

Debt Collectors (Field Agents and Collection Agents) Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Debt Collectors (Field Agents and Collection Agents) Bill 2013.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. Provide for the repeal and split of the *Property Agents and Motor Dealers Act 2000* (PAMD Act) into four separate Acts. The Bill is one of the four Acts that will split the PAMD Act. The Bill will provide a system for regulating debt collectors and their employees, and a way of protecting consumers against particular undesirable practices associated with debt collection, repossession and process serving activities. The Bill adopts the term *debt collectors* for the purpose of describing persons performing debt collection, repossession and process serving activities.
2. Simplify and reduce the level of red tape and regulation the PAMD Act currently imposes on the debt collection industry.
3. Improve the operation of the legislation regulating the debt collection industry and clarify particular provisions.

Repeal and split of the PAMD Act

The PAMD Act provides a licensing and conduct framework for businesses and individuals (referred to in the PAMD Act as commercial agents) who perform the following activities as an agent for others for reward:

- finding, or repossessing, for a person any goods or chattels that the person is entitled to repossess under an agreement;
- collecting, or requesting payment of, debts;
- serving any writ, claim, application, summons or other process.

The PAMD Act also provides for the licensing and regulation of real estate agents, resident letting agents, pastoral houses, property developers, motor dealers and auctioneers, and establishes a claim fund designed to compensate consumers who suffer loss as a result of particular actions of licence holders.

The PAMD Act serves a number of important public policy objectives. However, over time it has become increasingly cumbersome and difficult to use. It has also been characterised by increasing levels of complex and technical regulatory requirements that in many instances may be disproportionate and ineffective response to the policy problems they are designed to resolve. In addition, the complex nature of the PAMD Act limits its capacity to be responsive to the needs of each industry it regulates.

The Motor Dealers and Chattel Auctioneers Bill 2013, Property Occupations Bills 2013, Agents Financial Administration Bill 2013 and this Bill (the Agents Bills) will provide for the repeal and split of the PAMD Act into three industry specific Acts and a financial administration Act which will provide common provisions for the industry specific Acts about trust account obligations and claim fund provisions. This structural change will facilitate a modern legislative framework that is more responsive to the individual needs and characteristics of the regulated industry sectors.

The Government has committed to growing a four pillar economy in Queensland and reducing red tape and regulation for industry. The repeal and split of the PAMD Act aligns with the Government's priorities by establishing Bills that are appropriately responsive to the needs of each respective industry and removing unnecessary red tape.

Industry groups will benefit from having legislation and obligations that are specific to their line of business. In addition, industry specific Acts will mean future legislative reforms will be more responsive to marketplace changes in each industry. This is anticipated to lead to increased industry standards, simplified compliance and increased consumer confidence in the regulated industries without having to increase the regulatory burden on licence holders.

Improvement of the operation of the legislation and reduction of unnecessary red tape and regulation

While largely consistent with the provisions of the PAMD Act that apply to commercial agents and their employees, the Bill includes amendments to improve the operation of the legislation regulating Queensland's debt collectors and to implement significant red tape reduction measures for the industry.

In February 2013, drafts of the Agents Bills were released for public consultation and a red tape reduction review. The objective of the red tape reduction review was to identify provisions of the draft Agents Bills that could be amended or removed to alleviate time and cost burdens (i.e. red tape) for industry. The red tape reduction review highlighted that there was considerable scope to reduce the regulatory burden imposed on industries regulated by the PAMD Act without adversely impacting on consumers.

Generally speaking (more detailed information is provided in the Achievement of Policy Objectives section below), to improve the operation of the legislation and simplify and reduce the level of red tape and regulation the PAMD Act currently imposes on Queensland debt collectors, the Bill:

- recognises the two distinct sectors of the industry and provides a regulatory framework appropriate for each sector;
- makes a number of changes to reduce particular licensing requirements, including removing the requirement for a director of a licensed corporation to hold a licence;

- simplifies and reduces regulatory burden for field agents and collection agents associated with appointments to act for clients;
- reduces the restrictions relating to particular persons being 'in charge' of a regulated business;
- introduces Suitability, Checking, Reporting and Monitoring (SCRAM) reports for licence holders, registration certificate holders, and collection agents required to open a trust account;
- provides an exemption, from the licensing and conduct requirements, for a person appointed under the Commonwealth *Bankruptcy Act 1966* (as the trustee in bankruptcy or the Official Receiver) for a debt collector who is an individual;
- clarifies the provision which gives exemptions for administrators, liquidators, receivers and controllers from prescribed requirements of the legislation; and
- improves the public accessibility of the register of enforceable undertakings.

Achievement of policy objectives

Provide for the repeal and split of the PAMD Act

The Bill achieves the policy objectives by enacting a law to deal exclusively with the licensing, registration and conduct of businesses and individuals performing debt collection, repossession and process serving activities as an agent for others for reward. These businesses and individuals are currently regulated under the PAMD Act and referred to as commercial agents and commercial subagents, and are respectively referred to in the Bill as debt collectors and subagents. The term 'debt collector' is used when referring to collection agents and field agents collectively.

The Bill is one of the three industry specific Bills that will facilitate the repeal and split of the PAMD Act. Grouping together all relevant licensing, registration and conduct provisions for debt collectors and subagent in one dedicated Act, rather than across a larger Act covering a number of industry sectors, simplifies the regulatory burden for the debt collection industry and improves the operation of the legislation, encouraging greater compliance on the part of the regulated individuals and businesses.

In licensing, registering and regulating the conduct of commercial agents and commercial subagents, the PAMD Act aimed to strike an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place. Similar to the objects of the PAMD Act, a key object of the Bill is to provide for a system for licensing and regulating debt collectors and subagents that achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place.

To provide continuity and limit impacts for the debt collection industry, commercial agent licenses under the PAMD Act will be transitioned to field agent licenses under the Bill. Similarly, commercial subagent registration certificates under the PAMD Act will be transitioned to subagent registration certificates under the Bill.

The Motor Dealers and Chattel Auctioneers Bill 2013 and the Property Occupations Bill 2013 are the other two industry specific Bills that facilitate the repeal and split of the PAMD Act. Consistent with the PAMD Act, licence holders and registration certificate holders

regulated by the three industry-specific Bills will be subject to particular financial administration requirements. These requirements will be imposed through the Agents Financial Administration Bill 2013.

The Agents Financial Administration Bill 2013 will provide for the administration of trust accounts held by agents (including field agents and collection agents) regulated under the three industry-specific Acts and establish a claim fund to compensate persons in particular circumstances for particular types of financial loss arising from dealings with agents.

The compliance and inspectorate provisions to enforce this Bill and the other two industry-specific Bills are provided for in the Fair Trading Inspectors Bill 2013, which will consolidate and harmonise compliance and enforcement provisions for 14 Acts about fair trading.

Reduce the level of red tape and regulation

The following describes how the Bill further achieves the policy objective of simplifying and reducing the level of red tape and regulation the PAMD Act currently imposes on debt collectors, while maintaining effective consumer protections.

Negative licensing system for collection agents

The debt collection industry has developed into two distinct specialisations: collection agents and field agents.

Collection agents engage in only the activities of collecting and requesting the payment of debts. Collection agents perform their activities *without* face-to-face contact with the debtor. Debt collection activities performed by collection agents are generally characterised by high volume telephone based activity completed from large call centres leveraging contact technology and software. Importantly, when dealing with agents using technology to make collection demands, debtors have much more control over how they wish to manage the situation and can choose to negotiate or terminate the call, as they see fit.

Field agents may engage in any of following activities: finding or repossessing goods and chattels under an agreement; collecting and requesting the payment of debts; and serving any writ, claim, application, summons or other similar process. Unlike collection agents, field agents typically carry out their activities *through face-to-face contact* with the debtor or person being served a notice.

In recognition of the difference in the two sectors, the Bill replaces the positive licensing regime currently imposed on collection agents under the PAMD Act with a negative licensing regime (see Part 2, Division 3 and Part 6), while maintaining the positive licensing regime for the field agent sector (see Part 4).

In general terms, under the negative licensing system, a person is not required to hold a licence or registration certificate to work as a collection agent. However, a person may be prohibited from being a collection agent if they fail to meet the prescribed suitability requirements. For example, the suitability requirements for an individual are that the person must:

- be at least 18 years of age;

- not have been convicted of a serious offence within the preceding 5 years;
- not be an insolvent under administration;
- not hold a field agent's licence or subagent's registration certificate that is suspended;
- and
- not be subject to an order by a court or tribunal disqualifying the person from holding a licence, registration certificate or performing a debt collection activity as a collection agent.

It is considered that the introduction of the negative licensing regime for collection agents will significantly reduce red tape for this sector without adversely impacting on consumers. Collection agents will no longer need to spend time and costs in both the paperwork and fees required to apply for, or renew, a licence.

Importantly, provisions currently included in the PAMD Act which relate to, for example, the appointment of an agent to act for a client, trust account requirements and the application of the claim fund for consumers in particular circumstances when they are negatively impacted financially by the behaviour of an agent, will be maintained in the Bill for both collection agents and field agents.

For any person who holds a commercial agent licence under the PAMD Act immediately before the commencement of the Bill the licence will be automatically transitioned to a field agent licence, regardless of whether the person only performs the activities of, and in the manner that would make the person, a collection agent. However, the person may surrender their licence if the person no longer wishes to hold a licence and only perform the functions of a collection agent.

Appointments

Simplifying appointments for process serving activities

The Bill simplifies the appointment requirements for field agents engaging in process serving for clients. Feedback during consultation was that the requirement under the PAMD Act for a field agent to obtain a written appointment that is signed and dated by both the client and the agent before the agent can act for the client is not practical for field agents engaging in the service of documents. Stakeholders advised that field agents may conduct a large volume of processes per month (often in excess of 1,000) and often receive instructions from clients which require service within tight timeframes (to comply with the service rules of courts). Consequently, clause 25 of the Bill provides that a field agent can engage in process serving activities for a client provided that the client has instructed the field agent in writing.

It is considered that consumer protection will be maintained as written instructions will continue to be required to be obtained to conduct process serving activities for a client, but signed and dated instructions are no longer required. In addition, the Bill provides that a field agent commits an offence if the field agent fails to obtain written instructions from the client in relation to the service. This offence is a replicate of the offence contained in the PAMD Act relating to appointments for process serving activities.

Remove the assignment of appointment provisions

The assignment of appointment provisions under the PAMD Act provided for an agent who held appointments from clients to perform services for the clients to assign the appointments to another agent, avoiding the need for the other agent to enter into new written appointments with each client (as long as the client agreed to the assignment). However, industry stakeholders advised that these provisions are unnecessary because clauses about assignment of appointments are typically a feature of contracts for service with clients. For this reason, the Bill removes the assignment provisions.

Licensing requirements

Display of licence and name and other particulars

The Bill does not continue the PAMD Act requirements for field agents to display their licence and name, and other particulars prescribed by regulation, at all times at their principal place of business. This is because, unlike other agents regulated under the PAMD Act, many field agents in Queensland work from home or away from their business premises and clients and debtors do not visit the business premises.

Furthermore, given the nature of the work performed by field agents, which often involves persistent requests for payment of debts and notifications of repossession and bankruptcy, there is also a safety justification for not requiring field agents to publicly display these details at their place of business. Importantly though, field agents will continue to be required to produce their licence for inspection, if asked, to enable debtors and clients to be assured that the person they are dealing with is licensed.

Advising name of auditor

The Bill removes the requirement under the PAMD Act for an applicant for a licence who intends to carry on a regulated business under the licence and is required to keep a trust account to advise, at the time of applying for the licence, the name and business address of an auditor appointed to audit the trust account and to give the chief executive evidence that the auditor has accepted the appointment as auditor.

The reason for removing this requirement from the licence application process is that when an application is made for a licence the applicant does not necessarily have a trust account or an auditor yet appointed. Furthermore, this information is not necessary for the purposes of processing the licence application.

Instead of making this requirement at the time of a licence application being made, the Agents Financial Administration Bill requires the name and address of the auditor (and evidence that the auditor has accepted the appointment as auditor) to be provided to the chief executive by a licence holder within one month of the licence holder appointing the auditor (the Agents Financial Administration Bill requires that an auditor must be appointed by the licence holder within one month of the licence holder opening a trust account).

This amendment will benefit industry by streamlining the licence application process and requiring notification of trust account auditor to be provided when appropriate.

Evidence of active trading

The Bill removes the requirement for a licence holder who is renewing or restoring their licence to provide evidence to the chief executive of active trading under their licence for a period, and within the period, prescribed under regulation.

It is considered that in relation to the decision making process for a licence renewal or restoration, the requirement to satisfy the chief executive that the applicant has actively carried out the authorised activities in the prescribed period is not necessary for determining whether or not an applicant is a suitable person to hold a licence.

This amendment will benefit industry by reducing unnecessary red tape and streamlining the licence application process.

Directors as licence holders

For a field agent that is a corporation, the Bill removes the current requirement under the PAMD Act for each director of the corporation to be licensed. However, it is considered that consumer protection will be maintained because the corporation will still be required to have a licence holder that is an individual in charge of the business and each director must still be suitable to hold a licence (that is, a director must meet the suitability criteria prescribed under the Bill for a licence holder). This will ensure that the business is still being managed by suitable persons, but without actually requiring each director to spend time and money on the paperwork and fees required to apply for, or renew, a licence.

Employment register

The Bill removes the requirement for a principal field agent to maintain an up to date employment register, which was required to be kept under the PAMD Act. The employment register was required to include the name of each employed licence holder and employed subagent, and the activities each employed subagent is authorised to perform. The requirement to maintain an employment register is onerous on business and it is considered appropriate to remove the requirement given that subagents are only permitted to perform the activities that the field agent in charge of the business is authorised to perform, subject to any conditions the chief executive has placed on the subagent's registration certificate. The activities a field agent in charge of a regulated business and any conditions placed on a subagent's registration are both matters the chief executive can identify without the employment register.

Licence holder to be 'in charge' of a regulated business

Under the provisions of the PAMD Act, each place of business performing regulated activities must be managed by a licence holder and a licence holder can only be 'in charge' of one place of business. The PAMD Act provides that a person is 'in charge' of a licence holder's business only if the person personally supervises, manages or controls the conduct of the licence holder's business at the place of business.

The policy intention of these provisions are to ensure licence holders maintain close personal supervision of the way the business is carried on and to ensure each subagent employed by the licence holder is properly supervised and complies with the legislation.

The PAMD Act also provides that if an in charge licence holder will be absent from the place of business an adult may be appointed (for a maximum of 30 days) as a substitute for the licence holder for the period of absence.

However, requiring a field agent to only be in charge of one place of business is not consistent with contemporary business practice. Many types of transactions are increasingly being made using the Internet, and technological developments will continue to change the way in which business practices are undertaken. As such, the requirement for place-based legislation becomes increasingly irrelevant and unduly restrictive for the debt collection and process serving industry.

In addition, it is considered that removing the requirement for a field agent to be on location at each place of business does not remove the principal licence holder's obligation to ensure their organisation and employees fully comply with the legislative requirements, including those which relate to maintaining trust accounts. Accordingly, the Bill continues to require that a principal field agent that is an individual must be in charge of their business, and a principal field agent that is a corporation must ensure that a field agent that is an individual is in charge of the business, but removes the requirement for the field agent to be in charge *at the agent's principal place of business*. The Bill also removes the requirement for a principal field agent or corporation that has more than one place of business to ensure a field agent is in charge at each place of business.

In addition, the Bill removes the prohibition on a field agent being in charge of a field agent's business at more than one place. However, the Bill maintains the requirement for a principal agent to take reasonable steps to ensure that each of the subagents employed by the principal agent is properly supervised and complies with the legislation. Similarly, the Bill maintains the requirement for an employed field agent who is in charge of a regulated business to take reasonable steps to ensure that each of the business's employees who are subagents are properly supervised and comply with the legislation.

Introduction of Suitability, Checking, Reporting and Monitoring Reports (SCRAM)

Under the PAMD Act, criminal history checks on applicants for licenses and registration certificates are currently undertaken at the initial application stage and at the renewal and restoration stage; however, renewal for a licence may occur annually or once every three years depending on the term of licence the applicant chose to apply for.

Clause 108 of the Bill introduces the ability for the Commissioner of Police to notify the chief executive of changes in criminal histories of licence holders, subagents and collection agents who are required to maintain trust accounts. This is done through an automated process referred to as Suitability, Checking, Reporting and Monitoring (SCRAM), which allows the timely reporting of changes of criminal histories within the jurisdiction of Queensland.

Introducing regular SCRAM checks ensures the chief executive is notified of any changes in a relevant person's criminal history within Queensland since the person's initial application

for a licence, registration certificate or, for particular collection agents, authority to open a trust account. Without this amendment convictions for serious offences may only be identified through an investigation of a complaint or when the licence holder/subagent renews their licence/registration certificate.

The introduction of SCRAM will provide the chief executive with the flexibility to manage potential risks (by being alerted to changes in a person's criminal history prior to a licence/registration certificate being renewed or a complaint being made) and deliver a saving to licence holders and subagents by enabling the chief executive to reduce the frequency under which a full criminal history report is required for renewing licenses and registration certificates. For new applicants, the introduction of SCRAM adds an additional tool for ongoing suitability checking, but will not impose additional requirements on applicants.

Exemption for administrator, liquidators, receivers and controllers

Under the PAMD Act, externally appointed administrators and receivers that have been appointed to deal with the insolvency of a corporate licence holder are provided with an exemption from the licensing and other particular provisions.

Clause 6 of the Bill maintains this exemption for administrators appointed for corporate licence holders and, additionally, provides that external administrators and receivers that have been appointed to deal with insolvent licence holders who are individuals are also exempt from the licensing and other particular requirements of the legislation. This amendment is consistent with the existing exemption that is provided to administrators that are appointed to deal with the insolvency of a corporate licence holder. It is considered this will remove regulatory duplication for those external administrators (who are governed under the *Bankruptcy Act 1966* (Cwth)) that have been appointed to deal with personal insolvency.

Clarify and improve operation of the legislation

The following explains how the Bill achieves the policy objectives of clarifying and improving the operation of the legislation for the debt collection industry.

Exemption for administrator, liquidators, receivers and controllers

Clause 6 of the Bill extends the exemption for administrators, receivers, controllers and liquidators from the licensing requirements of the legislation when they are appointed for corporations and natural persons which and who were formerly licensed. This is to ensure administrators etc can be appointed (and be exempt from the licensing provisions) for a corporation or person where the corporation or person was licensed but, for example, is unable to pay for their licence to be renewed and therefore becomes unlicensed. It is important that in these types of circumstances that an administrator (or other prescribed person under clause 6) be able to be appointed and exempt from the licensing provisions of the legislation to enable the business to be dealt with for the benefit of clients and consumers associated with the business.

Register of enforceable undertakings

Clause 132 introduces the ability for the chief executive to publish the register of enforceable undertakings on the Department's website. An enforceable undertaking is a written promise by a licensed business to discontinue breaching the legislation in a particular respect. This is one of several enforcement options available under the Bill.

Under the PAMD Act, the register of enforceable undertakings may be inspected by a member of the public, at a fee. However, enabling the chief executive to publish the register on the Department's website will increase public accessibility to enforceable undertakings entered into by businesses and individuals and it is considered that this will improve licensee compliance with the legislation and consequently improve consumer protection.

Joining of multiple offences relating to wrongful conversion and false accounts of amounts

Under the PAMD Act, if a licence holder, in the performance of the activities of a licence holder, receives an amount belonging to someone else, the licence holder must not dishonestly convert the amount to the licence holder's own or someone else's use; or dishonestly render an account of the amount knowing it to be false in a material particular. Proceedings may be commenced if the licence holder is considered to have contravened this conduct requirement and a course of dishonest conduct is present.

This provision is replicated in the Bill at clause 133. However, clause 133 of the Bill also introduces a provision (similar to the approach taken in the Criminal Code) to allow multiple alleged offences relating to the prescribed conduct that have occurred over the course of a period of time or on multiple occasions to be considered and presented to the courts jointly, as opposed to each individual offence being considered separately. That is, the new provision allows for two or more instances of conduct relating to dishonest application of money to be taken to constitute one alleged offence committed over the period stated in the complaint or indictment in relation to the conduct, which may be charged and proceeded against on one charge.

This new provision will promote procedural fairness and may benefit consumers by reducing the costs of participating in proceedings if all instances of the offence are considered at the same time. It is considered that allowing one charge to be laid for multiple offences will also reduce the costs to government associated with commencing proceedings and reduce the volume of work imposed on the court system.

Suitability of corporations

The PAMD Act provides that a corporation is not suitable to hold a licence if an executive officer of the corporation is convicted of a serious offence. Clause 45 of the Bill retains this suitability criteria and also makes it clear that a corporation is not suitable to hold a licence if the corporation is convicted of a serious offence. This is because there are times where a court will convict a corporation that holds a licence (and record the conviction), but not convict the executive officers of the corporation. This amendment is considered a clarification of the existing policy under the PAMD Act about what makes a corporation a suitable person to hold a licence.

Immediate suspension for failure to file an audit report

An important consumer protection under the PAMD Act is that licence holders operating trust accounts must submit periodic audit reports to the chief executive. However, if a licence holder fails to submit an audit report, the chief executive is unable to take immediate action to stop the licence holder operating the trust account until such time as a conviction has been recorded for the failure, and the licence holder continues to fail to provide the audit report. This increases the risk of significant delay in detecting (and preventing) defalcations and other issues associated with a trust account.

Accordingly, clause 67 of the Bill includes provision for a licence to be immediately suspended if a licence holder fails to submit a required audit report. The licence remains suspended until the licence holder files the required audit report or an application to the Queensland Civil and Administrative Tribunal (QCAT) for the cancellation of the licence is heard and decided, whichever is the earliest.

Alternative ways of achieving policy objectives

All submissions and proposals put forward by stakeholders during the public consultation process for the red tape reduction review were considered in detail. Proposals raised by stakeholders that were consistent with the objective of the review, which was to reduce red tape and regulation without adversely impacting on consumers, were generally supported and are reflected in the Bill.

A preliminary impact assessment of the proposals reflected in the Bill as well as alternatives to these proposals, including maintaining the status quo and adopting interstate approaches, was conducted. Maintaining the status quo was not supported as this alternative was considered to be inconsistent with Government priorities and the objective of the red tape reduction review.

The appropriateness of adopting interstate approaches in Queensland was also assessed. In this respect, the Bill provides a similar approach to the Victorian model for regulating the debt collection industry (the negative licensing model). However, unlike the Victorian legislation which provides a negative licensing system for the whole debt collection industry, the Bill will only provide a negative licensing regime for the collection agent sector of the Queensland debt collection industry.

Estimated cost for government implementation

The Government will incur costs in implementing the split of the PAMD Act and in implementing the additional amendments to the existing legislative requirements of the PAMD Act to reduce red tape and regulation for industry.

For example, the split of the PAMD Act into four separate pieces of legislation, three of which will relate to the licensing of particular industries, will require the development of a new licensing framework, data system and business processes for the new licensing categories and requirements for the regulated industries. In addition, a change management process will also need to be developed to seamlessly transition existing licence holders into

the new licensing, data and business process system. The development and implementation of this new licensing framework and the change management process will impose significant costs on the Government.

The repeal of the PAMD Act and the changes to the licensing system and other red tape reduction reforms require substantial amendments to be made to the existing approved forms, information on the Office of Fair Trading website, and other related publications. In addition, the scripts provided to the public call centre, Smart Service Queensland, will be largely redrafted to implement the split of the PAMD Act and red tape reduction reforms. Significant staff training costs and changes to the complaint management system are also associated with the implementation of the Bill.

Finally, the State Government will incur costs in delivering information and education services to assist stakeholders including existing licence holders in understanding their rights and obligations following the changes to the Act. A substantial communication programme (comprising of updates to the website features and content, social media messaging, a series of media releases, editorials and articles for trade journals and industry publications, electronic alerts to licence holders, publications and direct mail-outs) to ensure existing licence holders are well informed of the changes to the licensing framework and existing legislative requirements will be undertaken.

All expenditure associated with implementing the split of the PAMD Act and the red tape reduction proposals will be met from existing appropriations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislative Standards Act 1991, section 4(3)(a) – legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

Chief executive must consider suitability of applicants, licence holders and subagents (established under the PAMD Act and provided for in the Bill)

Part 4, Division 3 and Part 5, Division 3 replicates the relevant sections of Chapter 2, Part 4 and Chapter 3, Part 4 of the PAMD Act respectively, which provides that the chief executive must consider the suitability of a person including their criminal history, their character and the character of the person's business associates when determining their suitability to hold a licence. Suitability must also be considered by the chief executive for corporations wishing to hold a licence and for individuals wanting to be registered as subagents. This raises the fundamental legislative principal of whether the legislation makes the rights of individuals dependent on administrative power that is sufficiently defined and subject to appropriate review.

However, Part 4, Division 3 and Part 5, Division 3 is considered justified because the character of a person, their criminal history and the character of a person's business associates are useful indicators by which to judge if a person is suitable to hold a licence.

Further, the legislation provides express and relevant criteria for the chief executive to make a decision about a person's suitability and the administrative powers of the chief executive to consider applications for licenses and registration are sufficiently defined and reviewable by the QCAT.

Eligibility for a licence and age discrimination (established under the PAMD Act and provided for in the Bill)

Part 4, Division 4 and Part 5, Division 4 provides that the chief executive must consider the eligibility of a person to hold a licence or be registered as a subagent, including whether the person is over the age of 18. This age discrimination is justified on the basis that it provides protection for consumers by ensuring that field agents and subagents have adequate judgement and capacity to carry out their authorised activities. Like the criteria for determining if a person is suitable to hold a licence, the criteria for determining eligibility are explicitly defined and necessary to ensure that field agents and subagents can adequately perform their duties.

Conditions and suspension of a licence or registration certificate

The Bill also allows the chief executive to place conditions on a licence or a person's registration as a subagent (clauses 53 and 84), and to suspend a licence or registration for a period (clauses 67 and 96). While this may adversely affect the rights and liberties of individuals, the imposition of conditions and the suspension of licenses and registration are necessary for the protection of consumers. Additionally, the administrative powers of the chief executive are sufficiently defined and are reviewable by QCAT.

Legislative Standards Act 1991, section 4(3)(b) – legislation should be consistent with principles of natural justice

Immediate action (cancellation, suspension or amendment) without hearing (established under the PAMD Act and provided for in the Bill)

Clauses 68 and 97 provide the chief executive with the power to cancel a licence or a person's registration as a subagent without giving the holder an opportunity to make representations as to why the licence or registration should not be cancelled. The clauses do not provide for prior notification of cancellation or a 'show cause' process.

Immediate cancellation denies the licence holder or registration certificate holder natural justice. However, the inconsistency with the fundamental legislative principle is justified on the grounds that immediate cancellation is limited to the most serious of instances that could cause the greatest detriment to consumers. In particular, a licence may only be cancelled under clause 68 if the licence holder is convicted of a serious offence; where the licence holder is an individual, if the licence holder is an insolvent under administration; or where the licence holder is a corporation, if the licence holder has been wound up or struck off under the Corporations Act.

For a person registered as a subagent, the registration may only be cancelled if the subagent is convicted of a serious offence. The happening of any of the events goes to the very core of a licence holder's or subagent's suitability to perform the activities authorised by the licence or

registration. The immediate cancellation of the licence or registration prevents the likelihood of detriment, or further detriment, to consumers.

It should also be noted that the immediate cancellation of a licence or person's registration does not permanently prevent the person from applying for a new licence or registration as a subagent. However, the person must meet the suitability and eligibility requirements. Additionally, the Bill does not prevent a licence holder or subagent from seeking judicial review of the chief executive's decision to cancel the licence or registration.

Inconsistency with the principles of natural justice may also be raised in relation to the immediate suspension of licenses and registration (clauses 67 and 96) as there is no prior notification or 'show cause' process. However, immediate suspension of a licence or registration is limited to specific circumstances and is considered necessary to prevent the likelihood of detriment, or further detriment, to consumers. Furthermore, as explained above, a right of review is available to QCAT.

Limiting the period within which a prosecution or proceeding may be started (established under the PAMD Act and provided for in the Bill)

It is also arguable that clause 141, which imposes time limits on the commencement of proceedings and allows the prosecution to elect for an indictable offence to be heard summarily on indictment is inconsistent with the principles of natural justice.

However, the time limits within which to commence a proceeding under the Bill are reasonable and necessary to provide certainty for persons about when the risk of prosecution for an alleged breach ends. Time limits are used to create certainty for parties in other proceedings, for instance, the *Limitations of Actions Act 1974* provides statutory limits for commencing civil actions.

Although the prosecution may elect for an indictable offence to be heard summarily, the person charged with the indictable offence may still ask, at the start of a summary proceeding, that the charge be prosecuted on indictment. If the person does make the request, the magistrate must not decide the charge as a summary offence and must proceed by way of a committal proceeding.

Legislative Standards Act 1991, section 4(3)(d) – legislation should not reverse the onus of proof in criminal proceedings without adequate justification

Entries in documents (established under the PAMD Act and provided for in the Bill)

Clause 140 provides that an entry in a document kept by or belonging to a debt collector is evidence that the entry has been made by or with the authority of the debt collector. The provision reverses the onus of proof by requiring the debt collector to prove that an entry in a document has not been made by the debt collector or with the authority of the debt collector. However, it is a reasonable assumption made for the purpose of procedural efficacy to assume that entries in documents in the possession of the debt collector or belonging to the debt collector have been made with the authority of the debt collector, particularly given that evidence related to the authorship of entries in documents is likely to be within the knowledge of the debt collector.

Responsibility for acts of representatives (established under the PAMD Act and provided for in the Bill)

Clause 142 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission. The reversal of the onus of proof is justified on the grounds that the information relating to the exercise of reasonable diligence would be peculiarly within the knowledge of the person and would otherwise be difficult to establish.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – abrogation of rights and liberties from any source must be justified

Negative licensing framework for collection agents

The introduction of a negative licensing regime for collection agents is anticipated to have broader application than the PAMD Act for particular persons. Essentially this new system will impose upfront suitability standards for a small sector of the industry that is currently exempt from the licensing framework.

Currently, the PAMD Act provides that an employee of a commercial agent does not act as a commercial agent only because the person requests, by telephone, payment of a debt. As such, this small segment is unregulated and suitability tests (probity) do not apply to these individuals. For example, it is feasible that under the PAMD Act, an individual that is an insolvent under administration may perform these restricted activities. However, as the prohibitions under the proposed negative licensing regime will apply to all persons who perform debt collection activities without face-to-face contact with the debtor, including employees requesting payment of a debt by telephone, this could arguably have an impact on these individuals.

While the negative licensing framework may be considered to impact on the existing rights and liberties of some individuals, it is considered to be justified to create a level playing field for all participants in the negative licensing framework and to remove potential loopholes from complying with regulatory requirements. It is anticipated that only a small number of individuals (if any) would be impacted. The exclusion will only apply for a period of time, and once the individual is, for example, no longer insolvent under administration or has not been convicted of a serious offence within the previous 5 years, they will no longer be prohibited from working as a collection agent.

Privacy and confidentiality rights (established under the PAMD Act and provided for in the Bill)

Part 7 provides that the chief executive may make investigations, including obtaining a criminal history report, about particular persons (including their business associates and, for corporations, the executive officers of the corporation), to help decide if the persons are suitable to hold a licence or be registered as a subagent, to be authorised to be a collection agent, or, in the case of collection agents who wish to open a trust account, if the collection agent is suitable to open a trust account. The provision of a criminal history report to the chief executive impacts the privacy of the person who is the subject of the report. In addition, when

investigating business associates of a person being investigated and or the executive officers of a corporation, the chief executive does not need to acquire the business associate's or executive officer's consent to obtain the report.

However, these infringements on privacy are justified on the basis that a criminal history report is necessary to ensure that only suitable persons are collection agents or become field agents or subagents, and that only suitable collection agents may open trust accounts. Given that the work of debt collectors and subagents involves persistent requests for debts and the repossession of property in circumstances where consumers are at their most vulnerable, it is reasonable to ask for details of a collection agent's or potential licence holder's/subagent's probity and propriety.

This extends to requiring details about a debt collector's associates, and a corporation's executive officers. Under the Bill, applicants for a licence must provide the names of their business associates and applicants for a corporate licence must provide the names of the corporation's executive officers. These are persons with whom the applicant or licence holder carries on, or intends carrying on, business under the licence. Given the direct involvement of business associates and executive officers in a licence holder's business and their ability to influence business behaviour, investigations into the propriety of these people is a necessary step in ensuring the business operates in accordance with the law, and limits the risk of consumers being subject to any detriment in their dealings with the business.

Clauses 110 provides a safeguard in relation to the confidentiality of the criminal history reports and notices by providing that a public service employee performing functions under the Bill must not disclose information about a person's criminal history and that the chief executive must destroy a written criminal history report or other notice about a change in a person's criminal history as soon as practicable after considering a person's suitability.

In relation to personal information generally, the chief executive and public service employees are required to comply with the *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009*.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – imposition of presumed responsibility must be justified

Imposition of liability for the acts of others (established under the PAMD Act and provided for in the Bill)

Clause 142 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission. While the clause imposes liability for the actions of others, it is justified on the grounds that it follows the general law of agency in that the principal is liable for the actions of his or her agent. The clause is also consistent with one of the main themes of the Bill in that a principal field agent must ensure their employees comply with the Bill, and are responsible for the acts and omissions of their employees.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* –
abrogation of common law rights must be justified

Right not to be defamed

Clause 145 replicates clause 594 of the PAMD Act, which allows the Minister or chief executive to make or issue public warning statements or information statements that may identify individuals. These public statements may have an adverse affect on individuals. However, before making a statement, the Minister or chief executive must be satisfied that it is in the public interest to do so. Accordingly, the inconsistency with the fundamental legislative principle is justified on the grounds that it is in the public interest to allow the making of warning and information statements for the protection of consumers.

A particular concern may be raised in relation to public statements about business practices regulated under the Bill that are unfair and naming persons who engage in the unfair practices. This is because, unlike making a public statement about disciplinary proceedings or the commission of an offence, determining what constitutes unfair business practices is subjective and has greater potential to adversely affect an individual. Additionally, information about disciplinary proceedings by QCAT and court convictions are already publicly available, whereas information concerning ‘unfair business practices’ is not. Nevertheless, the Minister or chief executive (noting that this power can not be delegated pursuant to clause 148) will only make a public statement if satisfied it is in the public interest to do so.

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

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

Clause 146 provides that nothing in the Bill affects or limits any civil remedy that a person may have against a debt collector or another person for any matter.

Publication of register of enforceable undertakings on department’s website

Clause 132 of the Bill provides for the chief executive to publish the register of enforceable undertakings on the Department’s website. An enforceable undertaking is a written promise by a licensed business not to keep breaching the legislation.

Under the PAMD Act, the register of enforceable undertaking may be inspected by a member of the public, at a fee. Providing the chief executive with capacity to publish this register on the department's website may be considered to be an abrogation of common law rights as the information contained in the register could contain adverse information about a person and impact on their capacity to obtain future clients who may not have been likely to pay a fee to inspect the register but are more likely to view it if it is readily available on the Department's website. However, enabling the chief executive to publish the register on the Department's website will increase public accessibility to enforceable undertakings entered into by businesses and individuals and it is considered that this will improve compliance with the legislation and consequently improve consumer protection.

Legislative Standards Act 1991, section 4(4)(a) – allows the delegation of legislative power only in appropriate cases and to appropriate persons

Regulation-making power (established under the PAMD Act and provided for in the Bill)

Clause 150 of the Bill replicates the relevant heads of regulatory power under the PAMD Act. The matters to be prescribed under regulation are those matters usually prescribed under regulations, for example, fees, minor offences, the keeping of records. As these are mostly administrative matters that can be subject to changes over time, it is appropriate that they are provided for in a regulation, rather than primary legislation. The regulation will comply with the requirements of section 4(5) of the *Legislative Standards Act 1992*.

Elements of offences prescribed by regulation (established under the PAMD Act and provided for in the Bill)

Clause 29 (notice to chief executive of changes in circumstances) and clause 150 (regulation-making power) allow elements of offences to be prescribed by regulation, which may be considered an inappropriate delegation of legislative power. However, it is considered appropriate that particular matters comprising these offences are prescribed by regulation, as they are administrative in nature and subject to change over time. For example, it may be necessary to prescribe an additional circumstance that a licence holder or subagent must notify the chief executive about if there is a change to that circumstance to ensure the chief executive has the most up to date information about necessary matters relating to licence and registration certificate holders. This approach allows flexibility in prescribing the offence elements and removes detail from the Bill.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – abrogation of established statute law rights and liberties must be justified

Requirement of QCAT or court to make disqualification order when making order to cancel and individual's licence or registration certificate

Consistent with the PAMD Act, the Bill provides that QCAT or a court may make an order to cancel a licence holder's licence or individual's registration when it is considered appropriate. However, the Bill includes amendments to require QCAT or the court to also make an order disqualifying a person from holding a licence, being registered as a subagent, or performing a debt collection activity as a collection agent for a period when making an order to cancel a licence or a person's registration and the order is being made in relation to an individual.

Without this amendment, some individuals that have had their licence or registration cancelled have subsequently made an application for a licence or registration to the chief executive, not long after the cancellation order was made by QCAT or a court. While the chief executive has capacity to consider whether an applicant has had their licence or registration cancelled when determining whether or not an individual is a suitable person to hold a licence or certificate, the period for which the individual may be considered unsuitable is ambiguous. It is considered more appropriate for QCAT or the court to determine an appropriate period for disqualification based on the circumstances of each case when making a cancellation order. To further clarify the legislation and reduce the administrative burden for the chief executive, the Bill (clause 43 and 79) also provides that a person can not make an application for a licence or registration while disqualified.

The requirement for QCAT or the court to make a disqualification order when making a cancellation order only applies when the cancellation order is being made in relation to an individual. This is because it is foreseeable that a corporation may be on sold and have a change in executive officers (as contemplated in clause 43 of the Bill), which could result in the corporation being determined to be suitable to hold a licence or perform a debt collection activity as a collection agent. As such, the chief executive will continue to make decisions about a corporation that has had their licence cancelled and subsequently makes an application for a licence on a case by case basis. However, QCAT and a court will also continue to be able to make an order to disqualify a corporation from holding a licence or performing a debt collection activity as a collection agent if QCAT or the court considers it appropriate. If a corporation is disqualified, the corporation is not suitable to hold a licence or perform a debt collection activity as a collection agent.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation

The offences in the Bill continue the offences and associated penalties applying under the PAMD Act. Consequently existing licence holders and subagents will be subject to the same offences as they were under the PAMD Act. The PAMD Act has been in force since the year 2000 and has acted as an effective deterrent against undesirable practices and in doing so has protected consumers, including from financial loss in significant transactions. Additionally, there have been a substantial number of prosecutions and enforcement actions taken for breaches of the offence provisions. As such, the offences in the Bill are considered to be relevant and of an appropriate proportion to the legislative obligations.

Offences included in the Bill that were not part of the PAMD Act are discussed in more detail below.

New offence – Sell, lend or borrow registration certificate

The Bill includes a new offence (clause 136) for subagents which relates to the selling, lending or hiring out a registration certificate. The offence prohibits a subagent from selling, lending or hiring out the subagent's registration certificate; notifying or advertising that the subagent's registration certificate is for sale, loan or hire to another person; or permitting or allowing someone else to hold out that they are the holder of the registration certificate issued to the subagent. The offence also prohibits a person from borrowing, hiring or purchasing a subagent's registration certificate.

While this is a new offence for subagents, the offence (and the maximum penalty applying to the offence) is a direct replicate of an existing offence under the PAMD Act about the selling, lending or hiring out of a licence, which is also included in the Bill (clause 135). Given that the chief executive must consider the suitability and eligibility of each applicant for registration as a subagent, in the same way the chief executive must consider the suitability and eligibility of each applicant for a licence, it is considered appropriate that a subagent should not be able to sell, lend or hire out their registration certificate to another person. This new offence is necessary to ensure that only persons who meet the prescribed suitability and eligibility criteria are authorised to work in the debt collection industry.

New offence – Return of licence or registration certificate for replacement

Under the PAMD Act, it is an offence not to return a licence or registration certificate for amendment of the conditions of the licence or registration. This offence is replicated under the Bill in clause 62 and clause 93. However, the offence has also been extended in the Bill to apply to circumstance where the chief executive is replacing a licence or registration certificate because the chief executive is satisfied that a prescribed change has happened (for example, the licence or registration certificate holder's name has changed) which requires the licence or certificate to be replaced. That is, clause 62 and 93 provide that it is an offence if a licence holder or subagent, respectively, does not return the licence or certificate to the chief executive if the chief executive intends to amend the conditions of the licence or registration or replace the licence or registration certificate due to the happening of a prescribed change which requires a replacement to be issued.

This extension of the existing offence under the PAMD Act is required to ensure that if the chief executive replaces a licence or registration certificate because the information contained on the licence/certificate requires changing, the chief executive can require the licence holder/subagent to return the licence/registration certificate that contains the incorrect information. This is necessary to ensure that a licence holder/subagent will only be in possession of a licence/certificate that contains correct information, which provides for increased protection for consumers.

The maximum penalty for the offence provided in clause 62 for licence holders and clause 93 for subagents is the same as the maximum penalty for the original offences under the PAMD Act.

New offence – Wrongful conversion and false accounts

Under the PAMD Act, it is an offence for a licence holder, and a person who acts as licence holder but who does not have a licence, to receive an amount belonging to someone else in the performance of a regulated activity and dishonestly convert the amount to the person's own or someone else's use or to dishonestly render an account of the amount knowing it to be false in a material particular. The Bill replicates this offence and extends the application of the offence to persons who are registered as a subagent or who act as a subagent but do not have registration as a subagent.

It is considered necessary to broaden the application of this offence to enhance consumer protection by providing a significant deterrent for not only licence holders but also subagents, or persons who acts as if they are subagents, from wrongfully converting an amount, or

dishonestly rendering an account of the amount, received for the performance of a regulated activity.

The maximum penalty applying to this offence under the PAMD Act for licence holders (and persons acting as licence holders without a licence) is replicated for this same offence in the Bill for licence holders, subagents and persons acting as licence holders or subagents without a licence or registration as a subagent.

The maximum penalty is one of the highest penalties for an offence in the Bill; however, it is considered a significant penalty is required with respect to the handling of consumers' money to provide as a sufficient deterrent from amounts received for the performance of regulated activities, and belonging to someone else, from being inappropriately used.

Consultation

Red tape reduction review of draft Bills to split the PAMD Act

A comprehensive red tape reduction review of the draft Bills to split the PAMD Act into four separate pieces of legislation was conducted in 2013. The objective of the review was to identify opportunities to reduce red tape and regulation while maintaining effective consumer benefits.

The red tape reduction review was informed by a 6 week public consultation process that commenced in February 2013. Stakeholders were encouraged to make submission to remove unnecessary legislative obligations. Over 86 stakeholder submissions were received and 38 of those submissions included more than 100 different proposals in relation to the regulation of property agents and resident letting agents.

Targeted consultation on an exposure draft of the amended Bill was also conducted in October 2013. Stakeholder feedback to the amendments was positive and further amendments to improve the operation of the provisions and the Act were subsequently made before the Agents Bills 2013 were ready to be introduced into the Legislative Assembly.

Proposal to split the PAMD Act

In 2008 the former Service Delivery and Performance Commission (SDPC) finalised its 'Report on the Review of Regulatory Reform (Phase 2) – *Property Agents and Motor Dealers Act 2000*'. The SDPC undertook extensive consultation during its review of the PAMD Act including consultation with industry and the Queensland Consumers Association. The SDPC concluded that a significant reduction in the level of regulation could be achieved without adversely affecting consumers. The reductions were anticipated to be of significant benefit to the businesses affected by the Act and a number of the SDPC recommendations were considered likely to have positive benefits for consumers.

In 2010, draft Bills were introduced into the Parliament to split the PAMD Act. Throughout the development of the 2010 draft Bills, a working group comprised of representatives of key industry associations was consulted. Broad public consultation was also conducted on the 2010 draft Bills. In addition, the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (the committee) called for public submissions and held two public hearings to inform its examination of the 2010 draft Bills. The committee made a

number of recommendations including that the Bills be passed. However, the Bills lapsed upon the dissolution of Parliament in 2012.

Results of consultation

Peak bodies that have been consulted during the development of the split Bills or in relation to the red tape reduction review of the draft split Bills include the:

- Auctioneers and Valuers Association of Australia;
- Australian Livestock and Property Agents Association;
- Australian Property Institute;
- Australian Resident Accommodation Managers' Association;
- Institute of Mercantile Agents;
- Motor Trades Association Queensland;
- Property Council of Australia;
- Property Sales Association of Queensland;
- Queensland Consumers Association;
- Queensland Law Society;
- Queensland Tourism Industry Council;
- Queensland University of Technology Property Law Academics;
- Royal Automobile Club of Queensland;
- Real Estate Excellence Academy;
- Real Estate Institute of Queensland;
- Shopping Centre Council of Australia; and
- Urban Development Institute of Australia (Queensland).

Generally speaking, stakeholders strongly support the repeal and split of the PAMD Act into separate pieces of legislation. Strong stakeholder support for the amendments to reduce red tape and regulation was also received when targeted consultation was conducted. It is anticipated that industry will benefit from the red tape reduction amendments as these amendments will reduce costs for business without adversely impacting on consumers.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform or complementary to legislation of the Commonwealth or another State.

However, depending on the type of debt being collected and the appointment arrangements, a debt collector's activities may also be regulated by the Commonwealth under the *National Consumer Protection Credit Act 2009* (Cwth). In addition, the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission have published a 'Debt collection guideline for collection agents and creditors', which are essentially guidelines for best practice.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 provides that the short title is the *Debt Collectors (Field Agents and Collection Agents) Act 2013*.

Clause 2 states that the Bill is to commence on a day to be fixed by proclamation.

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

Clause 4 provides that the *Fair Trading Inspectors Act 2013* enacts common provisions for this Bill and that the powers that an inspector has under that Act are in addition to and do not limit any powers the inspector may have under the Bill, unless this Bill otherwise provides.

Division 2 Exemptions

Clause 5 provides exemptions for certain public officials from compliance with clause 30 (which provides an offence for acting as a debt collector unless authorised under the Bill or another Act) as follows:

- a bailiff serving a notice, claim, application, summons or other process; or
- a person, other than a debt collector, who is an enforcement officer or a member of the staff of the State Penalties Enforcement Registry under the *State Penalties Enforcement Act 1999* who is collecting, or requesting payment of, debts, or serving a notice, claim, application, summons or other process.

Clause 6 provides that particular persons appointed as administrators, receivers, liquidators or other controllers, for a corporation or individual, are exempt from particular prescribed provisions of the Bill while performing a regulated activity in relation to the business they are appointed for.

Clause 7 provides that Part 3 of the Bill does not apply to a financial institution or trustee company. Essentially, this means that a financial institution or a trustee company is exempt from holding a licence under the Bill and from particular prescribed requirements and conduct provisions under the Bill.

Division 3 Objects of Act

Clause 8 sets out the objects of the Bill and the ways the objects are to be achieved.

Division 4 Interpretation

Clause 9 states that the dictionary in schedule 3 defines particular words used in the Bill.

Clause 10 gives the meaning of *regulated activity* and related terms. The related terms are: debt collection activity, repossession activity and process serving activity.

Clause 11 gives the meaning of a *regulated business*.

Clause 12 gives the meaning of the phrase *in charge* in relation to a person being in charge of a regulated business. A person will be taken to be *in charge* of a regulated business only if the person supervises, manages or controls the carrying on of the business.

Clause 13 gives the meaning of *registered office* for a field agent.

Part 2 Authorisations

Division 1 Licences

Clause 14 provides that a licence authorises the holder to perform the following activities as an agent for others for reward, subject to any limitations imposed under a condition of the holder's licence:

- a debt collection activity;
- a repossession activity;
- a process serving activity.

A person who is the holder of a licence is referred to as a *field agent*.

A licence authorises the holder to perform the activities in carrying on a regulated business alone or with others, or as an employee of someone else.

Clause 15 restricts a corporation that holds a licence to performing a regulated activity under its licence only if the activity may be performed by a field agent in charge of the corporation's regulated business. A corporation that performs an activity which it is not authorised to perform is taken to be a person who acts without an authorisation for the performance of the activity.

Clause 16 restricts an individual who is an employed field agent to performing a regulated activity authorised under the individual's licence only if the activity may be performed by the individual's employer under the employer's licence. If the employed field agent performs an activity which the individual is not authorised to perform because the individual's employer is not authorised to perform the activity, the individual is taken to be a person who acts without a licence for the performance of the activity.

Clause 17 provides that if a field agent performs a regulated activity that the agent is not authorised to perform due to a condition on the agent's licence the agent is taken to have acted without a licence for the performance of the activity.

Division 2 Registration certificates

Clause 18 details the activities that a registration certificate authorises the holder of the certificate to perform. A person who is the holder of a registration certificate is referred to as a *subagent*.

For a subagent, the activities authorised to be performed are limited to the activities that may be performed by the field agent who employs the subagent and any conditions of the registration for which the certificate was issued.

Division 3 Automatic authorisations

Clause 19 provides an automatic authorisation for a person to perform a limited debt collection activity as an agent for others for reward without a licence or registration certificate. However, the automatic authorisation applies only if the person is suitable to perform a debt collection activity under Part 6 of the Bill and does not engage in face-to-face communication with the debtor in performing the debt collection activity.

A person authorised under this clause is referred to as a *collection agent*. A collection agent may perform the limited debt collection activity in carrying on a regulated business alone or with others, or as an employee of someone else.

Clause 20 provides that if a collection agent performs a debt collection activity that the agent is not authorised to perform under clause 19 or is not authorised to perform because of a condition imposed on the agent by QCAT under clause 116(1)(e), the collection agent is taken to be a person who acts as a person without an authority for the performance of the debt collection activity.

Part 3 Conduct

Division 1 Responsibilities

Clause 21 requires a principal field agent (defined in schedule 3) who is an individual to be in charge of the agent's regulated business. This clause also requires that if the field agent is a corporation, the corporation must ensure that the individual in charge of the corporation's regulated business is a field agent.

Clause 22 requires a principal field agent to take reasonable steps to ensure that each of the agent's employed subagents is properly supervised and complies with the Bill. This clause also requires an employed field agent who is in charge of a regulated business to take reasonable steps to ensure that each of the business' subagents is properly supervised and complies with the Bill.

Division 2 Appointment and engagement

Clause 23 prohibits a debt collector from performing a debt collection activity or repossession activity (service) for a client for reward unless the client first appoints the debt collector under this clause, or an appointment under this clause that is in force has been assigned to the collector under the terms of the appointment.

Clause 23 also provides that the appointment may be a single appointment for the performance of a particular service, or a continuing appointment for the performance of a number of services over a period. The appointment must state the prescribed information and be signed and dated by the client and debt collector (or someone authorised, or apparently authorised, to sign for the debt collector). The clause also requires the debt collector to give a copy of the signed appointment to the client.

Also, a notice revoking a continuing appointment must be in writing and signed, and given to the other party.

Clause 24 requires the appointment under clause 23 to be in writing and contain the particulars prescribed under a regulation, otherwise the appointment is ineffective from the time it is made.

Clause 25 prohibits a field agent from performing a process serving activity for a client for reward (the service) unless the client has engaged the agent in writing to perform the service.

Division 3 Recovery of expenses and costs

Clause 26 provides that a person is not entitled to sue for, or recover or retain, a reward or expense for the performance of a debt collection, repossession or process serving activity as an agent for others for reward unless the person was authorised under part 2 to perform the activity and the person had been properly appointed or engaged under division 2 by the client.

Clause 27 prohibits a person from recovering or attempting to recover from a debtor the costs or expenses of a debt collector for performing a debt collection activity or a repossession activity. However, this prohibition does not apply to prevent a person who appoints a debt collector to repossess goods or chattels from a debtor from recovering the debt collector's costs and expenses if the person has a right under an agreement with the debtor or otherwise to recover the costs or expenses. Costs or expenses recovered in contravention of this provision may be recovered by the debtor as a debt.

Clause 27 applies subject to the National Credit Code in schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).

Division 4 Notifiable changes

Clause 28 requires a field agent who is a principal field agent to notify the chief executive in the approved form of particular changes to the field agent's regulated business. *Clause 28* also requires an employed field agent to notify the chief executive in the approved form of any change in the employed agent's business address.

Clause 29 requires a field agent or subagent to give written notice to the chief executive of any prescribed change (which is prescribed under a regulation) in the field agent or subagent's circumstances.

Division 5 Prohibited conduct

Clause 30 prohibits a person from performing, as an agent for someone else for reward, a regulated activity (that is, a debt collection activity, repossession activity or process serving activity) unless the person is authorised under the Bill or another Act to perform the activity.

The clause also prohibits a person from acting as a debt collector unless the person is authorised under the Bill or another Act to perform activities of a debt collector. Without limiting the ways a person may "act" as a debt collector, a person acts as a debt collector if the person performs a regulated activity as an agent for someone else for reward; or advertises, notifies or states that the person performs or is willing to perform any of the

regulated activities, or holds out as being ready to perform any of the regulated activities, as an agent for someone else for reward.

However, if a lawyer, in the course of the lawyer's practice, collects debts, the lawyer is not taken to have acted as a debt collector if the lawyer complies with the requirements of the *Legal Profession Act 2007*.

Clause 31 prohibits a person from acting as a subagent (including holding out that the person is a subagent) unless the person is registered as a subagent.

Clause 32 prohibits a debt collector from accepting an appointment to act for another person if the debt collector is appointed to perform the activity for a person in relation to the other person. However, this prohibition does not apply if a debt collector acts for more than 1 party in relation to a debt agreement under part IX of the *Bankruptcy Act 1966* (Cwlth).

Clause 33 requires a field agent or a subagent, if asked by a person with whom the field agent or subagent is dealing, to produce the field agent's licence or subagent's registration certificate for the person's inspection.

Clause 34 prohibits a principal field agent from employing particular persons to perform regulated activities for the agent as a subagent.

Clause 35 prohibits a field agent or subagent from representing that the person's licence or registration certificate entitles the person to exercise a power the person may not lawfully exercise, or to use the licence or registration certificate to exercise a power the person may not lawfully exercise.

The clause also prohibits a collection agent from representing that the person's authorisation under part 2, division 3 of the Bill entitles the person to exercise a power the person may not lawfully exercise.

Clause 36 prohibits a field agent or subagent from entering any premises without lawful authority when performing a regulated activity.

Clause 37 prohibits a debt collector or subagent from inducing a person to enter into an arrangement for the payment of a debt by any false or misleading representation.

Clause 38 prohibits a creditor from impersonating a debt collector by using a name, description, document or device intended to make a person believe that the person is not dealing directly with the creditor.

The clause also provides that a debt collector is prohibited from giving any document to a creditor to enable the creditor to make a third person believe that the third person is dealing directly with the debt collector.

Division 6 Prescribed conduct provisions

Clause 39 provides that a regulation may provide for conduct standards for debt collectors and subagents in performing a regulated activity.

Part 4 Licensing

Division 1 How to obtain a licence

Clause 40 sets out the steps involved for an applicant in obtaining a licence. It also provides that the chief executive is to decide an application after having had regard, amongst other things, to the applicant's suitability and eligibility to hold a licence.

Division 2 Applications for licence

Clause 41 details the requirements for a licence application.

Clause 42 requires an applicant for a licence, if the applicant intends carrying on a regulated business immediately after the issue of the licence, to specify in the application the place or places in Queensland where the applicant proposes to carry on a regulated business.

The clause also requires an applicant for a licence, if the applicant does not intend carrying on a regulated business immediately after the issue of the licence, to specify in the application the capacity in which the applicant intends performing activities under the licence (for example, as a person in charge of a corporation's regulated business or as an employed field agent) and the address where the activities are to be performed.

Clause 42 also requires an applicant that does not intend carrying on a regulated business immediately after the issue of the licence, but intends to be a person in charge of a regulated business, to state in the application the name of their employer and the address of the places of business where the applicant is to be in charge.

A place of business or an address required under this clause to be specified in a person's application must be a place where a document can be served personally and not a post office box.

Clause 43 prohibits particular individuals or corporations from making an application for a licence in particular circumstances.

Division 3 Suitability of applicants and field agents

Clause 44 states, for individuals, the persons who are not suitable to hold a field agent licence and therefore, who can not hold a licence under the Bill.

Clause 45 states, for corporations, the corporations that are not suitable to hold a field agent licence and therefore, that can not hold a licence under the Bill.

Clause 46 sets out the matters that the chief executive must consider when deciding a person's suitability to hold a licence. For all applicants for a licence, the person's character, previous licence or registration record, and the character of the person's business associates are to be considered. The chief executive must also consider whether a claim has been paid out of the claim fund because of something the person did or omitted to do, and whether the person has ever been disqualified under a relevant Act from holding a licence or registration, or being an executive officer of a corporation that holds a licence, under a relevant Act.

In the case of applicants who are individuals, the chief executive must also consider the person's criminal history, solvency record, convictions (if any) for an offence under a relevant Act or the Administration Act, capability of satisfactorily performing a regulated activity, and whether the person's name appears in the register of persons disqualified from managing corporations under the Corporations Act.

For a corporation, the chief executive must also consider whether the corporation has been placed in receivership or liquidation, the solvency record of the executive officers of the corporation, whether the corporation or any executive officers of the corporation have been convicted of an offence against a relevant Act or the Administration Act, and whether each of the executive officers is a suitable person to hold a licence.

If the chief executive decides that an applicant is not a suitable person to hold a licence, the chief executive must give the applicant an information notice about the decision.

Clause 47 states that the corporation called The Public Trustee of Queensland is taken to be a suitable person to hold a licence. The suitability inquiry required for applicants for a licence is therefore not necessary.

Clause 48 states that the chief executive of a department of government is taken to be a suitable person to hold a licence. The suitability inquiry required for applicants for a licence is therefore not necessary.

Division 4 Eligibility for licence

Clause 49 sets out the eligibility requirements for a licence.

For an individual, the individual must be at least 18 years old to be eligible to hold a licence.

For a corporation, the corporation is eligible to obtain a licence only if there is a person in charge of the corporation's regulated business that is a licence holder.

Clause 49 also provides that the corporation sole called The Public Trustee of Queensland, and the chief executive of a department of government, is taken to be eligible to obtain a field agent licence.

Division 5 Issue of licence

Clause 50 provides that the chief executive may decide to issue or refuse to issue a licence to an applicant. The clause provides that a licence may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligibility to hold a licence and that the application complies with clause 41. If the applicant intends to carry on a regulated business with others, the chief executive must also be satisfied that each of those other persons is a suitable person to hold a licence.

If the chief executive refuses to issue a licence to an applicant the chief executive must give the applicant an information notice about the decision.

Clause 51 provides that a licence issued to the public trustee as a corporation sole is to be issued in the name "The Public Trustee of Queensland". A licence issued to the public trustee

authorises an officer or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence. The clause also provides that an officer or employee performing an activity authorised by the public trustee is not required to be licensed or registered under the Bill to perform the activity.

Clause 52 provides that a licence issued to the chief executive of a department is to be issued in the name “The Chief Executive of the (name of department)”. The licence is to be taken as being issued to the chief executive of the department for the time being and the chief executive, as the licence holder, is taken to represent the State.

A licence issued to a chief executive of a department authorises an officer or employee of the department to perform any activity authorised by the chief executive of that department that the chief executive may perform. The clause also provides that an officer or employee performing an authorised activity is not required to be licensed or registered under the Bill to perform the activity.

Clause 53 gives power to the chief executive to issue a licence on conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence. A condition may limit or prohibit the performance of an activity authorised by the Bill or the Administration Act, or require a licence holder to hold insurance of a kind and in an amount prescribed under a regulation.

If the chief executive decides to issue a licence on condition the chief executive must give the applicant for the licence an information notice about the decision.

Division 6 Renewal and restoration of licences

Subdivision 1 Renewal

Clause 54 makes provision for renewal of a licence by application before the licence expires. The application must be made in the approved form, stating the term of the licence being applied for and the names and addresses of the field agent’s business associates. It must be accompanied by the application fee, the licence renewal fee, proof of any insurance required to be held as a condition of the field agent’s licence and, if a criminal history costs requirement is made of the licence holder before or when the application for renewal is made, the amount of the costs required to be paid.

The application must also be accompanied by an audit report for all trust accounts kept by the field agent during the relevant audit period or by a statutory declaration that the field agent did not operate a trust account during the relevant audit report period.

For a field agent that is an individual, the field agent’s application must also, if requested by the chief executive, be accompanied by 2 recent colour photographs of the field agent of the prescribed size and certified in the prescribed way.

The chief executive may also, by written notice to the applicant, require the field agent to give the chief executive information or material the chief executive reasonably believes is needed to consider the application.

The field agent is taken to have withdrawn the agent's application if the agent fails to comply with the chief executive's request for colour photographs or for other information or material the chief executive has requested of the agent for considering the licence application.

Clause 55 provides that the chief executive may renew or refuse to renew a licence.

A licence may be renewed only if the chief executive is satisfied that the application complies with clause 54 and the field agent is a suitable person, and eligible, to hold a licence. If the field agent applying for the licence renewal carries on a regulated business with others, the chief executive must also be satisfied each person with whom the agent carries on the business is a suitable person to hold a licence.

If the chief executive refuses to renew a licence the chief executive must give the field agent an information notice about the decision.

Clause 56 provides that if a field agent makes a licence renewal application under clause 54, the agent's licence is taken to continue in force from the day that it would, apart from this clause, have expired until the application is decided under clause 55 or is withdrawn.

Subdivision 2 Restoration

Clause 57 provides that if a person's licence expires, the person may apply to have the licence restored. The clause also sets out what the application must include and be accompanied by, and when and how the application must be made. The clause also provides for the chief executive to require the person, by written notice, to give the chief executive information or material the chief executive reasonably believes is needed to consider the application.

For an applicant that is an individual, the application must also, if requested by the chief executive, be accompanied by 2 recent colour photographs of the individual of the prescribed size and certified in the prescribed way.

The person is taken to have withdrawn the person's application if the person fails to comply with the chief executive's request for colour photographs or for other information or material the chief executive has requested of the person for considering the licence application.

Clause 58 provides that the chief executive may restore or refuse to restore a licence.

A licence may be restored only if the chief executive is satisfied that the application complies with clause 57 and the field agent is a suitable person, and eligible, to hold a licence. If the applicant carries on, or intends to carry on, a regulated business with others, the chief executive must also be satisfied each person with whom the applicant carries, or intends to carry, on the business is a suitable person to hold a licence.

If the chief executive refuses to restore a licence the chief executive must give the applicant an information notice about the decision.

Clause 59 provides that if a restoration application is made under clause 57, the applicant's licence is taken to continue in force from the day that it would, apart from this clause, have expired until the application is decided under clause 58 or is withdrawn.

Clause 59 also provides that if the chief executive restores the applicant's licence, the licence is to be taken to have been renewed on the day it would, apart from this clause, have expired (the *initial expiry date*) and, to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the licence is restored is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.

Division 7 Dealings with licences

Clause 60 states that a licence can not be transferred.

Clause 61 provides that the chief executive may amend the conditions of a licence on application of the licence holder, or on the order of QCAT, or on the chief executive's own initiative.

An application by a licence holder for amendment of conditions must be made in the approved form and be accompanied by the prescribed fee. Before making the amendment applied for, the chief executive must be satisfied that the amendment of the condition is necessary or desirable for the proper performance of the activities authorised by the licence.

If the chief executive refuses to make an amendment requested by a licence holder, within 14 days of the decision, the chief executive must give the licence holder an information notice about the decision.

Before the chief executive amends a condition on the chief executive's own initiative, the chief executive is required to give written notice of the particulars of the proposed amendment to the licence holder and to advise the licence holder that the holder may make written submissions about the proposed amendment to the chief executive before a stated day, not later than 14 days after the notice is given to the holder. The chief executive must have regard to any submissions made by the licence holder before the stated day. However, the requirement for the chief executive to give written notice to the licence holder before making the amendment does not apply if the amendment must be made urgently to avoid potential claims against the fund, or to ensure compliance with the Bill or the Administration Act.

If the chief executive decides to amend the conditions of a licence on the chief executive's initiative, the chief executive must give written notice of the amendment to the licence holder about the decision within 14 days after the decision is made.

Clause 61 also provides that an amendment takes effect on the day written notice of the amendment is given to the licence holder or, if a later date is stated in the notice, the later date.

Clause 62 enables the chief executive to require a licence holder to produce their licence for amendment or replacement if the chief executive intends to amend the conditions of the licence under clause 61 or replace the licence under clause 75(5), unless the person has a reasonable excuse.

Clause 63 requires a person whose licence has been suspended or cancelled to return the licence to the chief executive within the prescribed timeframe, unless the person has a reasonable excuse.

Clause 64 allows a licence holder to surrender the holder's licence by giving written notice, and returning the licence, to the chief executive. The licence stops having effect on the day it is surrendered.

Clause 65 allows a field agent to request the chief executive to deactivate the agent's licence by applying in the approved form, which must be accompanied by the agent's licence and the prescribed fee.

When the application, the licence and the fee are received by the chief executive, the licence is taken to be deactivated and a licence holder is not authorised to perform an activity under the licence while it is deactivated.

Deactivation does not affect the term of the licence or entitle the licence holder to a refund of fees for the balance of the term. A deactivated licence may be renewed or restored as a deactivated licence under a reduced fee as prescribed.

Clause 66 allows the holder of a deactivated licence to request the chief executive to reactivate the deactivated licence by application in the approved form, accompanied by the prescribed fee. The clause provides that if the licence has been deactivated for 5 years or longer, the licence may be reactivated only if the chief executive is satisfied the licence holder is a suitable person, and eligible, to hold a licence. The chief executive must also be satisfied that, if the licence holder carries on, or intends to carry on, a regulated business with others, each person is a suitable person to hold a licence.

The clause also provides for the chief executive to require the holder of the deactivated licence, by written notice, to give the chief executive information or material the chief executive reasonably believes is needed to consider the request. The licence holder is taken to have withdrawn the holder's application if the holder fails to comply with the chief executive's request for information or material.

Division 8 Immediate suspension and cancellation of licences

Clause 67 permits the chief executive to immediately suspend a licence for particular reasons.

If the chief executive suspends a licence for a reason other than because the chief executive reasonably believes the licence holder has failed to file an audit report as required under the Administration Act, the licence may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.

If the chief executive suspends a licence because the chief executive reasonably believes the licence holder has failed to file an audit report, the licence is suspended until whichever of the following happens first:

- the licence holder files the required audit report;
- an application to QCAT for the cancellation of the licence is heard and decided;
- the licence is cancelled or otherwise ends under the Bill.

When a licence has been suspended by the chief executive, the chief executive must give written notice of the suspension to the licence holder.

Clause 68 provides that a field agent's licence is automatically cancelled when any of the following events happen:

- the agent is convicted of a serious offence;
- if the agent is an individual, the agent becomes an insolvent under administration;
- if the agent is a corporation, the agent is wound up or de-registered under the Corporations Act.

Division 9 Substitute licences

Clause 69 applies to a principal field agent who is an individual. The clause provides for the agent to appoint, or for the chief executive to appoint, an adult to be the agent's substitute.

A principal field agent is given power to appoint an adult person to be the agent's substitute for a period of not longer than 30 days, only if the adult consents to the appointment and, if the agent is required to hold insurance as a condition of the agent's licence, the adult is covered by the insurance or holds insurance that complies with the requirements of the licence condition.

The principal field agent must ensure that the appointment, the period of appointment and the adult substitute's consent are set out in writing. The appointment, consent and evidence of any insurance the substitute is required to have must be kept at the principal field agent's registered office.

If the principal field agent intends to appoint an adult (nominated person) as the agent's substitute for a period of more than 30 days, the agent must apply to the chief executive for the appointment, or extension of the appointment in the approved form. The clause also provides what the application must be accompanied by.

Clause 70 provides that the chief executive may appoint or refuse to appoint a nominated person as a substitute for a period of more than 30 days. However, the chief executive may appoint a nominated person as a substitute only if satisfied that the nominated person is a suitable person to hold a licence and if, as a condition of the field agent's licence the field agent is required to hold insurance, the nominated person is covered by the insurance or has insurance coverage that complies with that condition.

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

If the chief executive refuses the field agent's application for the appointment of the nominated person or decides to impose conditions on the appointment the chief executive must give the field agent an information notice advising the field agent of the decision.

Clause 71 provides for matters about a substitute. When a substitute is appointed under clause 69(2) or clause 70, the substitute is taken to be the field agent for the duration of the appointment and must act for the field agent for whom the substitute is appointed. A field agent for whom a substitute has been appointed under clause 69(2) or clause 70 must not act under the field agent's licence while the substitute's appointment continues. This clause also provides for the circumstances under which a substitute's appointment ends.

Clause 72 sets the limits on the period for which a substitute may be appointed by a principal field agent or the chief executive. A principal field agent may not appoint a substitute for more than 12 weeks in a 12 month period. The chief executive may not appoint a substitute for any principal field agent for more than 26 weeks in any 12 month period.

Division 10 General provisions about licences

Clause 73 provides that a licence must be issued in the approved form. The chief executive may approve a form of licence for office display, or personal identification, purposes. The licence must contain the name of the licence holder, the licence issue date, the expiry date of the licence and any other prescribed particulars. A personal identification licence must also contain a recent photograph of the licence holder.

Clause 74 provides that a licence may be issued for a term of 1 year or 3 years.

Clause 75 provides for a field agent to apply (in the approved form) to the chief executive for a replacement licence if agent's licence is lost, stolen, destroyed or damaged. If the chief executive is satisfied that the licence needs to be replaced, the chief executive must issue a replacement licence.

Clause 75 also allows the chief executive to issue a replacement licence to a field agent if the chief executive is satisfied that a prescribed change required to be notified under clause 29 (for example, a change of the field agent's name) has happened and the prescribed change requires a replacement of the licence, whether or not the licence holder has notified the chief executive of the prescribed change in the way and as required under clause 29.

If the chief executive replaces a licence under clause 75 the licence holder must pay the prescribed fee for a replacement licence and the replacement licence certificate continues to be subject to the same conditions and the term the licence was subject to before being replaced.

Clause 76 requires the chief executive to keep a register of licences and licence applications, and prescribes the particulars that must be contained in the register. A person may inspect, and obtain a copy of, the information contained in the register on payment of the prescribed fee. Access to the register is to be made available by personal attendance at a place decided by the chief executive or by using a computer. Provision is also made for the register to be kept in the way the chief executive considers appropriate.

Part 5 Subagents

Division 1 How to obtain registration

Clause 77 sets out the steps involved for an applicant in obtaining registration as a subagent, which include giving the chief executive an application detailing the person's eligibility for registration and paying the prescribed fees. It also provides that the chief executive is to decide an application after having had regard, among other things, to the person's suitability and eligibility for registration as a subagent.

Division 2 Applications for registration

Clause 78 details the requirements for an application for registration as a subagent, including use of the approved form; provision of information required by the chief executive, including any information the chief executive reasonably requires to decide whether the applicant is a suitable person, and eligible, for registration as a subagent; payment of the relevant fees and criminal history costs requirement; and 2 recent colour photographs of the applicant of the prescribed size and certified in the prescribed way.

Clause 78 also provides that the chief executive may require the person to give information or material the chief executive reasonably believes is needed for considering the person's application. A person who fails to supply the information or material within the notified time is to be taken to have withdrawn the person's application.

Clause 79 prohibits an individual from making an application for registration as a subagent if the individual is disqualified from being registered. The individual is not permitted to make an application for registration during the period for which the individual is disqualified.

Clause 79 also prohibits an individual who has been refused registration as a subagent from making another application for registration as a subagent for 3 months after the day the chief executive gives the information notice about the chief executive's decision to refuse the application for registration. If a person who has been refused registration by a decision of the chief executive applies to the tribunal for a review of the chief executive's decision and the tribunal confirms the chief executive's decision, the person may not make another application for registration until 3 months after the day of the tribunal's decision.

Division 3 Suitability of applicants and subagents

Clause 80 provides a list of factors that will exclude an individual from being a suitable person to obtain registration as a subagent, and therefore from holding a registration certificate. The factors are whether the person: has been convicted within the preceding five years of a serious offence; is currently disqualified from holding a licence or being registered as a subagent; is a person the chief executive decides under clause 81 is not a suitable person for registration as a subagent.

Clause 81 sets out the matters that the chief executive must consider when deciding a person's suitability for registration as a subagent.

The person's character and previous licence or registration record are to be considered, including whether the person has held a licence or registration that has been suspended or cancelled, or been disqualified from holding a licence or registration, under a relevant Act. The chief executive must also consider whether the person has been disqualified under the relevant Act from being an executive officer of a licensed corporation, and whether a claim has been paid out of the claim fund because of something the person did or omitted to do.

The chief executive must also consider the person's criminal history; whether the person is an insolvent under administration and the circumstances giving rise to this; convictions (if any) for an offence under a relevant Act or the Administration Act; the person's capability of

satisfactorily performing a regulated activity under the registration; and whether the person's name appears in the register of persons who have been disqualified from managing corporations under the Corporations Act.

If the chief executive decides that an applicant is not a suitable person to obtain registration, the chief executive must give the applicant an information notice about the decision.

Division 4 Eligibility for registration

Clause 82 provides that a person is eligible for registration as a subagent only if the person is an individual who is at least 18 years of age.

Division 5 Grant of registration

Clause 83 provides that the chief executive may grant or refuse to grant registration of an applicant as a subagent. However, registration may be granted only if the chief executive is satisfied of the applicant's suitability and eligibility for registration. The chief executive must also be satisfied that the application complies with clause 78.

Clause 83 also provides that if the chief executive grants registration of an applicant as a subagent, the chief executive must issue the applicant a registration certificate for the registration. If the chief executive refuses to grant registration of an applicant as a subagent the chief executive must give the applicant an information notice about the decision.

Clause 84 gives power to the chief executive to grant registration as a subagent on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the registration or another purpose consistent with the achievement of the Bill or the Administration Act. A condition may limit or prohibit the performance of an activity authorised under the Bill or the Administration Act.

If the chief executive decides to grant registration subject to a condition, the chief executive must give the applicant an information notice.

Division 6 Renewal and restoration of registration

Subdivision 1 Renewal

Clause 85 makes provision for renewal of a subagent's registration by application to the chief executive. The application must be made before the subagent's registration expires and must be made in the approved form. The application must state the term of the registration being applied for and be accompanied by the prescribed fees; two recent colour photographs (if requested by the chief executive) of the subagent of the prescribed size and certified in the prescribed way; and, if a criminal history costs requirement has been made, the amount of the costs to be paid.

The chief executive may also, by written notice to the subagent, require the subagent to provide information or material, within a stated reasonable period, the chief executive reasonably believes is needed to consider the application.

A subagent is taken to have withdrawn the subagent's application if the subagent does not comply with the chief executive's request for the photographs or other information or material the chief executive has requested by written notice to the subagent.

Clause 86 provides that the chief executive may renew or refuse to renew a subagent's registration. The chief executive may renew a subagent's registration only if the chief executive is satisfied that the subagent is a suitable person for registration as a subagent and the application complies with clause 85.

If the chief executive refuses the subagent's application for renewal the chief executive must give the subagent an information notice about the decision.

Clause 87 provides that if a subagent makes an application under clause 85, the subagent's registration is taken to continue in force from the day that it would, apart from this clause, have expired until the subagent's application is decided under clause 86 or the application is withdrawn.

Subdivision 2 Restoration

Clause 88 provides that if a person's registration expires the person may apply to the chief executive for restoration of the registration. The application must be made within 3 months of the expiry of the registration, in the approved form and state the term of the registration being applied for. The application must also be accompanied by the prescribed fees; two recent colour photographs (if requested by the chief executive) of the person of the prescribed size and certified in the way prescribed; and, if a criminal history costs requirement has been made, the amount of the costs to be paid.

The chief executive may also, by written notice to the person, require the person to provide information or material, within a stated reasonable period, the chief executive reasonably believes is needed to consider the application. The person is taken to have withdrawn the person's application if the person does not comply with the chief executive's request for the photographs or other information or material the chief executive has requested by written notice to the person.

Clause 89 provides that the chief executive may restore or refuse to restore a person's registration. The chief executive may restore a person's registration only if the chief executive is satisfied that the person is a suitable person for registration as a subagent and the application complies with clause 88.

If the chief executive refuses to restore a person's registration the chief executive must give the person an information notice about the decision.

Clause 90 provides that if a person makes an application for restoration of the person's registration under clause 88, the person's registration is taken to continue in force from the day that it would, apart from this clause, have expired until the application is decided under clause 89 or the application is withdrawn.

If the chief executive decides to restore the person's registration under clause 89, the registration is taken to have been renewed on the day it would have expired (the initial expiry

date) and a thing done during the period starting on the initial expiry date and ending on the day the registration is restored is taken to have been as validly done as it would have been if the registration had been renewed immediately before the initial expiry date.

Division 7 Dealings with registration certificates

Clause 91 prohibits a subagent's registration, or registration certificate, from being transferred to another person.

Clause 92 provides that the chief executive may amend the conditions of the registration of a person as a subagent on application of the subagent, or on the order of QCAT, or on the chief executive's initiative.

An application made under this clause by a subagent must be made to the chief executive in the approved form and be accompanied by the prescribed fee. However, before making the amendment applied for by the subagent, the chief executive must be satisfied that the amendment of the condition is necessary or desirable for the proper performance of the activities authorised by the subagent's registration, or for another purpose consistent with the achievement of the objects of the Bill or the Administration Act.

The clause also provides that before the chief executive amends a condition on the chief executive's initiative, the chief executive is required to give written notice of the particulars of the proposed amendment to the subagent and to advise the subagent that the subagent may make written submissions about the proposed amendment to the chief executive before a stated day, not later than 14 days after the notice is given to the subagent. The chief executive must have regard to any submissions made by the subagent before the stated day. However, the requirement to give notice to the subagent does not apply if the amendment must be made urgently to avoid potential claims against the claim fund, or to ensure compliance with the Bill or the Administration Act.

If the chief executive decides to amend the conditions of a subagent's registration on the chief executive's own initiative, the chief executive must give an information notice about the decision to the subagent. An amendment takes effect on the day that written notice of the amendment is given to the subagent or, if a later date is stated in the notice, the later date.

Clause 93 enables the chief executive to require a subagent to produce the subagent's registration certificate for amendment or replacement if the chief executive intends to amend the conditions of the subagent's registration under clause 92 or replace the registration certificate under clause 100(5), unless the subagent has a reasonable excuse.

Clause 94 requires a subagent whose registration has been suspended or cancelled to return the subagent's registration certificate to the chief executive within the prescribed timeframe, unless the subagent has a reasonable excuse.

Clause 95 allows a subagent to surrender the subagent's registration certificate by giving written notice to the chief executive and returning the registration certificate. Registration surrendered under the clause, and the registration certificate, stops having effect on the day it is surrendered.

Division 8 Immediate suspension and cancellation of registration

Clause 96 permits the chief executive to immediately suspend a subagent's registration for particular reasons, whether or not proceedings have been started under part 9, division 3 of the Bill.

The subagent's registration may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides. When a subagent's registration has been suspended by the chief executive, the chief executive must give written notice of the suspension to the subagent.

Clause 97 provides that the registration of a subagent is automatically cancelled when the subagent is convicted of a serious offence.

Division 9 General provisions about registration and registration certificates

Clause 98 requires a registration certificate issued for registration as a subagent to be in the approved form. The chief executive may approve a form of certificate for office display, or personal identification, purposes. The registration certificate must contain the name of the holder of the certificate, the date of grant of the registration, the expiry date of registration and any other prescribed particulars. A personal identification certificate must also contain a recent photograph of the holder of the certificate.

Clause 99 provides that registration as a subagent may be granted for a term of 1 year or 3 years.

Clause 100 provides for a subagent to apply to the chief executive (in the approved form) for a replacement registration certificate if the subagent's certificate is lost, stolen, destroyed or damaged. If the chief executive is satisfied that the registration certificate needs to be replaced, the chief executive must issue a replacement certificate.

Clause 100 also allows the chief executive to issue a replacement registration certificate to a subagent if the chief executive is satisfied that a prescribed change required to be notified under clause 29 (for example, a change of the registration certificate holder's name) has happened and the prescribed change requires a replacement of the registration certificate, whether or not the holder of the certificate has notified the chief executive of the prescribed change in the way and as required under clause 29.

If the chief executive replaces a registration certificate under clause 100 the subagent must pay the prescribed fee for a replacement certificate, and the registration for which the certificate was issued continues to be subject to the same conditions and the term the registration was subject to before the certificate was replaced.

Clause 101 requires the chief executive to keep a register of registration certificates and applications for registration as a subagent. The clause also prescribes the particulars that must be contained in the register. A person may inspect, and obtain a copy of, the information contained in the register on payment of the prescribed fee. Access to the register is to be made available by personal attendance at a place decided by the chief executive or by using a computer. Provision is made for the register to be kept in the way the chief executive considers appropriate.

Part 6 Collection Agents

Clause 102 provides that an individual is suitable to perform a debt collection activity as a collection agent as authorised under part 2, division 3 of the Bill unless the individual is under 18 years of age; is an insolvent under administration; has been convicted within the preceding 5 years of a serious offence; holds a licence, or registration certificate for registration as a subagent, that is suspended; or is disqualified from performing a debt collection activity as authorised under part 2, division 3, or from holding a licence or being registered as a subagent.

Clause 103 provides that a corporation is suitable to perform a debt collection activity as a collection agent as authorised under part 2, division 3 of the Bill unless the individual in charge of the corporation's regulated business or an executive officer of the corporation is not suitable to perform a debt collection activity as a collection agent as authorised under part 2, division 3; or the corporation has been convicted within the preceding 5 years of a serious offence, holds a licence that is suspended, held a licence that was cancelled, or is disqualified from holding a licence or performing a debt collection activity as authorised under part 2, division 3.

However, if the corporation held a licence that was cancelled (the first licence) but the corporation is issued another licence after the cancellation of the first licence and the other licence has not been cancelled, the corporation's cancelled licence does not make the corporation unsuitable to perform a debt collection activity as authorised under part 2, division 3. This is because it is considered that if a corporation's licence is cancelled, the corporation is not suitable to perform a debt collection activity as authorised under part 2, division 3 until the chief executive is satisfied that the corporation is suitable again to hold a licence.

Part 7 Investigations about eligibility and suitability

Division 1 General investigations

Clause 104 gives the chief executive the power to make investigations about particular persons to help the chief executive decide whether the person is:

- a suitable person to hold a licence; or
- a suitable person for registration as a subagent; or
- suitable to perform a debt collection activity as a collection agent as authorised under part 2, division 3; or
- a suitable person to open a trust account under the Administration Act.

Division 2 Criminal history

Clause 105 provides that to assist, but without limiting, the investigation the chief executive may undertake under clause 104, the chief executive may ask the commissioner of the police service for a report about the criminal history of any person mentioned in clause 104(1) or 104(3). The commissioner is required to give the report to the chief executive; however, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

Clause 105 also requires the commissioner's report to be in writing if the criminal history of the person includes a conviction recorded against the person.

Clause 106 gives the chief executive the power to require particular persons to pay the reasonable, but no more than the actual, costs of obtaining a criminal history report under clause 105 (a criminal history costs requirement). The clause also sets out to whom, and under what circumstances, the chief executive must refund an amount paid for a criminal history costs requirement under the clause.

Clause 107 provides how the chief executive may make a criminal history costs requirement of a person.

Clause 108 provides that the commissioner of the police service may notify the chief executive that the criminal history of a person has changed if the commissioner suspects on reasonable grounds that the person is a field agent, subagent, collection agent who is required to open a trust account, or is a field agent's substitute. The chief executive may confirm the commissioner's suspicions about whether the person is a field agent, subagent, a collection agent who is required to open a trust account, or is a field agent's substitute.

The commissioner's notice to the chief executive must state particular identifying matters about the person (including the person's name and date and place of birth) and a brief description of the nature of the offence giving rise to the conviction or charge to which the change in criminal history relates. For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

Clause 108 also sets out what the terms 'criminal history' and 'offence' each includes for the purposes of the clause.

Clause 109 limits what the information about a person contained in a criminal history report obtained under clause 105, or a notice of change to criminal history obtained under clause 108, may, or may not, be used for by the chief executive.

Clause 110 prohibits a public service employee from directly or indirectly disclosing a person's criminal history report or any information contained in the report obtained under clause 105 or a notice about a change in a person's criminal history or information contained in the notice given under clause 108, except where the disclosure is authorised by the chief executive to the extent necessary to perform a function under or relating to the Bill, or is otherwise required or permitted by law. The chief executive is required to destroy a criminal history report obtained under clause 105 or a notice given under clause 108 as soon as practicable after considering the report or notice.

Part 8 Trust accounts

Clause 111 requires a principal field agent and a principal collection agent to open and keep a trust account in accordance with the Administration Act if an amount is likely to be received by the field agent or collection agent for a transaction, or with written directions for its use, when performing: for a field agent, a regulated activity; or, for a collection agent, a debt collection activity.

Part 9 QCAT proceedings

Division 1 Preliminary

Clause 112 sets out the definitions of *debt collector* and *subagent* for the purpose of part 9.

Division 2 Jurisdiction

Clause 113 provides that QCAT has jurisdiction:

- to make orders under clause 116;
- to review decisions of the chief executive relating to licensing and registration;
- to make orders under clause 120.

Division 3 QCAT proceedings affecting authorisations

Clause 114 sets out the grounds for making an order under clause 116 against a debt collector or a subagent under division 3.

Clause 115 provides that the chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under clause 114 for making an order under clause 116 against a debt collector or subagent.

Clause 116 sets out the orders that QCAT may make against a person in relation to whom QCAT finds grounds exist to take make an order under this clause.

Division 4 Review proceedings

Clause 117 entitles a person who is dissatisfied with a decision of the chief executive made under a provision specified in schedule 2 to apply to have the decision reviewed by QCAT.

Clause 118 provides that when a decision of the chief executive made under clause 67 or 96 is under review by QCAT, the effect of the chief executive's decision is stayed for the purpose of securing the effectiveness of the review proceeding. However, the period of a stay lasts only until QCAT decides the review.

Clause 119 gives jurisdiction to QCAT to extend the time within which an applicant may seek review of a decision of the chief executive. The time may be extended if the application is made within 42 days after the person receives notice of the decision to be reviewed and it is appropriate to extend time having regard to the application generally and the justice of the matter generally.

Division 5 Other proceedings

Clause 120 allows QCAT to order a person to stop doing something that is in contravention of the Bill. While it is similar to an injunctive power, it can be exercised upon application by the chief executive prior to other proceedings in either QCAT's original or review jurisdiction being started.

QCAT may make an order without providing notice to the person subject to the order, provided QCAT allows the person a reasonable opportunity to show cause why the order should not be confirmed. If, after considering the person's submission and any further submission by the chief executive, QCAT is not satisfied that the order should continue, QCAT must rescind the order.

It is an offence to contravene an order under this clause. An order has effect once a copy of the order is given to the person who is the subject of the order.

Division 6 Chief executive's right of appeal

Clause 121 allows the chief executive to appeal to the appeal tribunal, as constituted under the QCAT Act, against a decision of QCAT on the ground of an error of law.

Part 10 Injunctions and undertakings

Division 1 Injunctions

Clause 122 prescribes the grounds for which the District Court may grant an injunction against a person (a respondent).

Clause 123 permits an application for an injunction to be made by the chief executive or by a person aggrieved by a respondent's conduct.

Clause 124 allows an injunction under the division to be granted by the District Court against a respondent at any time.

Clause 125 provides that the District Court may exercise the power to grant an injunction to restrain a respondent from engaging in conduct whether or not it appears to the court that the respondent intends to engage again, or to continue to engage in, the conduct that has given grounds for the grant of an injunction, and whether or not the respondent has previously engaged in that kind of conduct.

The court may exercise the power to grant an injunction requiring a respondent to do something whether or not it appears to the court that the respondent intends to fail again, or continue to fail, to do the act or thing that has given grounds for the grant of an injunction, and whether or not the respondent has previously failed to do the act or thing. The court may grant an interim injunction until an injunction application is finally decided.

Clause 126 provides that the District Court may grant an injunction in the terms the court considers appropriate, including restraining a respondent from carrying on a regulated business for a stated period; or except in accordance with stated terms and conditions; or requiring a respondent to take specified action, such as disclosing or publishing information to remedy adverse consequences caused by the respondent's contravention.

Clause 127 states that when the chief executive applies for an injunction under division 1, no undertaking as to damages or costs may be required or made.

Division 2 Undertakings

Clause 128 gives power to the chief executive, if the chief executive believes on reasonable grounds that a person has contravened, or has been involved with contravening, the Bill or a conduct provision prescribed under a regulation, to issue the person with a written notice that:

- states the act or omission constituting the believed contravention; and
- asks the person to give a written undertaking not to continue or not to repeat the act or omission.

Clause 129 provides that 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 (such as, for example, an undertaking to publish corrective advertising).

Clause 130 provides that an undertaking may be varied or withdrawn by the person who gave the undertaking, with the chief executive's approval, or by the chief executive on particular grounds. The chief executive must provide written notice to the person of the variation or withdrawal of an undertaking. The variation or withdrawal takes effect when the person receives the written notice.

Clause 131 provides that the chief executive may apply to the District Court to enforce an undertaking if the chief executive reasonably believes that the person bound by an undertaking has breached its terms. The clause also prescribes the orders the court may make if satisfied that the person has contravened a term of the undertaking.

The chief executive can apply to the court for an order that a security bond be forfeited to the State. The court may grant the order if satisfied that the person contravened the undertaking during the period for which the bond was given.

Clause 132 requires the chief executive to keep a register of undertakings which must contain a copy of each undertaking. The chief executive may publish information contained in the register on the department's website. A person may inspect or access details of the register at a place decided by the chief executive or by using a computer, on payment of any fee that is prescribed by regulation.

Part 11 General contraventions and evidentiary matters

Division 1 General contraventions

Clause 133 provides that a debt collector, subagent or a person not authorised under part 2 of the Bill but who acts as if the person was authorised under that part who dishonestly converts an amount that belongs to someone else, in performing the person's activities, to the person's or someone else's use, or who dishonestly renders an account of the amount knowing it to be false in a material particular, commits an offence.

The clause also allows for two or more instances of conduct relating to dishonest application of money by a person to be taken to constitute one alleged offence committed by the person over the period stated in the complaint or indictment in relation to the conduct, which may be charged and proceeded against on one charge.

A person also commits an offence if the person represents the person has received an amount in performing a regulated activity, if the person knows the amount has not been received in performing a regulated activity.

Clause 134 prohibits a debt collector or a debt collector's employee from charging a fee for providing or preparing a document required to be prepared under the Bill.

Clause 135 prohibits a field agent from selling, lending or hiring out the agent's licence; notifying or advertising that a licence is available for sale, loan or hire to another person; or permitting someone else to hold out that the person is the holder of the licence issued to the agent. It is also an offence for a person to borrow, hire or buy a field agent's licence.

The clause also provides that a person who has the effective or apparent management or control of an agent's business who is not the holder of a licence or the agent's substitute, is taken to have borrowed the agent's licence, and the agent is taken to have lent the licence to the person.

Clause 136 prohibits a subagent from selling, lending or hiring out the subagent's registration certificate; notifying or advertising that a registration certificate is available for sale, loan or hire to another person; or permitting someone else to hold out that the person is the holder of the registration certificate issued to the subagent. It is also an offence for a person to borrow, hire or buy a subagent's registration certificate.

Clause 137 prohibits a person from making false or misleading statements to the chief executive or a public service employee.

Clause 138 prohibits a person from giving a document containing false or misleading information to the chief executive or a public service employee, or making an entry in a document required or permitted to be made or kept under the Bill knowing the entry to be false or misleading.

Division 2 Evidentiary matters

Clause 139 makes provision for evidentiary matters in relation to proceedings under the Bill.

Clause 140 provides that an entry in a document kept by or belonging to a debt collector or found in the debt collector's premises, is evidence that the entry has been made by or with the authority of the debt collector.

Clause 141 provides for proceedings for offences and the time limits for starting a proceeding. The maximum penalty that is able to be imposed on a summary conviction of an indictable offence (an offence for which the maximum penalty is more than 2 years imprisonment) is 200 penalty units or 1 year's imprisonment.

The prosecution may elect for an indictable offence to be heard by way of summary proceeding under the *Justices Act 1886* or on indictment. If 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, the magistrate must not decide the charge by way of summary proceeding and must proceed by way of committal proceeding.

Clause 142 provides for the responsibility of a person for the acts or omissions of a representative of the person in a proceeding for an offence. If a person's state of mind is relevant in relation to a particular act or omission, it is enough to show that the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority, and the representative had the state of mind.

The act or omission of a person's representative, acting within the scope of the representative's actual or apparent authority, is taken to be the act or omission of the person, unless the person can prove that the person could not have prevented the act or omission with the exercise of reasonable diligence.

Clause 143 provides that a court may, on the application of the chief executive or on its own initiative, in addition to any other penalty it might impose on a field agent or subagent for conviction for an offence under the Bill, order that:

- the person's licence or registration be suspended for a stated period; or
- the person's licence or registration be cancelled; or
- the person be disqualified permanently, or for a stated period, from holding a licence or being registered.

The clause also requires that if a court makes an order that a field agent's licence be cancelled (and the field agent is an individual) or a subagent's registration be cancelled, the court must also order that the field agent or subagent be disqualified permanently, or for stated period, from any or all of the following:

- holding a licence;
- being registered as a subagent;
- performing a debt collection activity as authorised under part 2, division 3.

Clause 144 provides for how a charge involving a false or misleading statement, representation or entry, of false or misleading information should be stated.

Part 12 General

Clause 145 permits the Minister or the chief executive to publish public warning statements about contraventions of conduct provisions prescribed under a regulation that have resulted in a QCAT order under clause 116, offences against the Bill, and business practices regulated under the Bill that are unfair. The statement may identify particular contraventions, business practices, offences and persons.

Clause 146 provides that nothing in the Bill is intended to affect or limit a civil remedy a person may have against a licensee or other person in relation to a matter.

Clause 147 provides that nothing in the Bill limits the application of the *Criminal Proceeds Confiscation Act 2002*.

Clause 148 permits the chief executive to delegate the chief executive's powers to an appropriately qualified public service officer. However, this power of delegation does not apply to the chief executive's power to make public warning statements.

Clause 149 provides for the approval of forms for use under the Bill.

Clause 150 provides for the making of regulations by the Governor in Council.

Part 13 Transitional provisions

Clause 151 is included for information purposes only. The clause notes that the *Property Occupations Act 2013*, part 14 includes provisions of a saving or transitional nature about particular matters arising from the repeal of the *Property Agents and Motor Dealers Act 2000*.

Part 14 Minor and consequential amendments

Clause 152 provides that schedule 1 makes consequential amendments to the Acts it mentions.

Schedule 1 Minor and consequential amendments

Schedule 1 makes minor and consequential amendments to the Bill, the *Fire and Rescue Service Act 1990* and the *State Penalties Enforcement Act 1999*.

Schedule 2 Decisions subject to review

Schedule 2 sets out the clause references for decisions of the chief executive that are subject to review by QCAT under clause 116.

Schedule 3 Dictionary

Schedule 3 sets out the dictionary containing the definitions of particular words used in the Bill.