

Commercial Agents Bill 2010

Explanatory Notes

Short Title

The short title of the Bill is the Commercial Agents Bill 2010.

Objectives of the Bill

The *Property Agents and Motor Dealers Act 2000* (PAMD Act) provides for the licensing and regulation of real estate agents, resident letting agents (letting agents for community titles schemes), pastoral houses (sellers of rural-based livestock, chattels and real property), property developers, motor dealers, auctioneers and commercial agents (predominantly debt collectors). In licensing and regulating the conduct of such persons, the PAMD Act aims 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. The PAMD Act also establishes a claim fund for consumers who suffer financial loss from particular conduct of a licensee.

The Bill implements the former Service Delivery and Performance Commission's (SDPC) recommendation to split the PAMD Act into industry specific Acts by enacting a law that deals exclusively with the licensing and regulation of commercial agents. Another SDPC recommendation and minor amendments to the relevant provisions of the PAMD Act will also be implemented in the Bill.

“Commercial agent” is defined in the Bill; however in general a commercial agent engages in debt collection, process serving and/or chattel repossession. The object of the Bill is to provide a system for licensing and regulating commercial agents that strikes 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. The Bill forms part of a package of Bills to give effect to the split of the PAMD Act, with the other Bills being the Property Agents Bill 2010; the Motor Dealers and Chattel Auctioneers Bill 2010; and the Agents Financial Administration Bill 2010, which provides for the trust account requirements applying to agents

licensed under the industry specific Bills and the establishment of the claim fund for consumers to claim against where they suffer financial loss from particular conduct of agents.

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*. The Government supported splitting the PAMD Act into industry specific Acts; however, it was considered more appropriate to establish separate Acts to deal with trust fund provisions and the regulation of commercial agents respectively.

The Bill also implements the government supported SDPC recommendation to remove the requirement on current commercial agent corporations to have a licensee as a director provided that a person in charge of the corporation's business is licensed.

Further policy responses

The Bill improves compliance and consumer protection by allowing the register of enforceable undertakings to be posted on the department's website and creating an offence where a licensee represents that he or she has received an amount of money when the licensee has not received the amount.

The Bill also implements some amendments sought by the commercial agent industry during consultation on the Bill. The amendments reflect the differences in the nature of the work performed by commercial agents and other PAMD Act agents (e.g. real estate agents and motor dealers). Unlike other agents regulated under the PAMD Act, many commercial agents in Queensland work from home. Generally, commercial agents perform their activities away from their business premises and clients and debtors do not visit the business premises.

Consequently, the Bill does not continue PAMD Act requirements for commercial agents to display their licence and name, and other particulars prescribed by regulation, at their principal place of business. Given the nature of the work performed, which often involves persistent requests for payment of debts and notifications of repossession and bankruptcy, there is a safety justification for not requiring commercial agents to display these details.

The Bill changes the appointment requirements for commercial agents engaging in process serving for clients. Feedback during consultation was that the requirement under the PAMD Act for a commercial agent to obtain a written appointment that is signed and dated by both the client and the agent before the agent can act for the client, is not practical for commercial agents engaging in the service of documents. Feedback was that commercial agents engaging in process serving can not generally comply with the appointment requirements, as they often receive instructions from clients which require service in tight timeframes (to comply with the service rules of courts), and do not have time to visit the client to sign and date an appointment to act. Consequently, the Bill provides that a commercial agent can engage in process serving for a client provided that the client has instructed the commercial agent in writing.

Red-tape reduction and regulatory simplification

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

Achievement of the Objective

The Bill achieves the policy objective by enacting a law to deal exclusively with the licensing and regulation of commercial agents, forming part of the package of Acts to effect the split of the PAMD Act into industry specific Acts. The trust account and claim fund provisions in the PAMD Act are provided for in the Agents Financial Administration Bill 2010 while enforcement provisions dealing with the appointment of inspectors and their powers will be provided for in a separate Bill proposed to be introduced in 2011. The Bill also implements the other SDPC recommendation and minor amendments identified earlier.

The main object of the Bill is to provide for a system for licensing and regulating persons as commercial agents, and for registering and regulating persons as commercial subagents, that achieves an appropriate balance between the need to regulate for the protection of consumers; and the need to promote freedom of enterprise in the market place.

The Bill achieves this by –

- (a) ensuring—
 - (i) only persons who are suitable and eligible 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 commercial agent 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) the chief executive is responsible for licensing; and
 - (ii) QCAT is responsible for reviewing particular decisions of the chief executive; and
- (iii) QCAT is responsible for disciplinary matters; and
- (e) establishing a right for persons who suffer financial loss because of their dealings with persons regulated under this Act to apply for compensation from the fund; and
- (f) increasing flexibility in enforcement measures through codes of conduct, injunctions and undertakings.

Alternatives to the Bill

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

Estimated Cost for Government Implementation

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

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

Consistency with Fundamental Legislative Principles

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

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?

Part 2, Division 3 replicates Chapter 2, Part 4 of the PAMD Act which provides that the chief executive must consider the suitability of a person

including their criminal history, their character and the character of the person's business associates when determining their suitability to hold a licence. Suitability must also be considered by the chief executive for corporations. This raises the fundamental legislative principle of whether the legislation makes the rights of individuals dependent on administrative power that is sufficiently defined and subject to appropriate review.

The character of a person, their criminal history and the character of a person's business associates are useful indicators by which to judge if a person is suitable to hold a licence. Further, the legislation provides express and relevant criteria for the chief executive to make a decision about a person's suitability. Part 4, Division 4 also sets out express and relevant criteria that the chief executive must consider in determining if a person is a suitable person to be registered as a commercial subagent.

Part 2, Division 4 and Part 4, Division 5 provide that the chief executive must consider the eligibility of a person to hold a licence and registration certificate, including whether the person is over the age of 18. This age discrimination is justified on the basis that it provides protection for consumers by ensuring that commercial agents and commercial subagents have adequate judgement and capacity to carry out their authorised activities. Like the criteria for determining if a person is suitable to hold a licence, the criteria for determining eligibility are explicitly defined and necessary to ensure that licensees and commercial subagents can adequately perform their duties.

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 28 and 93), and to suspend licences and registration certificates (clauses 48 and 104). While this may adversely affect the rights and liberties of individuals, the imposition of conditions and the suspension of licences and registration certificates protect 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 49 and 105 provide the chief executive with the power to cancel a licence or registration certificate without giving the holder an opportunity to make representations as to why the licence or certificate should not be cancelled. The clauses do not provide for prior notification of cancellation

or a 'show cause' process. Additionally, there is no right of review to QCAT.

Immediate cancellation denies the holder of the licence or registration certificate natural justice. However, the inconsistency with the fundamental legislative principle is justified on the grounds that immediate cancellation is limited to the most serious of instances that could cause the greatest detriment to consumers. In particular, a licence may only be cancelled under clause 49 if the licensee is convicted of a serious offence; where the licensee is an individual, if the licensee is an insolvent under administration; or where the licensee is a corporation, if the licensee has been wound up or struck off under the Corporations Act. For a registration certificate, the certificate may only be cancelled if the employee is convicted of a serious offence. The happening of any of the events goes to the very core of a licensee's or registered employee's ability to perform the activities authorised by the 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 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 48 and 104) 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 limited to specific 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?

Clause 138 makes it an offence for a licensee to ask for or receive a commission or reward for a transaction greater than an amount allowed under the regulation. The provision reverses the onus of proof by requiring the licensee to establish, on the balance of probabilities, that expenditure was lawfully incurred, where the licensee alleges that an amount is lawfully incurred. The reversal of the onus of proof is justified as the fact to be

proved (i.e. that the expenditure was lawfully incurred) is peculiarly within the knowledge of the licensee and would be difficult to establish otherwise.

Clause 143 provides that an entry in a document kept by or belonging to a licensee is evidence that the entry has been made by or with the authority of the licensee. The provision reverses the onus of proof by requiring the licensee to prove that an entry in a document has not been made by the licensee or with the authority of the licensee. However, it is a reasonable assumption made for the purpose of procedural efficacy to assume that entries in documents in the possession of the licensee or belonging to the licensee have been made with the authority of the licensee, particularly given that evidence related to the authorship of entries in documents is likely to be within the knowledge of the licensee.

Clause 145 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission. The reversal of the onus of proof is justified on the grounds that the information relating to the exercise of reasonable diligence would be peculiarly within the knowledge of the licensee and would otherwise be difficult to establish.

Clause 146 provides that if a corporation commits an offence against a provision of the Bill, an executive officer is automatically liable for committing the offence of failing to ensure the corporation complies with the provision, subject to the defences that the executive officer took all reasonable steps to ensure the corporation complied, or that the executive officer was not in a position to influence the conduct of the corporation. The reversal of the onus of proof is justified because provisions which a corporation may 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, and who is responsible for a contravention, be accountable. This provides an incentive for the executive officers of a corporation to ensure that the corporation is compliant. The clause also provides that it is sufficient for the executive officer to prove that the act or omission that constituted the offence was done or made without the officer's knowledge, despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

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

Privacy and confidentiality rights

Clauses 20 and 87 provide that the chief executive may make investigations about particular persons, including obtaining a criminal history report, to help decide if an applicant, existing commercial agent or commercial subagent is a suitable person to hold a licence or registration certificate. The provision of a criminal history report to the chief executive impacts the privacy of the person who is the subject of the report. Clause 20 also provides that the chief executive may obtain a criminal history report in relation to a business associate of an applicant or licensee, for the purposes of making investigations into the suitability of a licensee or an applicant. The chief executive does not need to acquire the business associate's consent to obtain the report. These infringements on privacy are justified on the basis that a criminal history report is necessary to ensure that only suitable persons become commercial agents and commercial subagents. Given that the work of commercial agents involves persistent requests for debts and the repossession of property in circumstances where consumers are at their most vulnerable, it is reasonable to ask for details of a potential licensee's probity and propriety. This extends to requiring details about their associates. Under the Bill, applicants must provide the names of their business associates. These are persons with whom the applicant or licensee carries on, or intends carrying on, business under the licence. Given the direct involvement of business associates in a licensee's business and their ability to influence business behaviour, investigations into the propriety of these people is a necessary step in ensuring the business operates in accordance with the law, and limits the risk of consumers being subject to any detriment in their dealings with the business.

Clauses 22 and 89 provide a safeguard in relation to the confidentiality of the criminal history reports by providing that a public service employee performing functions under the Act must not disclose information about a person's criminal history and that the chief executive must destroy a written criminal history report as soon as practicable after considering a person's suitability.

In relation to criminal histories, it should be noted that the Bill does not abrogate the rehabilitation period and the non-disclosure rights provided in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

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

Imposition of liability for the acts of others

Clause 145 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 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 his or her 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 146 provides that if a corporation commits an offence against a provision of the Bill, an executive officer is automatically liable for committing the offence of failing to ensure the corporation complies with the provision, subject to the defences that the executive officer took all reasonable steps to ensure the corporation complied, or that the executive officer was not in a position to influence the conduct of the corporation. The imposition of liability for the acts of the corporation is justified because provisions which a corporation may 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, and who is responsible for a contravention, be accountable. This provides an incentive for the executive officers of a corporation to ensure that the corporation is compliant. The clause also provides that it is sufficient for the executive officer to prove that the act or omission that constituted the offence was done or made without the officer's knowledge, despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

To provide further justification, clause 146 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 under clause 17. 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 industry specific 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 that resulted in the corporation's licence being cancelled, could continue the unlawful conduct under a new corporate entity.

Another issue that may be raised in relation to clause 146 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 that there is sufficient justification for making directors liable for corporate fault. As the review has not yet been finalised, it is anticipated that any further assessment around the appropriateness of executive officer liability in relation to offences in the Bill would be undertaken once the review is completed.

Right not to be defamed

Clause 149 allows the Minister or chief executive to make or issue public warning statements or information statements that may identify individuals. These public statements may have an adverse affect on individuals. However, before making a statement, the Minister or chief executive must be satisfied that it is in the public interest to do so. Accordingly, the inconsistency with the fundamental legislative principle is justified on the grounds that it is in the public interest to allow the making of warning and information statements for the protection of consumers.

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

clause 152) will only make a public statement if satisfied it is in the public interest to do so.

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

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

Clause 150 provides that nothing in the Bill affects or limits any civil remedy that a person may have against a licensee or another person for any matter. Accordingly, the Minister and chief executive will not have immunity from legal liability in relation to public statements and this is a matter that is taken into consideration in deciding to issue a statement that identifies a person.

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

The Bill replicates the relevant heads of regulatory power under the PAMD Act. The matters to be prescribed under regulation are those matters usually prescribed under regulations, i.e. fees, qualification requirements, 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 of section 4(5) of the *Legislative Standards Act 1992*.

Consultation

The SDPC conducted extensive consultation as part of its review of the PAMD Act by holding meetings and workshops with industry, consumer,

academic and Government stakeholders. The SDPC's recommendations were subsequently borne from this consultation process.

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

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

A draft of this Bill and the other related Bills was 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.

Notes on Provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 provides that the short title of the Bill is the *Commercial Agents Act 2010*.

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

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

Clause 4 exempts bailiffs from the requirement to be licensed as a commercial agent in serving a notice, claim, application, summons or other process, and persons employed as enforcement officers or members of staff of the State Penalties Enforcement Registry from the requirement to be licensed as a commercial agent when collecting, or requesting the payment of, debts or serving a writ, claim, application, summons or other process.

Clause 5 provides an exemption from the licensing requirements for liquidators, controllers or administrators of a corporation appointed under the Corporations Act, or an administrator of a deed of company arrangement appointed under the Corporations Act who may be engaged or appointed to manage or control a licensed corporation in instances such as administration or liquidation. A receiver appointed under the Administration Act (i.e. the Agents Financial Administration Bill) is also exempt from these requirements. These persons are still subject to the conduct provisions of the Bill.

The exemption provided to these persons is limited to those activities that the corporation was limited to performing by any condition imposed on its licence.

For example if the corporation's licence was limited to process serving only, then the activities a receiver, liquidator, administrator or controller could undertake would similarly be limited to process serving activities.

Clause 6 exempts financial institutions and trustee companies from the operation of part 3, which sets out the authority and the responsibilities of a commercial agent. Trustee company is defined in subclause (2).

Division 2 Object of Act

Clause 7 provides that the main object of the Bill is to provide a system for licensing and regulating persons as commercial agents and commercial subagents that achieves an appropriate balance between the need to regulate for the protection of consumers; and the need to promote freedom of enterprise in the market place. Subclause (2) provides the ways in which the objects are to be achieved.

Division 3 Interpretation

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

Clause 9 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 and 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 commercial agent licence maintain close personal supervision of the way the business is carried on.

Part 2 Licensing

Division 1 How to obtain a licence

Clause 10 outlines the steps involved for an applicant in obtaining a licence, which include providing an application detailing the applicant's eligibility for the licence and paying the prescribed fees. It also provides that the chief executive is to decide an application after having had regard, among other things, to the person's suitability and eligibility to hold a licence.

Division 2 Applications for licence

Clause 11 details the requirements for a licence application, including use of the approved form, provision of information required by the chief executive, including any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence, payment of the relevant fees, and, for an individual, 2 recent colour photographs of the applicant.

Clause 12 requires an applicant to state, on the application form, the applicant's proposed business address or the address of the applicant's employer, where the applicant intends to be a person in charge of a licensee's business at a place. The address specified must be a place where a document can be served personally. A post office box is not acceptable as a business address. Where an applicant intends to operate a commercial agent business at more than one place, the applicant must specify the place intended to be the applicant's principal place of business.

Clause 13 provides that the chief executive may require an applicant to give information or material the chief executive reasonably considers is needed for considering the applicant's licence application. The request must be made by written notice, stating a reasonable period within which the information or material must be supplied. An applicant who fails to supply the information or material within the stated period is to be taken to have withdrawn the licence application.

Clause 14 requires an applicant intending to carry on business under the licence and who is required under clause 111 to keep a trust account, to state in the licence application the name and business address of an auditor appointed by the applicant to audit the trust account. The applicant must provide evidence to the chief executive that the named auditor has accepted the appointment.

Division 3 Suitability of applicants and licensees

Clause 15 provides a list of factors that will exclude an individual from being a suitable person to hold a licence, and therefore from holding a licence. The factors are whether the person is an insolvent under administration; has been convicted within the preceding five years of a serious offence; is currently disqualified from holding a licence or registration certificate; or a person the chief executive decides under clause 17 is not a suitable person to hold a licence.

Clause 16 provides a list of factors that will exclude a corporation from being a suitable person to hold a licence, and therefore from holding a licence. The factors are whether an executive officer of the corporation is an insolvent under administration; has been convicted within the preceding five years of a serious offence; or is a person the chief executive decides under clause 17 is not a suitable person.

Clause 17 sets out the matters that the chief executive must consider when deciding a person's suitability to hold a licence. For applications by both individuals and corporations, the chief executive must consider the person's character, business associates and previous licence record, including whether the person has had a licence suspended or cancelled or been disqualified from holding a licence under a relevant Act. The chief executive must also consider whether the person has been disqualified under a relevant Act from being an executive officer of a licensed corporation. The chief executive must also consider whether a claim has been paid out of the fund because of something the person did or omitted to do, and any other thing the chief executive may consider under the Bill.

In the case of individuals, the chief executive must also consider the person's criminal history, whether the person has been an insolvent under administration, convictions (if any) for an offence under a relevant Act or the Administration Act. The chief executive must also consider the

person's capability of satisfactorily performing a licensee's activities and whether the person's name is entered in the register of disqualified company directors and other officers under the Corporations Act.

For a corporation, the chief executive must consider also whether the corporation has been placed in receivership or liquidation, whether an executive officer of the corporation has been an insolvent under administration, whether an executive officer has been convicted of an offence under a relevant Act or the Administration Act and whether each of the executive officers is a suitable person to hold a licence.

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

Clause 18 states that the corporation sole of The Public Trustee of Queensland is taken to be a suitable person to hold a licence. The inquiry around suitability where The Public Trustee of Queensland applies for a licence is therefore not necessary.

Clause 19 states that the chief executive of a department of government is taken to be a suitable person to hold a licence. The inquiry around suitability where a department of government applies for a licence is therefore not necessary.

Clause 20 provides that the chief executive may make investigations about the suitability of an applicant, or in the case of a renewal or restoration application, the licensee. If the applicant or licensee is a corporation, an investigation may be made about the corporation's executive officers. An investigation may also be made about the business associates of the applicant or licensee, and partnership members if the applicant or licensee is in a partnership.

For the investigation, the chief executive may ask the commissioner of the police service for a report about the criminal history of any of the persons the chief executive is empowered to investigate. The commissioner of the police service is required, when asked by the chief executive, to provide a criminal history in the commissioner's possession or to which the commissioner has access.

There is a requirement that if the criminal history of the person records a conviction against the person for an offence, the commissioner's report must be written. An applicant is taken to include a person nominated as a substitute licensee mentioned in clauses 39(3) and 40(4). This allows the

chief executive to make investigations about substitute principal licensees and substitute employed licensees.

Clause 21 provides that the chief executive may require an applicant or licensee to pay the reasonable costs, which must not be greater than the actual costs of obtaining a criminal history report under clause 20. This requirement is known as a ‘criminal history costs requirement’. The requirement for these costs is taken to be made sufficiently of the applicant or licensee if it is generally made of applicants in the relevant approved form or notified on the department’s website for applicant or licensees. If the chief executive refuses the application or if the applicant withdraws the application before the chief executive requests the report from the commissioner, the chief executive must refund the applicant the money paid in relation to the requirement.

Clause 22 prohibits a public service employee from directly or indirectly disclosing a person’s criminal history report or any information contained in the report, except where the disclosure is authorised by the chief executive to the extent necessary to perform a function under or relating to the Bill, or is otherwise required or permitted by law. The chief executive is required to destroy a criminal history report as soon as practicable after considering the person’s suitability for a licence.

Clause 23 gives power to the chief executive to require an applicant for the issue, renewal or restoration of a licence, by written notice, to give information or material about the applicant’s suitability that the chief executive reasonably considers is needed to establish the applicant’s suitability. The written notice must include a stated reasonable period within which the applicant must comply. If an applicant fails to provide the information or material within the stated reasonable period, the applicant is taken to have withdrawn the application.

Division 4 Eligibility for licence

Clause 24 sets out the eligibility requirements to be satisfied by persons who apply for a licence. If the applicant is an individual, the applicant must be at least 18 years old and must have the educational or other qualifications that may be prescribed by regulation for a commercial agent. An applicant who has comparable qualifications or who, within the previous 2 years, has been licensed as a commercial agent under the Bill, or

who has held a comparable licence under the repealed Act, may be accepted by the chief executive as having satisfied the educational or other qualifications requirements.

An applicant that is a corporation must satisfy the chief executive that the person in charge of the corporation's business at a place is a commercial agent and each director of the corporation would be a suitable person to hold a licence as 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 a director of the corporation is a commercial agent. The SDPC's recommendation that this requirement be removed was supported by the Government, on the basis that a person in charge of the corporation's business at a place be required to be appropriately licensed. The Bill gives effect to this recommendation. It should be noted that the provision does not exclude a director from being the licensed person in charge of the corporation's business at a place.

The public trustee and chief executive of a department are taken to be eligible persons to hold a licence.

Division 5 Issue of licences

Clause 25 provides that the chief executive may issue or refuse to issue a licence to an applicant. A licence may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligibility for a licence. The chief executive must also be satisfied that the application was properly made. An application will be properly made if it complies with clause 11 and is accompanied by the things mentioned in that clause. If the applicant intends to carry on business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the applicant is a corporation, each executive officer of the corporation must be a suitable person for a licence.

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

A person who has been refused a licence is not permitted to make another application for a licence for 3 months after the date the chief executive gives the information notice. If the person applies to QCAT for a review of the chief executive's decision and QCAT confirms the chief executive's

decision, the person may not make another application until 3 months after the date of the QCAT's decision. The above time constraints on submitting another application do not apply if the applicant is a corporation, and the corporation satisfies the chief executive that because of a genuine sale of the corporation, no person who was a shareholder of the corporation, or who held a beneficial interest in the corporation, or was in a position to control or influence the affairs of the corporation when the refused application was made, currently holds such a position in or has such an association with the corporation.

Clause 26 provides that the chief executive may issue a licence to the public trustee as a corporation sole is to be issued in the name "The Public Trustee of Queensland". A licence issued to the public trustee authorises an officer or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence.

In order to remove any doubt, subclause (3) declares that officer or employee performing an activity authorised by the public trustee is not required to be licensed or registered under the Bill to perform the activity.

Clause 27 provides that the chief executive may issue a licence to the chief executive of a department in the name "The Chief Executive of the (name of department)". The licence is to be taken as being issued to the chief executive for the time being of the department. As a licensee, the chief executive is taken to represent the State.

A licence issued to the chief executive authorises an officer or employee of the department 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 (3) 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.

Clause 28 gives power to the chief executive to issue a licence on conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence. A condition may limit or prohibit the performance of an activity authorised by the Bill or the Administration Act or require a licensee to hold insurance of a kind and in an amount prescribed under a regulation.

If the chief executive decides to issue a licence subject to a condition, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision.

Division 6 Restrictions on performing activities under licences

Clause 29 provides that a corporation may perform an activity under a licence at a place only if the activity may be performed by the licensed person in charge of the corporation's business at the place or a liquidator, administrator or controller appointed under the Corporations Act, an administrator of a deed of company arrangement appointed under the Corporations Act, or a receiver appointed under the Administration Act.

If the corporation performs an activity which it is not authorised to perform, it is taken to have acted without a licence for the performance of the activity.

Clause 30 provides that an individual who is an employed licensee may perform an activity authorised under the individual's licence only if the activity may be performed by the individual's employer under the employer's licence. If the individual performs an activity which the individual is not authorised to perform, the individual is taken to have acted without a licence for the performance of the activity.

Clause 31 provides that if a licensee performs an activity in breach of a licence condition, the licensee is taken to have acted without a licence for the performance of the activity.

Division 7 Renewal and restoration of licences

Subdivision 1 Renewal

Clause 32 makes provision for renewal of a licence by application before the licence expires. The application must be made in the approved form, stating the term of the licence being applied for and the names and addresses of the licensee's business associates. It must be accompanied by the application fee, the licence renewal fee, proof of current insurance, if the holding of insurance is required as a condition of the licence, and, if a criminal history costs requirement is made, the amount of the costs to be paid.

If requested by the chief executive, the application for an individual licensee must be accompanied by 2 recent colour photographs of the prescribed size.

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

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 a period, prescribed.

Clause 33 provides that the chief executive may renew or refuse to renew a licence.

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

- the licensee is a suitable person for a licence. If the licensee carries on business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the licensee is a corporation, each executive officer of the corporation must be a suitable person for a licence;
- the application was properly made;
- the licensee has actively carried out the activities authorised under the licence for a period, and within a period, prescribed; and
- the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

If the chief executive refuses to renew a licence, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision.

Clause 34 provides that if a licensee makes a renewal application under clause 32, the licensee's licence is taken to continue in force from the day that it would have expired, until the licensee's application is decided or until the application is withdrawn by the licensee or is taken to have been withdrawn under clause 23.

Subdivision 2 Restoration

Clause 35 provides that if a licence expires, a former licensee may apply to have the licence restored. The application must be made within 3 months of the expiry, in the approved form, stating the term of the licence being applied for and the names and addresses of the licensee's business associates. It must be accompanied by the application fee, the licence renewal fee, the licence restoration fee, proof of current insurance, if the holding of insurance is required as a condition of the licence and if a criminal history costs requirement is made, the amount of the costs to be paid.

If requested by the chief executive, the application for an individual licensee must be accompanied by 2 recent colour photographs of the prescribed size.

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

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

Clause 36 provides that the chief executive may restore or refuse to restore a licence.

A licence may be restored only if the chief executive is satisfied that—

- the licensee is a suitable person for a licence. If the licensee carries on, or intends to carry on, business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the licensee is a corporation, each executive officer of the corporation must be a suitable person for a licence;
- the application was properly made;
- the licensee has actively carried out the activities authorised under the licence for a period, or within a period prescribed; and
- the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

If the chief executive refuses to restore a licence, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision.

Apart from clause 37, if the chief executive restores the licence, the licence is to be taken to have been renewed on the day it would have expired.

Clause 37 provides that if a licensee makes a restoration application under clause 35, the licensee's licence is taken to continue in force from the day that it would have expired, until the licensee's application is decided, until the application is withdrawn by the licensee or is taken to have been withdrawn under clause 23.

Division 8 Dealing with licences

Subdivision 1 Transfer of licence

Clause 38 prohibits a licence from being transferred to another person.

Subdivision 2 Substitute licences

Clause 39 makes provision for an individual who is a principal licensee to appoint, or to have the chief executive appoint, a substitute licensee to take the licensee's place during the licensee's absence from the licensee's registered office.

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

The principal licensee must ensure that the appointment, the period of appointment and the appointee's consent are set out in writing.

This written evidence must be kept at the licensee's registered office and be made available for immediate inspection by an inspector if requested.

If a principal licensee proposes to be absent from the principal licensee's registered office for a period of more than 30 days, the principal licensee must apply to the chief executive for the appointment of a nominated person as the principal licensee's substitute licensee. The application must be accompanied by the prescribed fee, the nominated person's signed consent to the appointment and sufficient information to allow the chief executive to decide whether the nominated person is a suitable person to hold a licence and sufficiently qualified to perform the licensee's activities during the period.

Clause 40 makes provision for a person who is a principal licensee with an employed licensee in charge of the principal licensee's business at a place, to appoint, or to have the chief executive appoint, a substitute licensee to take the employed licensee's place during the employed licensee's absence from the place for a reason other than the employed licensee's resignation or termination of employment.

A principal licensee is given power to appoint an adult person to be a substitute licensee for the employed licensee for a period not longer than 30 days, if the employed licensee will be absent for the period of appointment and the appointee consents. The principal licensee must ensure that the appointment, the period of appointment and the appointee's consent are set out in writing. This written evidence must be kept at the principal licensee's registered office and be made available for immediate inspection by an inspector if requested.

If an employed licensee proposes to be absent from the principal licensee's business at a place for a period of more than 30 days, the principal licensee must apply to the chief executive for the appointment of a nominated person as the employed licensee's substitute licensee. The application must be accompanied by the prescribed fee, the nominated person's signed consent to the appointment and sufficient information to allow the chief executive to decide whether the nominated person is a suitable person to hold a licence and sufficiently qualified to perform the employed licensee's activities during the period.

Clause 41 provides that the chief executive may appoint or refuse to appoint a person nominated as a substitute licensee. The chief executive may appoint a nominated person as a substitute licensee only if satisfied that the nominated person is a suitable person to hold a licence, is sufficiently qualified to perform the licensee's activities during the period of the licensee's absence and if, as a condition of the licensee's licence, the

licensee is required to hold insurance, the appointee has insurance coverage that complies with that condition.

The chief executive must give written notice of the appointment to the licensee and substitute licensee.

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

If the chief executive appoints a nominated person as a substitute licensee, the chief executive may make the appointment subject to conditions the chief executive considers appropriate.

Clause 42 provides for matters about a substitute licensee. When a substitute licensee is appointed, the substitute licensee is to be taken as the licensee for the duration of the appointment and must act for the licensee for whom the substitute is appointed. A licensee for whom a substitute has been appointed must not act under the licensee's licence while the substitute licensee's appointment continues.

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

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

Clause 43 sets the limits on the period for which a substitute licensee can be appointed. A principal licensee may not appoint a substitute licensee for himself or herself or for an employed licensee for more than 12 weeks in a 12 month period. The chief executive may not appoint a substitute licensee for any licensee for more than 26 weeks in a 12 month period.

Subdivision 3 General

Clause 44 provides that the chief executive may amend the conditions on a licence on the licensee's application, or on the order of QCAT after a disciplinary hearing, or on the chief executive's initiative.

An application by a licensee for amendment of conditions must be made in the approved form and be accompanied by the prescribed fee. Before making the amendment applied for, the chief executive must be satisfied that the licensee meets the eligibility requirements the chief executive specifies as relevant to the amendment.

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

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

If the chief executive decides to amend licence conditions, the chief executive must give written notice of the amendment to the licensee. An amendment takes effect on the day that written notice of the amendment is given to the licensee or, if a later date is stated in the notice, the later date.

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

Clause 45 provides for the return of a licence to the chief executive for amendment of a licence condition or if the licence has been suspended or cancelled.

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

- the chief executive reasonably considers that the licensee has contravened, is contravening or is likely to contravene this Bill or the Administration Act.

The chief executive may also suspend a licence held by an employee of the licensee if the chief executive considers, on reasonable grounds, that the employee is responsible for the irregularity or deficiency in the licensee's trust account.

The chief executive may also suspend a licensee's licence if the chief executive is satisfied that a licensee continues to fail to file an audit report under the Administration Act, after being convicted of failing to file an audit report.

If the chief executive suspends the licence because the chief executive is satisfied that a licensee continues to fail to file an audit report, the licence is suspended until the licensee files the required audit report or an application to QCAT for the cancellation of the licence is heard and decided.

When a licence has been suspended, the chief executive must give an information notice about the suspension to the licensee, within 14 days after suspending the licence. The licensee must return the licence to the chief executive within 14 days of receiving the suspension notice unless the licensee has a reasonable excuse.

Clause 49 provides that a licence is automatically cancelled when—

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

On the happening of any of the defined events, the licensee is no longer licensed and must return the licence to the chief executive within 14 days of the event unless the licensee has a reasonable excuse.

Division 10 General provisions about licences

Clause 50 provides for a licence to be issued in an approved form containing the name of the licensee, the date the licence is issued, the expiry date of the licence and any other prescribed particulars. An approved form of licence may be of a type suitable for office display or for

personal identification. A personal identification licence must contain a recent photograph of the licensee.

Clause 51 provides that a licence may be issued for a 1 year or a 3 year term.

Clause 52 provides that if a licence is lost, stolen, destroyed or damaged, the licensee may apply for a replacement by using the approved form and paying the prescribed fee. If the chief executive is satisfied that the licence needs to be replaced, the chief executive must issue a replacement licence.

Clause 53 requires the chief executive to keep a register of licences and licence applications. For applications, these are the name of an applicant; the place, if any, where an applicant intends to carry on business under a licence; the date of the application; and the application number. For licensees, the particulars are the name of a licensee; the licensee's registered office address; the issue and expiry dates of a licence; the conditions imposed on a licence, if the licensee is a corporation, the name of an individual in charge of a corporation's business at the registered office; if the licensee is a director, the name of the licensed corporation; if the licensee is an employed licensee, the name of the licensee's employer; licence numbers; and particulars about any surrender, suspension, cancellation or revocation of a licence.

A person may inspect, and obtain a copy of, the information contained in the register on payment of the prescribed fee.

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

Clause 54 requires a licensee to give written notice to the chief executive of any prescribed change in the licensee's circumstances within 14 days after the change occurs.

Part 3 Authorisation and responsibilities

Division 1 Commercial agents' authorisation and responsibilities

Subdivision 1 Commercial agent licence

Clause 55 provides that a commercial agent's licence authorises the holder to perform the following activities as an agent for others for reward—

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

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

Subdivision 2 Responsibilities of persons in charge of a licensee's business for commercial subagents

Clause 56 requires a commercial agent who is a principal licensee to take reasonable steps to ensure that each commercial subagent employed by the agent is properly supervised and complies with the Bill. An employed commercial agent who is in charge of a principal licensee's business at a place must take reasonable steps to ensure that each commercial subagent employed at that place is properly supervised and complies with the Bill.

A commercial agent who fails to comply with the clause is liable to disciplinary action.

Division 2 Conduct Provisions

Subdivision 1 Carrying on business

Clause 57 provides that an individual who carries on the business of a commercial agent with others is not required to hold a commercial agent's licence if at least one of the persons with whom the individual carries on business holds a licence as a commercial agent, the individual does not perform the activities of a commercial agent and the individual meets the suitability requirements for holding a licence.

Clause 58 requires a commercial agent who is an individual and a principal licensee to be in charge of the agent's business at the agent's registered office. If the agent has more than one place of business, the agent must ensure that a licensed commercial agent who is an individual is in charge at each other place of business.

If the commercial agent is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is a licensed commercial agent. If the corporation has more than 1 place of business, the corporation must ensure that a commercial agent who is an individual is in charge at each other place of business.

In all cases, an individual is not permitted to be in charge of a commercial agent's business at more than 1 place.

Subdivision 2 Appointment

Clause 59 provides that the subdivision applies to a commercial agent only in relation to performing the activities of finding, or repossessing, for a person any goods or chattels that the person is entitled to repossess under an agreement or collecting, or requesting the payment of a debts, for reward.

Clause 60 provides that a commercial agent must not act for a client in performing an activity specified in clause 59 unless the client has first appointed the agent in writing.

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

- the service to be performed and how it is to be performed;
- the fees, charges and commission payable for the service;
- the expenses, including travelling expenses, the commercial agent is authorised to incur in connection with the performance of the service or services;
- the source and estimated amount of any rebate, discount or commission the agent may receive in relation to any expenses the agent may incur in connection with the performance of the service;
- any condition, limitation or restriction on the performance of the service;
- when the fees, charges and commission become payable.

The appointment must be signed and dated by the client and the commercial agent.

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

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

Clause 61 requires an appointment to be in writing, and contain any particulars prescribed by regulation. If the appointment does not comply, it is ineffective from the time it is made.

Clause 62 applies when a commercial agent assigns client appointments to another agent such as in circumstances where a commercial agent sells the business to the other agent. The commercial agent must give each client written notice of the assignment at least 14 days before the assignment. The notice must state the proposed assignee's name, that the appointment is to be assigned without changing the terms of the appointment, that the client may agree or refuse to agree to the proposed assignment and when the proposed assignment is to take effect. If the client agrees to the assignment, and the assignment is undertaken in accordance with this clause, the appointment is taken to be an appointment by the client of the assignee and to continue to have effect according to its terms. The clause does not apply

to the assignment of appointments to another agent if the terms of the appointment authorise the assignment and the assignment is made in accordance with the terms of the appointment. The clause does not apply where the commercial agent engages another commercial agent to perform part of the commercial agent's function in a particular transaction. For example where the debt is to be collected in an area other than where the commercial agent usually operates from.

Subdivision 3 Process Serving

Clause 63 provides that a commercial agent must not act as a commercial agent for a person in relation to serving a writ, claim, application, summons or other process, unless the person has instructed the agent in writing in relation to the service. If a commercial agent is engaged by a client to undertake process serving and another activity authorised by the licence (e.g. debt collection), an appointment in accordance with clause 60, providing for both the process serving activity and the other authorised activity, complies with the requirements under clause 63.

Subdivision 4 Recovery of expenses and costs

Clause 64 provides that a person is not entitled to sue for, recover or retain a reward or expense for performing an activity as a commercial agent unless, at the time the activity was performed, the person held a commercial agent's licence, was authorised under the licence to perform the activity and had been properly appointed or engaged under the Bill by the person to be charged with the reward or expense.

Clause 65 prohibits a person from recovering or attempting to recover, from a debtor, a commercial agent's costs or expenses for collecting or attempting to collect a debt owed by the debtor, or repossessing or attempting to repossess goods and chattels from a debtor. However, the clause does not prevent a person who appoints a commercial agent to repossess goods or chattels from a debtor from recovering the commercial agent's costs and expenses if the person has a right under an agreement with a debtor. The clause is also subject to the application of the National Credit Code which regulates consumer credit contracts. Costs and expenses

recovered in contravention of this requirement may be recovered by the debtor as a debt.

Subdivision 5 Code of Conduct

Clause 66 permits a regulation to be made prescribing a code of conduct about commercial agency practice, including setting conduct standards for commercial agents and commercial subagents, establishing principles for fair trading, providing for a system of complaint resolution and providing that contraventions of some provisions of the code are an offence.

Clause 67 entitles a person aggrieved by the conduct of a commercial agent or subagent to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the commercial agent or subagent, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer a commercial agent or commercial subagent.

Division 3 General

Clause 68 defines the registered office of a commercial agent who is a principal licensee as the place stated by the commercial agent as the commercial agent's principal place of business in the commercial agent's licence application, or another place notified to the chief executive as the agent's principal place of business in the approved form. For a commercial agent who is an employed licensee, the registered office is the place stated by the employee in the employee's licence application, as the employee's business address, or another place notified to the chief executive in the approved form.

Clause 69 requires commercial agent who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the commercial agent's principal place of business, the closing of any place where the commercial agent carries on business and the opening of any new place of business.

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

Clause 70 prohibits a commercial agent from publishing an advertisement about the commercial agent's business in a newspaper, or elsewhere, without including the particulars that may be prescribed under a regulation.

Clause 71 requires a commercial agent who is a principal licensee to keep an employment register at each place where the licensee carries on business. The commercial agent must enter in the register the name and other prescribed particulars of every person who is employed as a commercial agent or commercial subagent by the commercial agent at the place. The commercial agent must also enter, for each commercial subagent, the activities the employee is authorised to perform for the commercial agent.

The particulars and authorised activities must be entered immediately after the employee is employed and any change that happens during the employment must be immediately entered. A regulation may prescribe the form of the register.

Division 4 Offences

Clause 72 prohibits a person from acting as an agent for someone else for reward in performing an activity that may be done only under the authority of a commercial agent's licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under the Bill or another Act to perform the activity.

A person must not act as a commercial agent unless the person holds a licence and is authorised under the licence to act or unless the person is otherwise permitted under this Bill or another Act to act. A person "acts" as a commercial agent if the person performs any activity that a commercial agent's licence authorises, or advertises, notifies or states that the person performs or is willing to perform any of those activities, or holds out as being ready to perform any of those activities.

However, a person is not to be taken as acting as a commercial agent merely because the person makes telephone requests for payment of debts as a supervised employee of a commercial agent. If a lawyer, in the course

of the lawyer's practice, collects debts, the lawyer is not taken to have acted as a commercial agent if the lawyer complies with the requirements of the *Legal Profession Act 2007*.

Clause 73 prohibits a person from holding out that the person is a commercial subagent unless the person holds a registration certificate as a commercial subagent.

A person is not to be taken as acting as a commercial subagent merely because the person makes telephone requests for payment of debts as a supervised employee of a commercial agent.

Clause 74 prohibits a commercial agent from accepting an appointment to act for another person if the agent is appointed to perform the activity for a person in relation to the other person. However, this prohibition does not apply if a commercial agent acts for more than one party in relation to a debt agreement under part IX of the *Bankruptcy Act 1966* (Cwlth).

Clause 75 requires a commercial agent and a commercial subagent, if asked by a person with whom the agent or subagent is dealing, to produce the agent's licence or the subagent's registration certificate for the person's inspection.

Clause 76 prohibits a commercial agent from employing, as a commercial subagent, a person the agent knows, or ought to know, does not hold a registration certificate as a subagent.

A principal licensee who is an individual is not permitted to employ as a commercial subagent, himself or herself, or another individual with whom the principal licensee carries on business as a commercial agent.

A principal licensee that is a corporation is not permitted to employ an executive officer of the corporation as a commercial subagent.

Clause 77 prohibits a commercial agent or commercial subagent from representing that the person's licence or registration certificate entitles the person to exercise a power the person may not lawfully exercise, or using the licence or registration certificate to exercise a power the person may not lawfully exercise.

Clause 78 prohibits a commercial agent or commercial subagent from entering premises without lawful authority.

Clause 79 prohibits a commercial agent or commercial subagent from inducing a person to enter into an arrangement for the payment of a debt by any false or misleading representation.

Clause 80 prohibits a creditor from impersonating a commercial agent by using a name, description, document or device intended to make a person believe that the person is not dealing directly with the creditor, but with a commercial agent acting on the creditor's behalf.

A commercial agent is prohibited from giving any document to a creditor to enable the creditor to make a third person believe that the third person is not dealing directly with the creditor but with the commercial agent acting on the creditor's behalf.

Part 4 Employee Registration

Division 1 Activities authorised under registration certificate

Clause 81 provides that the holder of a registration certificate may perform any activity that may be performed by the commercial agent who employs the holder, subject to any conditions on the certificate.

Division 2 How to obtain registration

Clause 82 sets out the steps involved for an applicant in obtaining a registration, which include providing an application detailing the applicant's eligibility for the licence and paying the prescribed fees. It also provides that the chief executive is to decide an application after having had regard, among other things, to the person's suitability and eligibility to hold a licence.

Division 3 Applications for registration

Clause 83 details the requirements for a registration certificate application, including use of the approved form, provision of information required by the chief executive, including any information the chief executive

reasonably requires to decide whether the applicant is a suitable and eligible person to be a commercial subagent, payment of the relevant fees, and, for an individual, 2 recent colour photographs of the applicant of the prescribed size.

Clause 84 provides that the chief executive may require an applicant to give information or material the chief executive reasonably considers is needed for considering the applicant's registration certificate application. The request must be made by written notice, stating a reasonable period within which the information or material must be supplied. An applicant who fails to supply the information or material within the stated time is to be taken to have withdrawn the application.

Division 4 Suitability of applicants

Clause 85 provides a list of factors that will exclude an individual from being a suitable person to obtain registration as a commercial subagent, and therefore from holding a registration certificate. The factors are whether the person is has been convicted within the preceding five years of a serious offence; is currently disqualified from holding a licence or registration certificate; or a person the chief executive decides under clause 86 is not a suitable person to hold a licence.

Clause 86 sets out the matters that the chief executive must consider when deciding a person's suitability to obtain registration. The person's character and previous licence or registration record are to be considered, including whether the person has had a licence or registration certificate suspended or cancelled or been disqualified from holding a licence under a relevant Act. The chief executive must consider whether the person has been disqualified under a relevant Act from being an executive officer of a licensed corporation. The chief executive must also consider whether a claim has been paid out of the fund because of something the person did or omitted to do. The chief executive must also consider the person's criminal history, whether the person is an insolvent under administration and the circumstances giving rise to this, convictions (if any) for an offence under a relevant Act or the Administration Act. The chief executive must also consider the person's capability of satisfactorily performing a licensee's activities and whether the person's name is entered in the register of disqualified company directors and other officers under the Corporations Act.

If the chief executive decides that an applicant is not a suitable person to obtain registration, the chief executive must give the applicant an information notice about the decision within 14 days of the decision.

Clause 87 provides that the chief executive may make investigations about the suitability of an applicant.

For the investigation, the chief executive may ask the commissioner of the police service for a written report about the criminal history of the applicant. The commissioner of the police service is required, when asked by the chief executive, to provide a criminal history in the commissioner's possession or to which the commissioner has access. If the criminal history of the applicant includes a conviction, the commissioner's report must be written.

Clause 88 provides that the chief executive may require an applicant for registration as a commercial subagent or the renewal or restoration of the registration, to pay the reasonable, but no more than actual, costs of obtaining the report about the criminal history of the applicant.

The chief executive must refund to the applicant the amount paid by the applicant, if the chief executive either refuses the grant of a licence or the applicant withdraws their application, before the chief executive requests the report from the commissioner.

The requirement to pay the costs of obtaining a criminal history report is sufficiently notified to the applicant if it is made generally for applicants either in the relevant approved form or via a notification on the department's website.

An applicant is taken to include a proposed applicant.

Clause 89 prohibits a public service employee from directly or indirectly disclosing a person's criminal history report or any information contained in the report, unless disclosure is authorised by the chief executive to the extent necessary to perform a function under or relating to the Bill or is otherwise required or permitted by law. The chief executive is required to destroy a criminal history report as soon as practicable after considering the person's suitability for registration as a commercial subagent.

Clause 90 gives power to the chief executive to require an applicant, by written notice, to give information or material about the applicant's suitability that the chief executive reasonably considers is needed to establish the applicant's suitability. The written notice must include a stated reasonable period within which the applicant must comply. If an applicant

fails to provide the information or material within the stated reasonable period, the applicant is taken to have withdrawn the application.

Division 5 Eligibility for registration

Clause 91 provides that a person is eligible to obtain registration as a commercial subagent only if the person is at least 18 years of age and has the educational or other qualifications that may be prescribed under a regulation.

An applicant who has comparable qualifications or who, within the previous 2 years, has been the holder of a registration certificate under the Bill as a commercial subagent, or who has held a comparable certificate under the repealed Act, is taken to satisfy the educational or other qualifications requirements.

Division 6 Issue of registration certificate

Clause 92 provides that the chief executive may issue or refuse to issue a registration certificate to an applicant. A registration certificate may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligibility for a registration certificate. The chief executive must also be satisfied that the application was properly made.

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

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

Clause 93 gives power to the chief executive to issue a registration certificate on conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the certificate or another purpose consistent with the achievement of the

objects of this Bill or the Administration Act. A condition may limit or prohibit the performance of an activity authorised by the Bill or the Administration Act.

If the chief executive decides to issue a registration certificate subject to a condition, the chief executive must give the applicant an information notice, within 14 days of the decision.

Division 7 Renewal and restoration of registration certificates

Subdivision 1 Renewal

Clause 94 makes provision for renewal of a registration certificate by application before the certificate expires. The application must be made in the approved form, stating the term of the registration being applied for and be accompanied by the prescribed fees, two recent colour photographs of the prescribed size, if requested by the chief executive, and, if a criminal history costs requirement has been made, the amount of the costs to be paid.

Clause 95 provides that the chief executive may renew or refuse to renew a registration certificate. The chief executive may renew a registration certificate only if the chief executive is satisfied that—

- the commercial subagent is a suitable person to obtain registration as a commercial subagent;
- the application was properly made; and
- the commercial subagent meets the eligibility requirements for the certificate.

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

Clause 96 provides that if a commercial subagent makes a renewal application under clause 94, the employee's certificate is taken to continue in force from the day that it would have expired, until the employee's

application is decided or until the application is withdrawn by the employee or is taken to have been withdrawn under clause 90.

Subdivision 2 Restoration

Clause 97 provides that if a registration certificate expires, a former commercial subagent may apply to have the certificate restored.

The application must be made within 3 months of the expiry, in the approved form and state the term of the registration being applied for. It must be accompanied by the prescribed fees, two recent colour photographs of the prescribed size, if requested by the chief executive, and, if a criminal history costs requirement has been made, the amount of the costs to be paid.

Clause 98 provides that the chief executive may restore or refuse to restore a registration certificate.

The chief executive may restore a registration certificate only if the chief executive is satisfied that—

- the commercial subagent is a suitable person to obtain registration as a commercial subagent;
- the application was properly made; and
- the commercial subagent meets the eligibility requirements for the certificate.

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

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

Clause 99 provides that if a commercial subagent makes a restoration application under clause 97, the commercial subagent's certificate is taken to continue in force from the day that it would have expired, until the commercial subagent's application is decided or until the application is withdrawn by the commercial subagent or is taken to have been withdrawn under clause 90.

Division 8 Dealings with registration certificates

Subdivision 1 Transfer of registration certificate

Clause 100 prohibits a registration certificate from being transferred to another person.

Subdivision 2 General

Clause 101 provides that the chief executive may amend the conditions of a registration certificate on the commercial subagent's application, or on the order of QCAT after a disciplinary hearing, or on the chief executive's initiative.

An application by a commercial subagent for amendment of conditions must be made in the approved form and be accompanied by the prescribed fee. Before making the amendment applied for, the chief executive must be satisfied that the commercial subagent meets the eligibility requirements the chief executive considers relevant to the amendment.

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

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

If the chief executive decides to amend registration certificate conditions, the chief executive must give an information notice about the decision within 14 days of the decision. An amendment takes effect on the day that written notice of the amendment is given to the commercial subagent or, if a later date is stated in the notice, the later date.

the registration certificate to the chief executive within 14 days of receiving the suspension notice, unless the commercial subagent has a reasonable excuse.

Clause 105 provides that a registration certificate is automatically cancelled when a commercial subagent is convicted of a serious offence.

Upon conviction, the commercial subagent is no longer registered and must return the registration certificate to the chief executive within 14 days of the event unless the commercial subagent has a reasonable excuse.

Division 10 General provisions about commercial subagent registration

Clause 106 provides for a registration certificate to be issued in an approved form which must contain the name of the employee, the date the certificate is issued, the expiry date of the certificate and any other prescribed particulars. An approved form may be of a type suitable for office display or for personal identification. A personal identification certificate must contain a recent photograph of the employee.

Clause 107 provides that a registration certificate may be issued for a 1 year or a 3 year term.

Clause 108 provides that if a registration certificate is lost, stolen, destroyed or damaged the employee may apply for a replacement by using the approved form and paying the prescribed fee. If the chief executive is satisfied that the certificate requires replacement, the chief executive must issue a replacement certificate.

Clause 109 requires the chief executive to keep a register of registration certificates and registration certificate applications. For applications, these are the name of an applicant; the date of the application; and the application number. For each commercial subagent, the particulars are the name of a commercial subagent; the issue and expiry dates of the registration certificate; the conditions imposed on the registration certificate; the registration certificate number; and particulars about any surrender, suspension, cancellation or revocation of the registration certificate.

A person may inspect, and obtain a copy of, the information contained in the register on payment of the prescribed fee. Provision is made for access

to be made available by personal attendance at a place decided by the chief executive or by using a computer. The register may be kept in any way the chief executive considers appropriate.

Clause 110 requires a commercial subagent to give written notice to the chief executive of any prescribed change in the commercial subagent's circumstances within 14 days after the change occurs.

Part 5 Trust Accounts

Clause 111 requires a principal licensee to open and maintain a trust account or special trust account in accordance with the Administration Act if an amount is likely to be received by the licensee for a transaction, or with written directions for its use when performing the activities of a commercial agent.

Part 6 Claims against the fund

Clause 112 defines financial loss, licensee and relevant person for the purposes of part 6. A relevant person means a licensee, a licensee's employee or agent, or person carrying on business with a licensee or a person having actual or apparent charge or control of a licensee's registered office or business.

Clause 113 provides that a person may make a claim against the claim fund under the Administration Act if the person suffers financial loss because of—

- a contravention of clause 136 by a relevant person; or
- a stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as an agent for the claimant in the person's capacity as a relevant person.

A person is permitted 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 that claim.

Clause 114 provides that a person cannot make a claim against the fund because of or arising out of the stealing, misappropriation or misapplication by a licensee of an amount that the licensee was directed to invest under the Administration Act.

The following persons are also excluded from making a claim against the fund for the financial losses:

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

Part 7 Jurisdiction of QCAT

Division 1 Preliminary

Clause 115 provides the definitions of commercial agent, licensee, former licensee, and former subagent for the purposes of part 7.

Division 2 Jurisdiction

Clause 116 provides that QCAT has jurisdiction—

- to hear and decide disciplinary matters involving licensees and commercial subagents employees; and
- to review decisions of the chief executive relating to licensing and registration.

Division 3 Disciplinary proceedings

Clause 117 sets out the grounds for starting a disciplinary proceeding against a licensee or a commercial subagent before QCAT. It also sets out the grounds for starting a disciplinary proceeding before QCAT against an executive officer of a licensed corporation.

The grounds for starting disciplinary action against a licensee or commercial subagent are that:

- the licensee or subagent has been convicted of an indictable offence or an offence against the Bill or the Administration Act;
- the licensee or subagent has contravened or breached the Bill, the Administration Act, an undertaking under the Bill, or a corresponding law in another jurisdiction.
- the licensee or subagent has been disqualified from holding a licence under a corresponding law;
- an amount has been paid from the fund because the licensee or subagent did, or omitted to do, something that gave rise to a claim against the fund;
- the licensee or commercial subagent fraudulently or improperly obtained or fraudulently or improperly helped someone obtain a licence or registration certificate; or
- the licensee or subagent failed to comply with an order of a court, QCAT or the former tribunal.

Additional grounds for starting disciplinary action against a licensee are:

- the licensee is not a suitable person to hold a licence;
- the licensee has carried on or is carrying on business with someone who is not a suitable person to hold a licence;
- the licensee has in carrying on a business or performing an activity under the licence been incompetent or acted in an unprofessional way;
- the licensee has failed to ensure that the licensee's employed licensees, commercial subagents, or other employees under the licensee's supervision are properly supervised in the performance of their duties or comply with the Bill;
- the licensee has failed to comply with a licence condition;

- if the licensee is a corporation, an executive officer of the corporation is not a suitable person to be an executive officer of the corporation or the executive officer has been disqualified under the Bill from being the executive officer of the licensed corporation;

Additional grounds for starting disciplinary action against a commercial subagent are:

- the commercial subagent is not eligible to be employed as a commercial subagent;
- the commercial subagent has been incompetent or acted in an unprofessional way in performing an activity of a licensee.

Disciplinary action may also be taken against a licensee who is an executive officer of a licensed corporation that has had disciplinary action taken against it. However, the chief executive must not start a disciplinary proceeding against an executive officer of a corporation if satisfied that the act or omission relevant to the disciplinary proceedings against the corporation was done or made without the officer's knowledge or the officer, using reasonable diligence, could not have prevented the doing of the act or the making of the omission.

Clause 118 provides that a disciplinary proceeding is started by the chief executive applying to QCAT.

Division 4 Review proceedings

Clause 119 entitles a person who is dissatisfied with a decision of the chief executive made under a provision specified in schedule 2 to apply to have the decision reviewed by QCAT.

Clause 120 provides that when a relevant decision of the chief executive is under review by QCAT, the effect of the decision is stayed for the purpose of securing the effectiveness of the review proceeding. However, a decision to immediately suspend a licence or registration certificate is not stayed.

The period of the stay lasts only until QCAT decides the review.

Clause 121 gives jurisdiction to QCAT to extend the time within which an applicant may seek review of a decision of the chief executive. The time may be extended if the application is made within 42 days after the person receives notice of the decision to be reviewed and it is appropriate to extend

time having regard to the application generally and the justice of the matter generally.

There is no appeal against the decision of the QCAT on an application to extend time.

Division 5 Proceedings generally

Subdivision 1 QCAT's orders

Clause 122 provides that QCAT may make one or more of the specified orders against a person whom QCAT finds grounds exist to take disciplinary action, including ordering a person to pay a fine or compensation, suspending for a period or cancelling a licence or registration certificate, disqualifying a person from holding a licence or registration certificate, disqualifying a licensee who is an executive officer of a corporation from being an executive officer of the licensed corporation, amending licence conditions or making another order QCAT considers appropriate.

However, QCAT may not disqualify a person from holding a licence or registration certificate if a disqualification order has previously been requested in a court proceeding under clause 147 of the Bill and has been denied.

Clause 123 allows QCAT to order a person to stop something that is in contravention of the Bill. While it is similar to an injunctive power, it can be exercised upon application by the chief executive prior to other proceedings in either QCAT's original or review jurisdiction being started. QCAT may make an order without providing notice to the person subject to the order, provided QCAT allows the person a reasonable opportunity to show cause why the order should not be confirmed. If, after considering the person's submission and any further submission by the chief executive, QCAT is not satisfied that the order should continue, QCAT must rescind the order. It is an offence to contravene an order under this clause. An order has effect once it is given to the person who is the subject of the order.

Subdivision 2 Chief executive's right of appeal

Clause 124 allows the chief executive to appeal to the appeal tribunal, as constituted under the QCAT Act, against a decision of QCAT on the ground of an error of law.

Part 8 Injunctions and undertakings

Division 1 Injunctions

Clause 125 allows an injunction to be granted by the District Court against a person under this division.

Clause 126 permits an application for an injunction to be made by the chief executive or by a person aggrieved by the respondent's conduct.

Clause 127 provides that the District Court may grant an injunction if it is satisfied that the respondent has engaged in, or is proposing to engage in, conduct that constitutes, or would constitute—

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

Clause 128 provides that the District Court may exercise the power to grant an injunction to restrain a respondent from engaging in conduct whether or not it appears to the court that the person intends to engage again, or to continue to engage in, the conduct that has given grounds for the grant of

an injunction, and whether or not the respondent has previously engaged in that kind of conduct.

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

Clause 129 provides that the District Court may grant an injunction in the terms the court considers appropriate, including restraining a respondent from carrying on business as a licensee for a stated period or except in accordance with stated terms and conditions, or requiring a respondent to take specified action, such as disclosing or publishing information to remedy adverse consequences caused by the respondent's contravention.

Clause 130 states that when the chief executive applies for an injunction, no undertaking as to damages or costs may be required or made.

Division 2 Undertakings

Clause 131 gives power to the chief executive, if the chief executive believes on reasonable grounds that a person has contravened, or has been involved with contravening, the Bill or the code of conduct, to issue the person with a written notice that—

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

If the person gives the undertaking, and stops the conduct where the contravention is conduct consisting of a series of acts or omissions, and the chief executive accepts the undertaking, offence proceedings for the contravention may not be started against the person unless the chief executive withdraws the undertaking.

Clause 132 provides that the chief executive may accept an undertaking given by a person about anything for which the chief executive or an inspector has a function or power.

Clause 133 provides that an undertaking may be varied or withdrawn by the person who gave the undertaking, with the chief executive's approval. The chief executive may vary or withdraw an undertaking, if the chief executive believes, on reasonable grounds, that before the undertaking was accepted—

- the person who gave it had contravened the Bill or the repealed Act in a way the chief executive did not know about; and
- had the chief executive known about the contravention, the chief executive would not have accepted the undertaking, or would not have accepted it unless its terms were changed.

The chief executive may also withdraw the undertaking if the chief executive believes on reasonable grounds that it is no longer necessary.

The chief executive must provide written notice to the person of the variation or withdrawal of an undertaking. The variation or withdrawal takes effect when the person receives the written notice.

Clause 134 provides that the chief executive may apply to the District Court to enforce an undertaking if the chief executive believes, on reasonable grounds, that a person bound by an undertaking has breached its terms.

The court may make a one or more of the following orders if satisfied that the person has contravened a term in the undertaking:

- an order directing the person to comply with the term;
- an order that the person pay the state an amount not more than the financial benefit attributable to the contravention;
- an order directing the person to pay compensation to a person who has suffered loss as a result of the contravention;
- an order directing the person to give a security bond to the state for a stated period; or
- another order the court considers appropriate.

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

Clause 135 requires the chief executive to keep a register of undertakings. The chief executive may publish information contained in the register on

the department's website. A person may inspect or access details of the register at a place decided by the chief executive or by using a computer, on payment of any fee that is prescribed by regulation.

Part 9 General contraventions, evidentiary matters and legal proceedings

Division 1 General contraventions

Clause 136 provides that a licensee who dishonestly converts an amount that belongs to someone else, in the performance of the licensee's activities, to the licensee's own or someone else's use, or who dishonestly renders an account of the amount knowing it to be false in a material particular, commits an offence.

A licensee also commits an offence if the licensee represents the licensee has received an amount, if the licensee knows the amount has not been received.

Clause 137 prohibits a licensee or a licensee's employee, unless otherwise provided in the Bill, from charging a fee for providing, preparing, or completing a document for a transaction in the course of performing the licensee's activities.

Clause 138 prohibits a licensee from requesting or receiving a commission or reward for performing licensed activities in relation to a transaction that is more than an amount that is prescribed under a regulation for the performance of the activity.

Clause 139 prohibits a licensee from lending the licensee's licence, or notifying or advertising that a licence is available for sale, loan, hire or on any other basis, to another person whether that person is licensed or not, or permitting someone else to hold out that the person is the holder of the licence issued to the licensee.

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

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

Clause 140 prohibits a person from making false or misleading statements to the chief executive or a public service employee.

Clause 141 prohibits a person from giving a document containing false or misleading information to the chief executive or a public service employee.

Division 2 Evidentiary matters

Clause 142 makes provision for evidentiary matters in relation to proceedings under the Bill, including presuming:

- the appointment or power of an inspector, unless a party, by reasonable notice, requires proof of the appointment or power;
- that a signature purporting to be the signature of the chief executive or an inspector is evidence of that signature; and
- that a certificate purporting to be signed by the chief executive, a member of QCAT, the principal registrar under the QCAT Act or an inspector is evidence of particular prescribed matters.

Clause 143 provides that an entry in a book kept by or belonging to a licensee or found in the licensee's premises, is evidence that the entry has been made by or with the authority of the licensee.

Division 3 Proceedings

Clause 144 provides for proceedings for offences and the time limits for starting a proceeding. The maximum penalty that is able to be imposed on a summary conviction of an indictable offence (an offence for which the maximum penalty is 2 or more years imprisonment) is 200 penalty units or 1 year's imprisonment.

The prosecution may elect for an indictable offence to be heard by way of summary proceeding under the *Justices Act 1886* or on indictment. If a person charged with an indictable offence asks at the start of a summary

proceeding for the offence that the charge be prosecuted on indictment, the magistrate must not decide the charge by way of summary proceeding and must proceed by way of committal proceeding.

Clause 145 provides for the responsibility of a person for the acts or omissions of a representative of the person in a proceeding for an offence. If a person's state of mind is relevant in relation to a particular act or omission, it is enough to show that the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority, and the representative had the state of mind.

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

Clause 146 requires executive officers of a corporation to ensure the corporation complies with the Bill.

If a corporation commits an offence against a provision of the Bill, each of the executive officers of the corporation commits the offence of failing to ensure the corporation complies with the provision. However, it is a defence for an executive officer to prove that the officer took all reasonable steps to ensure the corporation complied with the provision where the officer was in a position to influence the conduct of the corporation in relation to the offence, or to prove the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Clause 147 provides that a court may, on the application of the chief executive or on its own initiative, in addition to any other penalty it might impose on a licensee for conviction for an offence under the Bill, order that—

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

Clause 148 provides for how a charge involving a false or misleading statement, representation or entry, of false or misleading information should be stated.

Part 10 General

Clause 149 permits the Minister or the chief executive to publish public warning statements about contraventions of the code of conduct, offences against the Bill and business practices regulated under the Bill that are unfair. The statement may identify particular contraventions, business practices, offences and persons.

Clause 150 provides that nothing in the Bill is intended to affect or limit any civil remedy a person may have against a licensee or other person in relation to any matter.

Clause 151 provides that nothing in the Bill limits the application of the *Crimes (Confiscation) Act 1989*.

Clause 152 permits the chief executive to delegate the chief executive's powers to an appropriately qualified public service officer. However, this power of delegation does not apply to the chief executive's power to make public warning statements.

Clause 153 provides for the approval of forms for use under the Bill.

Clause 154 requires the Minister to ensure that a review of the operation of the Bill is started within three years of the commencement of the clause. As soon as practicable after the review is finished, the Minister must table a report of the outcome of the review in the Legislative Assembly.

Clause 155 provides for the making of regulations by the Governor in Council.

Part 11 Transitional and savings provisions

Clause 156 provides the definitions for part 11.

Clause 157 provides for the transitional arrangements for existing commercial agents. A commercial agent licence under the repealed Act is taken to be a commercial agent licence under the Bill. If the licence under the repealed Act was subject to a condition, the licence under the Bill is

taken to be subject to a condition in the same terms, so far as practicable, as the current condition.

Clause 158 provides for the transitional arrangements for existing commercial subagents. A commercial subagent registration certificate under the repealed Act is taken to be a commercial subagent registration certificate under the Bill. If the registration certificate under the repealed Act was subject to a condition, the registration certificate under the Bill is taken to be subject to the same condition, so far as practicable.

Clause 159 provides that an application for the issue, renewal, restoration or amendment of a commercial agent licence or a commercial subagent registration certificate or for the appointment of a substitute licensee in relation to a commercial agent licence under the repealed Act and not decided before the commencement, is to be decided under the Bill.

If the application is about the renewal or restoration of an existing licence or registration certificate, the licence or registration certificate is taken to continue in force from the day that it would, apart from this clause, have expired until the application for renewal or restoration is decided under the Bill or withdrawn.

Clause 160 provides that a person may apply for restoration of a commercial agent licence held under the repealed Act, as if the licence were a commercial agent licence under the Bill, provided that the person's licence expired within 3 months before the commencement of the Bill.

Clause 161 provides that a person may apply for restoration of a commercial subagent registration certificate held under the repealed Act, as if the certificate were a registration certificate under the Bill, provided that the person's certificate expired within 3 months before the commencement of the Bill.

Clause 162 provides transitional arrangements for previously refused applications under the repealed Act. Where a person has made an application under the repealed Act for the issue of a commercial agent licence or commercial subagent registration certificate and the application was refused before commencement, the person may not make another application for the issue of a licence or registration certificate under the Bill for 3 months after the day the chief executive gave the person an information notice for the refusal. If the applicant has applied to QCAT to review the chief executive's decision and the decision is confirmed, the applicant must not make another application for 3 months after the day the decision is confirmed.

This clause does not apply if the applicant is a corporation, and the corporation satisfies the chief executive that because of a genuine sale of the corporation, no person who was a shareholder of the corporation, or who held a beneficial interest in the corporation, or was in a position to control or influence the affairs of the corporation when the refused application was made, currently holds such a position in or has such an association with the corporation.

Clause 163 provides that a commercial agent licence that has been deactivated under the repealed Act, continues to be deactivated under the Bill and clause 47 applies to the licence as if the licence were a commercial agent licence deactivated under the Bill. Any requests to deactivate an existing licence made under the repealed Act and not decided before the commencement, must be decided under the Bill.

Clause 164 provides transitional arrangements for previously suspended existing licences and registration certificates. A suspended commercial agent licence or commercial subagent registration certificate under the repealed Act continues to be suspended under the Bill. The provisions in the Bill relating to the suspension of licences and registration certificates apply to the existing licence or registration certificate as if the licence or certificate were issued under the Bill.

Clause 165 provides that a valid appointment or engagement to act as a commercial agent under the repealed Act and in force at the commencement continues to be a valid appointment under the Bill. Existing appointments of substitute licensees by the chief executive under the repealed Act are also continued.

Clause 166 provides that if a ground existed for taking disciplinary action under the repealed Act prior to commencement, disciplinary action may be taken under the ground under the Bill. If, prior to commencement, QCAT had started but not finalised disciplinary action against a person, the action may be finalised under the repealed Act as if that Act had not been repealed.

Clause 167 provides transitional arrangements for QCAT reviews of chief executive decisions begun under the repealed Act but not decided at the commencement of the Bill. If a review of the chief executive's decision had been started but not decided before commencement, QCAT may continue to decide the review under the repealed Act. Where a person could have applied for a review of the chief executive's decision under the repealed

Act prior to commencement, the person may apply for a review of the decision as if that Act had not been repealed.

Clause 168 provides that an injunction granted by the District Court under the repealed Act and in force prior to commencement continues to be a valid injunction under the Bill according to its terms. If the injunction was granted against a person holding a licence or registration certificate under the repealed Act, the injunction is taken to relate to the person's transitioned licence or certificate under the Bill. The District Court may also grant an injunction if satisfied a person has engaged in particular conduct prior to commencement.

Clause 169 provides that an undertaking given by a person to the chief executive under the repealed Act continues to be a valid undertaking under the Bill according to its terms. An undertaking may also be sought under the Bill, if the chief executive reasonably believes a person has, prior to commencement, contravened or been involved in a contravention of the repealed Act or the repealed code of conduct.

If the undertaking was given by a person holding a licence or registration certificate under the repealed Act, the injunction is taken to relate to the person's transitioned licence or certificate under the Bill.

If under the repealed Act, the chief executive applied to the District Court for an order to enforce an undertaking, and the District Court has not decided the application, the application may be dealt with under the repealed Act as if that Act had not been repealed.

Clause 170 provides that proceedings for alleged offences against provisions under Chapter 10 of the repealed Act, may be started or continued and the court may hear and decide the proceedings, as if the repealed Act had not been repealed.

Clause 171 provides for the continuation of existing delegations of the chief executive's power under the repealed Act. Where a delegation is in force prior to commencement of the Bill, the person is taken to have been delegated the equivalent or substantially similar power under the Bill.

Clause 172 provides that upon commencement of the Bill, the licence register kept under the repealed Act is taken to be the licence register to be kept under the Bill. The registration certificate register kept under the repealed Act is taken to be the registration certificate register kept under this Bill and the register of undertakings kept under the repealed Act is taken to be the register of undertakings to be kept under this Bill.

Clause 173 provides for the chief executive to recover a fee or fine incurred under the repealed Act and not paid prior to commencement in a court with jurisdiction to recover debts up to the amount of the unpaid fee or fine.

Part 12 Minor and Consequential Amendments

Clause 174 provides that schedule 1 makes consequential amendments to the Acts it mentions.

Schedule 1 Minor and consequential amendments

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

Schedule 2 Decisions subject to review

Schedule 2 sets out the clause references to decisions of the chief executive that are subject to review by QCAT under clause 119.

Schedule 3 Dictionary

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