)	warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.	8 9 10
(4)	The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.	11 12 13
	Maximum penalty—100 penalty units.	14
(5)	It is a reasonable excuse for an individual to fail to comply with subsection (4) if complying with the subsection would tend to incriminate the individual.	15 16 17
239	False representations about mileage	18
	A person must not wilfully represent in any way to someone else anything that is false or misleading about the total distance travelled by a motor vehicle.	19 20 21
	Maximum penalty—540 penalty units.	22
240	Tampering with odometers	23
(1)	A person must not tamper with or replace a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle—	24 25 26
(a)	has travelled a distance less than a specified distance; or	27
(b)	has travelled a distance more than a specified distance.	28
	Maximum penalty—200 penalty units or 2 years imprisonment.	29 30

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- (2) If a court finds a person guilty of an offence against subsection (1), the court may, on its own initiative or on the application of the prosecution or a person who has suffered loss, order the person who committed the offence to compensate the person who suffered loss for loss resulting from the commission of the offence. 1
2
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- (3) In any proceeding, the distance shown at any time on the odometer tampered with or replaced is evidence of a false representation by the person who tampered with or replaced the odometer that the vehicle— 7
8
9
10
- (a) has travelled a distance less than a specified distance shown on the odometer; or 11
12
- (b) has travelled a distance more than a specified distance shown on the odometer. 13
14
- (4) Subsection (2) does not limit a court’s powers under the *Penalties and Sentences Act 1992* or any other law. 15
16
- 241 Offence to charge fee for providing documents etc.** 17
- (1) A licensee or a licensee’s employee must not charge a fee for the provision, preparation or completion of a document for a transaction relating to, or arising out of, the performance of a licensee’s activities. 18
19
20
21
- Maximum penalty—200 penalty units or 1 year’s imprisonment. 22
23
- (2) Subsection (1) does not limit the *Legal Profession Act 2007*, section 24 or 25. 24
25
- 242 Offence to ask for, or receive, excess or improper remuneration** 26
27
- (1) If an amount is prescribed under a regulation as the maximum amount allowed to a licensee for the performance of a licensee’s activities relating to a stated transaction, a licensee must not ask for, or receive, a commission or reward for the transaction greater than the amount allowed under the regulation. 28
29
30
31
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33

[s 243]

Maximum penalty—200 penalty units or 1 year’s imprisonment.	1 2
(2) If, in a proceeding under subsection (1), an amount is alleged to be payable to the licensee for recouping expenditure lawfully incurred by the licensee in connection with the transaction, the licensee must establish to the court’s satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred.	3 4 5 6 7 8
(3) If a licensee is convicted of an offence against subsection (1) or fails to satisfy the court under subsection (2) about expenditure incurred, the convicting court must also order the licensee to refund the amount to which the licensee was not entitled to the person from whom it was obtained.	9 10 11 12 13
(4) Subsection (1) does not prevent the licensee asking for or receiving an amount more than the maximum amount allowed under the regulation if the amount is for GST payable for a supply in relation to the transaction.	14 15 16 17
243 Offence to lend or borrow licence	18
(1) A licensee must not—	19
(a) lend or hire out the licensee’s licence to someone else; or	20 21
(b) notify or advertise that a licence is available for sale, loan or hire, or on another basis, to someone else, whether licensed or not; or	22 23 24
(c) permit or allow someone else to hold out that the person is the holder of the licence issued to the licensee.	25 26
Maximum penalty—200 penalty units or 2 years imprisonment.	27 28
(2) A person must not borrow, hire or buy a licensee’s licence.	29
Maximum penalty—200 penalty units or 2 years imprisonment.	30 31
(3) If a person who is not the holder of an appropriate licence or the licensee’s substitute has the effective or apparent	32 33

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

244 False or misleading statements 4

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

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

245 False or misleading documents 10

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

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

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

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

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

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

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

[s 246]

Division 2	Evidentiary matters	1
246	Evidence of tampering by a motor dealer or chattel auctioneer	2 3
(1)	Evidence that a motor vehicle’s odometer reading when the vehicle was in the possession of a motor dealer or chattel auctioneer was less than its reading when the dealer or chattel auctioneer took possession of the vehicle is evidence that—	4 5 6 7
(a)	the motor vehicle’s odometer was tampered with or replaced; and	8 9
(b)	the dealer or chattel auctioneer contravened section 240(1)(a).	10 11
(2)	Evidence that a motor vehicle’s odometer was tampered with or replaced to increase the distance shown on the odometer when the vehicle was in a motor dealer’s or chattel auctioneer’s possession is evidence that the dealer or chattel auctioneer contravened section 240(1)(b).	12 13 14 15 16
(3)	In this section—	17
	<i>possession</i> , of a motor vehicle, includes custody and control of the vehicle.	18 19
247	Continuing false representation—tampered with odometer	20 21
(1)	This section applies, in any proceeding, if there is evidence (<i>relevant evidence</i>) that a person intentionally tampered with or replaced the odometer of a motor vehicle so that it showed that the vehicle at that time—	22 23 24 25
(a)	had not travelled the distance shown on the odometer before it was tampered with; or	26 27
(b)	had travelled more than the distance shown on the odometer before it was tampered with.	28 29
(2)	The distance shown at any time afterwards on the odometer is evidence of a false representation by a person at that later time that—	30 31 32

-
- (a) if the relevant evidence relates to subsection (1)(a)—the vehicle had not travelled more than the distance shown on the odometer; or 1
2
3
 - (b) if the relevant evidence relates to subsection (1)(b)—the vehicle had travelled more than the distance shown on the odometer. 4
5
6

248 Evidentiary provisions 7

- (1) This section applies to a proceeding under this Act. 8
- (2) The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of— 9
10
 - (a) the appointment; or 11
 - (b) the power to do anything under this Act. 12
- (3) A signature purporting to be the signature of the chief executive is evidence of the signature it purports to be. 13
14
- (4) A certificate purporting to be signed by the chief executive, a member of QCAT or the registrar stating any of the following matters is evidence of the matter— 15
16
17
 - (a) a stated document is— 18
 - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or 19
20
21
 - (ii) a notice, or a copy of a notice, given under this Act; or 22
23
 - (iii) a record, or a copy of a record, kept under this Act; or 24
25
 - (iv) a document, or a copy of a document, kept under this Act; 26
27
 - (b) on a stated day, a stated person— 28
 - (i) was, or was not, the holder of a stated licence or registration certificate under this Act; or 29
30

[s 249]

(ii)	was given a stated notice, order, requirement or direction under this Act.	1 2
(5)	In this section—	3
	<i>registrar</i> means the principal registrar under the QCAT Act.	4
249	Entries in licensee's documents	5
	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.	6 7 8
Division 3	Proceedings	9
250	Proceedings for an offence	10
(1)	Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the <i>Justices Act 1886</i> within the later of the following—	11 12 13
(a)	1 year after the offence is committed;	14
(b)	6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.	15 16 17
(2)	A proceeding for an indictable offence may be taken, at the prosecution's election—	18 19
(a)	by way of summary proceedings under the <i>Justices Act 1886</i> ; or	20 21
(b)	on indictment.	22
(3)	A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—	23 24
(a)	for the summary conviction of the person; or	25
(b)	for an examination of witnesses in relation to the charge.	26
(4)	If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking	27 28

-
- or making a procedural action or order within the meaning of
the *Justices of the Peace and Commissioners for Declarations
Act 1991*. 1
2
3
- (5) If— 4
- (a) a person charged with an indictable offence asks at the
start of a summary proceeding for the offence that the
charge be prosecuted on indictment; or 5
6
7
- (b) the magistrate hearing a charge of an indictable offence
considers the charge should be prosecuted on
indictment; 8
9
10
- the magistrate— 11
- (c) must not decide the charge as a summary offence; and 12
- (d) must proceed by way of a committal proceeding. 13
- (6) If a magistrate acts under subsection (5)— 14
- (a) any plea of the person charged, made at the start of the
proceeding, must be disregarded; and 15
16
- (b) any evidence brought in the proceeding before the
magistrate decided to act under subsection (5) is taken
to be evidence in the proceeding for the committal of the
person for trial or sentence; and 17
18
19
20
- (c) before committing the person for trial or sentence, the
magistrate must make a statement to the person under
the *Justices Act 1886*, section 104(2)(b). 21
22
23
- (7) The maximum penalty that may be imposed on a summary
conviction of an indictable offence is 200 penalty units or 1
year's imprisonment. 24
25
26
- (8) In this section— 27
- indictable offence* means an offence against this Act for
which the maximum penalty of imprisonment is more than 2
years. 28
29
30

[s 251]

251	Responsibility for acts or omissions of representatives	1
(1)	This section applies in a proceeding for an offence against this Act.	2 3
(2)	If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—	4 5
(a)	the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and	6 7 8
(b)	the representative had the state of mind.	9
(3)	An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.	10 11 12 13 14 15
(4)	In this section—	16
	<i>offence</i> includes a contravention of this Act for which an amount may be ordered by the District Court or QCAT to be paid as a money penalty.	17 18 19
	<i>representative</i> means—	20
(a)	of a corporation—an executive officer, employee or agent of the corporation; or	21 22
(b)	of an individual—an employee or agent of the individual.	23 24
	<i>state of mind</i> , of a person, includes—	25
(a)	the person's knowledge, intention, opinion, belief or purpose; and	26 27
(b)	the person's reasons for the intention, opinion, belief or purpose.	28 29

252	Executive officers must ensure corporation complies with Act	1 2
(1)	The executive officers of a corporation must ensure that the corporation complies with this Act.	3 4
(2)	If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.	5 6 7 8
	Maximum penalty—the penalty for the contravention of the provision by an individual or, if the penalty is expressed to be for this section, the expressed penalty.	9 10 11
(3)	Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.	12 13 14 15
(4)	However, it is a defence for an executive officer to prove that—	16 17
(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	18 19 20 21
(b)	the officer was not in a position to influence the conduct of the corporation in relation to the offence.	22 23
(5)	For subsection (4)(a), it is sufficient for the executive officer to prove that the act or omission that was the offence was done or made without the officer’s knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.	24 25 26 27 28
253	Power of court	29
(1)	A court may, in addition to any other penalty it may impose, order that a licensee’s licence or a registered employee’s registration certificate be suspended for a stated period or cancelled if the licensee or registered employee has been convicted of an offence against this Act.	30 31 32 33 34

[s 254]

- (2) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently. 1
2
3
4
- (3) The court may make an order under subsection (1) or (2)— 5
(a) on the chief executive’s application; or 6
(b) on its own initiative. 7
- (4) If an order is made by a court under this section on the court’s own initiative, the court must cause a copy of the order to be given to the chief executive. 8
9
10

254 Allegations of false or misleading representations or statements etc. 11
12

In any proceeding for an offence against this Act involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state that the statement, representation, entry or information was ‘false or misleading’. 13
14
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Part 11 General 18

255 Public warning statements 19

- (1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following— 20
21
22
- (a) contraventions of a code of conduct that have resulted in disciplinary action and persons who commit the contraventions; 23
24
25
- (b) business practices regulated under this Act that are unfair and persons who engage in the unfair practices; 26
27

(c)	the commission of offences against this Act and persons who commit the offences.	1 2
(2)	The statement may identify particular contraventions, business practices, offences and persons.	3 4
(3)	The Minister or chief executive must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.	5 6 7
256	Civil remedies not affected	8
	Nothing in this Act affects or limits any civil remedy that a person may have against a licensee or another person for any matter.	9 10 11
257	Criminal Proceeds Confiscation Act 2002 not limited	12
	Nothing in this Act limits the <i>Criminal Proceeds Confiscation Act 2002</i> .	13 14
258	Delegation—chief executive	15
(1)	The chief executive may delegate the chief executive’s powers, other than power under section 255, to an appropriately qualified public service employee.	16 17 18
(2)	In subsection (1)—	19
	<i>appropriately qualified</i> includes having the qualifications, experience or standing appropriate to exercise the power.	20 21
	<i>Example of standing—</i>	22
	the level at which a person is employed within the department	23
259	Approved forms	24
	The chief executive may approve forms for use under this Act.	25 26

[s 260]

260	Review of Act	1
(1)	The Minister must ensure the operation of this Act is reviewed.	2 3
(2)	The review must start within 3 years after the commencement of this section.	4 5
(3)	The Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is finished.	6 7 8
261	Regulation-making power	9
(1)	The Governor in Council may make regulations under this Act.	10 11
(2)	Without limiting subsection (1), a regulation may be made about the following—	12 13
(a)	fees, including the refunding of fees payable under this Act;	14 15
(b)	the amount of fees and rate of commission that may be charged for transactions by licensees;	16 17
(c)	imposing a penalty for a contravention of a regulation of not more than 20 penalty units;	18 19
(d)	the keeping or destruction of motor vehicle identifiers;	20
(e)	the display at a motor dealer’s registered office of the motor dealer’s usual hours of business;	21 22
(f)	imposing time limits within which a del credere agent must pay the purchase price of livestock the agent is authorised to sell to the seller of the livestock;	23 24 25
(g)	the financial or insurance protection requirements for del credere agents;	26 27
(h)	imposing limits on out-of-pocket expenses incurred in the performance of activities under a licence;	28 29
(i)	the keeping of records, including the form in which a record is kept;	30 31

-
- (j) the keeping of receipts and evidence of expenditure; 1
 - (k) the length of time a document required to be kept under 2
this Act is to be kept. 3

Part 12 Transitional provisions 4

Note— 5

See also the *Property Agents Act 2010*, part 15, for transitional 6
provisions for persons who under that part are taken to hold chattel 7
auctioneer licences or registration certificates as trainee chattel 8
auctioneers. 9

Division 1 Preliminary 10

262 Definitions for pt 12 11

In this part— 12

commencement means commencement of this section. 13

existing licence means a motor dealer's licence under the 14
repealed Act. 15

existing registration certificate means a registration 16
certificate as a motor salesperson under the repealed Act. 17

transitioned licence see section 263(2). 18

transitioned registration certificate see section 264(2). 19

[s 263]

Division 2	Licences and registration certificates	1 2
263	Transitioned licences for existing licences	3
(1)	This section applies to a person who, immediately before the commencement, held an existing licence.	4 5
(2)	The person, on the commencement, is taken to be the holder of a motor dealer licence (the <i>transitioned licence</i>).	6 7
(3)	If the existing licence was subject to a condition (the <i>current condition</i>), the transitioned licence is also taken to be subject to a condition in the same terms, so far as practicable, as the current condition.	8 9 10 11
(4)	The transitioned licence expires on the day it would have expired under the repealed Act unless it is sooner cancelled.	12 13
(5)	The chief executive may deal with the transitioned licence as if it were a licence issued under this Act.	14 15
	<i>Example of dealing with a transitioned licence under this Act—</i>	16
	the chief executive amending the conditions of the transition licence under section 51	17 18
264	Transitioned registration certificates for existing registration certificates	19 20
(1)	This section applies to a person who, immediately before the commencement, held an existing registration certificate.	21 22
(2)	The person, on the commencement, is taken to be the holder of a registration certificate as a motor salesperson under this Act (the <i>transitioned registration certificate</i>).	23 24 25
(3)	If the existing registration certificate was subject to a condition (the <i>current condition</i>), the transitioned registration certificate is also taken to be subject to a condition in the same terms, so far as practicable, as the current condition.	26 27 28 29

-
- (4) A transitioned registration certificate expires on the day it would have expired under the repealed Act unless it is sooner cancelled. 1
2
3
- (5) The chief executive may deal with a transitioned registration certificate as if it were a registration certificate issued under this Act. 4
5
6
- Example of dealing with the transitioned registration certificate under this Act—* 7
8
- The chief executive amending the conditions of the transitioned registration certificate under section 201. 9
10

265 Existing applications 11

- (1) This section applies to the following applications made under the repealed Act but not decided before the commencement— 12
13
- (a) an application for the issue of an existing licence or existing registration certificate; 14
15
- (b) an application for the renewal of an existing licence or existing registration certificate; 16
17
- (c) an application for the restoration of an existing licence or existing registration certificate; 18
19
- (d) an application about appointing a nominated person mentioned in the repealed Act, section 64(3) or 65(4) as a licensee's substitute licensee; 20
21
22
- (e) an application about amending an existing licence or existing registration certificate. 23
24
- (2) The application must be decided under this Act and the provisions of this Act, relevant to the application, apply to the application. 25
26
27
- (3) However, the provisions of this Act dealing with making the application in the approved form and paying the application fee do not apply to the application. 28
29
30
- (4) If the application is about the issue, renewal or restoration of an existing licence, the application is taken to be about the 31
32

[s 266]

issue, renewal or restoration of the transitioned licence for the existing licence.	1 2
(5) If the application is about the issue, renewal or restoration of an existing registration certificate, the application is taken to be about the issue, renewal or restoration of the transitioned registration certificate for the existing registration certificate.	3 4 5 6
(6) If an application is about the renewal or restoration of an existing licence, the transitioned licence for the existing licence is taken to continue in force from the day the transitioned licence would, apart from this subsection, expire until the application for renewal or restoration is—	7 8 9 10 11
(a) decided under this Act; or	12
(b) withdrawn.	13
(7) If an application is about the renewal or restoration of an existing registration certificate, the transitioned registration certificate for the existing certificate is taken to continue in force from the day the transitioned registration certificate would, apart from this subsection, expire until the application for renewal or restoration is—	14 15 16 17 18 19
(a) decided under this Act; or	20
(b) withdrawn.	21
266 Restoration of expired existing licences	22
(1) This section applies if a person's existing licence expired within 3 months before the commencement.	23 24
(2) The person may apply under this Act, section 42, for restoration of the existing licence, as if the existing licence were a motor dealer licence.	25 26 27
<i>Note—</i>	28
Section 42(2)(a) requires that an application for restoration be made within 3 months after the expiry.	29 30
(3) To remove any doubt, it is declared that section 44 applies to the existing licence.	31 32

-
- 267 Restoration of expired existing registration certificates** 1
- (1) This section applies if a person's existing registration 2
certificate expired within 3 months before the 3
commencement. 4
- (2) The person may apply under section 197 for restoration of the 5
existing registration certificate, as if the existing registration 6
certificate were a motor salesperson registration certificate. 7
- Note—* 8
- Section 197(2)(a) requires that an application for restoration be made 9
within 3 months after the expiry. 10
- (3) To remove any doubt, it is declared that section 199 applies to 11
the existing registration certificate. 12
- 268 Previous refusals of applications** 13
- (1) This section applies to a person who made an application for 14
the issue of an existing licence or existing registration 15
certificate under the repealed Act and the application was 16
refused before the commencement. 17
- (2) The person can not make an application for a licence or 18
registration certificate under this Act— 19
- (a) for 3 months after the day the chief executive gave the 20
person an information notice for the refusal; or 21
- (b) if the applicant applies to QCAT to review the chief 22
executive's decision and the decision is confirmed, for 3 23
months after the day the decision is confirmed. 24
- (3) This section does not apply to a person if— 25
- (a) the person is a corporation; and 26
- (b) the person satisfies the chief executive that, because of a 27
genuine sale— 28
- (i) no person who was a shareholder of, or held a 29
beneficial interest in, the corporation when the 30
refused application was made is a shareholder of, 31
or holds a beneficial interest in, the corporation; 32
and 33

[s 269]

	(ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the corporation.	1 2 3 4
269	Deactivated existing licences	5
	(1) Subsection (2) applies to an existing licence that, immediately before the commencement, was deactivated under the repealed Act.	6 7 8
	(2) The licence continues to be deactivated under this Act and section 54 applies to the licence as if the licence were a motor dealer licence deactivated under this Act.	9 10 11
	(3) A request to deactivate an existing licence, made under the repealed Act and not decided before the commencement, must be decided under this Act and section 54 applies to the request.	12 13 14 15
270	Suspended existing licences and existing registration certificates	16 17
	(1) This section applies to an existing licence or existing registration certificate that was, immediately before the commencement, suspended under the repealed Act.	18 19 20
	(2) The existing licence or existing registration certificate continues to be suspended under this Act.	21 22
	(3) The provisions of this Act relating to the suspension of a licence apply to the existing licence as if the existing licence were a licence under this Act.	23 24 25
	(4) The provisions of this Act relating to the suspension of a registration certificate apply to the existing registration certificate as if the existing registration certificate were a registration certificate under this Act.	26 27 28 29

Division 3	Miscellaneous provisions	1
271	Existing appointments	2
(1)	An appointment or an agreement to act as a motor dealer under the repealed Act that is in force immediately before the commencement and complies with the repealed Act (an <i>existing appointment</i>), continues to be a valid appointment to act as a motor dealer under this Act according to its terms.	3 4 5 6 7
(2)	An appointment, under the repealed Act, by the chief executive of a nominated person mentioned in the repealed Act, section 64(3) or 65(4) as an existing licensee's substitute licensee that is in force immediately before the commencement continues to be a valid appointment under this Act according to its terms.	8 9 10 11 12 13
272	Disciplinary action relating to pre-commencement conduct	14 15
(1)	If, before the commencement, a ground existed for starting disciplinary action against a person under the repealed Act, disciplinary action may be taken against the person on that ground under this Act as if the ground were a ground for starting disciplinary proceedings under this Act.	16 17 18 19 20
(2)	If, before the commencement, QCAT had started, but not finished, disciplinary action under the repealed Act, the action may be finished under the repealed Act as if that Act had not been repealed.	21 22 23 24
273	Continuation of reviews under repealed Act	25
(1)	Subsection (2) applies if—	26
(a)	a person applied to QCAT, under the repealed Act, section 501 for a review of a decision of the chief executive; and	27 28 29
(b)	the review had not been decided before the commencement.	30 31

[s 274]

(2)	QCAT may hear, or continue to hear, and decide the review under the repealed Act as if that Act had not been repealed.	1 2
(3)	Subsections (4) and (5) apply if—	3
(a)	a person could have applied, under the repealed Act, section 501 for a review of a decision of the chief executive; but	4 5 6
(b)	the person had not applied before the commencement.	7
(4)	The person may apply for a review of the decision under the repealed Act as if that Act had not been repealed.	8 9
(5)	QCAT may hear and decide the review under the repealed Act.	10 11
274	Injunctions relating to pre-commencement conduct	12
(1)	Subsections (2) to (5) apply to an injunction granted by the District Court under the repealed Act and in force immediately before the commencement.	13 14 15
(2)	The injunction continues to be a valid injunction under this Act according to its terms.	16 17
(3)	The provisions of this Act relating to injunctions apply to the injunction.	18 19
(4)	If the injunction was granted against a person to whom section 263 applies and relates to the person’s existing licence, from the commencement, the injunction is taken to relate to the person’s transitioned licence under section 263(2).	20 21 22 23
(5)	If the injunction was granted against a person to whom section 264 applies and relates to the person’s existing registration certificate, from the commencement, the injunction is taken to relate to the person’s transitioned registration certificate under section 264(2).	24 25 26 27 28
(6)	In addition to section 227, the District Court may also grant an injunction if the court is satisfied that a person has, before the commencement, engaged in conduct that constituted—	29 30 31
(a)	a contravention of the repealed Act or the repealed code of conduct; or	32 33

[s 275]

(b)	an attempt to contravene the repealed Act or the repealed code of conduct; or	1 2
(c)	aiding, abetting, counselling or procuring a person to contravene the repealed Act or the repealed code of conduct; or	3 4 5
(d)	inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the repealed Act or the repealed code of conduct; or	6 7 8
(e)	being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the repealed Act or the repealed code of conduct; or	9 10 11
(f)	conspiring with others to contravene the repealed Act or the repealed code of conduct.	12 13
(7)	Subsection (6) does not limit section 227.	14
275	Undertakings relating to pre-commencement conduct	15
(1)	Subsections (2) to (5) apply to an undertaking given by a person to the chief executive under the repealed Act.	16 17
(2)	The undertaking continues to be a valid undertaking under this Act according to its terms.	18 19
(3)	The provisions of this Act relating to undertakings apply to the undertaking.	20 21
(4)	If the undertaking was given by a person to whom section 263 applies and relates to the person's existing licence, from the commencement, the undertaking is taken to relate to the person's transitioned licence under section 263(2).	22 23 24 25
(5)	If the undertaking was given by a person to whom section 264 applies and relates to the person's existing registration certificate, from the commencement, the undertaking is taken to relate to the person's transitioned registration certificate under section 264(2).	26 27 28 29 30
(6)	If the chief executive reasonably believes a person has, before the commencement, contravened or been involved in a	31 32

[s 276]

contravention of the repealed Act or repealed code of conduct, section 231 of this Act applies as if—	1 2
(a) a reference in that section to this Act were a reference to the repealed Act; and	3 4
(b) a reference in that section to the code of conduct were a reference to the repealed code of conduct.	5 6
(7) If, before the commencement, the chief executive applied to the District Court for an order under the repealed Act, section 571 and the District Court has not decided the application, the application may be heard under the repealed Act as if that Act had not been repealed.	7 8 9 10 11
276 Proceedings for particular offences under repealed Act	12
(1) This section applies if a person is alleged to have committed an offence against a provision of chapter 9 of the repealed Act before the commencement.	13 14 15
(2) Without limiting the <i>Acts Interpretation Act 1954</i> , section 20, proceedings for the offence may be started or continued, and a court may hear and decide the proceedings, as if the repealed Act had not been repealed.	16 17 18 19
(3) Subsection (2) applies despite the Criminal Code, section 11.	20
277 Existing infringement notice offences	21
(1) This section applies if—	22
(a) an infringement notice offence under the <i>State Penalties Enforcement Act 1999</i> was committed by a person before the commencement; and	23 24 25
(b) no infringement notice under that Act had been served before the commencement on the person for the offence.	26 27
(2) Without limiting the <i>Acts Interpretation Act 1954</i> , section 20, an infringement notice may be served on the person and the	28 29

infringement notice may be dealt with as if the repealed Act had not been repealed.	1 2
(3) Subsection (2) applies despite the Criminal Code, section 11.	3
278 Existing delegations	4
On the commencement, a delegation of power made by the chief executive under the repealed Act, section 597, continues to have effect according to its terms as a delegation made under section 258 of the power under the Act that is equivalent or substantially similar to the delegated power under the repealed Act.	5 6 7 8 9 10
279 Existing registers	11
(1) On the commencement—	12
(a) the licence register kept under the repealed Act is taken to be the licence register under this Act; and	13 14
(b) the registration certificate register kept under the repealed Act is taken to be the registration certificate register under this Act; and	15 16 17
(c) the register kept under the repealed Act, section 572 is taken to be the register of undertakings.	18 19
(2) In this section—	20
<i>register of undertakings</i> means the register kept under section 235.	21 22
280 Existing fines and fees	23
(1) A fine ordered to be paid by QCAT or the former tribunal to the chief executive under the repealed Act that has not been paid before the commencement may be recovered after the commencement as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.	24 25 26 27 28 29

[s 281]

(2)	A fee incurred under the repealed Act that has not been paid before the commencement may be recovered after the commencement as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.	1 2 3 4 5
281	Return of beneficial interest if in form of commission	6
(1)	Subsections (2) and (3) apply if, under section 276, a person is convicted of an offence against the repealed Act, section 292(2) or (3) Act after the commencement.	7 8 9
(2)	The repealed Act, section 292A applies to the person and the court convicting the person as if the repealed Act had not been repealed.	10 11 12
Part 13	Minor and consequential amendments	13 14
282	Minor and consequential amendments	15
	Schedule 2 amends the Acts it mentions.	16

Schedule 1	Decisions subject to review	1
	section 219	2
section 21(2)	(Chief executive must consider suitability of applicants and licensees)	
section 32(1)	(Chief executive may issue or refuse to issue licence)	
section 35(1)	(Licence—conditions)	
section 40(1)	(Chief executive may renew or refuse to renew licence)	
section 43(1)	(Chief executive may restore or refuse to restore licence)	
section 48(1)	(Chief executive may appoint or refuse to appoint substitute licensee)	
section 51(1)	(Amendment of licence conditions)	
section 55(2)	(Immediate suspension)	
section 186(2)	(Chief executive must consider suitability of applicants)	
section 192(1)	(Chief executive may issue or refuse to issue registration certificate)	
section 193(1)	(Registration certificate—conditions)	
section 195(1)	(Chief executive may renew or refuse to renew registration certificate)	
section 198(1)	(Chief executive may restore or refuse to restore registration certificate)	
section 201(1)	(Amendment of registration certificate conditions)	
section 204(2)	(Immediate suspension)	

Schedule 2	Consequential amendments	1
	section 282	2
Part 1	Amendments of this Act	3
1	Long title, from ‘practices, and to make’—	4
	<i>omit, insert—</i>	5
	‘practices’.	6
2	Section 8, ‘schedule 3’—	7
	<i>omit, insert—</i>	8
	‘schedule 2’.	9
3	Schedule 3—	10
	<i>renumber</i> as schedule 2.	11
Part 2	Other amendments	12
	Criminal Organisation Act 2009	13
1	Schedule 2, definition <i>prescribed activity</i>, paragraph (f)—	14
	<i>omit, insert—</i>	15
	‘(f) acting as a licensed motor dealer under the <i>Motor Dealers and Chattel Auctioneers Act 2010</i> ;’.	16
		17

Duties Act 2001		1
1	Schedule 6, definition <i>vehicle dealer</i>, paragraph (a), ‘Property Agents and Motor Dealers Act 2000’—	2 3
	<i>omit, insert—</i>	4
	<i>‘Motor Dealers and Chattel Auctioneers Act 2010’.</i>	5
 Forestry Act 1959		 6
1	Section 22, from ‘an auctioneer’s’—	7
	<i>omit, insert—</i>	8
	<i>‘a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Act 2010.’.</i>	9 10
 Motor Vehicles and Boats Securities Act 1986		 11
1	Section 2, definition <i>auctioneer</i>—	12
	<i>omit, insert—</i>	13
	<i>‘auctioneer means a chattel auctioneer under the Motor Dealers and Chattel Auctioneers Act 2010.’.</i>	14 15
2	Section 30H(1)(d), ‘Property Agents and Motor Dealers Act 2000’—	16 17
	<i>omit, insert—</i>	18
	<i>‘Motor Dealers and Chattel Auctioneers Act 2010’.</i>	19

	Police Powers and Responsibilities Act 2000	1
1	Section 66(8), definition <i>motor dealer</i>, ‘<i>Property Agents and Motor Dealers Act 2000</i>’—	2 3
	<i>omit, insert—</i>	4
	<i>‘Motor Dealers and Chattel Auctioneers Act 2010’.</i>	5
	 Queensland Civil and Administrative Tribunal Act 2009	 6 7
1	Section 12(4), definition <i>relevant person</i>, paragraph (e), ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 248 or 324’—	8 9 10
	<i>omit, insert—</i>	11
	<i>‘Motor Dealers and Chattel Auctioneers Act 2010, section 112 or 166’.</i>	12 13
2	Section 13(4)(a), ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 324’—	14 15
	<i>omit, insert—</i>	16
	<i>‘Motor Dealers and Chattel Auctioneers Act 2010, section 112 or 166’.</i>	17 18
3	Schedule 3, definition <i>minor civil dispute</i>, item 1(d), ‘<i>Property Agents and Motor Dealers Act 2000</i>, section 248 or 324’—	19 20 21
	<i>omit, insert—</i>	22
	<i>‘Motor Dealers and Chattel Auctioneers Act 2010, section 112 or 166’.</i>	23 24

Second-hand Dealers and Pawnbrokers Act 2003		1
1	Section 6(2)(b)—	2
	<i>omit, insert—</i>	3
	‘(b) a chattel auctioneer, motor dealer or motor salesperson	4
	under the <i>Motor Dealers and Chattel Auctioneers Act</i>	5
	2010 to the extent the person may lawfully deal with	6
	second-hand property under the person’s licence or	7
	registration certificate under that Act;’.	8
2	Section 6(4)(a)—	9
	<i>omit, insert—</i>	10
	‘(a) a chattel auctioneer under the <i>Motor Dealers and</i>	11
	<i>Chattel Auctioneers Act 2010</i> ;’.	12
3	Section 35(2)(b), from ‘an auctioneer’—	13
	<i>omit, insert—</i>	14
	‘a chattel auctioneer licensed under the <i>Motor Dealers and Chattel</i>	15
	<i>Auctioneers Act 2010</i> .’.	16
Transport Operations (Road Use Management) Act		17
1995		18
1	Section 46A(1)(a)(i), ‘Property Agents and Motor Dealers	19
	Act 2000’—	20
	<i>omit, insert—</i>	21
	‘ <i>Motor Dealers and Chattel Auctioneers Act 2010</i> .’.	22

Schedule 3	Dictionary	1
	section 8	2
<i>actually expended</i> , for expenses, means the amount actually incurred after deducting—		3 4
(a) the amount of any benefit, received or receivable, directly or indirectly, in connection with the expenses by the person seeking to sue for, recover or retain the expenses; or		5 6 7 8
(b) if the benefit has no fixed amount—the market value of the benefit.		9 10
<i>Administration Act</i> means the <i>Agents Financial Administration Act 2010</i> .		11 12
<i>Agents Act</i> means—		13
(a) the <i>Commercial Agents Act 2010</i> ; or		14
(b) the <i>Property Agents Act 2010</i> .		15
<i>application for review</i> see section 219.		16
<i>approved form</i> see section 259.		17
<i>arrangement</i> includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).		18 19 20
<i>associate</i> , of a person, means—		21
(a) a spouse, parent, brother, sister or child of the person; or		22
(b) a child of the person’s spouse.		23
<i>audit period</i> , see section 30 of the Administration Act.		24
<i>audit report</i> , see section 30 of the Administration Act.		25
<i>beneficial interest</i> , other than for section 32(6)(b)(i), see section 9.		26 27
<i>business address</i> , of a licensee, see 16(1)(b).		28

<i>business associate</i> , of an applicant for a licence or a licensee, means a person with whom the applicant or licensee carries on, or intends carrying on, business under a licence.	1 2 3
<i>business day</i> , for part 3, division 4, see section 83.	4
<i>caravan</i> means a trailer fitted, equipped, or used principally—	5
(a) for camping; or	6
(b) as a dwelling; or	7
(c) for carrying on any trade or business.	8
<i>chattel auctioneer</i> —	9
(a) generally, see section 127(1); and	10
(b) for part 4, division 4, see also section 150.	11
<i>chattel auctioneer licence</i> means a chattel auctioneer licence issued under this Act.	12 13
<i>claimant</i> , for part 7, see section 212.	14
<i>claim fund</i> see section 76 of the Administration Act.	15
<i>class A warranted vehicle</i> means a warranted vehicle that—	16
(a) at the day of its sale, has an odometer reading of less than 160000km; and	17 18
(b) was manufactured less than 10 years before the day of sale.	19 20
<i>class B warranted vehicle</i> means a warranted vehicle that—	21
(a) at the day of its sale, has an odometer reading of 160000km or more; or	22 23
(b) was manufactured at least 10 years before the day of sale.	24 25
<i>code of conduct</i> means—	26
(a) for motor dealing practice—a code of conduct under section 79; or	27 28
(b) for chattel auctioneering practice—a code of conduct under section 146.	29 30
<i>commencement</i> , for part 12, see section 262.	31

commercial vehicle means a motor vehicle—	1
(a) built mainly for carrying or hauling goods; or	2
(b) designed to carry more than 9 persons;	3
but does not include a utility with a nominal load carrying capacity of 1t or less.	4 5
comparable certificate means—	6
(a) for a registration certificate as a motor salesperson—a registration certificate as a motor salesperson granted under the repealed Act; or	7 8 9
(b) for a registration certificate as a trainee chattel auctioneer—a registration certificate as a trainee auctioneer granted under the repealed Act.	10 11 12
comparable licence means—	13
(a) for a motor dealer licence—a motor dealer’s licence granted under the repealed Act; or	14 15
(b) for a chattel auctioneer licence—an auctioneer’s licence granted under the repealed Act.	16 17
computer means a mechanical, electronic or other device for the processing of data.	18 19
consignment , for the sale of a motor vehicle, means the delivering of the motor vehicle by a person into the possession of a motor dealer or chattel auctioneer and the appointing of the motor dealer or chattel auctioneer as an agent to sell the vehicle for the vehicle’s owner.	20 21 22 23 24
conviction includes a plea of guilty or a finding of guilt by a court, but does not include a plea of guilty or a finding of guilt by a court if no conviction is recorded by the court.	25 26 27
cooling-off period , for part 3, division 4, see section 83.	28
corresponding law means a law of another State or New Zealand that provides for the same matter as this Act or a provision of this Act.	29 30 31
criminal history , of a person, means the person’s criminal history as defined under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> , other than for a conviction—	32 33 34

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- (a) to which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.
- criminal history costs requirement*** see—
- (a) generally for an applicant or licensee—section 25(2); or
- (b) for an applicant for, or for the renewal or restoration of, registration—section 188(2).
- defect***—
- (a) for part 3, division 5, see section 99; or
- (b) for part 4, division 4, see section 150.
- defect notice***—
- (a) for part 3, division 5, see section 99; or
- (b) for part 4, division 4, see section 150.
- del credere agent*** means a chattel auctioneer who—
- (a) is authorised under the auctioneer’s chattel auctioneer licence to sell livestock; and
- (b) guarantees the payment of the livestock’s purchase price to the seller of the livestock.
- employ*** includes engage on a contract for services or commission and use the services of, whether or not for reward.
- employed licensee*** means a licensee who performs the activities of a licensee as the employee of someone else.
- employment register***—
- (a) of a motor dealer, see section 117(1); or
- (b) of a chattel auctioneer, see section 171(1).
- executive officer***, for a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

<i>existing licence</i> , for part 12, see section 262.	1
<i>existing registration certificate</i> , for part 12, see section 262.	2
<i>financial loss</i> , for part 7, see section 212.	3
<i>financier</i> means a corporation whose ordinary business (whether or not it carries on any other business) is providing credit for motor vehicles and that does not carry on the business of dealing with motor vehicles other than for 1 or more of the following purposes—	4 5 6 7 8
(a) selling motor vehicles on instalment terms;	9
(b) hiring motor vehicles under hire-purchase agreements;	10
(c) putting in place or enforcing securities over motor vehicles;	11 12
(d) hiring motor vehicles, if no right to purchase the motor vehicle is included in the hiring of any vehicle;	13 14
(e) disposing of motor vehicles acquired by it in connection with a purpose mentioned in paragraphs (a) to (d).	15 16
<i>former licensee</i> —	17
(a) generally, means a person who held a licence under this or the repealed Act; and	18 19
(b) for part 8, see section 215.	20
<i>former registered employee</i> , for part 8, see section 215.	21
<i>former tribunal</i> means the tribunal under the repealed <i>Commercial and Consumer Tribunal Act 2003</i> .	22 23
<i>fund</i> means the claim fund.	24
<i>goods</i> means personal property that is tangible property and includes, for example, livestock and motor vehicles.	25 26
<i>holder</i> —	27
(a) of a motor dealer licence, means the person in whose name the licence is issued; or	28 29
(b) of a registration certificate, means the person in whose name the certificate is issued.	30 31
<i>in charge</i> see section 10.	32

information notice means a notice complying with the QCAT Act, section 157(2).	1 2
insolvent under administration means a person who is insolvent under administration under the Corporations Act, section 9.	3 4 5
inspector means a person whose appointment as an inspector is continued under the <i>Property Agents Act 2010</i> , section 292.	6 7
licence means a motor dealer licence or a chattel auctioneer licence.	8 9
licence register see section 61(1).	10
licensed , for a person, means licensed under this Act.	11
licensee —	12
(a) generally, means the holder of a motor dealer or chattel auctioneer licence that is in force; and	13 14
(b) for part 7, see also section 212.	15
(c) for part 8, see also section 215.	16
livestock means cattle, horses, sheep or swine.	17
misleading includes deceptive.	18
motor dealer —	19
(a) generally, see section 63(1); and	20
(b) for part 3, division 5, see also section 99.	21
motor dealer licence means a motor dealer licence issued under this Act.	22 23
motor salesperson means a person who holds a registration certificate as a motor salesperson.	24 25
motor vehicle see section 11.	26
non-refundable deposit , for part 3, division 4, see section 83.	27
obstruct includes hinder, delay and attempt to obstruct.	28
obtain —	29
(a) for part 3, division 2, subdivision 4, see section 75; or	30
(b) for part 4, division 2, subdivision 5, see section 139.	31

<i>official</i> means—	1
(a) the chief executive; or	2
(b) an inspector; or	3
(c) a public service employee.	4
<i>option to purchase</i> includes a right granted or purportedly granted, but not immediately exercisable, to purchase or to be given an option to purchase.	5 6 7
<i>principal licensee</i> means a licensee that carries on business under the licensee’s licence on the licensee’s own behalf.	8 9
<i>registered employee</i> —	10
(a) generally, means a person registered under this Act as a motor salesperson or trainee chattel auctioneer; or	11 12
(b) for part 8, see also section 215.	13
<i>registered office</i> —	14
(a) of a motor dealer, see section 114; or	15
(b) of a chattel auctioneer, see section 168.	16
<i>registration certificate</i> means a registration certificate issued under section 192.	17 18
<i>registration certificate register</i> see section 209(1).	19
<i>relevant person</i> , for part 7, see section 212.	20
<i>repair period</i> —	21
(a) for part 3, division 5, see section 99; or	22
(b) for part 4, division 4, see section 150.	23
<i>repealed Act</i> means the repealed <i>Property Agents and Motor Dealers Act 2000</i> .	24 25
<i>repealed code of conduct</i> means—	26
(a) the code of conduct under the repealed <i>Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation 2001</i> ; or	27 28 29

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- (b) the code of conduct under the repealed *Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001*. 1
2
3
- representation** includes a statement, promise, publication and 4
other representation made in any way. 5
- respondent**, for part 9, see section 225. 6
- reward** includes remuneration of any kind including, for 7
example, any fee, commission or gain. 8
- sale by auction** means the sale of property in any way 9
commonly known and understood to be by auction. 10
- sell** includes agree to sell, advertise or display for sale, 11
attempt to sell, have for sale, negotiate for a sale, and in any 12
way be concerned in selling. 13
- serious offence** means any of the following offences 14
punishable by 3 or more years imprisonment— 15
- (a) an offence involving fraud or dishonesty; 16
- (b) an offence involving the trafficking of drugs; 17
- (c) an offence involving the use or threatened use of 18
violence; 19
- (d) an offence of a sexual nature; 20
- (e) extortion; 21
- (f) arson; 22
- (g) unlawful stalking. 23
- statutory warranty**— 24
- (a) for part 3, division 5, see section 99; or 25
- (b) for part 4, division 4, see section 150. 26
- statutory write-off** means a motor vehicle recorded on a 27
TORUM register as a statutory write-off. 28
- time of taking possession**— 29
- (a) for part 3, division 5, see section 99; or 30
- (b) for part 4, division 4, see section 150. 31
-

<i>TORUM register</i> means a register kept under a regulation under the <i>Transport Operations (Road Use Management) Act 1995</i> .	1 2 3
<i>trainee chattel auctioneer</i> means a person who holds a registration certificate as a trainee chattel auctioneer.	4 5
<i>transactions register</i> see section 118.	6
<i>transitioned licence</i> , for part 12, see section 262.	7
<i>transitioned registration certificate</i> , for part 12, see section 262.	8 9
<i>trust account</i> , means a trust account required to be kept under section 211.	10 11
<i>unwarranted vehicle</i> means a used motor vehicle that does not have a statutory warranty.	12 13
<i>used imported vehicle</i> means a motor vehicle that—	14
(a) has been imported into Australia under the <i>Motor Vehicle Standards Act 1989</i> (Cwlth); and	15 16
(b) is intended to be used in transport in Australia within the meaning of that Act.	17 18
but does not include a motor vehicle that has been supplied to the market in full volume in Australia within the meaning of that Act and the <i>Motor Vehicle Standards Regulations 1989</i> (Cwlth).	19 20 21 22
<i>used motor vehicle</i> —	23
(a) generally, means—	24
(i) a motor vehicle that has, at any time, been licensed or registered, whether under a law of this State or another State; or	25 26 27
(ii) a motor vehicle that, had it not been registered as mentioned in subparagraph (i) for use for demonstration or sales promotion, would have been a new motor vehicle; or	28 29 30 31
(iii) a used imported vehicle; and	32
(b) for part 3, division 4, see section 83.	33

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- warranted vehicle** means a used motor vehicle other than— 1
- (a) an unregistered motor vehicle that is— 2
 - (i) incapable of being registered in Queensland 3
because of its design; or 4
 - (ii) a written-off vehicle; or 5
 - (b) a motor vehicle sold on consignment, unless the owner 6
of the vehicle is a motor dealer or chattel auctioneer; or 7
 - (c) a commercial vehicle; or 8
 - (d) a caravan; or 9
 - (e) a motorcycle. 10
- warrantor**— 11
- (a) for part 3, division 5, see section 99; or 12
 - (b) for part 4, division 4, see section 150. 13
- warranty advice**— 14
- (a) for part 3, division 5, see section 99; or 15
 - (b) for part 4, division 4, see section 150. 16
- warranty period**— 17
- (a) for part 3, division 5, see section 99; or 18
 - (b) for part 4, division 4, see section 150. 19
- written-off vehicle** means a motor vehicle recorded on a 20
TORUM register as— 21
- (a) a repairable write-off; or 22
 - (b) a statutory write-off. 23