

# Motor Dealers and Chattel Auctioneers Bill 2010

## Explanatory Notes

### Short Title

The short title of the Bill is the Motor Dealers and Chattel Auctioneers Bill 2010.

### Objectives of the Bill

The *Property Agents and Motor Dealers Act 2000* (PAMD Act) provides for the licensing and regulation of resident letting agents, real estate agents, pastoral houses, auctioneers, property developers, motor dealers, and commercial agents. In addition to licensing and regulating the conduct of such persons, another object of the PAMD Act is to strike an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place.

This Bill implements the former Service Delivery and Performance Commission's (SDPC) recommendation to split the PAMD Act into industry-specific Acts by establishing an Act dealing with the licensing and conduct of motor dealers and chattel auctioneers. Other SDPC recommendations and minor amendments to the relevant provisions of the PAMD Act continued in the Bill will also be implemented.

The main object of the Bill is to provide a system for licensing and regulating persons as motor dealers and chattel auctioneers, and for registering and regulating persons as registered employees that achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. The Bill forms part of a suite of Bills which give effect to the splitting of the PAMD Act, with the other industry-specific Bills being the Commercial Agents Bill 2010 and Property Agents Bill 2010 (collectively referred to as the Agents Bills). The Agents Financial Administration Bill 2010 provides common provisions for the Agents Bills dealing with trust accounts and the consumer claim fund.

## **Reasons for the Bill**

### SDPC review

In 2008, the SDPC conducted a review of the PAMD Act with a view to reducing the regulatory burden on business while maintaining effective consumer protection. The Government supported (fully, partially or with qualification) 22 of the 48 recommendations. The SDPC report on the review and the Government's response were tabled in Parliament on 23 April 2009.

One SDPC recommendation (recommendation B1) was to repeal the PAMD Act and establish separate Acts regulating real estate agents and motor dealers respectively. It was also recommended that the trust account provisions be transferred to the *Fair Trading Act 1989* and commercial agents be regulated under the *Security Providers Act 1993*. While the Government supported splitting the PAMD Act into industry-specific Acts, it was considered more appropriate to establish separate Acts to deal with trust account provisions and the regulation of commercial agents respectively.

The SDPC also recommended that the licensing requirements for property developers (recommendation A3) and auctioneers (recommendation A12) be removed. The Government supported recommendation A3, while recommendation A12 was not supported on the basis that it would reduce consumer protection.

The SDPC also made a number of other recommendations that will be implemented (fully, partially or with qualification) in the Bill:

- Recommendation A26: remove the requirement for corporations to have a licensee as a director, provided that the person in charge of the corporation's business is licensed.
- Recommendation A32: remove the requirement for principal licensees to display their licence at the registered office, provided that the licence is displayed at the principal place of business.
- Recommendation A34: remove the requirement to provide photographs with licence applications.

### National Occupational Licensing System

The Government has committed to implementing the National Occupational Licensing System (NOLS) as agreed to by the Council of Australian Governments. Property occupations will fall under the NOLS

and the introduction of the Property Agents Bill as a result of splitting the PAMD Act will facilitate Queensland's transition to the NOLS when it is anticipated to commence in July 2012. At this stage, the inclusion of motor dealers and chattel auctioneers in the NOLS has not been determined.

#### Licensing of chattel auctioneers

Currently under the PAMD Act, the auctioneer and pastoral house licences authorise the licensee to auction both real property and chattels. However, the auctioning of real property will be dealt with in the Property Agents Bill, in anticipation of transition to the NOLS. Additionally, the pastoral house licence category will be transitioned to the property agent licence category. This therefore necessitates the creation of a separate chattel auctioneer licence category in accordance with the Government's position to continue the regulation of auctioneers.

#### Sale of livestock

Currently under the PAMD Act, livestock may be sold by a real estate agent, pastoral house or auctioneer. In this way, livestock is treated as real property under the PAMD Act. The SDPC recommended that the pastoral house licence category be removed and that existing licensees and registered salespersons be transitioned to the property agent licence category (recommendations A18—A20).

The Property Agents Bill does not propose to regulate the sale of livestock as the authorised functions of a property agent will relate to real property and land only (again in anticipation of transition to the NOLS). Consequently, the sale of livestock by auction will continue to be regulated under this Bill and be treated as chattels. Livestock sales other than by auction will therefore no longer be regulated in terms of a licensing regime.

#### Minor amendments

While the Bill does not represent a full review of the provisions of the PAMD Act, a number of minor amendments to the continued provisions of the PAMD Act in the Bill have been identified and will be implemented. In particular, the Bill seeks to clarify that:

- the chief executive may issue limited classes of licence;
- a 'motor vehicle' does not include a golf buggy, motorised scooter or motorised wheelchair;
- tampering with an odometer includes replacing an odometer;

- the chief executive may publish the register of undertakings on the department's website; and
- falsely representing the receipt of trust money is an offence.

### *Personal Property Securities (Ancillary Provisions) Act 2010*

The *Personal Property Securities (Ancillary Provisions) Act 2010* received Royal Assent on 14 October 2010 and amends certain provisions of the PAMD Act. These amendment provisions have not yet commenced, but are anticipated to commence in mid 2011 when the national personal property securities scheme commences. The Bill however, has been drafted to reflect the amendments made to the PAMD Act by the *Personal Property Securities (Ancillary Provisions) Act 2010*. The explanatory notes accompanying the Personal Property Securities (Ancillary Provisions) Bill 2010 explain the amendments.

### Red-tape reduction

Overall, the Bill represents an initiative to reduce red-tape without reducing consumer protection. By splitting the PAMD Act into industry-specific Acts and simplifying a number of licensing and conduct requirements (as described above), the Bill reduces red-tape faced by the motor dealing and chattel auctioneering industries, and simplifies the regulatory burden for these sectors. In doing so, it encourages greater compliance on the part of licensees and as a result, this increases consumer confidence.

## **Achievement of the Objectives**

The Bill establishes a law which licences and regulates the conduct of motor dealers and chattel auctioneers by continuing the relevant provisions of the PAMD Act. The trust account and claim fund provisions in the PAMD Act are provided for in the Agents Financial Administration Bill while enforcement provisions dealing with the appointment of inspectors and their powers are proposed to be harmonised. The Bill also implements the other SDPC recommendations and minor amendments identified earlier.

As indicated, the main object of the Bill is to provide a system for licensing and regulating persons as motor dealers and chattel auctioneers, and for registering and regulating persons as registered employees that achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. The Bill achieves this mainly by:

- (a) ensuring—
  - (i) only suitable persons with appropriate qualifications are licensed or registered; and
  - (ii) persons who carry on business or are in charge of a licensee's business at a place under the authority of a motor dealer or chattel auctioneer licence maintain close personal supervision of the way the business is carried on; and
- (b) providing—
  - (i) protection for consumers in their dealings with licensees and their employees; and
  - (ii) a legislative framework within which persons performing activities for licensees may lawfully operate; and
- (c) regulating fees and commissions that can be charged for particular transactions; and
- (d) promoting administrative efficiency by providing that—
  - (i) responsibility for licensing rests with the chief executive; and
  - (ii) responsibility for reviewing particular decisions of the chief executive rests with the Queensland Civil and Administrative Tribunal (QCAT); and
  - (iii) responsibility for disciplinary matters rests with QCAT; and
- (e) establishing a right for persons who suffer financial loss because of their dealings with persons regulated under the Bill to apply for compensation from the fund; and
- (f) providing increased flexibility in enforcement measures through codes of conduct, injunctions and undertakings.

## **Alternatives to the Bill**

While legislation is the only way to give effect to the SDPC recommendations, consideration was given to creating separate Bills regulating motor dealers and chattel auctioneers respectively. However, it was considered more appropriate to regulate motor dealers and chattel auctioneers in the same Bill due to the similar legislative requirements for the sale of used motor vehicles. Additionally, the majority of the conduct provisions in the PAMD Act dealing with chattel auctions relate to used

motor vehicles, thus obviating the need for a separate Bill regulating chattel auctioneers.

### **Estimated Cost for Government Implementation**

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

It is estimated that the implementation costs for the split of the PAMD Act will total \$1.06 million. The Department of Employment, Economic Development and Innovation has evaluated the work required for implementation and considers that \$0.52 million can be absorbed within existing resources, with funding for the balance of \$0.54 million being granted by the Cabinet Budget Review Committee at Mid-Year Review. The total costs include licence database systems changes to reflect the new licensing categories (\$0.28 million for engaging a third party supplier to make changes to the licensing system), data migration activities (\$0.26 million), implementation and change management costs for programs and systems (\$0.11 million). A communications campaign is also required to inform licensees of the changes to the licensing framework, with scripting changes, changes to forms and other governance costs also being incurred (\$0.41 million).

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

The Bill is largely consistent with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992* and those that are generally recognised. Generally however, the issues regarding fundamental legislative principles in this Bill are the same as those which were identified and addressed in the establishment of the PAMD Act. More detailed consideration of fundamental legislative principles is provided below.

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

The Bill imposes suitability and eligibility criteria for the issue of a licence or registration certificate (part 2, divisions 5 to 7 and part 5, divisions 5 to

7). A person who does not meet the suitability and eligibility requirements can not obtain a licence or registration certificate under the Bill. This may therefore adversely affect the rights and liberties of individuals. The imposition of suitability and eligibility criteria however, seeks to ensure only suitable and eligible persons are licensed or registered. This goes toward fulfilling the consumer protection object of the Bill. Additionally, the administrative powers of the chief executive to consider applications for licences and registration certificates are sufficiently defined and reviewable by QCAT.

The Bill also allows the chief executive to place conditions on licences and registration certificates (clauses 35 and 193), and to suspend licences and registration certificates (clauses 55 and 204). While this may adversely affect the rights and liberties of individuals, the imposition of conditions and suspension of licences and registration certificates go toward protecting consumers. Additionally, the administrative powers of the chief executive are sufficiently defined and are reviewable by QCAT.

Is the Bill consistent with principles of natural justice?

Clauses 56 and 205 provide for the immediate cancellation of a licence and registration certificate in certain circumstances, such as where the licensee or registered employee is convicted of a serious offence. The clauses do not provide prior notification of cancellation or a 'show cause' process. Additionally, there is no right of review to QCAT.

This inconsistency with the fundamental legislative principle is justified on the grounds that immediate cancellation is limited to the most serious of instances that could create the greatest detriment to consumers. In particular, a licence may only be cancelled under clause 56 if the licensee is convicted of a serious offence; if the licensee is an individual, the licensee is affected by bankruptcy action; or if the licensee is a corporation, the licensee has been wound up or struck off under the Corporations Act. For a registration certificate, the certificate may only be cancelled under clause 205 if the employee is convicted of a serious offence. The happening of any of the events goes to the very core of a licensee or registered employee's ability to perform the activities authorised by their licence or registration certificate. The immediate cancellation of the licence or registration certificate prevents the likelihood of detriment, or further detriment, to consumers.

It should also be noted that the cancellation of a licence or registration certificate does not prevent the former licensee or employee from applying

for a new licence or registration certificate. However, the person must meet the suitability and eligibility requirements. Additionally, the Bill does not prevent a licensee or registered employee from seeking judicial review of the decision.

Inconsistency with the principles of natural justice may also be raised in relation to the immediate suspension of licences and registration certificates (clauses 55 and 204) as there is no prior notification or 'show cause' process. However, a right of review is available to QCAT. Immediate suspension of a licence or registration certificate is only limited to certain circumstances and is considered necessary to prevent the likelihood of detriment, or further detriment, to consumers.

Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?

Clauses 82 and 149 require a motor dealer and chattel auctioneer respectively to ensure the buyer of a used motor vehicle gains clear title to the vehicle. It is a defence for the defendant to prove the defendant took all reasonable steps to ensure the requirement was complied with. The reversal of the onus of proof is justified on the grounds that knowledge about taking reasonable steps to ensure the requirement was complied with is information which is peculiarly within the knowledge of the person who made the representation, and would otherwise be difficult to establish.

Clause 237 prohibits a person from making false or misleading representations about property, and places the onus of proving the person who made the representation had reasonable grounds to do so, on that person. The reversal of the onus of proof is justified on the grounds that knowledge about the reasonableness or otherwise of the representation is information which is peculiarly within the knowledge of the person who made the representation, and would otherwise be difficult to establish.

Clause 242 makes it an offence for a licensee to ask for or receive a commission or reward greater than the maximum that may be prescribed under a regulation. A licensee will not commit an offence if the licensee establishes to the court's satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred. The reversal of the onus of proof is justified on the grounds that the information relating to the relevant expenditure would be peculiarly within the knowledge of the licensee and would otherwise be difficult to establish.

Clause 251 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual



or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission. The reversal of the onus of proof is justified on the grounds that the information relating to the exercise of reasonable diligence would be peculiarly within the knowledge of the licensee and would otherwise be difficult to establish.

Clause 252 provides that if a corporation commits an offence against a provision of the Bill, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure the corporation complies with the provision. It is a defence for an executive officer to prove the officer took all reasonable steps to ensure the corporation complied with the provision, or the officer was not in a position to influence the conduct of the corporation in relation to the offence. The reversal of the onus of proof is justified as the provisions a corporation could contravene have the potential to cause substantial consumer detriment and it is appropriate that an executive officer who is in a position to influence the conduct of the corporation be accountable. Additionally, the information relating to the executive officer's influence on the conduct of the corporation would be peculiarly within the knowledge of the officer and would otherwise be difficult to establish.

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

*Imposition of additional licence requirement and fees*

The Bill may affect the rights and liberties of individuals, namely auctioneers who are currently licensed under the PAMD Act. Under the PAMD Act, auctioneers and pastoral houses may auction both real property and chattels. However, the auctioning of real property will be provided for in the Property Agents Bill while the auctioning of chattels is provided for in this Bill. This will impose additional costs (in terms of licensing fees) for individuals who wish to auction both real property and chattels as they will need to obtain two licences or registration certificates. This situation is unavoidable due to the splitting of the auctioneering functions and the Government's position to continue to regulate auctioneers in the interests of consumer protection.

The potential adverse impacts will be mitigated through a number of ways. Existing auctioneer licences and certain pastoral house licence categories will be transitioned to a property agent licence (or property agent

salesperson registration certificate) and a chattel auctioneer licence (or trainee auctioneer registration certificate) upon commencement of this Bill and the Property Agents Bill. Additionally, there will be reduced licensing fees, as is currently the case under the PAMD Act, for persons who hold more than one licence or registration certificate. It should also be noted that many licensed auctioneers under the PAMD Act also hold a real estate agent licence. Accordingly, such persons will continue to hold two licences when the Bill commences.

This Bill and the Property Agents Bill also make provision for a person to only be required to hold a single licence in certain circumstances. The Property Agents Bill will allow a property agent who is authorised to conduct auctions to also auction chattels if the auction of the chattels is directly connected with the auction of real property. Clause 4 of this Bill makes provision for the exemption of such sales from the application of the Bill in order for the authorisation in the Property Agents Bill to operate effectively. This takes into consideration clearing sales and house and contents sales, and obviates the need for two licences.

#### *Age discrimination*

The Bill provides that an individual must be at least 18 years to be eligible to obtain a motor dealer licence (clause 28) or chattel auctioneer licence (clause 29), or registration as a motor salesperson or trainee chattel auctioneer (clause 191). This age discrimination is justified on the grounds that consumers expect to deal with licensees and registered employees that have the necessary maturity, judgement and capacity given the pecuniary nature of the transactions involved in the sale of used motor vehicles and the auction of chattels. Accordingly, it is for the protection of consumers that individuals must be at least 18 years to be eligible to obtain a licence or registration certificate.

#### *Imposition of liability for the actions of others (derivative liability)*

Clause 251 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person provides the person could not, by the exercise of reasonable diligence, have prevented the act or omission. While the clause imposes liability for the actions of others, it is justified on the grounds that it follows the general law of agency in that the principal is liable for the actions of their agent. The clause is also consistent with one of the main themes of the Bill in that principal licensees must ensure their

employees comply with the Bill, and are responsible for the acts and omissions of their employees.

Clause 252 provides that if a corporation commits an offence against a provision of the Bill, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure the corporation complies with the provision. While a corporation is a separate legal entity from its executive officers, ‘piercing the corporate veil’ is justified as it is in the interests of consumer protection that executive officers ensure the corporation complies with the Bill and they be held accountable. The inconsistency with the fundamental legislative principle is balanced by the defence provided in subclause (4). Subclause (4) provides that it is a defence for an executive officer to prove that—

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

To provide further justification, clause 252 is consistent with one of the main themes of the Bill in that principal licensees must ensure their employees comply with the Bill, and are responsible for the acts and omissions of their employees. So too, should executive officers be liable for offences of a corporation, but only where the executive officer was in a position to influence the conduct of the corporation in relation to the offence. The clause is also consistent with the suitability requirements for applicants and licensees in clause 21. In deciding whether a corporation is suitable, the chief executive must have regard to whether an executive officer of the corporation has been convicted of an offence against this Bill, the other Agents Bills or the Agents Financial Administration Bill. If derivative liability was not imposed, an executive officer who had influence over an offence by a corporation, and the corporation’s licence was cancelled, could continue the unlawful conduct under a new corporate entity.

Another issue that may be raised in relation to clause 252 is that derivative liability can potentially apply to any offence under the Bill. However, it is not considered appropriate to limit derivative liability to certain offences, such as more serious offences. This is because there is potential for the commission of relatively minor offences in a manner that is systematic and widespread.

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

#### *Privacy and confidentiality rights*

Clauses 24 and 187 allow the chief executive to obtain criminal history reports. The chief executive is then required to have regard to a criminal history of an individual in deciding their suitability to hold a licence or registration certificate.

Clause 24 also allows criminal history reports to be obtained for each business partner of the applicant or licensee, and each person with whom the applicant or licensee carries on or intends to carry on business. An argument may be raised that these business associates, being third parties, would not necessarily consent to criminal history checks. However, clause 24 makes it clear the chief executive may make investigations about such persons. Additionally, clause 15(1)(e) requires the applicant to state the names and addresses of the applicant's business associates. It is therefore submitted that the business associates of the applicant or licensee would give implied consent to criminal history checks, notwithstanding the legislative requirement in clause 24. The ability to investigate business associates goes toward protecting consumers, given the direct involvement of business associates in a licensee's business and their ability to influence the conduct of the business.

Overall, making investigations and obtaining criminal histories of applicants and licensees, and their business associates, allows the chief executive to make an informed opinion about whether an applicant or licensee will act in accordance with the law in performing their activities. This is essential to ensuring applicants and licensees are suitable under the Bill.

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

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employees are required to comply with the *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009*.

*Right not to be defamed*

Clause 255 allows the Minister or chief executive to make or issue public warning statements or information statements that may identify individuals. These public statements may therefore have an adverse affect on individuals. However, before making a statement, the Minister or chief executive must be satisfied that it is in the public interest to do so. Accordingly, the inconsistency with the fundamental legislative principle is justified on the grounds that it is in the public interest to allow the making of warning and information statements for the protection of consumers.

A particular concern may however, be raised in relation to public statements about business practices regulated under the Bill that are unfair and naming persons who engage in the unfair practices. This is because unlike making a public statement about disciplinary proceedings or the commission of an offence, determining what constitutes ‘unfair business practices’ is subjective and has greater potential to adversely affect an individual. Additionally, information about disciplinary proceedings by QCAT and court convictions are already publicly available, whereas information concerning ‘unfair business practices’ are not. Nevertheless, the Minister or chief executive (noting that this power can not be delegated pursuant to clause 258) 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. Ultimately, public statements are made in the most serious 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. Public warning statements can, for example, protect consumers from committing large amounts of money or entering into transactions where they may suffer detriment, while information statements play an educative role in informing consumers about particular conduct or behaviour that may place consumers at risk. An individual would normally only be named in a situation where the individual has been convicted of an offence and/or disqualified from holding a licence by QCAT or a court. The public exposure of non-compliant licensees also provides a compliance incentive to other licensees wishing to avoid such negative publicity.

Clause 256 provides that nothing in the Bill affects or limits any civil remedy that a person may have against a licensee or another person for any matter. Accordingly, the Minister and chief executive will not have immunity from legal liability in relation to public statements and this is a matter that is taken into consideration in deciding to issue a statement that identifies an individual.

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

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

## **Consultation**

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

Industry stakeholders were again consulted in the development of this Bill and the other Bills. The peak bodies that were consulted include the:

- Auctioneers and Valuers Association of Australia (Inc.);
- Australian Livestock and Property Agents Association Ltd;
- Australian Property Institute;
- Australian Resident Accommodation Managers' Association Inc.;
- Institute of Mercantile Agents Limited (Queensland division);
- Motor Trades Association Queensland;
- Property Council of Australia (Queensland division);
- Property Sales Association of Queensland;
- Queensland Law Society;
- Royal Automobile Club of Queensland;

- Real Estate Institute of Queensland; and
- Urban Development Institute of Australia (Queensland).

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

### **Uniform or complementary with legislation of the Commonwealth or another State**

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

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Division 1                Introduction**

##### **1 Short title**

Clause 1 provides that the short title of the Bill is the *Motor Dealers and Chattel Auctioneers Act 2010*.

##### **2 Commencement**

Clause 2 provides that the Bill commences on a day to be fixed by proclamation.

### **3 Act binds all persons**

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

### **4 Exemption—auctions**

Clause 4 exempts certain types of sales from the operation of part 4 of the Bill, which deals with chattel auctioneers. While this clause continues the position in section 4 of the PAMD Act, a new exemption is provided in paragraph (i). Paragraph (i) exempts from part 4 a sale of goods directly connected with a sale by way of auction of a place of residence or land performed by a property agent appointed under the Property Agents Bill, part 3, division 2, subdivision 2. The conduct and regulation of such auctions is provided for in the Property Agents Bill, which obviates the need for property agents to hold a separate chattel auctioneer licence for these particular auctions.

### **5 Exemption—liquidators, controllers and receivers**

Clause 5 provides limited exemptions for a person appointed under the Corporations Act as a liquidator or controller of property of a corporation that is authorised under a licence to perform an activity; or a person appointed under the Administration Act (i.e. the Agents Financial Administration Bill) as a receiver of an entity that is authorised under a licence to perform an activity.

The clause also provides similar exemptions for an administrator appointed under the Corporations Act that is authorised under a licence to perform an activity; or an administrator appointed under the Corporations Act as an administrator of a deed of company arrangement for a corporation that is authorised under a licence to perform an activity. This is a new exemption that is not provided in the equivalent section 5A of the PAMD Act. However, the exemption for administrators is necessary as they perform somewhat similar functions as liquidators, controllers and receivers.



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

Clause 6 exempts financial institutions and trustee companies from the operation of part 3, which deals with motor dealers. A definition of ‘trustee company’ is provided in subclause (2).

## **Division 2            Object**

### **7 Main object**

Clause 7 provides that the main object of the Bill is to provide a system for licensing and regulating persons as motor dealers and chattel auctioneers, and for regulating persons as registered employees, 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. Subclause (2) provides the ways in which the objects are to be achieved.

## **Division 3            Interpretation**

### **8 Definitions**

Clause 8 provides that the dictionary in schedule 3 defines particular words used in the Bill.

### **9 Meaning of *beneficial interest***

Clause 9 lists a number of cases in which a licensee and a registered employee of a licensee are taken to have a ‘beneficial interest’ in property. Later clauses in the Bill create offences where a motor dealer or chattel auctioneer obtains a beneficial interest in certain circumstances.

### **10 Meaning of *in charge***

Clause 10 provides that a person is ‘in charge’ of a licensee’s business at a place where the licensee carries on business only if the person personally supervises, manages or controls the conduct of the licensee’s business at the place. Subclause (2) defines ‘licensee’s business’ to mean the licensee’s business carried on under the authority of the licensee’s licence.

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

## **11 Meaning of *motor vehicle***

Clause 11 defines a ‘motor vehicle’ to mean a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle, whether or not the vehicle is capable of being operated or used in a normal way; or a caravan. However, subclause (2) provides that a ‘motor vehicle’ does not include any of the following—

- (a) a hovercraft;
- (b) a motorised golf buggy;
- (c) a motorised scooter;
- (d) a motorised wheelchair;
- (e) a trailer, other than a caravan;
- (f) a tractor or farm machinery;
- (g) a vehicle designed for use exclusively in the mining industry;
- (h) a vehicle designed for use exclusively on a railway or tramway.

There has been uncertainty as to whether golf buggies, motorised scooters and motorised wheelchairs fall within the definition of ‘motor vehicle’ and are subsequently captured by the PAMD Act. The PAMD Act however, was not intended to capture such vehicles. Clause 11 seeks to remove this uncertainty by expressly providing that a ‘motor vehicle’ does not include a motorised golf buggy, motorised scooter and motorised wheelchair. Subclause (3) provides definitions of ‘motorised golf buggy’, ‘motorised scooter’ and ‘motorised wheelchair’ by reference to the *Transport Operations (Road Use Management) Act 1995*.

## **Part 2                      Licensing**

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

#### **12 Categories of licence**

Clause 12 authorises the chief executive to issue a motor dealer licence and a chattel auctioneer licence under the Bill.

### **Division 2                      Limited motor dealer licence**

#### **13 Limited motor dealer licence**

Clause 13 provides that the chief executive may issue a motor dealer licence (a ‘limited motor dealer licence’) of a type prescribed under a regulation that authorises the performance of activities that are more limited than the activities that may be performed under an unconditional motor dealer licence. Subclause (2) provides that a regulation may prescribe the activities that may be performed under a limited motor dealer licence, and the educational requirements for obtaining a limited motor dealer licence.

A motor dealer (broker) licence and a motor dealer (wrecker) licence can currently be issued by the chief executive under the PAMD Act. However, there is uncertainty as to whether the PAMD Act expressly allows for the issue of these ‘limited’ licences. Clause 13 seeks to remove this uncertainty by expressly authorising the chief executive to issue limited motor dealer licences of a type prescribed under a regulation. This will allow motor dealer (broker) and motor dealer (wrecker) licences to continue to be issued.

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

#### **14 Steps involved in obtaining a licence**

Clause 14 outlines the steps involved in obtaining a licence. Subclause (1) provides that a person must first be a suitable person to hold a licence under

division 5. Pursuant to subclause (2), the person must then apply for a licence by—

- (a) giving the chief executive an application showing, among other things, the person is eligible to obtain the licence; and
- (b) paying—
  - (i) the fees prescribed under a regulation; and
  - (ii) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and
- (c) giving the chief executive the other information required under clause 16 and, if the person is required under clause 211 to keep a trust account, clause 18.

Subclause (3) provides that in deciding the application, the chief executive must have regard to, among other things—the person’s suitability to hold a licence under the Bill, and the person’s eligibility to hold the licence.

## **Division 4            Applications for licence**

### **15 Application for licence**

Clause 15 outlines the steps for applying for a licence. Subclause (1) provides that an applicant for a licence must—

- (a) apply to the chief executive in the approved form; and
- (b) state the category of licence being applied for; and
- (c) state the term of the licence being applied for; and
- (d) establish the applicant’s eligibility for the category of licence being applied for; and
- (e) state the names and addresses of the applicant’s business associates; and
- (f) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence.

Subclause (2) provides that the application must be accompanied by—

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

## **16 Applicant must state business address**

Clause 16 requires the applicant to also state in the applicant's application—

- (a) if the applicant intends carrying on business under the licence immediately after the issue of the licence—the place or places in Queensland where the applicant proposes to carry on business under the licence; or
- (b) if the applicant does not intend carrying on business under the licence immediately after the issue of the licence—
  - (i) the capacity in which the applicant intends performing activities under the licence and the address where the activities are to be performed ('business address'); and
  - (ii) if the applicant intends to be a person in charge of a licensee's business at a place of business—the name of the person's employer and the address of the place of business where the person is to be in charge (also a 'business address').

Subclause (2) provides that if the applicant intends to carry on business under the licence at more than 1 place, the applicant must state in the application the place the applicant intends to be the applicant's principal place of business.

Subclause (3) provides that a place of business or an address must be a place where a document can be served personally. To remove ambiguity, subclause (4) provides that a place of business or an address must not be a post office box.

## **17 Requirement to give information or material about application**

Clause 17 applies to an applicant for a licence. Subclause (2) provides that the chief executive may, by written notice given to the applicant, require the

applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the applicant's application for the licence.

Subclause (3) provides that the applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.

### **18 Applicant intending to carry on business to advise name of auditor**

Clause 18 provides that if the applicant intends carrying on business under a licence and is required under clause 211 to keep a trust account, the applicant must state in the applicant's application the name and business address of an auditor appointed by the applicant to audit the trust account, and give the chief executive evidence that the auditor has accepted the appointment as auditor. The note under subclause (1)(a) directs the reader to section 26 of the Administration Act, which requires a licensee to appoint an auditor for the trust account. Subclause (2) defines 'auditor' by reference to section 25 of the Administration Act.

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

### **19 Suitability of applicants and licensees—individuals**

Clause 19 provides that an individual is not suitable to hold a licence if the person is—

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

Subclause (2) provides that an individual who is not a suitable person can not hold a licence.

## **20 Suitability of applicants and licensees—corporations**

Clause 20 provides that a corporation is not a suitable person to hold a licence if an executive officer of the corporation is—

- (a) an insolvent under administration action; or
- (b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
- (c) a person the chief executive decides under clause 21 is not a suitable person to hold a licence.

Subclause (2) provides that a corporation that is not a suitable person can not hold a licence.

## **21 Chief executive must consider suitability of applicants and licensees**

Clause 21 prescribes certain matters which the chief executive must consider when deciding whether a person is suitable to hold a licence. Subclause (1) provides that the chief executive must consider all of the following things—

- (a) the character of the person;
- (b) the character of the person's business associates;
- (c) whether the person held a licence under a relevant Act that was suspended or cancelled under the relevant Act;
- (d) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to a claim against the fund;
- (e) whether the person has been disqualified under a relevant Act from being the holder of a licence within the meaning of the relevant Act, or an executive officer of a corporation;
- (f) for an individual—
  - (i) the person's criminal history; and
  - (ii) whether the person has been an insolvent under administration; and
  - (iii) whether the person has been convicted of an offence against a relevant Act or the Administration Act; and

- (iv) whether the person is capable of satisfactorily performing the activities of a licensee; and
- (v) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act
- (g) for a corporation—
  - (i) whether the corporation has been placed in receivership or liquidation; and
  - (ii) whether an executive officer of the corporation has been an insolvent under administration; and
  - (iii) whether an executive officer of the corporation has been convicted of an offence against a relevant Act or the Administration Act; and
  - (iv) whether each executive officer of the corporation is a suitable person to hold a licence; and
- (h) another thing the chief executive may consider under the Bill.

Subclause (2) provides that if the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by the Queensland Civil and Administrative Tribunal (QCAT).

Subclause (3) defines 'fund' to include the claim funds established under the repealed Act (i.e. the PAMD Act) and the repealed *Agents and Auctioneers Act 1971*. 'Relevant Act' is defined to mean this Bill, an Agents Act, the repealed Act or a corresponding law.

## **22 Public trustee is a suitable person**

Clause 22 provides that the corporation sole called the Public Trustee of Queensland is taken to be a suitable person to hold a licence.

## **23 Chief executive of department is a suitable person**

Clause 23 provides that the chief executive is taken to be a suitable person to hold a licence.



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## **24 Investigations about suitability of applicants and licensees**

Clause 24 authorises the chief executive to make investigations about the following persons to help the chief executive decide whether an applicant for a licence is a suitable person to hold a licence—

- (a) the applicant or licensee; or
- (b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction;
- (c) if the applicant or licensee is a corporation—the corporation's executive officers;
- (d) a business associate of the applicant or licensee.

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

For clause 24, an 'applicant' includes a nominated person mentioned in clause 46(3) or 47(4). This allows the chief executive to make investigations about substitute principal licensees and substitute employed licensees.

## **25 Costs of criminal history report**

Clause 25 allows the chief executive to require an applicant (including a proposed applicant) or licensee to pay the reasonable, but no more than actual, costs of obtaining a criminal history report under clause 24. This requirement is known as a 'criminal history costs requirement'.

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

The chief executive must refund to an applicant an amount paid under the criminal history costs requirement if the chief executive refuses the

application without asking for the report, or the applicant withdraws the application before the chief executive asks for the report.

## **26 Confidentiality of criminal history**

Clause 26 provides that a public service employee performing functions under the Bill must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under clause 24. A maximum penalty of 100 penalty units is provided for a contravention of the provision.

However, the person does not contravene the provision if disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or for the Bill, or disclosure is otherwise required or permitted by law.

Clause 26 also requires the chief executive to destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to hold a licence.

## **27 Requirement to give chief executive information or material about suitability**

Clause 27 applies to an applicant for the issue of a licence or the renewal or restoration of a licence. The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the licence.

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

## **Division 6            Eligibility for licence**

### **Subdivision 1    Motor dealer licence**

#### **28 Eligibility for motor dealer licence**

Clause 28 provides that an individual is eligible to obtain a motor dealer licence only if the individual is at least 18 years and has the educational or other qualifications for a motor dealer licence prescribed under a regulation. Subclause (2) provides that an individual is taken to satisfy the educational or other qualification requirements if the chief executive is satisfied the individual—

- (a) has a comparable qualification; or
- (b) within 2 years before the day the individual's application for a motor dealer licence is received by the chief executive—
  - (i) has been licensed as a motor dealer; or
  - (ii) has been the holder of a comparable licence under the repealed Act.

Subclause (3) provides that a corporation is eligible to obtain a motor dealer licence only if a person in charge of the corporation's business is a motor dealer, and each director of the corporation would be a suitable person under division 5 if the director were an applicant for a licence. This differs from the PAMD Act, where a corporation is only eligible to obtain a licence if the director of the corporation is a motor dealer. The SDPC's recommendation that this requirement be removed was supported by Government, provided that a person in charge of the corporation's business is appropriately licensed. Clause 28(3) gives effect to this recommendation.

### **Subdivision 2    Chattel auctioneer licence**

#### **29 Eligibility for chattel auctioneer licence**

Clause 29 provides that an individual is eligible to obtain a chattel auctioneer licence only if the individual is at least 18 years and has the educational or other qualifications for a chattel auctioneer licence

prescribed under a regulation. Subclause (2) provides that an individual is taken to satisfy the educational or other qualification requirements if the chief executive is satisfied the individual—

- (a) has a comparable qualification; or
- (b) within 2 years before the day the individual's application for a chattel auctioneer licence is received by the chief executive—
  - (i) has been licensed as a chattel auctioneer; or
  - (ii) has been the holder of a comparable licence under the repealed Act.

Subclause (3) provides that a corporation is eligible to obtain a chattel auctioneer licence only if a person in charge of the corporation's business is a motor dealer, and each director of the corporation would be a suitable person under division 5 if the director were an applicant for a licence. This differs from the PAMD Act, where a corporation is only eligible to obtain a licence if the director of the corporation is an auctioneer. The SDPC's recommendation that this requirement be removed was supported by Government, provided that a person in charge of the corporation's business is appropriately licensed. Clause 29(3) gives effect to this recommendation.

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

### **30 Public trustee is eligible to obtain licences**

Clause 30 provides that the public trustee as a corporation sole is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.

### **31 Chief executive of department is eligible to obtain licences**

Clause 31 provides that the chief executive of a department is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.

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## **Division 7                      Issue of licences**

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

Clause 32 provides that the chief executive may issue or refuse to issue a licence to an applicant. Subclause (2) provides that the chief executive may issue a licence only if the chief executive is satisfied that—

- (a) the applicant is a suitable person to hold a licence and—
  - (i) if the applicant intends carrying on business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant intends carrying on business in conjunction is a suitable person to hold a licence; and
  - (ii) if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
- (b) the applicant is eligible to obtain a licence of the category of licence being applied for; and
- (c) the application is properly made.

Subclause (3) provides that for subclause (2)(c), an application is properly made only if it complies with clause 15 and is accompanied by the things mentioned in that clause.

Subclause (4) provides that if the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

Subclause (5) provides that if the application is refused, the applicant may not make another application for a licence for 3 months after the day the chief executive gives the applicant the information notice; or if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed. However, subclause (6) provides that subclause (5) does not apply if the applicant is a corporation and the applicant satisfies the chief executive that, because of a genuine sale—

- (a) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the applicant corporation; and

- (b) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the applicant corporation.

### **33 Licence—public trustee**

Clause 33 allows the chief executive to issue a licence to the public trustee in the public trustee's capacity as a corporation sole in the name 'The Public Trustee of Queensland'. 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.

In order to remove any doubt, subclause (3) declares 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.

### **34 Licence—chief executive of department**

Clause 34 authorises the chief executive to issue a licence to the chief executive of a department in the name 'The Chief Executive of the (name of department)'. The licence is taken to be issued to the chief executive for the time being of the department and the chief executive of a department, as a licensee, is taken to represent the State.

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

In order to remove any doubt, subclause (5) declares that an officer or employee performing an activity authorised by the chief executive is not required to be licensed or registered under the Bill to perform the activity.

### **35 Licence—conditions**

Clause 35 authorises the chief executive to issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence. Without limiting this ability, a condition may limit or prohibit the performance of an activity authorised under the Bill or the Administration Act; or require a licensee to hold insurance of a kind and in an amount prescribed under a regulation.

If the chief executive decides to issue a licence on condition, subclause (3) requires the chief executive to give the applicant an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

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

### **36 Restriction—corporations**

Clause 36 places restrictions on the activities that may be performed by a corporation that holds a licence. Subclause (1) provides that a corporation that holds a licence may perform an activity under its licence at a place only if the activity may be performed by—

- (a) a licensed person in charge of the corporation's business at the place;  
or
- (b) a liquidator or controller appointed under the Corporations Act of property of the corporation; or
- (c) an administrator of a corporation appointed under the Corporations Act; or
- (d) an administrator of a deed of company arrangement for a corporation appointed under the Corporations Act; or
- (e) a receiver, appointed under the Administration Act, for property of the corporation.

However, subclause (2) provides that subclause (1) does not prevent a corporation that holds a motor dealer licence selling or attempting to sell or offering for sale or resale a used motor vehicle by way of auction if the auction is conducted by a chattel auctioneer who is an employed licensee of the corporation.

Subclause (3) provides that if the corporation performs an activity it is not authorised to perform, it is taken to be a person who acts as a licensee without a licence for the performance of the activity.

### **37 Restriction—individuals**

Clause 37 places restrictions on the activities that may be performed by an individual that holds a licence. Subclause (1) provides that an individual who is an employed licensee may perform an activity authorised under the individual's licence only if the activity may also be performed by the individual's employer under the employer's licence.

However, subclause (2) provides that subclause (1) does not prevent an individual who holds a chattel auctioneer licence selling or attempting to sell or offering for sale or resale any goods by way of auction for the individual's licensed employer.

Subclause (3) provides that if the employed licensee performs an activity the employed licensee is not authorised to perform because of subclause (1), the employed licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

### **38 Restriction—conditions**

Clause 38 applies to a licensee who performs an activity under the licensee's licence that the licensee is not authorised to perform because of a condition on the licensee's licence. The licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

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

### **Subdivision 1    Renewal**

#### **39 Application for renewal**

Clause 39 provides that a licensee may only apply for renewal of the licensee's licence before the licence expires. The clause also outlines the steps involved in making the application, which are similar to those involved in making an application for an initial licence. However, the application must also be accompanied by an audit report for all trust accounts kept by the licensee during the relevant audit period; or a statutory declaration that the licensee did not operate a trust account during the relevant audit period. The 'relevant audit period', for a licensee's licence,



is defined in subclause (5) to mean the audit period ending immediately before the licence's expiry date.

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

#### **40 Chief executive may renew or refuse to renew licence**

Clause 40 provides that the chief executive must consider the renewal application and may renew or refuse to renew the licence. The clause also outlines the matters which the chief executive must be satisfied before renewing a licence, which are similar to those involved in the issue of an initial licence. However, the chief executive must also be satisfied that the licensee has, as a principal licensee, a licensee in charge of the corporation's business or an employed licensee, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation.

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

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

Clause 41 provides that if an application for renewal is made under clause 39, the licensee's licence is taken to continue in force from the day that it would, apart from the clause, have expired until the licensee's application for renewal is either decided under clause 40, withdrawn by the licensee, or taken to have been withdrawn under clause 27(3).

### **Subdivision 2 Restoration**

#### **42 Application for restoration**

Clause 42 allows a former licensee to apply for restoration of the licence. The clause also outlines the steps involved in making the application, which are similar to those involved in making an application for renewal.

However, the former licensee must make the application within 3 months after the expiry of their licence.

### **43 Chief executive may restore or refuse to restore licence**

Clause 43 provides that the chief executive must consider the restoration application and may restore or refuse to restore the licence. The clause also sets out the matters which the chief executive must be satisfied before restoring a licence, which are similar to those involved in the renewal of a licence.

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

If the chief executive restores the licence, the licence is taken to have been renewed on the day it would, apart from clause 44, have expired (the 'initial expiry date'). To remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the licence is restored is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.

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

Clause 44 provides that if an application for restoration is made under clause 42, the licensee's licence is taken to continue in force from the day that it would, apart from the clause, have expired until the licensee's application for restoration is either decided under clause 43, withdrawn by the licensee, or taken to have been withdrawn under clause 27(3).

## **Division 10      Dealings with licences**

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

#### **45 Transfer of licence prohibited**

Clause 45 provides that a licence may not be transferred.

## **Subdivision 2    Substitute licences**

### **46 Appointment of substitute licensee—principal licensee—individual**

Clause 46 allows a principal licensee to appoint an adult as the licensee's substitute licensee for a period of not more than 30 days only if—

- (a) the licensee will be absent from the licensee's registered office for the period; and
- (b) the adult consents to the appointment; and
- (c) if the licensee is required as a condition of the licensee's licence to hold insurance, the adult is covered by the insurance or holds insurance that complies with the requirements of the condition.

Subclause (2) provides that the principal licensee must ensure an appointment and the substitute licensee's consent are in writing and state the period of appointment. The principal licensee must also ensure that these documents and evidence of any insurance are kept at the licensee's registered office, and made available for immediate inspection by an inspector who asks to see them. A maximum penalty of 100 penalty units is provided for a contravention.

Subclause (3) requires a principal licensee who will be absent from the licensee's registered office for a period of more than 30 days to apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult ('nominated person') as the licensee's substitute licensee. A maximum penalty of 200 penalty units is provided for a contravention.

Subclause (4) provides that if the principal licensee is a person for whom an administrator has been appointed under the *Guardianship and Administration Act 2000* or is deceased, the licensee's representative may make the application under subclause (3).

Subclause (5) sets out the matters that must accompany an application, while subclause (6) provides definitions for 'principal licensee' and 'representative'.

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

Clause 47 is similar to clause 46, but applies where an employed licensee who is in charge of a licensee’s business at a place will be absent from the place for any reason, other than the employed licensee’s resignation or termination. If the employed licensee will be absent from the place for a period of not more than 30 days, the principal licensee who employs the employed licensee may appoint an adult as the employed licensee’s substitute licensee for the period if the adult consents to the appointment. However, if the employed licensee will be absent for more than 30 days, the principal licensee must apply to the chief executive in the approved form for the appointment or the extension of the appointment of a person as the licensee’s substitute licensee.

#### **48 Chief executive may appoint or refuse to appoint substitute licensee**

Clause 48 provides that the chief executive may appoint or refuse to appoint a nominated person mentioned in subclause 46(3) or subclause 47(4) as a licensee’s substitute licensee. The chief executive may appoint the nominated person only if the chief executive is satisfied that the person—

- (a) is, under division 5, a suitable person to hold a licence; and
- (b) is sufficiently qualified to perform the licensee’s activities during the period of the licensee’s absence; and
- (c) if the licensee is required as a condition of the licensee’s licence to hold insurance, is covered by the insurance or holds insurance that complies with the requirements of the condition.

An appointment may be made subject to the conditions the chief executive considers appropriate and the chief executive must give written notice of the appointment to the licensee and the substitute licensee. However, if the chief executive decides to refuse the application or to impose conditions on the appointment, the chief executive must give the licensee an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive’s decision may be reviewed by QCAT.

## **49 Substitute licensee**

Clause 49 provides that on appointment, a substitute licensee must act as substitute for the licensee for whom the substitute is appointed, and is taken to be the licensee during the period of appointment.

Subclause (2) prohibits a licensee for whom a substitute has been appointed from acting under the authority of the licensee's licence while the appointment of the substitute licensee continues. A maximum penalty of 200 penalty units is provided for a contravention.

Subclause (3) sets out when the appointment of the substitute licensee ends. The appointment will usually end when the period of appointment ends. However, either the principal licensee or substitute licensee may give written notice to the appropriate entity to end the appointment from a date stated in the notice. An appointment also ends if the chief executive revokes the appointment; the licensee's licence is suspended or cancelled; or if the licensee is a principal licensee, the licensee stops carrying on business as a licensee.

## **50 Limitation on period of substitution**

Clause 50 prevents a principal licensee from appointing a substitute licensee for himself or herself, or for an employed licensee, for more than 12 weeks in any period of 12 months. Additionally, the chief executive can not appoint a substitute licensee for any licensee for more than 26 weeks in any period of 12 months.

# **Subdivision 3    General**

## **51 Amendment of licence conditions**

Clause 51 provides that the chief executive may amend the conditions of a licence either on the licensee's application, on the order of QCAT after a disciplinary hearing, or on the chief executive's own initiative. The clause also sets out procedural matters for amending licence conditions. However, if the chief executive decides to refuse to make an amendment requested by a licensee, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

## **52 Return of licence for amendment of conditions or when suspended or cancelled**

Clause 52 provides that if the chief executive amends the conditions of a licence under clause 51, the chief executive may require the licensee to produce the licence for amendment within a stated period of not less than 14 days. The licensee must comply with the requirement unless the person has a reasonable excuse and a maximum penalty of 100 penalty units applies for a contravention.

If a person's licence has been suspended or cancelled, the person must return the licence to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units applies for a contravention.

## **53 Surrender of licence**

Clause 53 allows a licensee to surrender their licence by giving written notice to the chief executive and returning the licence. A licence surrendered under the clause stops having effect on the day it is surrendered.

## **54 Licence may be deactivated**

Clause 54 allows a licensee to ask the chief executive to deactivate their licence. The request must be made in the approved form and be accompanied by the licensee's licence and the fee prescribed under a regulation. The licence is taken to be deactivated when the request, the licence and the prescribed fee are received by the chief executive.

A deactivated licence does not authorise the licensee to perform an activity under the authority of the licence. However, deactivation does not affect the term of the licence or entitle the licensee to a refund of fees for the licence for the balance of the licence's term. The holder of a deactivated licence may apply to have the licence renewed under clause 39 or restored under clause 42 as a deactivated licence at a reduced fee prescribed under a regulation.

A licensee may also request that the chief executive reactivate the licence by using the approved form and paying the fee prescribed under a regulation. However, if the licence has been deactivated for 5 years or more, the licence may be reactivated only if the licensee satisfies any

educational or other requirements prescribed under a regulation for the issue of the licence.

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

### **55 Immediate suspension**

Clause 55 sets out circumstances where a licence can be immediately suspended, for instance where the chief executive reasonably considers that a licensee has contravened the Bill. The chief executive may suspend a licensee's licence whether or not disciplinary proceedings have been started under the Bill. The clause also provides the period in which the licence is suspended.

The chief executive is required to give the licensee an information notice for the suspension within 14 days after suspending the licensee's licence. Accordingly, the chief executive's decision to suspend the licence may be reviewed by QCAT.

The licensee is also required to return the licence to the chief executive within 14 days after the licensee receives the notice, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units applies for a contravention.

### **56 Immediate cancellation**

Clause 56 provides that a licensee's licence is cancelled on the happening of any of the following events—

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

The licensee is required to return the licence to the chief executive within 14 days after the happening of one of the events, unless the licensee has a reasonable excuse. A maximum penalty of 100 penalty units applies for a contravention.

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

### **57 Form of licence**

Clause 57 provides that a licence must be in the approved form; however, the chief executive may approve a form of licence for office display purposes, and a form of licence for personal identification purposes. The chief executive may also issue a form of licence for a corporation endorsed with the categories of licence issued in the corporation's name.

The clause also provides that the licence must contain the name of the licensee, the date of issue, the expiry date, and other particulars prescribed under a regulation.

### **58 Display of licence**

Clause 58 provides that a principal licensee must display the licence at the principal place of business in the way prescribed under a regulation and provides a maximum penalty of 100 penalty units for a contravention.

### **59 Term of licence**

Clause 59 provides that a licence may be issued for a 1 year or 3 year term.

### **60 Replacement licences**

Clause 60 provides for the issue of replacement licences where a licence is lost, stolen, destroyed or damaged.

### **61 Register of licences**

Clause 61 requires the chief executive to keep a register of licences and applications for licences ('licence register') and prescribes, in subclause (2), the particulars that must be included in the licence register. The clause also provides for the inspection of the register and allows a person to obtain a copy of the details in the part of the register containing the particulars mentioned in subclause (2).



## **62 Licensees to notify chief executive of changes in circumstances**

Clause 62 requires a licensee to give written notice to the chief executive of a prescribed change (i.e. a change prescribed under a regulation) in the licensee's circumstances within 14 days after the change. A maximum penalty of 100 penalty units applies for a contravention.

# **Part 3                      Motor Dealers**

## **Division 1                      Motor Dealer's authorisation and responsibilities**

### **63 What a motor dealer licence authorises**

Clause 63 provides that a motor dealer licence authorises the holder of the licence (a 'motor dealer') to perform the following activities in the carrying on of a business of motor dealing—

- (a) to acquire, primarily for resale, used motor vehicles;
- (b) to sell used motor vehicles;
- (c) to sell used motor vehicles on consignment as an agent for others for reward;
- (d) to sell a leased motor vehicle to the lessee under the terms of the lease;
- (e) to acquire used motor vehicles, whether or not as complete units, to break up for sale as parts;
- (f) to sell used motor vehicles mentioned in paragraph (e) as parts;
- (g) to negotiate, under a consultancy agreement, for a person who is not a motor dealer or chattel auctioneer for the purchase or sale of a used motor vehicle for the person.

Subclause (2) provides that a motor dealer may perform the activities as an employee of another motor dealer who carries on the business of motor dealing, while subclause (3) provides definitions for 'business of motor dealing' and 'consultancy agreement'.

## **64 Responsibility for acts and omissions of motor salespersons**

Clause 64 requires a motor dealer who is a principal licensee to take reasonable steps to ensure each motor salesperson employed by the dealer is properly supervised and complies with the Bill. A motor dealer who is an employed licensee in charge of a licensee's business at a place of business must also take reasonable steps to ensure each motor salesperson employed at the place is properly supervised and complies with the Bill. A motor dealer who fails to comply with either of these requirements is liable to disciplinary action under part 8, division 2.

## **Division 2            Conduct provisions**

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

#### **65 Carrying on of business under motor dealer licence**

Clause 65 provides that an individual who carries on the business of a motor dealer with others is not required to hold a motor dealer licence if—

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

#### **66 Licensee to be in charge of motor dealer's business at a place**

Clause 66 places requirements on principal licensees to be in charge of the motor dealer's business at a place. Subclause (1) requires that where a motor dealer is an individual and a principal licensee, the dealer must be in charge of the motor dealer's business at the dealer's registered office; and if the motor dealer has more than 1 place of business, ensure that at each other place of business a motor dealer who is an individual is in charge. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (2) requires that where a motor dealer is a corporation and a principal licensee ('corporate dealer'), the corporate dealer must ensure

that the individual in charge of the corporate dealer's business at its registered office is a motor dealer; and if the corporate dealer has more than 1 place of business, ensure that at each other place of business an individual who is a motor dealer is in charge. A maximum penalty of 200 penalty units applies for an individual guilty of an offence under chapter 2 of the Criminal Code, or for clause 252 of the Bill. A maximum penalty of 1000 penalty units applies for a corporation.

Subclause (3) provides that an individual must not be in charge of a motor dealer's business at more than 1 place and a maximum penalty of 200 penalty units applies for a contravention.

However, subclause (4) provides that it is not an offence against the clause for a motor dealer who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located. Subclause (5) provides that land is 'contiguous' with other land only if the parcels of land have a common boundary that is not separated by a public road.

## **67 Motor dealing in motor vehicles**

Clause 67 clarifies when a motor dealer is taken to be performing the activities of a motor dealer and imposes disclosure requirements on the dealer. Subclause (1) provides that a motor dealer who is performing an activity the motor dealer is authorised under clause 63(1) to perform in relation to a used motor vehicle is taken to be performing the activities of a motor dealer whether or not—

- (a) the motor dealer is the registered operator, as defined under the *Transport Operations (Road Use Management) Act 1995*, of the motor vehicle; or
- (b) the motor dealer or the motor dealer's associate used the motor vehicle for private purposes.

Subclause (2) requires a motor dealer to disclose to a potential buyer or seller of a vehicle that the licensee is a licensed motor dealer. A maximum penalty of 400 penalty units applies for a contravention. Additionally, subclause (3) requires the potential buyer or seller to sign a written acknowledgement stating the motor dealer disclosed to the person that the licensee is a licensed motor dealer.

## **Subdivision 2    Consignment selling**

### **68 Appointment—sale on consignment**

Clause 68 prevents a motor dealer from acting for a client to sell the client's motor vehicle on consignment without being appointed in writing or having a previous appointment assigned to the dealer. A maximum penalty of 200 penalty units applies for a contravention. The clause also makes provision for how an appointment must be made and requires the motor dealer to give a copy of the signed appointment to the client.

### **69 Form of appointment**

Clause 69 provides that the appointment must be in the approved form, and that the approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment. An appointment that is not in the approved form is ineffective from the time it is made.

### **70 Proposal for assignment of appointments**

Clause 70 makes provision for the assignment of appointments to another motor dealer.

### **71 Trade-ins**

Clause 71 provides that a motor dealer must not accept a trade-in from the buyer of a motor vehicle being sold on consignment. A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention. However, the motor dealer does not commit a contravention if the dealer purchases the motor vehicle offered as a trade-in as part of a separate transaction between the dealer and the buyer.

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

### **72 Commission may be claimed only for actual amounts**

Clause 72 applies to a motor dealer who sells a motor vehicle on consignment for the payment of a commission. The motor dealer must not

claim commission worked out on an amount that is more than the actual sale price of the vehicle. A maximum penalty of 200 penalty units applies for a contravention.

### **73 Restriction on remedy for reward or expense**

Clause 73 restricts a person's ability to sue for, or recover or retain, a reward or expense for a sale of a motor vehicle on consignment.

### **74 Excess commission etc. to be repaid**

Clause 74 makes provision for a court to order excess amounts to be repaid to a client in certain circumstances.

## **Subdivision 4 Interests in motor vehicles**

### **75 Definition for sdiv 4**

Clause 75 provides a definition of 'obtain' for subdivision 4. 'Obtain' includes being in any way concerned in obtaining.

### **76 Beneficial interest—options**

Clause 76 creates offences where a motor dealer or motor salesperson obtains from the owner of a used motor vehicle, other than another motor dealer, an option to purchase the vehicle in which the dealer has a beneficial interest. Maximum penalties of 200 penalty units or 3 years imprisonment apply for contraventions.

The clause also creates an offence where a motor dealer sells a motor vehicle if the motor dealer has a beneficial interest in an option to purchase the vehicle, other than an option to purchase given by another motor dealer. A maximum penalty of 200 penalty units or 3 years imprisonment applies for a contravention.

### **77 Beneficial interest—other than options**

Clause 77 applies to a motor vehicle placed by a person ('client') with a motor dealer for sale on consignment, but does not apply if clause 76 applies. Subclauses (2) and (3) create offences where a motor dealer or motor salesperson obtains a beneficial interest in a motor vehicle that is

sold on consignment. Maximum penalties of 200 penalty units or 3 years imprisonment apply for contraventions. However, subclause (4) provides that a person does not commit a contravention if—

- (a) the person before a contract for the sale of the motor vehicle is entered into, obtains the client's written acknowledgement in the approved form that the client—
  - (i) is aware that the person is interested in obtaining a beneficial interest in the motor vehicle; and
  - (ii) acts fairly and honestly in relation to the sale; and
- (b) no commission or other reward is payable for the sale; and
- (c) the client is in substantially as good a position as the client would be if the motor vehicle were sold at fair market value.

## **78 Return of beneficial interest if in form of commission**

Clause 78 makes provision for a court to order a beneficial interest be repaid to the client if the beneficial interest is in the form of a commission.

## **Subdivision 5 Code of conduct**

### **79 Code of conduct**

Clause 79 allows a regulation to prescribe a code of conduct about motor dealing practice that may include the following—

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

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

Clause 80 makes provision for complaints to be made to the chief executive about the conduct of a motor dealer or motor salesperson, and for the chief

executive to investigate the complaint and take action where the code of conduct has been breached.

## **Subdivision 6 Sales of used motor vehicles that are written-off vehicles**

### **81 Notice to be given about used motor vehicle—written-off vehicle**

Clause 81 applies if a used motor vehicle that is an unregistered written-off vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer. Subclause (2) provides that before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a written-off vehicle and state—

- (a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or
- (b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

A maximum penalty of 200 penalty units applies for a contravention.

Subclause (3) provides that the motor dealer must also ask the buyer to sign an acknowledgement, printed in type no smaller than 12 point, that identifies the used motor vehicle as a written-off vehicle, and states whether the vehicle is a repairable write-off or a statutory write-off. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (3) provides that the motor dealer must give the original of the acknowledgement to the buyer, keep a copy of the acknowledgment, and make a copy available for immediate inspection by an inspector who asks to see it. A maximum penalty of 200 penalty units applies for a contravention.

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

### **82 Obligations of motor dealer**

Clause 82 makes provision for the obligations of a motor dealer in ensuring the buyer of a used motor vehicle gains clear title to the motor vehicle. As indicated earlier, the Bill reflects the prospective amendments to the PAMD Act made by the *Personal Property Securities (Ancillary Provisions) Act 2010*. Accordingly, clause 82 differs from section 295 of the PAMD Act in that the motor dealer is no longer expressly required to obtain a security interest certificate under the *Motor Vehicles and Boats Securities Act 1986*. This is in anticipation of the Queensland Register of Encumbered Vehicles (REVS) being closed down when the new national Personal Property Securities Register (PPSR) is expected to commence in mid 2011.

Despite the removal of the express requirement to obtain a security interest certificate, the motor dealer is still required to ensure the buyer gains clear title to the used motor vehicle. Consequently, the motor dealer will invariably be required to search the REVS until it is closed down and, when commenced, the PPSR to determine whether the motor vehicle is encumbered.

Subclause (6) displaces the requirements to ensure the buyer gains clear title to the motor vehicle, to the extent that a security interest in the motor vehicle is registered under the Commonwealth *Personal Property Securities Act 2009* (Commonwealth PPS Act). This is because section 45 of the Commonwealth PPS Act provides for the taking of motor vehicles free of security interests in certain circumstances.

As the Commonwealth PPS Act is not expected to commence until mid 2011, it may be the case that this Bill commences before the Commonwealth PPS Act. However, this will not affect the operation of clause 82 as it will be taken, for the purpose of subclause (6), that no security interest is registered under the Commonwealth PPS Act given that it will not have commenced.



## **Division 4            Cooling-off period**

### **83 Definitions for div 4**

Clause 83 provides definitions for division 4.

### **84 Meaning of *cooling-off period***

Clause 84 provides that the ‘cooling-off period’ for the purchase of a used motor vehicle from a motor dealer starts on the day the contract for the purchase of the vehicle is enforceable against the motor dealer. The cooling-off period ends—

- (a) if the motor dealer’s actual close of business on the motor dealer’s next business day is 5p.m. or later—at the time of the motor dealer’s actual close of business on that business day; or
- (b) if the motor dealer’s actual close of business on the motor dealer’s next business day is earlier than 5p.m.—at the time of the motor dealer’s actual close of business on the business day immediately following the next business day; or
- (c) at any earlier time the buyer takes physical possession of the vehicle for a purpose other than a vehicle inspection or a test drive.

### **85 Application of div 4**

Clause 85 provides that the division applies to sales of used motor vehicles by motor dealers. However, subclause (2) provides that the division does not apply to a sale by auction; a sale on consignment, unless the owner of the vehicle is a motor dealer or chattel auctioneer; or a sale to another motor dealer.

### **86 Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period**

Clause 86 provides that a motor dealer must not advertise or display for sale a motor vehicle for sale on consignment unless it is advertised or displayed for sale as a vehicle that is not subject to a cooling-off period in the way provided under a regulation. A maximum penalty of 100 penalty units applies for a contravention. However, the offence provision does not

apply to a sale on consignment of a motor vehicle owned by a motor dealer or chattel auctioneer.

### **87 Notice to be given about used motor vehicle—no prior contract**

Clause 87 applies if a used motor vehicle is not subject to any prior contract with a prospective buyer for its sale. The clause requires a motor dealer to give the prospective buyer a written statement in the approved form, and makes provision for what the statement must include and the giving of the statement.

### **88 Option to purchase during cooling-off period**

Clause 88 applies if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable. A motor dealer may not give more than 1 other person ('option holder') an option to purchase the vehicle even though the vehicle is subject to a prior contract. If a motor dealer gives an option to purchase the motor vehicle to someone else while an option to purchase is still current, the dealer commits an offence and a maximum penalty of 100 penalty units applies.

The clause also requires the motor dealer to give the option holder a written statement in the approved form, and makes provision for what the statement must include and the giving of the statement.

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

Clause 89 allows a buyer to avoid the contract for the sale of a used motor vehicle if the buyer has not been given the statement under clause 87, or the statement is defective in a material particular. In order to avoid the contract, the buyer must give written notice to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.

If the contract is avoided under the clause, the motor dealer—

- (a) must do everything in the dealer's power to return the buyer to the position the buyer was in before the vehicle was purchased; or
- (b) if the buyer can not be returned to that position, is liable for any financial loss suffered by the buyer because the buyer can not be returned to that position.

## **90 Contract must contain cooling-off clause**

Clause 90 requires a contract for the sale of a used motor vehicle to have a cooling-off clause, and makes provision for what the clause must contain.

## **91 Consideration for cooling-off period**

Clause 91 makes provision for consideration payable during the cooling-off period.

## **92 Consideration for option**

Clause 92 makes provision for the consideration payable for an option for a purchase of a used motor vehicle.

## **93 Harassment or coercion**

Clause 93 provides that a motor dealer or other person must not harass or coerce a person for the purpose of dissuading or preventing the person from exercising a right conferred on the person by the division. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention.

## **94 Property does not pass during cooling-off period**

Clause 94 provides that property in a used motor vehicle subject to a cooling-off period does not pass to the buyer of the vehicle until the end of the cooling-off period. Property in a motor vehicle offered to the motor dealer as a trade-in does not pass to the dealer until the end of the cooling-off period. The clause also provides that a deposit, other than a non-refundable deposit, given to a motor dealer by a buyer of a used motor vehicle from the dealer remains the property of the buyer until the end of the cooling-off period.

## **95 Buyer may avoid contract during cooling-off period**

Clause 95 provides that the buyer of a used motor vehicle may avoid the contract to purchase the vehicle during the cooling-off period.

## **96 Procedure for avoidance**

Clause 96 makes provision for the procedure for avoiding a contract to purchase a used motor vehicle.

## **97 What happens when contract avoided**

Clause 97 provides that notice given under clause 96 brings the contract, and any related contract, to an end. A ‘related contract’ includes a contract about the provision of finance to purchase the vehicle, and a contract of insurance for the vehicle. The clause also makes provision for the obligations of a motor dealer in relation to an option holder of the used motor vehicle.

## **98 Consideration for used motor vehicle during cooling-off period**

Clause 98 allows a motor dealer to accept a trade-in or other consideration from a buyer of a used motor vehicle before the end of the cooling-off period. However, the motor dealer must not deal in the trade-in or other consideration during the cooling-off period and a maximum penalty of 200 penalty units or 1 year’s imprisonment applies for a contravention.

The motor dealer must return the trade-in or other consideration immediately to the buyer, at no cost to the buyer, if the buyer avoids the contract under clause 96. A maximum penalty of 200 penalty units or 1 year’s imprisonment applies for a contravention. However, the motor dealer is not required to return to the buyer any non-refundable deposit paid as consideration for the cooling-off period.

# **Division 5                      Statutory warranty**

## **99 Definitions for div 5**

Clause 99 provides definitions for division 5.

## **100 Meaning of *defect***

Clause 100 provides that a warranted vehicle has a ‘defect’ for the division if a part of the vehicle does not perform its intended function; or a part of

the vehicle has deteriorated to an extent where it can not reasonably be relied on to perform its intended function.

### **101 Meaning of *warranty period***

Clause 101 defines the ‘warranty period’ for class A warranted vehicles and class B warranted vehicles. A ‘class A warranted vehicle’ is defined in the Dictionary to mean a warranted vehicle that, at the day of its sale, has an odometer reading of less than 160,000km and was manufactured less than 10 years before the day of sale. A ‘class B warranted vehicle’ is defined in the Dictionary to mean a warranted vehicle that, at the day of its sale, has an odometer reading of 160,000km or more or was manufactured at least 10 years before the day of sale. Under clause 101, class A warranted vehicles have a greater warranty period than class B warranted vehicles.

### **102 Application of div 5**

Clause 102 provides that the division applies to each warranted vehicle sold by a motor dealer as owner of the vehicle or on consignment for another motor dealer or chattel auctioneer. However, the division does not apply to the sale of a motor vehicle by a motor dealer to another motor dealer or chattel auctioneer, or on consignment for a person who is not a motor dealer or chattel auctioneer.

### **103 Unwarranted and restorable vehicles to be identified when offered for sale**

Clause 103 makes provision for the advertisement or display for sale an unwarranted vehicle or a restorable vehicle in the way prescribed under a regulation. A maximum penalty of 100 penalty units applies for a contravention. However, the clause does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.

### **104 Waiver of statutory warranty for restorable vehicles**

Clause 104 makes provision for the statutory warranty for the purchase of a restorable vehicle to be waived by the buyer.

### **105 Motor dealer to give proposed buyer notice about statutory warranty**

Clause 105 requires a motor dealer to give a proposed buyer notice about a statutory warranty, and requires the proposed buyer to acknowledge receipt of a notice by signing a copy of it.

### **106 Statutory warranty**

Clause 106 provides that the warrantor of a warranted vehicle warrants that the vehicle is free from defects at the time of taking possession and for the warranty period, and defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge. However, ‘defects’ do not include defects not covered by the statutory warranty.

### **107 Defects not covered by statutory warranty**

Clause 107 sets out defects which are not covered by the statutory warranty.

### **108 Buyer’s obligations under statutory warranty**

Clause 108 sets out the buyer’s obligations under the statutory warranty where the buyer believes the vehicle has a defect that the warrantor of the vehicle is obliged to repair.

### **109 Warrantor to record particulars of extension of warranty period**

Clause 109 provides that the warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under clause 108 and the day the vehicle is returned to the buyer. A maximum penalty of 100 penalty units applies for a contravention.

### **110 Warrantor to advise whether defect covered by statutory warranty**

Clause 110 applies if a defect notice is given, and the vehicle is delivered, under clause 108. The warrantor must advise the buyer in writing (‘warranty advice’) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty. If the warrantor fails to give

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

### **111 Warrantor's obligation to repair defects**

Clause 111 makes provision for the warrantor's obligation to repair defects.

### **112 Warrantor's failure to repair**

Clause 112 allows the buyer to apply to QCAT where the warrantor refuses or fails to repair a defect in certain circumstances. The clause also allows QCAT to make a number of orders in relation to the defect.

### **113 Applications for more than prescribed amount**

Clause 113 applies if an application under clause 112 may be made to QCAT and the application seeks the payment of an amount greater than the prescribed amount as defined under the *Queensland Civil and Administrative Tribunal Act 2009*. Any reference to QCAT in a provision of the division is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the application amount, and the provision applies with necessary changes as if QCAT were the court. This allows the buyer to apply to the appropriate court where the amount claimed exceeds QCAT's jurisdiction.

## **Division 6            General**

### **114 Registered office**

Clause 114 defines a motor dealer's 'registered office'.

### **115 Motor dealer must notify chief executive of change in place of business etc.**

Clause 115 requires a motor dealer to notify the chief executive of certain changes in the place of business and the opening or closing of any place where the motor dealer carries on business. Maximum penalties of 200 penalty units apply for contraventions.

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

Clause 116 requires a motor dealer who is a principal licensee to display at each place of business, in the way prescribed under a regulation—

- (a) the dealer's name; and
- (b) if the dealer is not the person in charge of the dealer's business at the place, the name of the motor dealer who is in charge at the place; and
- (c) the other particulars prescribed under a regulation.

A maximum penalty of 100 penalty units applies for a contravention.

The clause also provides that a motor dealer must not publish in a newspaper or elsewhere an advertisement for the dealer's business without stating in the advertisement the particulars prescribed under a regulation. A maximum penalty of 100 penalty units applies for a contravention.

## **117 Principal licensee to keep employment register**

Clause 117 requires a principal licensee to keep an employment register at each place where the licensee carries on business, and provides for the particulars that must be entered and kept on the register.

## **118 Motor dealer to keep transactions register**

Clause 118 requires a motor dealer to keep a register of transactions at each place of business, and provides for the particulars that must be entered and kept on the register.

## **119 Motor dealer to obtain statement from seller of vehicle**

Clause 119 requires a motor dealer to obtain a statement from the seller of a vehicle which states particulars about the seller and the vehicle prescribed under a regulation. A maximum penalty of 200 penalty units applies for a contravention. The motor dealer must also keep a copy of the statement at the motor dealer's place of business, give a copy to the seller, and make a copy available for immediate inspection by an inspector who asks to see it. A maximum penalty of 200 penalty units applies for a contravention. However, the clause does not apply if the seller is a financier of the business of the motor dealer, or another motor dealer or chattel auctioneer.



## **120 Motor dealer to give statement to buyer of vehicle**

Clause 120 provides that a motor dealer must, when selling a motor vehicle, including when selling on consignment, to a buyer, give to the buyer a statement, signed by the motor dealer, stating the particulars about the vehicle's owner immediately before the sale and the vehicle prescribed under a regulation. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (2) provides that the motor dealer must also keep a copy of the statement at the motor dealer's place of business, give a copy of the statement to the buyer immediately after it is signed, and make a copy available for immediate inspection by an inspector who asks to see it. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (3) provides that nothing in the clause prevents the statement being contained in the contract for sale of the vehicle.

## **121 Contract of sale**

Clause 121 makes provision for a motor dealer's obligations in relation to the contract of sale of a motor vehicle. The contract must be in writing and contain the particulars prescribed under a regulation in the way prescribed under the regulation. The motor dealer must also give 1 copy of the contract to each other person signing the contract immediately after it is signed, and make a copy available for immediate inspection by an inspector who asks to see it. Maximum penalties of 200 penalty units apply for contraventions.

A contract for the sale of a motor vehicle by a motor dealer that is not in writing is not enforceable against the buyer of the motor vehicle.

# **Division 7            Offences**

## **122 Acting as motor dealer**

Clause 122 provides that a person must not carry on the business of a motor dealer unless the person holds a motor dealer licence and the activities performed in the carrying on of business as a motor dealer are authorised under the person's licence. A maximum penalty of 400 penalty units or 2 years imprisonment applies for a contravention.

Subclause (2) provides that without limiting the ways a person may carry on the business of a motor dealer, a person ‘carries on business’ as a motor dealer if the person—

- (a) advertises or notifies or states that the person carries on the business of motor dealing, either generally or for a single transaction; or
- (b) in any way holds out as being ready to carry on the business of motor dealing, either generally or for a single transaction.

Subclause (3) provides that the clause does not apply to a person who carries on a business that is primarily concerned with the hiring out or leasing of motor vehicles.

### **123 Pretending to be motor salesperson**

Clause 123 provides that a person must not act as a motor salesperson unless the person holds a registration certificate as a motor salesperson, and provides a maximum penalty of 200 penalty units. Subclause (2) clarifies that to ‘act as a motor salesperson’ includes holding out that the person is a motor salesperson.

### **124 Motor dealer must not act for more than 1 party**

Clause 124 provides that a motor dealer must not act for more than 1 party to a transaction, and provides a maximum penalty of 200 penalty units. If the motor dealer acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

### **125 Production of licence or registration certificate**

Clause 125 requires a motor dealer or motor salesperson to produce their licence or registration certificate for inspection if asked by a person with whom the dealer or salesperson is dealing. Maximum penalties of 100 penalty units apply for contraventions.

### **126 Employment of persons in motor dealer business**

Clause 126 creates offences in relation to the employment of persons in a motor dealer business. Subclause (1) provides that a motor dealer must not employ, as a motor salesperson, a person the motor dealer knows, or ought to know, does not hold a registration certificate as a motor salesperson. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (2) provides that a principal licensee who is an individual and carries on the business of a motor dealer must not employ, as a registered employee for the business, himself or herself or another individual with whom the principal licensee carries on business as a motor dealer. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (3) provides that a principal licensee that is a corporation and carries on business as a motor dealer must not employ an executive officer of the corporation as a motor salesperson for the business. A maximum penalty of 200 penalty units applies for an individual guilty of an offence under chapter 2 of the Criminal Code, or for clause 252 of the Bill. A maximum penalty of 1000 penalty units applies for a corporation.

## **Part 4                      Chattel Auctioneers**

### **Division 1                      Chattel auctioneer's authorisation and responsibilities**

#### **127 What a chattel auctioneer licence authorises**

Clause 127 provides that a chattel auctioneer licence authorises the holder of the licence (a 'chattel auctioneer') to perform the activity of selling or attempting to sell or offering for sale or resale any goods by way of auction. A chattel auctioneer licence also authorises the chattel auctioneer to sell the goods by any means during the auction period.

A chattel auctioneer may perform the activity in the carrying on of a business, either alone or with others. Additionally, a chattel auctioneer may perform the activity as an employee of a chattel auctioneer, or a motor dealer.

Subclause (4) defines 'auction period' to mean a period for which the chattel auctioneer is appointed under clause 131 or otherwise authorised or permitted under the Bill, or another Act to sell the goods.

## **128 Responsibility for acts and omissions of trainee chattel auctioneers**

Clause 128 provides that a chattel auctioneer must take reasonable steps to ensure each trainee chattel auctioneer under the chattel auctioneer's supervision and instruction is properly supervised and instructed and complies with the Bill. A chattel auctioneer who fails to comply with the requirement is liable to disciplinary action under part 8, division 2.

## **Division 2            Conduct provisions**

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

#### **129 Carrying on of business under chattel auctioneer licence**

Clause 129 provides that an individual who carries on the business of a chattel auctioneer with others is not required to hold a chattel auctioneer licence if—

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

#### **130 Licensee to be in charge of chattel auctioneer's business at a place**

Clause 130 places requirements on principal licensees to be in charge of the chattel auctioneer's business at a place. Subclause (1) requires that where a chattel auctioneer is an individual and a principal licensee, the chattel auctioneer must be in charge of the business at the registered office; and if the chattel auctioneer has more than 1 place of business, ensure that at each other place of business an individual who is a chattel auctioneer is in charge. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (2) requires that where a chattel auctioneer is a corporation and a principal licensee ('corporate chattel auctioneer'), the corporate chattel

auctioneer must ensure that the individual in charge of the business at the registered office is a chattel auctioneer; and if the corporate chattel auctioneer has more than 1 place of business, ensure that at each other place of business an individual who is a chattel auctioneer is in charge. A maximum penalty of 200 penalty units applies for an individual guilty of an offence under chapter 2 of the Criminal Code, or for clause 252 of the Bill. A maximum penalty of 1000 penalty units applies for a corporation.

Subclause (3) provides that an individual must not be in charge of a chattel auctioneer's business at more than 1 place of business.

## **Subdivision 2 Appointment**

### **131 Appointment of chattel auctioneer**

Clause 131 prevents a chattel auctioneer from performing an activity for a client without first being appointed in writing or having a previous appointment assigned to the chattel auctioneer. A maximum penalty of 200 penalty units applies for a contravention. The clause also makes provision for how an appointment must be made.

### **132 Form of appointment**

Clause 132 provides that the appointment must be in the approved form, and that the approved form must include a statement that the client should seek independent legal advice before signing the appointment. An appointment that is not in the approved form is ineffective from the time it is made.

### **133 Proposal for assignment of appointments**

Clause 133 makes provision for the assignment of appointments to another chattel auctioneer.

## **Subdivision 3 Auctions of goods**

### **134 Buyer's premium**

Clause 134 applies to an auction of goods and provides that a chattel auctioneer must not charge the buyer of goods a buyer's premium unless—

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

A maximum penalty of 200 penalty units applies for a contravention.

However, subclause (3) provides that the chattel auctioneer does not act for the buyer of the goods only because the chattel auctioneer accepts a buyer's premium from the buyer.

Subclause (4) defines 'buyer's premium' to mean an amount, not more than an amount prescribed or worked out under a regulation, payable to the chattel auctioneer by a buyer on the purchase of goods. 'Owner', of goods, includes a person who is lawfully entitled to sell the goods.

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

### **135 Commission may be claimed only for actual amounts**

Clause 135 applies to a chattel auctioneer who performs, for the payment of a commission, a service of selling goods. The chattel auctioneer must not claim commission worked out on an amount more than the actual sale price of the goods. A maximum penalty of 200 penalty units applies for a contravention.

### **136 Restriction on remedy for reward or expense**

Clause 136 restricts a person's ability to sue for, or recover or retain, a reward or expense for the performance of an activity as a chattel auctioneer.

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

Clause 137 restricts a person's ability to sue for, or recover or retain, a reward or expense that is more than the amount stated in the appointment given under clause 131.

### **138 Excess commission etc. to be repaid**

Clause 138 makes provision for a court to order excess amounts to be repaid to the client in certain circumstances.

## **Subdivision 5 Interests in goods**

### **139 Definition for sdiv 5**

Clause 139 defines 'obtain' to include being in any way concerned in obtaining.

### **140 Beneficial interest—options**

Clause 140 applies to goods placed by a person ('client') with a chattel auctioneer for sale. Subclauses (2) and (3) create offences where a chattel auctioneer or trainee chattel auctioneer obtains from a client an option to purchase goods in which the chattel auctioneer has a beneficial interest. Maximum penalties of 200 penalty units or 3 years imprisonment apply for contraventions.

Subclause (4) also creates an offence where a chattel auctioneer sells goods if the chattel auctioneer obtains a beneficial interest in an option to purchase the goods. A maximum penalty of 200 penalty units or 3 years imprisonment applies for a contravention.

### **141 Beneficial interest—other than options**

Clause 141 applies to goods placed by a person ('client') with a chattel auctioneer for sale, but does not apply if clause 140 applies. Subclauses (2) and (3) create offences where a chattel auctioneer or trainee chattel auctioneer obtains a beneficial interest in the goods. Maximum penalties of 200 penalty units or 3 years imprisonment apply for contraventions. The clause also provides situations where a chattel auctioneer or trainee chattel auctioneer does not commit an offence.

### **142 Return of beneficial interest if in form of commission**

Clause 142 makes provision for a court to order a beneficial interest be repaid to the client if the beneficial interest is in the form of a commission.

### **143 Non-application of s 141 for particular livestock sales**

Clause 143 provides that clause 141 does not apply to livestock sales if the chattel auctioneer obtains the client's written acknowledgement that the client is aware the chattel auctioneer or trainee chattel auctioneer is interested in obtaining a beneficial interest in the livestock, and consents to the chattel auctioneer or trainee obtaining the interest.

## **Subdivision 6 Sales of livestock**

### **144 Sales of livestock**

Clause 144 applies to the sale of livestock by a chattel auctioneer. Subclause (2) provides that the chattel auctioneer may pay over the proceeds from the sale to the client appointing the chattel auctioneer to conduct the auction only if—

- (a) the chattel auctioneer—
  - (i) has known the client for at least 1 year; and
  - (ii) considers the client is a person of good repute; and
  - (iii) has no reason to believe the client is not lawfully entitled to sell the livestock; or
- (b) the chattel auctioneer receives a certificate for the client from a referee.



Subclause (3) provides that a referee may give a certificate for the client only if the referee has known the client for at least 1 year, considers the client is a person of good repute, and has no reason to believe the client is not lawfully entitled to sell the livestock. A 'referee' is defined in subclause (4) to mean a person whom the chattel auctioneer has known for at least 1 year and considers is a person of good repute.

### **145 Protection for chattel auctioneer**

Clause 145 applies if a court finds, in relation to livestock sold by a chattel auctioneer, that the client was not lawfully entitled to sell the livestock. Subclause (2) provides that a chattel auctioneer who, acting in good faith and without negligence, complies with clause 144 is not liable to the owner of the livestock only because the chattel auctioneer took possession or gave delivery of the livestock.

## **Subdivision 7 Code of conduct**

### **146 Code of conduct**

Clause 146 allows a regulation to prescribe a code of conduct about chattel auctioneering practice that may include the following—

- (a) setting conduct standards for chattel auctioneers, employed licensees and trainee chattel auctioneers;
- (b) establishing principles for fair trading;
- (c) providing for a system of complaint resolution;
- (d) providing that contravention of some provisions of the code are an offence.

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

Clause 147 makes provision for complaints to be made to the chief executive about the conduct of a chattel auctioneer or trainee chattel auctioneer, and for the chief executive to investigate the complaint and take action where the code of conduct has been breached.

## **Subdivision 8 Sales of written-off vehicles**

### **148 Announcements before auction—written-off vehicle**

Clause 148 provides that a chattel auctioneer must announce, immediately before the auction of a motor vehicle that is an unregistered written-off vehicle, that the vehicle is a written-off vehicle and state—

- (a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or
- (b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

A maximum penalty of 100 penalty units applies for a contravention.

However, a chattel auctioneer does not contravene the requirements if 2 or more written-off vehicles that are repairable write-offs are to be auctioned in consecutive lots, and immediately before the first vehicle is to be auctioned, the chattel auctioneer—

- (a) identifies the vehicles; and
- (b) announces that the identified vehicles are repairable write-offs and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before they can be registered.

## **Division 3 Sale of motor vehicles by auction**

### **149 Obligations of chattel auctioneer**

Clause 149 makes provision for the obligations of a chattel auctioneer in ensuring the buyer of a used motor vehicle gains clear title to the motor vehicle. As indicated earlier, the Bill reflects the prospective amendments to the PAMD Act made by the *Personal Property Securities (Ancillary Provisions) Act 2010*. Accordingly, clause 149 differs from section 233 of the PAMD Act in that the chattel auctioneer is no longer expressly required to obtain a security interest certificate under the *Motor Vehicles and Boats Securities Act 1986*. This is in anticipation of the Queensland Register of

Encumbered Vehicles (REVS) being closed down when the new national Personal Property Securities Register (PPSR) is expected to commence in mid 2011.

Despite the removal of the express requirement to obtain a security interest certificate, the chattel auctioneer is still required to ensure the buyer gains clear title to the used motor vehicle. Consequently, the chattel auctioneer will invariably be required to search REVS until it is closed down and, when commenced, the PPSR to determine whether the motor vehicle is encumbered.

Subclause (8) displaces the requirements to ensure the buyer gains clear title to the motor vehicle, to the extent that a security interest in the motor vehicle is registered under the Commonwealth *Personal Property Securities Act 2009* (Commonwealth PPS Act). This is because section 45 of the Commonwealth PPS Act provides for the taking of motor vehicles free of security interests in certain circumstances.

As the Commonwealth PPS Act is not expected to commence until mid 2011, it may be the case that this Bill commences before the Commonwealth PPS Act. However, this will not affect the operation of clause 149 as it will be taken, for the purpose of subclause (8), that no security interest is registered under the Commonwealth PPS Act given that it will not have commenced.

## **Division 4            Statutory warranty**

### **150 Definitions for div 4**

Clause 150 provides definitions for division 4.

### **151 Meaning of *defect***

Clause 151 provides that a warranted vehicle has a ‘defect’ for the part if a part of a vehicle does not perform its intended function; or a part of the vehicle has deteriorated to an extent where it can not be reasonably relied on to perform its intended function.

## **152 Meaning of *warranty period***

Clause 152 defines the ‘warranty’ period for class A warranted vehicles and class B warranted vehicles. A ‘class A warranted vehicle’ is defined in the Dictionary to mean a warranted vehicle that, at the day of its sale, has an odometer reading of less than 160,000km and was manufactured less than 10 years before the day of sale. A ‘class B warranted vehicle’ is defined in the Dictionary to mean a warranted vehicle that, at the day of its sale, has an odometer reading of 160,000km or more or was manufactured at least 10 years before the day of sale. Under clause 152, class A warranted vehicles have a greater warranty period than class B warranted vehicles.

## **153 Application of div 4**

Clause 153 provides that the division applies to each warranted vehicle sold by a chattel auctioneer as owner of the vehicle or on consignment for another chattel auctioneer or a motor dealer. However, the division, other than clauses 154-156, does not apply to the sale of a motor vehicle by the chattel auctioneer to another chattel auctioneer or a motor dealer; or on consignment for a person who is not a chattel auctioneer or motor dealer.

## **154 Unwarranted and restorable vehicles to be identified when offered for sale**

Clause 154 makes provision for the advertisement or display for sale an unwarranted vehicle or a restorable vehicle in the way prescribed under a regulation. A maximum penalty of 100 penalty units applies for a contravention. However, the clause does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.

## **155 Bidders to register for auction of restorable vehicles**

Clause 155 provides that before a restorable vehicle is offered for sale, a chattel auctioneer must invite persons intending to bid for the vehicle when it is offered for sale to register as bidders (‘registered bidders’) for the sale. The chattel auctioneer must also inform potential bidders that by registering as a bidder, the person agrees to purchase the restorable vehicle on the condition that the person is taken to waive its statutory warranty when the contract for its purchase is entered into.

## **156 Announcements before auction**

Clause 156 sets out what a chattel auctioneer must announce immediately before the auction of any unwarranted vehicle and any restorable vehicle.

## **157 Effect of sale of restorable vehicle to registered bidder**

Clause 157 provides that if a restorable vehicle is sold to a registered bidder at auction, the statutory warranty for the vehicle stops having effect when the contract for its purchase is entered into and the vehicle is taken, for clause 159, to be an unwarranted vehicle.

## **158 Warrantor**

Clause 158 provides that for the division, the ‘warrantor’ of a warranted vehicle is the chattel auctioneer or motor dealer who owns the vehicle immediately before the time of taking possession.

## **159 Chattel auctioneer to give buyer notice about statutory warranty**

Clause 159 requires a chattel auctioneer to give a proposed buyer notice about a statutory warranty, and requires the proposed buyer to acknowledge receipt of the notice by signing a copy of it.

## **160 Statutory warranty**

Clause 160 provides that the warrantor of a warranted vehicle warrants that the vehicle is free from defects at the time of taking possession and for the warranty period, and defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge. However, ‘defects’ do not include defects not covered by the statutory warranty.

## **161 Defects not covered by statutory warranty**

Clause 161 sets out defects that are not covered by the statutory warranty.

## **162 Buyer’s obligations under statutory warranty**

Clause 162 sets out the buyer’s obligations under the statutory warranty where the buyer believes the vehicle has a defect that the warrantor of the vehicle is obliged to repair under the part.

### **163 Warrantor to record particulars of extension of warranty period**

Clause 163 provides that the warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under clause 162 and the day the vehicle is returned to the buyer. A maximum penalty of 100 penalty units applies for a contravention.

### **164 Warrantor to advise whether defect covered by statutory warranty**

Clause 164 applies if a defect notice is given, and the vehicle is delivered, under clause 162. The warrantor must advise the buyer in writing ('warranty advice') whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty. If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.

### **165 Warrantor's obligation to repair defects**

Clause 165 makes provision for the warrantor's obligation to repair defects.

### **166 Warrantor's failure to repair**

Clause 166 allows the buyer to apply to QCAT where the warrantor refuses or fails to repair a defect in certain circumstances. The clause also allows QCAT to make a number of orders in relation to the defect.

### **167 Applications for more than prescribed amount**

Clause 167 applies to an application if an application under clause 166 may be made to QCAT and the application seeks the payment of an amount greater than the prescribed amount as defined under the QCAT Act. Any reference in a provision of the division to QCAT is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the application amount, and the provision applies with necessary changes as if QCAT were the court. This allows the buyer to apply to the appropriate court where the amount claimed exceeds QCAT's jurisdiction.

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## **Division 5            General**

### **168 Registered office**

Clause 168 defines a chattel auctioneer's 'registered office'.

### **169 Chattel auctioneer must notify chief executive of change in place of business etc.**

Clause 169 requires a chattel auctioneer to notify the chief executive of certain changes in the place of business and the opening or closing of any place where the chattel auctioneer carries on business. Maximum penalties of 200 penalty units apply for contraventions.

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

Clause 170 requires a chattel auctioneer who is a principal licensee to display at each place of business, in the way prescribed under a regulation—

- (a) the chattel auctioneer's name; and
- (b) if the chattel auctioneer is not the person in charge of the chattel auctioneer's business at the place, the name of the chattel auctioneer who is in charge at the place; and
- (c) the other particulars prescribed under a regulation.

A maximum penalty of 100 penalty units applies for a contravention.

Subclause (2) provides that a chattel auctioneer who conducts an auction must display at the auction, in the way and for the period prescribed under a regulation—

- (a) the chattel auctioneer's name; and
- (b) the other particulars prescribed under a regulation.

A maximum penalty of 100 penalty units applies for a contravention.

Subclause (3) provides that a chattel auctioneer who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the chattel auctioneer's business without stating in the advertisement the particulars prescribed under a regulation. A maximum penalty of 100 penalty units applies for a contravention.

### **171 Principal licensee must keep employment register**

Clause 171 requires a principal licensee to keep an employment register at each place where the licensee carries on business, and provides for the particulars that must be entered and kept on the register.

### **172 Chattel auctioneer to obtain statement from seller of vehicle**

Clause 172 requires a chattel auctioneer to obtain a statement from the seller of a vehicle which states particulars about the seller and the vehicle prescribed under a regulation. A maximum penalty of 200 penalty units applies for a contravention. The chattel auctioneer must also keep a copy of the statement at the chattel auctioneer's registered office, give a copy to the seller, and make a copy available for immediate inspection by an inspector who asks to see it. A maximum penalty of 200 penalty units applies for a contravention. However, the clause does not apply if the seller is a financier of the business of the chattel auctioneer, or another chattel auctioneer or motor dealer.

### **173 Chattel auctioneer to give statement to buyer of vehicle**

Clause 173 provides that a chattel auctioneer must, immediately after the sale of a motor vehicle to a buyer in the course of carrying on the chattel auctioneer's business, give to the buyer a statement, signed by the chattel auctioneer, stating the particulars about the vehicle's owner immediately before the sale and the vehicle prescribed under a regulation. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (2) provides that the chattel auctioneer must also keep a copy of the statement at the chattel auctioneer's registered office, and make a copy available for immediate inspection by an inspector who asks to see it. A maximum penalty of 200 penalty units applies for a contravention.

Subclause (3) provides that nothing in the clause prevents the statement being contained in the contract for sale of the vehicle.



## **Division 6                      Offences**

### **174 Acting as chattel auctioneer**

Clause 174 creates offences for acting as a chattel auctioneer without a licence. Subclause (1) provides that a person must not perform an activity that may be done under the authority of a chattel auctioneer licence unless the person holds a chattel auctioneer licence and the performance of the activity is authorised under the person's licence; or is otherwise permitted under the Bill or another Act to perform the activity. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention.

Subclause (2) provides that a person must not act as a chattel auctioneer unless the person holds a chattel auctioneer licence and the act is done under the authority of the person's licence; or the act is otherwise permitted under the Bill or another Act. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention.

Subclause (3) provides that without limiting the ways a person may act as a chattel auctioneer, a person 'acts' as a chattel auctioneer if the person—

- (a) performs an auction for the sale or resale of goods; or
- (b) advertises or notifies or states that the person performs auctions or is willing to perform auctions for the sale or resale of goods; or
- (c) in any way holds out as being ready to perform auctions for the sale or resale of goods.

### **175 Pretending to be trainee chattel auctioneer**

Clause 175 provides that a person must not act as a trainee chattel auctioneer unless the person holds a registration certificate as a trainee chattel auctioneer. A maximum penalty of 200 penalty units applies for an offence. Subclause (2) clarifies that 'act as a trainee chattel auctioneer' includes holding out that the person is a trainee chattel auctioneer.

### **176 Chattel auctioneer must not act for more than 1 party**

Clause 176 provides that a chattel auctioneer must not act for more than 1 party to a transaction, and a maximum penalty of 200 penalty units applies for a contravention. If a chattel auctioneer acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is

ineffective from the time it is made. However, a chattel auctioneer does not commit a contravention if the transaction is a livestock sale.

### **177 Production of licence or registration certificate**

Clause 177 requires a chattel auctioneer or trainee chattel auctioneer to produce their licence or registration certificate for inspection if asked by a person with whom the chattel auctioneer or trainee chattel auctioneer is dealing. Maximum penalties of 100 penalty units apply for contraventions.

### **178 Employment of persons in chattel auctioneer's business**

Clause 178 provides that a chattel auctioneer must not employ, as a trainee chattel auctioneer, a person the chattel auctioneer knows, or ought to know, does not hold a registration certificate as a trainee chattel auctioneer. A maximum penalty of 200 penalty units applies for a contravention.

## **Part 5                      Employee registration**

### **Division 1                      Categories of registered employees**

#### **179 Categories of registered employees**

Clause 179 provides that the categories of registered employees for the Bill are a motor salesperson, and trainee chattel auctioneer.

#### **180 Limited motor salesperson registration certificate**

Clause 180 provides that the chief executive may issue a registration certificate for a motor salesperson (a 'limited motor salesperson registration certificate') of a type prescribed under a regulation, that authorises the performance of activities that are more limited than the activities that may be performed under an unconditional registration certificate for a motor salesperson. A regulation may prescribe the activities that may be performed under a limited motor salesperson registration certificate, and the educational requirements for obtaining a limited motor salesperson registration certificate.

As is the case with limited motor dealer licences, clause 180 seeks to remove uncertainty by expressly authorising the chief executive to issue limited motor salesperson registration certificates of a type prescribed under a regulation.

## **Division 2            Registered employees' authorisation**

### **181 What a registration certificate authorises**

Clause 181 provides that a registration certificate held by a motor salesperson authorises the salesperson to perform any activity that may be performed by the motor dealer who employs the salesperson. A registration certificate held by a trainee chattel auctioneer authorises the trainee to perform any activity that may be performed by the chattel auctioneer who supervises the trainee. However, a registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform because a condition to which the certificate is subject.

## **Division 3            How to obtain registration**

### **182 Steps involved in obtaining registration**

Clause 182 outlines the steps involved in obtaining a registration certificate. As is the case with obtaining a licence, an applicant for registration must be a suitable person to hold registration. The person must also submit an application showing, among other things, the person is eligible to obtain registration; and pay the prescribed fees. In deciding the application, the chief executive must have regard to, among other things, the person's suitability and eligibility to hold a registration certificate.

## **Division 4            Applications for registration**

### **183 Application for registration**

Clause 183 outlines the steps involved in making an application for registration, which are similar to the steps involved in making an

application for a licence. However, only an individual can obtain registration as a corporation can not be an employee.

### **184 Requirement to give chief executive information or material about application**

Clause 184 allows the chief executive to require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the applicant's application for the registration.

Subclause (2) provides that the applicant is taken to have withdrawn the application if the applicant fails to comply with the chief executive's requirement within the stated reasonable period.

## **Division 5            Suitability of applicants**

### **185 Suitability of applicants**

Clause 185 provides that a person is not a suitable person to obtain registration as a registered employee if the person is—

- (a) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
- (b) currently disqualified from holding a licence or registration certificate; or
- (c) a person the chief executive decides under clause 186 is not a suitable person to obtain registration as a registered employee.

Subclause (2) provides that an individual who is not a suitable person can not obtain registration as a registered employee.

### **186 Chief executive must consider suitability of applicants**

Clause 186 provides the matters the chief executive must consider in deciding whether a person is a suitable person to obtain registration as a registered employee. The matters the chief executive must consider are similar to those for applicants of licences.

### **187 Investigations about suitability of applicants**

Clause 187 makes provision for the chief executive to make investigations about an applicant to help the chief executive decide whether the applicant is a suitable person to obtain registration as a registered employee. This includes asking the commissioner of the police service for a report about the applicant's criminal history.

### **188 Costs of criminal history report**

Clause 188 makes provision for the chief executive to require an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under clause 187 about the applicant. This requirement is a 'criminal history costs requirement'.

### **189 Confidentiality of criminal history**

Clause 189 imposes confidentiality requirements on public service employees regarding the criminal history report and requires the chief executive to destroy a written report as soon as practicable after considering a person's suitability to obtain registration.

### **190 Requirement to give chief executive information or material about suitability**

Clause 190 makes provision for the chief executive to require information or material from the applicant the chief executive reasonably considers is needed to establish the applicant's suitability for registration. The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.

## **Division 6            Eligibility for registration**

### **191 Eligibility for registration as registered employee**

Clause 191 sets out the eligibility requirements for registration as a registered employee. Subclause (1) provides that an individual is eligible to obtain registration as a registered employee only if the individual is at

least 18 years and has the educational or other qualifications prescribed under a regulation for the relevant category of registration.

Subclause (2) provides that an individual is to be taken to satisfy the requirement mentioned in subclause (1)(b) if the chief executive is satisfied the individual—

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

## **Division 7            Issue of registration certificate**

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

Clause 192 makes provision for the chief executive to issue or refuse to issue a registration certificate. If the chief executive refuses to issue the registration certificate, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

### **193 Registration certificate—conditions**

Clause 193 makes provision for the chief executive to issue a registration certificate on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the certificate; or for another purpose consistent with the achievement of the object of the Bill or the Administration Act. If the chief executive decides to issue the certificate on condition, the chief executive must give the applicant an information notice within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed.

## **Division 8            Renewal and restoration of registration certificates**

### **Subdivision 1    Renewal**

#### **194 Application for renewal**

Clause 194 makes provision for a registered employee to apply for renewal of the registration certificate.

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

Clause 195 makes provision for the chief executive to renew or refuse to renew a registration certificate. If the chief executive decides to refuse the application, the chief executive must give the employee an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

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

Clause 196 provides that if an application is made under clause 194, the registered employee's registration certificate is taken to continue in force from the day that it would, apart from the clause, have expired until the employee's application for renewal is decided under clause 195 or taken to have been withdrawn under clause 190(3).

### **Subdivision 2    Restoration**

#### **197 Application for restoration**

Clause 197 makes provision for a former employee to apply for the restoration of an expired registration certificate. As with restorations of licences, an application for the restoration of a registration certificate must be made within 3 months after the expiry.

### **198 Chief executive may restore or refuse to restore registration certificate**

Clause 198 makes provision for the chief executive to restore or refuse to restore a registration certificate. If the chief executive decides to refuse an application, the chief executive must give the former employee an information notice about the decision within 14 days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

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

Clause 199 provides that if an application is made under clause 197, the applicant's registration certificate is taken to continue in force from the day that it would, apart from the clause, have expired until the employee's application for restoration is decided under clause 198 or taken to have been withdrawn under clause 190(3).

## **Division 9 Dealings with registration certificates**

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

#### **200 Transfer of registration certificate prohibited**

Clause 200 provides that a registration certificate may not be transferred.

### **Subdivision 2 General**

#### **201 Amendment of registration certificate conditions**

Clause 201 makes provision for the chief executive to amend the conditions of a registration certificate on the registered employee's application, on the order of QCAT after a disciplinary proceeding, or on the chief executive's own initiative. If the chief executive decides to amend the conditions on the chief executive's own initiative, or refuses to make an amendment requested by the registered employee, the chief executive must give the registered employee an information notice about the decision within 14



days after the decision is made. Accordingly, the chief executive's decision may be reviewed by QCAT.

## **202 Return of registration certificate for amendment of conditions**

Clause 202 provides that if the chief executive amends the conditions of a registration certificate under clause 201, the chief executive may require the registered employee to produce the certificate for amendment within a stated period of not less than 14 days. The employee must comply with the requirement, unless the person has a reasonable excuse, and a maximum penalty of 100 penalty units applies for a contravention.

## **203 Surrender of registration certificate**

Clause 203 allows a registered employee to surrender their registration certificate by giving written notice, and returning the certificate, to the chief executive. A registration certificate surrendered under the clause stops having effect on the day it is surrendered.

# **Division 10      Immediate suspension and cancellation of registration certificates**

## **204 Immediate suspension**

Clause 204 makes provision for the chief executive to suspend a registered employee's registration certificate in certain circumstances. The chief executive must give the employee an information notice about the decision to suspend the employee's registration within 14 days after suspending the employee's registration. Accordingly, the chief executive's decision may be reviewed by QCAT.

The employee must also return the certificate within 14 days after the employee receives the notice, unless the employee has a reasonable excuse. A maximum penalty of 100 penalty units applies for a contravention.

## **205 Immediate cancellation**

Clause 205 provides that the registration certificate of a registered employee is cancelled if the employee is convicted of a serious offence. The employee must return the certificate to the chief executive within 14 days after the conviction, unless the employee has a reasonable excuse. A maximum penalty of 100 penalty units applies for a failure to return the certificate.

## **Division 11            General provisions about employee registration**

### **206 Form of registration certificate**

Clause 206 provides that a registration certificate must be in the approved form and allows the chief executive to approve forms of registration certificates. The clause also sets out the particulars that must be contained on the certificate.

### **207 Term of registration certificate**

Clause 207 provides that a registration certificate may be issued for a 1 year or 3 year term.

### **208 Replacement certificates**

Clause 208 makes provision for the issue of replacement registration certificates where a registered employee's registration certificate is lost, stolen, destroyed or damaged.

### **209 Register of registration certificates**

Clause 209 requires the chief executive to keep a register of registration certificates and applications for registration certificates ('registration certificate register'). The clause also sets out the particulars that must be contained in the register, and provides for the inspection of the register.

## **210 Registered employees to notify chief executive of changes in circumstances**

Clause 210 provides that a registered employee must give written notice to the chief executive of a change prescribed under a regulation in the employee's circumstances within 14 days after the change. A maximum penalty of 100 penalty units applies for a contravention.

## **Part 6 Trust accounts**

### **211 Opening and maintaining trust accounts**

Clause 211 provides that a principal licensee must open a trust account under the Administration Act if an amount is likely to be received by the licensee for a transaction, or with written direction for its use, when performing the activities of a motor dealer or chattel auctioneer. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention.

However, the requirement does not apply to a del credere agent for selling livestock under a del credere agreement while the agreement is in force. A 'del credere agreement' is defined in subclause (3) to mean a written agreement between a del credere agent and a livestock seller under which the agent agrees to sell the livestock for the seller and guarantees payment of the purchase price of the livestock to the seller.

Subclause (3) also defines 'amount' to include deposit and purchase monies for a transaction, but does not include an amount payable to the licensee in relation to a transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.

## **Part 7                      Claims against the fund**

### **Division 1              Preliminary**

#### **212 Definitions for pt 7**

Clause 212 provides definitions for part 7.

### **Division 2              Who can claim**

#### **213 Claims**

Clause 213 makes provision for a person to make a claim against the fund, in the way provided under the Administration Act, if the person suffers financial loss in certain circumstances. The clause also allows a person to make a claim against the fund even if the person has made another claim for the loss against a receiver and the receiver has not considered or has refused the other claim.

#### **214 Persons who can not claim**

Clause 214 sets out persons who can not make a claim against the fund.

## **Part 8                      Jurisdiction of QCAT**

### **Division 1              Preliminary**

#### **215 Definitions for pt 8**

Clause 215 provides definitions for part 8.

#### **216 Jurisdiction**

Clause 216 provides that for the Bill, QCAT has jurisdiction to hear and decide disciplinary matters involving licensees and registered employees,

and to review decisions of the chief executive about licensing and registration.

## **Division 2            Disciplinary proceedings**

### **217 Grounds for starting disciplinary proceedings**

Clause 217 sets out the grounds for starting disciplinary proceedings against a licensee or registered employee.

### **218 Starting disciplinary proceedings**

Clause 218 provides that the chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under clause 217 for taking disciplinary action against a licensee or registered employee.

## **Division 3            Review proceedings**

### **219 Person dissatisfied with chief executive's decision may seek review**

Clause 219 provides that a person who is dissatisfied with a decision of the chief executive made under a provision mentioned in schedule 1 may apply to QCAT to have the decision reviewed.

### **220 Stay of operation of decisions**

Clause 220 provides that a decision of the chief executive, other than a decision made under clause 55 or 204, being reviewed is stayed for securing the effectiveness of the review. However, the period of a stay does not extend past the time when QCAT decides the application.

### **221 QCAT may extend time**

Clause 221 allows QCAT to extend the time within which to seek a review of a decision of the chief executive if it is satisfied—

- (a) the application is made within 42 days after the person receives notice of the decision to be reviewed; and

- (b) it is appropriate to extend time having regard to the application generally and the justice of the matter generally.

Subclause (2) provides that no appeal lies against QCAT's decision under the clause.

## **Division 4            Proceedings generally**

### **Subdivision 1    QCAT's orders**

#### **222 Orders QCAT may make on disciplinary hearing**

Clause 222 sets out the orders that QCAT may make on a disciplinary hearing.

#### **223 Stopping contraventions**

Clause 223 applies if QCAT is satisfied, on application by the chief executive, that a person is doing, or is about to do, something in contravention of the Bill. The clause makes provision for QCAT to make an order prohibiting the person from starting or continuing to do the thing.

### **Subdivision 2    Chief executive's right of appeal**

#### **224 Appeal**

Clause 224 provides that the chief executive may appeal to the appeal tribunal against any decision of QCAT, but only on the ground of error of law. The 'appeal tribunal' means QCAT as constituted under the QCAT Act, section 166 for the purposes of an appeal.

## **Part 9                      Injunctions and undertakings**

### **Division 1              Injunctions**

#### **225 Injunctions**

Clause 225 provides that an injunction under the division may be granted by the District Court against a person ('respondent') at any time.

#### **226 Who may apply for injunction**

Clause 226 provides that the chief executive and a person aggrieved by the respondent's conduct may apply to the District Court for an injunction.

#### **227 Grounds for injunction**

Clause 227 sets out the grounds in which the District Court may grant an injunction.

#### **228 Court's powers for injunctions**

Clause 228 makes provision for the power of the District Court to grant injunctions. The District Court also has the power to grant an interim injunction until the application for an injunction is finalised, and may rescind or vary an injunction at any time.

#### **229 Terms of injunction**

Clause 229 makes provision for the District Court to grant an injunction in the terms the court considers appropriate.

#### **230 Undertakings as to costs**

Clause 230 provides that if the chief executive applies for an injunction under the division, no undertaking as to damages or costs may be required or made.

## **Division 2                      Undertakings**

### **231 Chief executive may seek undertaking after contravention**

Clause 231 applies if the chief executive reasonably believes a person has contravened or been involved in a contravention of the Bill or the code of conduct. The chief executive may then seek an undertaking from a person that the person will not continue or repeat the act or omission the chief executive believes is a contravention.

### **232 Undertaking about other matter**

Clause 232 provides that without limiting clause 231, the chief executive may accept an undertaking given by a person about anything for which the chief executive or an inspector has a function or power.

### **233 Variation and withdrawal of undertakings**

Clause 233 makes provision for the chief executive to vary or withdraw an undertaking that has been accepted by the chief executive.

### **234 Enforcement of undertakings**

Clause 234 makes provision for the chief executive to apply to the District Court for an order under the clause if the chief executive believes, on reasonable grounds, a person has contravened a term of an undertaking. The clause then sets out the orders the District Court may make.

### **235 Register of undertakings**

Clause 235 requires the chief executive to keep a register of undertakings and provides for the inspection of the register. Unlike section 572 of the PAMD Act, this clause expressly allows the chief executive to publish information contained in the register on the department's website in order to remove uncertainty.



## **Part 10                      General contraventions, evidentiary matters and legal proceedings**

### **Division 1                  General contraventions**

#### **236 Wrongful conversion and false accounts**

Clause 236 provides offences for wrongful conversion of amounts and false accounts. Subclause (1) provides that subclause (2) applies if a licensee, in the performance of the activities of a licensee, receives an amount belonging to someone else. Subclause (2) provides that a licensee must not dishonestly convert the amount to the licensee's own or someone else's use; or dishonestly render an account of the amount knowing it to be false in a material particular. A maximum penalty of 1000 penalty units or 5 years applies for a contravention.

Subclause (3) provides that for a prosecution under subclause (2)(a), it is enough for the prosecution to prove that the licensee dishonestly converted an amount belonging to someone else to the licensee's own use or someone else's use without having to prove that the amount belonged to a particular person.

In order to remove ambiguity faced by section 573 of the PAMD Act, subclause (4) provides that a licensee must not represent that the licensee has received an amount if the licensee knows the licensee did not receive the amount including, for example, by rendering an account of the amount. A maximum penalty of 540 penalty units applies for a contravention.

Subclause (5) provides that for the clause, a 'licensee' includes a former licensee and a person who is not licensed, but who acts a licensee. Accordingly, such persons may be captured under the offence provisions.

#### **237 False representations about property**

Clause 237 makes it an offence if a licensee or registered employee represents in any way to someone else anything that is false or misleading about the sale or auction of property. A maximum penalty of 540 penalty units applies for a contravention.

### **238 Chief executive's power to ask for substantiation of representations made by licensees or registered employees**

Clause 238 applies if the chief executive believes, on reasonable grounds, that a licensee or registered employee has made a representation in contravention of clause 237(1). The clause makes provision for the chief executive to ask the person to give to the chief executive written proof that supports the representation.

### **239 False representations about mileage**

Clause 239 provides that a person must not wilfully represent in any way to someone else anything that is false or misleading about the total distance travelled by a motor vehicle. A maximum penalty of 540 penalty units applies for a contravention.

### **240 Tampering with odometers**

Clause 240 makes it an offence for a person to tamper with or replace a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle has travelled a distance less than a specified distance; or has travelled a distance more than a specified distance. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention. Unlike section 577 of the PAMD Act, the clause also refers to replacing an odometer in order to remove uncertainty.

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

Clause 241 provides that a licensee or a licensee's employee must not charge a fee for the provision, preparation or completion of a document for a transaction relating to, or arising out of, the performance of a licensee's activities. A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention.

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

Clause 242 makes it an offence for a licensee to ask for, or receive, a commission or reward for the transaction greater than the amount allowed under the regulation (if an amount is prescribed under the regulation). A maximum penalty of 200 penalty units or 1 year's imprisonment applies for a contravention.

### **243 Offence to lend or borrow licence**

Clause 243 makes it an offence to lend or borrow a licence. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention.

### **244 False or misleading statements**

Clause 244 makes it an offence for a person to state anything to an official the person knows is false or misleading in a material particular. A maximum penalty of 200 penalty units or 2 years imprisonment applies for an offence.

### **245 False or misleading documents**

Clause 245 makes it an offence to give an official a document containing information the person knows is false or misleading in a material particular. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention. However, a person does not commit an offence if the person, when giving the document—

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

The clause also makes it an offence for a person to make an entry in a document required or permitted to be made or kept under the Bill knowing the entry to be false or misleading in a material particular. A maximum penalty of 200 penalty units or 2 years imprisonment applies for a contravention.

## **Division 2            Evidentiary matters**

### **246 Evidence of tampering by a motor dealer or chattel auctioneer**

Clause 246 makes provision for evidentiary matters relating to odometer tampering by a motor dealer or chattel auctioneer.

### **247 Continuing false representation—tampered with odometer**

Clause 247 makes provision for evidentiary matters for continuing false representations relating to odometer tampering.

### **248 Evidentiary provisions**

Clause 248 makes provision for evidentiary matters in relation to proceedings under the Bill.

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

Clause 249 provides that an entry in a document kept by or belonging to a licensee or found in the licensee's premises is evidence that the entry has been made by or with the authority of the licensee.

## **Division 3                      Proceedings**

### **250 Proceedings for an offence**

Clause 250 makes provision for the bringing of proceedings for summary offences and indictable offences.

### **251 Responsibility for acts or omissions of representatives**

Clause 251 applies in a proceeding for an offence against the Bill. Subclause (2) provides that if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

Subclause (3) 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.

Subclause (4) defines 'offence', 'representative' and 'state of mind'.

## **252 Executive officers must ensure corporation complies with Act**

Clause 252 places an obligation on executive officers of a corporation to ensure that the corporation complies with the Bill, and deems executive officers to have committed an offence in certain circumstances.

## **253 Power of court**

Clause 253 provides that a court may, in addition to any other penalty it may impose, order that a licensee's licence or a registered employee's registration certificate be suspended for a stated period or cancelled if the licensee or registered employee has been convicted of an offence against the Bill. The court may also order that a person convicted of an offence against the Bill be disqualified from holding a licence or registration certificate under the Bill for a stated period or permanently.

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

Clause 254 provides that in any proceeding for an offence against the Bill involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state that the statement, representation, entry or information was 'false or misleading'.

# **Part 11                      General**

## **255 Public warning statements**

Clause 255 allows the Minister or chief executive to make or issue a public statement identifying and giving warnings or information about any of the following—

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

The statement may identify particular contraventions, business practices, offences and persons. However, the Minister or chief executive must not make or issue a statement under the clause unless satisfied that it is in the public interest to do so.

### **256 Civil remedies not affected**

Clause 256 provides that nothing in the Bill affects or limits any civil remedy that a person may have against a licensee or another person for any matter.

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

Clause 257 provides that nothing in the Bill limits the *Criminal Proceeds Confiscation Act 2002*.

### **258 Delegation—chief executive**

Clause 258 allows the chief executive to delegate the chief executive's powers, other than power under clause 255, to an appropriately qualified public service employee.

### **259 Approved forms**

Clause 259 provides that the chief executive may approve forms for use under the Bill.

### **260 Review of Act**

Clause 260 requires the Minister to ensure the operation of the Bill is reviewed, and that the review must start within 3 years after the commencement of the clause. The Minister must then table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is finished.

### **261 Regulation-making power**

Clause 261 makes provision for the Governor in Council to make regulations under the Bill.

## **Part 12                      Transitional provisions**

The note for part 12 directs the reader to part 15 of the proposed Property Agents Act for transitional provisions for persons who, under that part are taken to hold chattel auctioneer licences or registration certificates as trainee chattel auctioneers. The Property Agents Act will therefore provide for the transition of existing auctioneer licences and certain pastoral house licences, and the respective registration certificates issued under the PAMD Act.

### **Division 1                      Preliminary**

#### **262 Definitions for pt 12**

Clause 262 provides definitions for part 12.

### **Division 2                      Licences and registration certificates**

#### **263 Transitioned licences for existing licences**

Clause 263 applies to a person who, immediately before commencement, held an existing licence (i.e. a motor dealer licence issued under the PAMD Act). The person, on commencement, is taken to be the holder of a motor dealer licence (the ‘transitioned licence’) under the Bill.

If the existing licence was subject to a condition (the ‘current condition’), the transitioned licence is also taken to be subject to a condition on the same terms, so far as practicable, as the current condition. Additionally, the transitioned licence expires on the day it would have expired under the repealed Act unless it is sooner cancelled.

The chief executive may deal with the transitioned licence as if it were a licence issued under the Bill.

## **264 Transitioned registration certificates for existing registration certificates**

Clause 264 applies to a person who, immediately before commencement, held an existing registration certificate (i.e. a registration certificate as a motor salesperson issued under the PAMD Act). The person, on commencement, is taken to be the holder of a registration certificate as a motor salesperson (the ‘transitioned registration certificate’) under the Bill.

If the existing registration certificate was subject to a condition (the ‘current condition’), the transitioned registration certificate is also taken to be subject to a condition in the same terms, so far as practicable, as the current condition. Additionally, the transitioned registration certificate expires on the day it would have expired under the repealed Act unless it is sooner cancelled.

The chief executive may deal with a transitioned registration certificate as if it were a registration certificate issued under the Bill.

## **265 Existing applications**

Clause 265 provides for the continuation of existing applications made under the repealed Act that are relevant to the Bill.

## **266 Restoration of expired existing licences**

Clause 266 applies if a person’s existing licence expired within 3 months before the commencement. The person may apply under clause 42 of the Bill for restoration of the existing licence, as if the licence were a motor dealer licence. To remove any doubt, it is declared that clause 44 applies to the existing licence.

## **267 Restoration of expired existing registration certificates**

Clause 267 applies if a person’s existing registration certificate expired within 3 months before the commencement. The person may apply under clause 197 of the Bill for restoration of the existing registration certificate, as if the existing registration certificate were a motor salesperson registration certificate. To remove any doubt, it is declared that clause 199 applies to the existing registration certificate.



## **268 Previous refusals of applications**

Clause 268 applies to a person who made an application for the issue of an existing licence or existing registration certificate under the repealed Act and the application was refused before the commencement. The person can not make another application for 3 months after the day the chief executive gave the person an information notice for the refusal; or if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.

The clause does not apply to a person if the person is a corporation and the person satisfies the chief executive that, because of a genuine sale—

- (a) no person was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the corporation; and
- (b) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the corporation.

## **269 Deactivated existing licences**

Clause 269 makes provision for deactivated existing licences. Subclause (1) provides that subclause (2) applies to an existing licence that, immediately before the commencement, was deactivated under the repealed Act. Subclause (2) provides that the licence continues to be deactivated under the Bill and clause 54 applies to the licence as if the licence were a motor dealer licence deactivated under the Bill.

Subclause (3) provides that a request to deactivate an existing licence, made under the repealed Act and not decided before the commencement, must be decided under the Bill and clause 54 applies to the request.

## **270 Suspended existing licences and existing registration certificates**

Clause 270 applies to an existing licence or existing registration certificate that was, immediately before the commencement, suspended under the repealed Act. The existing licence or registration certificate continues to be suspended under the Bill. Additionally, the provisions of the Bill relating to the suspension of a licence or a registration certificate apply to the existing licence or registration certificate as if it were one under the Bill.

## **Division 3                      Miscellaneous provisions**

### **271 Existing appointments**

Clause 271 makes provision for the continuation of existing appointments for motor dealers made under the repealed Act. The Property Agents Bill provides for the continuation of existing appointments for auctioneers.

### **272 Disciplinary action relating to pre-commencement conduct**

Clause 272 makes provision for the continuation, or commencement of, disciplinary action relating to pre-commencement conduct.

### **273 Continuation of reviews under repealed Act**

Clause 273 makes provision for the continuation of reviews by QCAT or the chief executive under the Bill.

### **274 Injunctions relating to pre-commencement conduct**

Clause 274 makes provision for the continuation, or commencement of, injunctions relating to pre-commencement conduct.

### **275 Undertakings relating to pre-commencement conduct**

Clause 275 makes provision for the continuation of undertakings relating to pre-commencement conduct. The clause also allows new undertakings to be requested for pre-commencement conduct under clause 231.

### **276 Proceedings for particular offences under repealed Act**

Clause 276 makes provision for the continuation of proceedings, or the starting of proceedings, for offences committed under the repealed Act before the commencement.

### **277 Existing infringement notice offences**

Clause 277 allows infringement notices to be served on a person who committed an infringement notice offence under the *State Penalties Enforcement Act 1999* before the commencement.

### **278 Existing delegations**

Clause 278 continues the delegation of a power made by the chief executive under the repealed Act.

### **279 Existing registers**

Clause 279 makes provision for the continuation of the existing registers kept under the repealed Act.

### **280 Existing fines and fees**

Clause 280 makes provision for the recovery of fines and fees that have not been paid before the commencement.

### **281 Return of beneficial interest if in form of commission**

Clause 281 makes provision for the return of beneficial interests that are in the form of commissions. Subclause (1) provides that subclauses (2) and (3) apply if, under clause 276, a person is convicted of an offence against section 292(2) or (3) of the repealed Act after the commencement. Subclause (2) provides that section 292A of the repealed Act applies to the person and the court convicting the person as if the PAMD Act had not been repealed.

## **Part 13                      Minor and consequential amendments**

### **282 Minor and consequential amendments**

Clause 282 provides that schedule 2 amends the Acts it mentions.

## **Schedule 1                Decisions subject to review**

Schedule 1 lists the decisions that are subject to review by QCAT.

## **Schedule 2      Consequential amendments**

### **Part 1                      Amendments of this Act**

Part 1 makes consequential amendments to the Bill. The consequential amendments to the Bill are required as schedule 2 will be repealed once the consequential amendments commence.

### **Part 2                      Other amendments**

Part 2 makes consequential amendments to the following Acts:

- (a) *Criminal Organisation Act 2009*;
- (b) *Duties Act 2001*;
- (c) *Forestry Act 1959*;
- (d) *Motor Vehicles and Boats Securities Act 1986*;
- (e) *Police Powers and Responsibilities Act 2000*;
- (f) *Queensland Civil and Administrative Tribunal Act 2009*;
- (g) *Second-hand Dealers and Pawnbrokers Act 2003*;
- (h) *Transport Operations (Road Use Management) Act 1995*.

## **Schedule 3      Dictionary**

Schedule 3 contains definitions for the Bill.