

AGENTS AND MOTOR DEALERS BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The major objective of the Agents and Motor Dealers Bill 1997 (“the Bill”) is to re-write the *Auctioneers and Agents Act 1971* (“the Act”). The purpose of the re-write is to more effectively regulate real estate agents, auctioneers, motor dealers and commercial agents (“industry groups”) and their employees.

The Bill seeks to provide an enhanced regulatory environment for the industry groups through the deregulation of commission rates, the deregistration of salespeople, and streamlining of licences. The Bill provides for more flexible enforcement mechanisms such as the introduction of mandatory codes of conduct, injunctions and enforceable undertakings.

Another objective of the Bill is to continue the current consumer protection provisions contained in the Act and to increase them through the introduction of a statutory warranty scheme for used motor vehicles, the increase of penalties and the strengthening of the beneficial interest provisions.

Additionally, the Bill achieves administrative efficiencies through changes to licensing and claims procedures.

Reasons for the objectives and how they will be achieved

The existing legislation, the *Auctioneers and Agents Act 1971* has been amended on numerous occasions since it came into force. As a result, it has become difficult to understand because of inconsistencies across its provisions and its antiquated language. Furthermore, the Act has failed to keep pace with modern business practices and consumer needs. It was

considered that it was not sufficient to merely amend the Act . Rather, it was considered that the Act should be re-written to more adequately provide for the requirements of industry and consumers alike.

The policy measures contained in the Bill were influenced by numerous reviews which were conducted both at Commonwealth and State level.

The most significant of these was the report of the Auctioneers and Agents Act Review Committee. The Committee was chaired by Mr Alex Overett, a real estate agent and auctioneering practitioner of long standing. Mr Overett was the Chairman of the Auctioneers and Agents Committee for approximately seven years. Each industry group regulated by the Auctioneers and Agents Act was represented on the Committee. The report of the Overett Committee was publicly released and attracted widespread publicity and comment. The recommendations made in the Committee Report form the basis of a number of the major policy positions in the Bill.

The Bill has regard to the requirements of National Competition Policy, as well as taking note of the recommendations arising from the Vocational, Employment, Educational and Training Committee (V.E.E.T.A.C.) review of partially registered occupations and the Prices Surveillance Authority's Report on Real Estate Agents Fees (1992).

In formulating the policy measures contained in the Bill, consideration was given to equivalent legislation in other jurisdictions concerning the regulation of the industry groups.

The structure of the Bill is different from the Auctioneers and Agents Act, in that the legislative requirements pertaining to each industry group are "compartmentalised". This means that the provisions of the Bill are broken up into industry specific parts. This method was used at the request of industry so that the legislative requirements relating to each industry could be accessed easily and be easier to understand.

The Bill seeks to provide an enhanced regulatory environment for the industry groups it regulates, through the following measures:-

- Rationalisation of licences into a single class of licence with industry specific categories and converting several licence classes i.e. branch managers and restricted auctioneers, to equivalent full licences.
- Requiring applicants for licences to advertise their intention to apply so that any person may object to the grant of the licence on

the grounds of eligibility or suitability.

- Introducing eligibility (competency based qualifications) and suitability (character and fitness to act as a licensee) as the criteria for determining the granting of licences.
- Deregistration of salespersons/commercial agent (employees), placing greater reliance on the employer to employ eligible persons. The Bill provides statutory tools to enable employers to establish the eligibility of persons for employment.

The eligibility criteria for employees are designed to enhance consumer protection in their dealings with employed salespersons/commercial agent (employees). The application of eligibility criteria in selection and recruitment should also protect the business interests of the employer.

- A more efficient licensing process whereby the chief executive, or his/her delegate will consider all licence applications.
- Deregulation of commissions and fees to stimulate negotiation between service providers and clients with regard to fees and services and to promote an environment whereby service providers will be able to develop and deliver innovative and enhanced services. The proposal will promote a greater range of options for clients in choosing agency services.
- Adjusting the functions of restricted letting agents so that the provisions align with the *Body Corporate and Community Management Act 1997* and providing greater scope for the letting of building complexes.
- Appointment of a "special investigator" to examine trust accounts in circumstances where the status of the account is unclear but does not necessarily warrant the appointment of receivers.
- Modernising and streamlining inspectors' powers. The Bill allows for the obtaining of search warrants.
- Updating penalties for non-compliance with provisions of the Act to more accurately reflect the seriousness of offences.
- Introducing mandatory codes of conduct for each occupational group. Each code of conduct may be enforced by means of disciplinary action or by application of injunctions to prevent

certain conduct from occurring or continuing.

- Taking account of modern technology, such as electronic fund transfers and computerised accounting for licensees' trust accounting requirements.
- Introducing the concept of "*del credere*" selling for livestock sales whereby the agent guarantees payment of sales proceeds to the client and the moneys are not treated as trust money. Pastoral houses already are able to provide *del credere* selling because of their exemption from trust account requirements. The provision will allow *del credere* selling to apply across the board for all livestock agents.

The Bill maintains the current level of consumer protection contained in the Auctioneers and Agents Act. In addition, the Bill provides for the following consumer protection measures:-

- Introduction of a statutory warranty on used motor vehicles sold by a motor dealer. The introduction of the statutory warranty scheme should result in better motor dealer/customer relations and better quality motor vehicles being offered for sale. The statutory warranty scheme should encourage consumers to buy from licensed motor dealers. It is to be noted that the statutory warranty scheme will apply to government when it acts as a motor dealer, so as to create a "level playing field."
- Addressing conflict of interest issues by tightening the beneficial interest provisions to ensure that agents act fairly and honestly and that the client is in as good a position as if the beneficial interest did not exist.
- Expanding the choices for persons wanting to sell a business by providing a limited exemption from licensing requirements for accountants to sell businesses on behalf of the clients but only in the course of providing their professional services as accountants.
- Publication of the results of disciplinary action taken against a licensee or employee of a licensee.
- Requiring licensees to provide greater disclosure on issues such as fees, commissions and services to be provided to a client.

The Bill provides for the streamlining of administrative procedures by providing that licence applications will now be heard by the chief executive.

This measure avoids the need to convene committee meetings in order to process licence applications. Furthermore, the new system brings the licensing regime for real estate agents, motor dealers, auctioneers and commercial agents into line with other industry groups such as travel agents and security providers.

The Bill restructures the present Auctioneers and Agents Committee into the Agents and Motor Dealers Board. The Board will be responsible for disciplinary hearings, commission/fee reviews, and determination of claims in excess of \$5,000 against the Fidelity Guarantee Fund. The Board will also be responsible for providing expert policy advice to the Minister.

The Bill provides for greater flexibility in the operations of the Board by providing for the appointment by the Minister of a panel of legal, industry and consumer representatives who may constitute the Board. The registrar will appoint panel members to constitute a Board. The Board will have greater mobility and flexibility as several Boards may be constituted at the same time, should the circumstances demand.

Alternatives to the Bill

Alternatives to the *Agents and Motor Dealers Bill* include retaining the existing *Auctioneers and Agents Act 1971* or repealing the existing legislation and deregulating the industries. Neither are considered viable alternatives.

The existing Act no longer effectively addresses issues confronting consumers or the real estate, motor dealing, auctioneering and commercial agency industries. There has been a strong demand by these industry groups for some years to modernise the legislation and to make it relevant for each of the occupations.

Deregulation of these industries would not be in the best interests of consumers. In particular, real estate transactions and motor vehicle transactions represent two of the largest investments that most consumers face. At the same time, because of a lack of exposure to the market, most consumers are inexperienced and vulnerable in the purchase of real property or motor vehicles.

Administrative cost to Government of implementation

The present regulatory regime imposes costs on Government in the areas of licensing, compliance, claims investigation and administration of trust account matters. The budget for 1997/98 for administration of the *Auctioneers and Agents Act 1971* is \$5.8 million.

The Bill should reduce the administrative burden on government by streamlining the licensing process, reducing administrative process by deregistration of employees of real estate agents, motor dealers and commercial agents and providing a flexible appointment arrangements for the Agents and Motor Dealers Board.

De-registration of salespersons will result in a revenue loss on application and renewal of registration fees, but is offset partially by savings on administrative processing and compliance.

Fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles.

One provision contained in the Bill which may be considered to constitute a breach of the fundamental legislative principles is in clause 47. Clause 47 provides that where a person makes an objection in relation to the issue, renewal or restoration of a licence, the person has the defence of absolute privilege for anything published to the chief executive in making the objection. The fact that the objector has absolute privilege may be considered to be a breach of section 4(3)(g) of the *Legislative Standards Act 1992*, in that it may adversely affect the rights of licensees because persons making objections are not subject to the usual defamation laws.

On the one hand the public interest must be served by providing for a free and meaningful objection process. It has been the experience under other statutes that persons may have a legitimate reason to object to the grant of a licence but are fearful of doing so because of threats of legal action by the prospective licensee. If protections for persons making objections are not enshrined in legislation, there cannot be an equitable licensing process.

On the other hand, the Bill counterbalances any disadvantage that may enure to the applicant by providing, in clause 48, that the chief executive must give the applicant a copy of the objection before deciding the person's application. The applicant then has an opportunity to give the chief

executive a written submission about the objection. If the decision of the chief executive is unfavourable, the applicant may then appeal the decision to the court. It can be seen therefore, that the Bill provides sufficient safeguards for the applicant.

On balance, it is considered that the public interest is best served by the protection from defamation proceedings contained in clause 47 and that the interests of the applicant are also protected.

A further matter contained in the Bill which may be considered to constitute a breach of the fundamental legislative principles is contained in clauses 452 and 453 of the Bill. The provision may offend section 4(1)(2)(b) of the *Legislative Standards Act 1992* which provides that legislation must be consistent with principles of natural justice.

Clause 452 provides that the registrar in determining claims against the Fidelity Guarantee Fund must consider the claim without a hearing. Clause 453 also provides that the Board may determine a claim against the Fund without a hearing. The current practice in relation to claims against the Fund is that hearings are rarely held. This is primarily because a matter is fully investigated before the matter is presented to the Auctioneers and Agents Committee, at which time the licensee or salesperson will have had an opportunity to respond to the claim. Further, a claim hearing may not necessarily have an impact on a licensee or salesperson.

It is proposed to continue with the present system for the following reasons:-

- all claims matters are fully investigated ;
- to have a hearing for each claim which is even of a simple nature, would unduly delay the claims process and add significantly to the costs of claims administration;
- where disciplinary proceedings do arise as the result of a successful claim, the agent has the right to be heard before the board; and
- all claims decisions are subject to appeal to the court.

It is considered therefore that the process which has been put in place has sufficient regard to the principles of natural justice.

Consultation

Approximately 1500 copies of a consultation draft of the Bill, together with an explanatory document, were distributed to individuals, industry and consumer groups, all Queensland government departments and relevant departments from interstate. Copies of the draft Bill and the supporting documentation were also provided to persons on request.

In addition to the distribution of the Bill, officers of the department of Justice travelled across Queensland and conducted workshops which were designed to explain the new draft Bill and inform people as to the process for responding to the Bill. The workshops were provided for industry and consumer groups. They provided an opportunity for immediate comment and reaction to the proposals in the Bill. The workshops were conducted in metropolitan and regional centres which included Cairns, Townsville, Toowoomba, Longreach, Mackay, Rockhampton, Maryborough, and the Gold and Sunshine Coasts.

Additionally, officers of the department conducted detailed briefings with peak industry groups and consumer/producer groups, which included the REIQ, MTAQ, RACQ, the Queensland Consumers Association, Financial Counselling Services Queensland, the Legal Aid Office, Auctioneers and Valuers Association, United Graziers Association, Cattlemen's Union and the Queensland Livestock Agents Association.

More than 150 written submissions were received. In addition a large number of people made telephone contact with the department of Justice and the Office of Consumer Affairs. Officers also received valuable feedback in relation to the Bill from participants of the workshops.

Departmental officers met with officers of the Public Trustee, Queensland Property Management (QPM), and the Queensland Police Service in order to address their concerns or queries in relation to the Bill. Officers also held discussions with Queensland Treasury in relation to the financial matters arising from the Bill. Discussions were also undertaken with the National Competition Policy Unit of Queensland Treasury in relation to the requirements of that Unit regarding the Bill. Officers also held discussions with officers of the department of Natural Resources in relation to those aspects of the Bill which were linked to the *Body Corporate and Community Management Act 1997*.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Clause 1 provides the short title for the Act

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

Clause 3 provides for the application of the Act. The Act will bind the State and so far as the legislative power of the Parliament permits, the other States. Nothing in the Act makes the State or any other State liable to be prosecuted for an offence.

Clause 4 provides that a regulation may exempt a person from the Act or any of its provisions and that the exemption may be given on conditions. If an exemption is given on conditions, the exemption operates only if the conditions are complied with. An exemption provision was also contained in section 7 of the *Auctioneers and Agents Act 1971*.

Clause 5 provides that chapter 6 (Auctioneers and trainee auctioneers) does not apply to the sales specified in the section. A similar provision was contained in section 3 of the *Auctioneers and Agents Act 1971*.

Clause 6 provides that section 330 (Acting as commercial agent) does not apply to a bailiff serving a writ, summons or other process. This provision continues the exemption contained in section 2 of the *Auctioneers and Agents Act* under the definition of commercial agent.

The clause also provides that chapter 9 (Accounts and Funds) does not apply to an accountable officer if another Act makes provision for the way the accountable officer is required to deal with the monies. This provision has been inserted to avoid duplication between the audit and accounting provisions of this Act and any other Act.

Clause 7 exempts financial institutions, trustee companies or friendly societies from the operation of certain provisions of the Act, which relate to offences for acting unlicensed. The provision continues the exemptions for

these bodies in the Auctioneers and Agents Act, which can be found in section 2 under the definitions of real estate agent, commercial agent and motor dealer. The clause further provides that the public trustee is also exempt when it is acting in the capacity of a trustee company.

Note that the provision does not preclude a financial institution, trustee company or friendly society from obtaining a licence, if it so chooses.

Clause 8 provides that an accountant is exempt from the provisions of section 149 (Acting as a real estate agent) if the accountant, in the ordinary course of the accountant's business, performs the functions of a real estate agent in the buying, selling, exchanging or letting businesses or interests in businesses or in the collection of rents. Whilst the provision in effect provides a limited exemption from being licensed as a real estate agent, most other provisions of the Act will apply, such as the conduct provisions. The clause also provides that a regulation may exempt an accountant from this provision.

The clause also continues the exemption contained in the Auctioneers and Agents Act which exempts accountants from having to obtain a commercial agents licence where the accountant performs the functions of a commercial agent in collecting, or requesting payment of debts.

The clause continues the exemption for accountants contained in the Auctioneers and Agents Act to comply with the provisions of the Act relating to trust accounts where the accountant complies with the *Trust Accounts Act 1973* in relation to trust monies.

Clause 9 exempts solicitors from compliance with certain provisions of the Act. Solicitors are exempt from:—

- section 149 (Acting as a real estate agent) to the extent that the solicitor performs the function of a real estate agent in the collection of rents;
- section 330, to the extent the solicitor performs the functions of a commercial agent collecting or requesting payment of debts;
- chapter 9, part 1 (Accounts and funds), only where the solicitor complies with the *Trust Accounts Act 1973* in relation to trust monies.

These exemptions are contained under the present Auctioneers and Agents Act sections 2 and 4.

Clause 10 exempts pastoral houses from the provisions of chapter 9

(Accounts and funds) except in relation to the sale of rural land or the auction of land that is not rural land. Presently, pastoral houses are not required to comply with the trust accounting provisions of the Auctioneers and Agents Act in any way. However, it is the practice for pastoral houses to deposit monies from the sale of real property into trust accounts. The provision therefore takes account of this practice.

Clause 11 provides that a del credere agent is exempt from chapter 9 (Accounts and funds) in relation to the sale of livestock if the agent and seller agree in writing before the sale that the agent guarantees payment of the livestock's purchase price to the seller.

Currently pastoral houses are exempt from compliance with the trust accounting provisions of the Auctioneers and Agents Act. This exemption is based in part on the fact that the pastoral houses offer the facility of del crede payment to their clients. Del credere payment means that the agent guarantees payment for the livestock to the client. In the interests of equity, this provision extends the privilege that was previously only enjoyed by pastoral houses to livestock agents.

PART 2—OBJECTS

Clause 12 provides for the objects of the Act. The primary object of the Act is to provide a regulatory system for restricted letting agents, real estate agents, pastoral houses, auctioneers, motor dealers and commercial agents 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 clause also provides for the ways in which the primary object may be achieved.

PART 3—INTERPRETATION

Clause 13 provides that the dictionary in schedule 3 defines the particular words in the Act.

Clause 14 provides for the use of certain tags in the Act.

Clause 15 provides for the meaning of beneficial interest. Note that the term “associate” is defined in the dictionary. The substantive beneficial interest provisions may be found in the conduct provisions relating to the relevant occupational group.

Clause 16 provides the meaning of “in charge”. Note that the provision states that a person must be in charge of the licensee’s business at a place, rather than the place of business itself as is the case under the Auctioneers and Agents Act. This provides for the situation, for example, in which two licensees who hold different licences, for example, a commercial agent and a real estate agent, operate out of the same premises. The Auctioneers and Agents Act only provided for one of the licensees to be in charge of the place of business. The Act provides a more flexible approach and provides that each licensee should be in charge of the business at the place.

Clause 17 provides a more modern definition of motor vehicle to that which is contained in the Auctioneers and Agents Act.

Clause 18 defines the meaning of open listing.

Clause 19 explains the difference between sole agency and exclusive agency.

CHAPTER 2—LICENSING

PART 1—CATEGORIES OF LICENCES

Clause 20 defines the categories of licences that the chief executive may issue.

PART 2—HOW TO OBTAIN A LICENCE

Clause 21 outlines the steps involved in obtaining a licence.

PART 3—APPLICATIONS FOR LICENCES

Clause 22 provides that all applicants will be required to advertise their intention to apply for a licence in a newspaper circulating the area in which they intend to perform the functions of their licence. Applicants for pastoral house type licences or trainee auctioneers licences are not required to advertise.

Clause 23 details the manner in which the applicant must submit an application for a licence including the documentation and fees required.

Clause 24 provides that every applicant must state a business address where they will perform the function of the licence and, if they are to be employed as the person in charge of a licensee's business at a place, the business address of the person and the name of their employer.

Clause 25 provides that the chief executive may by written notice require the applicant for a licence to provide further details regarding the application and, if the applicant fails to provide the information within a reasonable time, the application is taken to be withdrawn.

Clause 26 provides that if an applicant intends to carry on business under the licence, as opposed to an employed licensee, the applicant must state the auditor for the trust accounts and provide evidence of the auditor's acceptance of the appointment.

PART 4—SUITABILITY OF APPLICANTS AND LICENSEES

Clause 27 lists the criteria that would render an individual applicant unsuitable for a licence. These include a conviction of a serious offence

(fraud, dishonesty, trafficking of drugs, an offence of a sexual nature or involving violence, arson or another prescribed offence) within the last 5 years which is punishable by 3 or more years imprisonment, or when the person is an undischarged bankrupt. Note that “serious offence” is defined in the dictionary.

Clause 28 requires the corporate applicant to be either a corporation within the meaning of the Corporations Law or a Government Owned Corporation. It further requires that the executive officers of the corporation not be bankrupt or convicted of a serious offence within the last 5 years which is punishable by 3 or more years imprisonment.

Clause 29 provides that the chief executive must, in determining suitability, consider among other things, the person’s character, any objections made in relation to the application, the person’s criminal history, whether the applicant has taken advantage of the laws of bankruptcy and whether their name appears on the register of disqualified company directors under the Corporations Law.

The chief executive must also consider the character of the person’s business associates. This is because of the provisions such as clause 117 which provide that a licensee who wishes to carry on business with a person who is not a licensee, can only do so if the partner is a suitable person.

In relation to corporations, the chief executive must consider whether the corporation has been placed into receivership or liquidation and in relation to its executive officers, whether any have taken advantage of the laws of bankruptcy or have been convicted of an offence against this or the repealed Act. If the chief executive decides that a person is not a suitable person to hold a licence, the chief executive must give the person an information notice detailing the reason for decision.

Clause 30 provides that the corporation sole of the Public Trustee is taken to be a suitable person. This provision is required to enable the public trustee to obtain a licence. As the corporation sole of the public trustee constitutes the legal persona of the public trust office, it is necessary for it to be taken to be a suitable person.

Clause 31 provides that the chief executive of a department of government is taken to be suitable person. This provision is required to enable the licensing of government departments. The licence will be issued to the chief executive of the department. Despite the fact that it is most

unlikely that the person holding the office of the chief executive would be unsuitable, it is appropriate that the Act state that the person holding the office is a suitable person.

Clause 32 provides that when the chief executive is deciding the application, the chief executive may make investigations about the applicant as well as other executive officers, in the case of a corporate applicant, and associates, with whom the applicant carries on or intends to carry on business. The latter provision is required because of provisions similar to clause 117, which provide that persons who carry on business with a licensee, but do not hold a licence, must be suitable.

In conducting an investigation, the chief executive may ask the commissioner of the police service for a written report on any of those persons and the commissioner must supply this information if he or she has access to it.

Clause 33 provides that an officer, employee or agent of the department is not permitted to disclose a person's criminal history to anyone unless it is authorised by the chief executive for the performance of a function or is required or permitted by law.

Clause 34 provides that where an applicant is applying for a licence or renewal or restoration of a licence, the chief executive may require, by written notice, information to determine suitability and, if the applicant does not provide the information within a stated reasonable time, the application is taken to be withdrawn.

PART 5—ELIGIBILITY FOR LICENCE

Division 1—Restricted letting agent's licence

Clause 35 provides that an individual is eligible for a restricted letting agent's licence if the applicant is at least 18 years of age and has educational or other qualifications prescribed. In addition, the individual must have body corporate approval to conduct the business of letting lots in the building complex and will reside and have a registered office in the building complex.

The chief executive may exempt the applicant from the educational or other qualifications requirement if the applicant has held a licence within the past 2 years or has comparable qualifications.

In the case of a corporation, the corporation must have the approval of the body corporate and the individual who will perform the functions of the restricted letting agent for the corporation must be a restricted letting agent who will reside and have a registered office within the building complex. A director of the corporation must also have a restricted letting agent's licence, however, if the director does not intend performing the functions of the restricted letting agent, the director is exempt from the residency requirement.

Division 2—Real estate agent's licence

Clause 36 provides that an individual is eligible for a real estate agent's licence if the applicant is at least 18 years of age and has educational or other qualifications prescribed.

The chief executive may exempt the applicant from the educational or other qualification requirement if the applicant has held a licence within the past 2 years or has a comparable qualification. In the case of a corporation, there must be a director who is the holder of a real estate agent's licence.

Division 3—Pastoral house licences

Clause 37 provides that a person is eligible to obtain a pastoral house licence if the person is a corporation within the meaning of the Corporations Law, is the holder of an exemption granted under the *Banking Act 1959* (Cwlth), is registered as a finance corporation under the *Banking Act 1959*, is an excluded corporation for the Corporations Law, chapter 7, and has a director who holds a pastoral house director's licence.

Clause 38 provides that a person is eligible for a pastoral house director's licence if the person is 18 years of age, has prescribed educational or other qualifications, has been employed by a pastoral house for a prescribed period and the chief executive is satisfied that the applicant will be a director of the pastoral house specified in the application.

Clause 39 provides that a person is eligible for a pastoral house manager's licence if the person is 18 years of age, has prescribed educational or other qualifications and has been employed by a pastoral house for a prescribed period.

Clause 40 provides that a person is eligible for a pastoral house auctioneer's licence if the person is 18 years of age, has prescribed educational or other qualifications and has been employed by a pastoral house for a prescribed period

Division 4—Auctioneer's and trainee auctioneer's licences

Clause 41 provides that an individual is eligible for an auctioneer's licence if the applicant is at least 18 years of age and has educational or other qualifications prescribed.

The chief executive may exempt the applicant from the educational or other qualification requirement if the applicant has held a licence within the past 2 years or has a comparable qualification. In the case of a corporation, there must be a director who is the holder of an auctioneers licence.

Clause 42 provides that an individual is eligible for a trainee auctioneer's licence if the applicant is at least 18 years of age and has educational or other qualifications prescribed. The chief executive must be satisfied that the applicant will work under the supervision of 1 or more individuals who are auctioneers and these individuals have consented to supervise the applicant.

Division 5—Motor dealer's licence

Clause 43 provides that an individual is eligible for a motor dealer's licence if the applicant is at least 18 years of age and has educational or other qualifications prescribed.

The chief executive may exempt the applicant from the educational or other qualifications requirement if the applicant has held a motor dealer's licence within the past 2 years or has a comparable qualification. In the case of a corporation, there must be a director who is the holder of a motor dealer's licence.

Division 6—Commercial agent’s licence

Clause 44 provides that an individual is eligible for a commercial agent’s licence if the applicant is at least 18 years of age and has educational or other qualifications prescribed.

The chief executive may exempt the applicant from the educational or other qualifications requirement if the applicant has held a commercial agent’s licence within the past 2 years or has a comparable qualification. In the case of a corporation, there must be a director who is the holder of a commercial agent’s licence.

Division 7—Public trustee and chief executives

Clause 45 provides that the Public Trustee as a corporation sole is eligible for a real estate agent’s licence, an auctioneer’s licence, a motor dealer’s and a commercial agent’s licence. The person appointed by the Governor in Council is taken to be eligible to be a director of the corporate sole. For the reasons outlined in relation to clause 30, the corporation of the public trustee is taken to be eligible to hold a licence. Note, however, that the persons within the organisation of the public trustee, will be required to hold the appropriate licences for the functions being carried on.

Clause 46 provides that the chief executive of a department is eligible to obtain a real estate agent’s licence, auctioneer’s licence, motor dealer’s and a commercial agent’s licence. For the reasons outlined in relation to clause 31, the chief executive of the department is taken to be eligible to hold a licence. Since it is unlikely that the person holding the office of the chief executive will be able to fulfil all of the eligibility requirements, this provision is necessary to allow the licensing of government departments. Note, however, that the persons within the organisation of the department, will be required to hold the appropriate licences for the functions being carried on.

PART 6—OBJECTIONS

Clause 47 provides that a person is able to object in writing to the chief executive about the issue, renewal or restoration of a licence to an applicant but the objection must be limited to the applicant's suitability or eligibility. The objection may be lodged at any time and the objector is protected from defamation for anything published to the chief executive. The protection from defamation is necessary so that people are not deterred from making an objection. Note, however, that the chief executive is required by clause 48 to provide a copy of any objection to the applicant, and that by clause 49 the applicant may make a submission about the objection.

Clause 48 provides that if the chief executive is considering an application for the issue, renewal or restoration of a licence, the chief executive must give a copy of any objection to the applicant before deciding the application.

Clause 49 provides that the applicant may, within 7 days of receiving a copy of the objection, give the chief executive a written submission in response to the objection.

PART 7—ISSUE OF LICENCES

Clause 50 provides that where an objection is received, the chief executive must have regard to it when considering an application.

Clause 51 provides that the chief executive may issue a licence if the chief executive is satisfied that the applicant is eligible to obtain a licence for the category applied for and that the applicant is a suitable person. Where the person intends to carry on business in partnership or in conjunction with others, each other person must be a suitable person and, in the case of a corporation, each executive officer must be a suitable person.

If the chief executive refuses to issue the licence, the chief executive must give an information notice to the applicant within 14 days of the decision and the applicant is not able to file another application for a further three months. If an appeal against the refusal to issue a licence is dismissed, the person may not re-apply for 3 months after the day the appeal is dismissed.

Clause 52 provides that the chief executive may issue a licence to the public trustee in its capacity as a corporation sole in the name of "the public

trustee of Queensland”. The chief executive may issue a licence to the public trustee in the public trustee’s capacity as an individual and director of the corporation sole in the name of the public trustee for the time being. A person acting as public trustee is taken to be the holder of a licence.

Clause 53 provides that the chief executive may issue a licence to the chief executive of a department in the name of “the chief executive of the (name of department)”. The licence is taken to be issued to the chief executive for the time being of the department.

Clause 54 provides that the chief executive may issue the licence subject to conditions the chief executive considers necessary or desirable for the proper performance of functions or to limit the performance of functions under the Act.

PART 8—RESTRICTIONS ON PERFORMING FUNCTIONS UNDER LICENCES

Clause 55 provides that a corporation is limited in the performance of its functions by the limitations placed on the director’s licence. Where the corporation performs a function it is not authorised to perform, it is taken to act without a licence.

Clause 56 provides that an individual can only perform functions authorised by the licence and, where the licensee is employed, the employed licensee is limited to the functions authorised by the employer’s licence.

In the case of a trainee auctioneer, the functions which may be performed are limited by that of the licensed supervising auctioneer.

Where an individual performs a function not authorised by the section, the individual is taken to act without a licence.

Clause 57 provides that where a person performs a function in breach of a condition, the person is taken to have acted without a licence.

PART 9—RENEWAL AND RESTORATION OF LICENCES

Division 1—Renewal

Clause 58 provides that the applicant for renewal must apply for renewal before the licence expires. The application must be made in the approved form, be accompanied by the prescribed fees, fund contribution and 2 recent colour photographs, in the case of an individual. The applicant must also submit the audit report on all trust accounts maintained. Where no trust account is maintained, then the applicant must submit a statutory declaration to that effect.

Clause 59 provides that where an objection is received, the chief executive must have regard to it when considering a renewal application.

Clause 60 provides that the chief executive may renew a licence if the chief executive is satisfied, among other things, that the applicant meets the eligibility requirements, the application is properly made and the applicant is a suitable person. Where the person intends to carry on business in partnership or in conjunction with others, each other person must be a suitable person and, in the case of a corporation, each executive officer must be a suitable person.

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

Clause 61 provides that where a renewal application has been lodged, the licence is taken to be in force until the application is decided or deemed to have been withdrawn.

Division 2—Restoration

Clause 62 provides that the application for restoration must be made within 3 months of expiry of the licence. The application must be submitted in the approved form, be accompanied by the fees and fund contribution and 2 recent colour photographs. The audit report on all trust accounts maintained must also be submitted. Where no trust account is maintained, then the applicant must submit a statutory declaration to that effect.

Clause 63 provides that where an objection is received, the chief executive must have regard to it when considering a restoration application.

Clause 64 provides the basis on which the chief executive may restore a licence. If the chief executive refuses to issue the licence, the chief executive must give an information notice to the applicant within 14 days of the decision.

Clause 65 provides that where a restoration application has been lodged, the licence is taken to be in force until the application is decided or deemed to have been withdrawn.

PART 10—DEALINGS WITH LICENCES

Division 1—Substitute licences

Clause 66 provides that where the principal licensee will be absent for not more than 30 days, the principal licensee may appoint an adult substitute licensee. The appointment and the substitute's consent to the appointment must be in writing and be available for immediate inspection by the chief executive or an inspector.

Where the principal will be absent for in excess of 30 days, the licensee may apply to the chief executive for the appointment of a substitute in the prescribed form accompanied by the prescribed fee and the substitute's consent to the appointment. The application must be accompanied by information about the nominated person to allow the chief executive to decide whether the person is a suitable person and sufficiently qualified to perform the licensee's functions.

Clause 67 provides that where the licensed person in charge of a licensee's business at a place will be absent for not more than 30 days, the principal licensee may appoint an adult substitute licensee. The appointment and the substitute's consent to the appointment must be in writing and be available for immediate inspection by the chief executive or an inspector.

Where the licensed person in charge will be absent for in excess of 30 days, the principal licensee may apply to the chief executive for the appointment of a substitute in the prescribed form accompanied by the prescribed fee and the substitute's consent to the appointment. The substitute must be a suitable person and be sufficiently qualified to perform

the licensee's functions.

Clause 68 provides that where the pastoral house manager in charge of a pastoral house's business at a place will be absent for not more than 42 days, the principal licensee may appoint an adult substitute licensee. The appointment and the substitute's consent to the appointment must be in writing and be available for immediate inspection by the chief executive or an inspector.

Where the licensed person in charge will be absent for in excess of 42 days, the principal licensee may apply to the chief executive for the appointment of a substitute in the prescribed form accompanied by the prescribed fee and the substitute's consent to the appointment. The substitute must be a suitable person and be sufficiently qualified to perform the licensee's functions.

Clause 69 provides that where the person nominated as a substitute is not a suitable person and sufficiently qualified to perform the functions of the licensee, the chief executive must refuse the application.

Clause 70 provides that during the period of appointment, the substitute is taken to be the licensee and the licensee, who has been substituted, must not act under the authority of the licence. The clause also provides for termination.

Clause 71 provides for a limitation on the period of substitution.

Division 2—General

Clause 72 provides that a licence cannot be transferred to any other person.

Clause 73 provides that where conditions have been placed on the licence, these conditions may be amended by the chief executive, the Board or on the licensee's application (accompanied by the prescribed fee). Before amending the condition at the licensee's request, the chief executive must be satisfied that the licensee meets the relevant eligibility requirements.

Where the chief executive decides to amend the condition, the chief executive must provide details of the proposed amendment and give 14 days notice to allow for written submissions which must be considered by the chief executive.

The chief executive is not required to give 14 days notice if the chief executive decides an amendment must be made urgently to avoid a claim against the fund or to ensure compliance with the Act.

Where a condition is amended, the chief executive must give written notice of the amended condition.

Clause 74 provides that where a licence condition is amended, the chief executive may request the licence to be returned within 14 days for amendment.

Clause 75 provides that the licensee may surrender the licence by written notice to the chief executive at which time the licence ceases to have effect.

Clause 76 provides that a licensee may apply in the approved form to the chief executive, accompanied by the prescribed fee, to deactivate the licence. Where the licence is deactivated, the licensee is not authorised to perform functions under the licence. The licence may be renewed or restored at a reduced fee. Provided the licence has not been deactivated for more than 5 years, it may be reactivated upon application in the approved form accompanied by the prescribed fee without the necessity to satisfy educational or other requirements prescribed.

PART 11—IMMEDIATE SUSPENSION AND CANCELLATION OF LICENCES

Clause 77 provides that the chief executive may immediately suspend a licence, including that of an employed licensee, if the chief executive considers, on reasonable grounds, that there is an irregularity or deficiency in the licensee's trust account, or where a receiver has been appointed under this Act over property held by or for the licensee. However, the period of suspension cannot be for more than 28 days and the chief executive must give the licensee a notice of the suspension stating the grounds.

Clause 78 provides that the licence is cancelled immediately if the licensee is convicted of a serious offence or, in the case if an individual, the licensee is an undischarged bankrupt.

PART 12—GENERAL PROVISIONS ABOUT LICENCES

Clause 79 This clause details the form of the licence and, in addition to a certificate which can be framed and displayed in an office, there is provision for the issue of a credit card size licence certificate with the licensee's photograph to enable it to be carried at all times by the licensee. The licence certificate details the licensee's name, date of issue and other prescribed particulars. A certificate is also issued to a corporation detailing the categories of licences issued in its name.

Clause 80 provides that the principal licensee must display the licence at the registered office in the manner prescribed.

Clause 81 provides that the licence is issued for a term of not more than 1 year or such shorter term as decided by the chief executive.

Clause 82 provides that where the licence is lost, stolen, destroyed or damaged, the licensee can apply to the chief executive upon payment of a fee to have the licence replaced.

Clause 83 provides that the chief executive is required to keep a register of licences and applications for licences which is available for public inspection at a fee when the head office of the department is open. Copies of the details of an entry may be taken. The register contains such details as the licensee's name, registered office, category of licence, application/licence number and particulars of suspension, cancellation or revocation of licences. Where the licensee is a corporation, the name of the person in charge of the licensee's registered office and, in the case of an employed licensee, the name of the employer is also recorded.

Clause 84 provides that a licensee is required to give the chief executive written notice of any prescribed changes of circumstances within 14 days of the change.

CHAPTER 3—RESTRICTED LETTING AGENTS AND THEIR EMPLOYEES

PART 1—RESTRICTED LETTING AGENT

Division 1—Restricted letting agent’s licence

Clause 85 details the functions that may be preformed under a restricted letting agent’s licence as being the letting and collection of rent on lots in a specific building complex. The licensee may perform the function in no more that 2 contiguous building complexes provided the licensee has the approval of the body corporate for each building complex. The chief executive is required to impose a condition on the licence to limit the functions to a stated building complex.

Division 2—Responsibilities of persons in charge of licensee’s business for employees

Clause 86 provides that the restricted letting agent, who is the principal licensee, or who is the licensee in charge of business at a place, must take reasonable steps to ensure that each restricted letting agent (employee) is properly supervised and acts only within the scope of the employee’s authority and complies with the Act. Failure to do so makes the licensee liable for disciplinary action.

**PART 2—RESTRICTED LETTING AGENTS
(EMPLOYEE)*****Division 1—Introduction***

Clause 87 This clause defines a restricted letting agent (employee) as a person employed to perform any of the functions of a restricted letting agent, but does not include a person who only performs secretarial or clerical duties.

Division 2—Provisions about employment

Clause 88 This clause details the criteria which would render a person to be ineligible to be employed as a restricted letting agent (employee). The person must be at least 18 years and not have a conviction for a serious offence within the last 5 years which is punishable by 3 or more years imprisonment.

A person is ineligible for employment if the person has been declared ineligible for employment as a restricted letting agent (employee), real estate salesperson or pastoral house salesperson by a court or whose name is entered in the register of ineligible person for such employment. In addition, corporations and persons who hold a restricted letting agent's licence are ineligible to be employed as a restricted letting agent (employee).

Clause 89 provides that before a restricted letting agent employs a restricted letting agent (employee), the agent must sight the proposed employee's criminal history and check the register of ineligible persons to determine that the proposed employee is not ineligible for employment.

Clause 90 provides that the restricted letting agent must give each restricted letting agent (employee) an employment authority which clearly specifies the functions the employee is authorised to perform.

Clause 91 provides that the court may declare by order that a person is ineligible for employment as a restricted letting agent (employee) where the court is satisfied that the employee has contravened a code of conduct made under this Act, has been convicted of an offence under this Act, or convicted of an indictable offence which would render the person as unsuitable for employment. The order can be made on the court's own initiative, on the prosecutor's application or by the chief executive on application at any time. The court may make the order subject to conditions and may vary or revoke the order.

Division 3—Functions of restricted letting agents (employee)

Clause 92 This clause provides that the restricted letting agent (employee) may, as an employee of the restricted letting agent and in terms of the person's employment authority, perform the functions which the letting agent is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee’s business

Clause 93 provides that an individual who carries on the business of a restricted letting agent is not required to hold a restricted letting agent’s licence if the individual does not perform the functions of a restricted letting agent, is a suitable person to hold a licence and there is at least 1 person with whom the individual carries on business who holds a licence as a restricted letting agent or as a real estate agent.

The restricted letting agent who is an individual, or in the case of a corporation, an executive officer who is performing the functions of the restricted letting agent, must reside in the building complex for which the restricted letting agent is authorised to perform functions. Where there are 2 building complexes, the individual or the executive officer (if the executive officer is performing the functions) must live in one of them. Where the executive officer is not performing the functions, the person who is performing the functions must reside in the building complex.

Clause 94 provides that a restricted letting agent, who is an individual, must be the licensee in charge of the business at the agent’s registered office and, in the case of a corporation, the corporation must ensure that person in charge is either a restricted letting agent or a real estate agent. Where there are 2 places of business, the restricted letting agent must ensure that there is a person in charge of the other place who is either a restricted letting agent or a real estate agent.

Division 2—Appointment

Clause 95 provides that a restricted letting agent cannot perform a function for a client until the client appoints the agent in writing. When the appointment is made, it must state the services to be provided and that fees, charges and commissions are negotiable. If the commission is payable as a percentage of rent, it is to be expressed in dollars based on the listed rent to be charged but the actual commission payable is based on the actual rent received. The appointment must state the fees, charges and commissions

payable, when they become payable and any condition, limitation or restriction on the provision of services. Expenses, including advertising expenses, which the letting agent is authorised to incur must also be stated. A continuing appointment must state when the appointment ends and that it may be revoked in writing at any time by either party.

The appointment must be signed by both parties and a copy of the signed agreement must be given the client.

Division 3—Recovery of commission or reward

Clause 96 provides that where a restricted letting agent performs services and claims commission based on a percentage for the service, the commission must be based on the percentage of the actual amount of rent collected.

Clause 97 provides that a person must not sue for, recover or retain a commission, reward or expenses as a restricted letting agent unless at the time the function was performed, the person held a restricted letting agent's licence, was authorised under the person's licence to perform the function and the person was properly appointed in writing by the client to do so.

A person cannot sue for, recover or retain a commission, reward or expense more than was stated in the written appointment or, if these amounts are prescribed, more than the amount allowed under the regulation.

Clause 98 provides that where a person is convicted of an offence related to excessive commission, expenses or the like, the court may, if it is satisfied on the balance of probabilities that the person was not entitled to charge that amount, order that the amount be paid to the client whether or not a penalty is imposed for the offence. The amount ordered may be recovered in a court of competent jurisdiction.

Division 4—Code of conduct

Clause 99 provides that a regulation may be made to prescribe a code of conduct about restricted letting agency practice which may include setting

the standard for agents and their employees, principles of fair trading and providing a system of complaint resolution.

Clause 100 provides that a person aggrieved by the conduct of a restricted letting agent or restricted letting agent (employee) may complain to the chief executive in writing. The chief executive may investigate the matter and take action under the Act, even if the person is no longer a restricted letting agent or a restricted letting agent (employee).

PART 4—GENERAL

Clause 101 This clause defines the registered office of a principal licensee as the one specified in the restricted letting agent's application as being the principal place of business. In the case of a restricted letting agent who is employed, it is the place specified in the application as the agent's business address.

Clause 102 provides that a principal licensee is required to notify the chief executive within 14 days in the approved form of any change in the registered office as well as the closure or opening of any place of business. An employed licensee must also notify the chief executive within 14 days of any change in the registered office.

The restricted letting agent, who is the principal licensee, must notify the chief executive in the approved form of any change or revocation of the body corporate's approval to the restricted letting agent to carry on the business within the building complex.

Clause 103 provides that a principal licensee must display at each place of business in a prescribed manner, the licensee's name, the name of the person in charge (if it is not the principal licensee) and any other particulars prescribed. Where the licensee advertises in a newspaper or elsewhere, the licensee must also state particulars as prescribed.

Clause 104 provides that the principal licensee must keep at each place of business an employment register, the form of which is prescribed by regulation, into which the names and other prescribed particulars of each

employed restricted letting agent and restricted letting agent (employee) employed at that place are recorded as well as the functions the restricted letting agent (employee) is authorised to perform. These details must be entered into the register immediately after the person is employed at that place and if there is a change in the details, the entry is to be corrected in the manner prescribed.

PART 5—OFFENCES

Clause 105 provides that a person must not perform the functions of a restricted letting agent under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under an Act.

Clause 106 provides that a person must not act for more than one party to a transaction. This provision is to avoid any conflict of interest between the agent and client. If the person does accept more than one appointment to act in the transaction, all appointments are ineffective.

Clause 107 provides that a restricted letting agent must not knowingly employ a person as a restricted letting agent (employee) who is ineligible for such employment or employ in any capacity an ineligible person. These person are listed in the register of ineligible persons maintained by the chief executive. However, the chief executive may approve, subject to conditions, the employment of such ineligible persons. Both the restricted letting agent and the ineligible person employed commit an offence against this Act if the employment has not been approved by the chief executive.

Clause 108 provides that when requested, a restricted letting agent must produce their licence for inspection by the person with whom they are dealing.

CHAPTER 4—REAL ESTATE AGENTS AND THEIR SALESPERSONS

PART 1—REAL ESTATE AGENTS

Division 1—Real estate agent's licence

Clause 109 provides that the real estate agent's licence authorises the holder of the licence to preform functions such as buying, selling, exchanging or letting of houses, land, estates and businesses (or an interest in such things) as well as the ability to collect rents, buy, sell or exchange livestock. A real estate agent may perform these functions in the carrying on of business, either alone or with others or as an employee.

Division 2—Responsibilities of persons in charge of a licensee's business for salespersons

Clause 110 provides that a real estate agent, who is the principal licensee, or who is the licensee in charge at a place of business, must take reasonable steps to ensure that each real estate salesperson is properly supervised and acts only within the scope of the employee's authority and complies with the Act. Failure to do so makes the licensee liable for disciplinary action.

PART 2—REAL ESTATE SALESPERSONS

Division 1—Introduction

Clause 111 This clause defines a real estate salesperson as a person employed to perform any of the functions of a real estate agent, but does not include a person who only performs secretarial or clerical duties.

Division 2—Provisions about employment

Clause 112 This clause details the criteria which would render a person to be ineligible to be employed as a real agent salesperson. The person must be at least 18 years and not have a conviction for a serious offence within the last 5 years which is punishable by 3 or more years imprisonment. A person is ineligible for employment if the person has been declared ineligible for employment as a restricted letting agent (employee), real estate salesperson or pastoral house salesperson by a court or whose name is entered in the register of ineligible person for such employment. In addition, corporations and persons who hold a restricted letting agent's licence are ineligible to be employed as a real estate salesperson

Clause 113 provides that before a real estate agent employs a real estate salesperson, the agent must sight the proposed employee's criminal history and check the register of ineligible persons to determine that the proposed employee is not ineligible for employment.

Clause 114 provides that the real estate agent must give each real estate salesperson an employment authority which clearly specifies the functions the salesperson is authorised to perform.

Clause 115 provides that the court may declare by order that a person is ineligible for employment as a real estate salesperson where the court is satisfied that the salesperson has contravened a code of conduct made under this Act, has been convicted of an offence under this Act, or convicted of an indictable offence which would render the person as unsuitable for employment. The order can be made on the court's own initiative, on the prosecutor's application or by application of the chief executive at any time. The court may make the order subject to conditions and may vary or revoke the order.

Division 3—Functions of real estate salespersons

Clause 116 This clause provides that the real estate salesperson may, as an employee of the real estate agent, perform the functions which the real estate agent is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee’s business

Clause 117 provides that an individual who carries on the business of a real estate agent is not required to hold a real estate agent’s licence if the individual does not perform the functions of a real estate agent, is a suitable person to hold a licence and there is at least 1 person with whom the individual carries on business who holds a licence as a real estate agent.

Clause 118 provides that a real estate agent who is an individual, and a principal licensee, must be in charge of the agent’s business at the agent’s registered office and, in the case of a corporation, the corporation must ensure that the person in charge of the registered office is a real estate agent. Where there is more than 1 place of business, the real estate agent must ensure that there is a person in charge of the business at each place who is a real estate agent. A real estate agent cannot be in charge of a business at more than one place.

Division 2—Appointment

Clause 119 provides that a real estate agent cannot perform a function for a client until the client appoints the agent in writing. When the appointment is made, it must state the services to be provided and that fees, charges and commissions are negotiable. If the commission is payable as a percentage of sale price or rent, it is to be expressed in dollars based on the listed sale price or rent to be charged but the commission payable is based on the actual sale price or rent received.

The appointment must state the fees, charges and commissions payable, when they become payable and any condition, limitation or restriction on the provision of services. Expenses, including advertising, marketing and travelling expenses, which the real estate agent is authorised to incur must also be stated. Where is a continuing appointment, it must state details of the expenses to be incurred for each service or category of services as well as stating when the appointment ends and that it may be revoked in writing at any time by either party.

The appointment must be signed by both parties and a copy of the signed

agreement must be given the client. Where there is an authority to sell by auction, a separate appointment as an auctioneer is not required. This section does not apply to the sale of livestock.

Clause 120 provides that in addition to the requirement to give a copy of signed appointment as agent to the client, where a real estate agent is appointed for a sole or exclusive agency, the agent is required to give to the client a notice in the approved form. This notice must state the term of the appointment and that it is negotiable up to a maximum of 90 days, whether it is a sole or exclusive agency and an explanation of the difference and the consequences for the client if the property is sold by someone else during the term of appointment. The appointment may include a provision that the agency continues as an open listing at the expiration of the appointment. The provisions of this clause will not apply to prescribed property.

Clause 121 provides that the real estate agent may be reappointed for a further term not exceeding 90 days but the reappointment must not be made until 14 days or less before the expiry of the term.

Clause 122 provides that the appointment of the real estate agent is ineffective if the clause 120 notice has not been given or the appointment is for more than 90 days, unless the appointment relates to a property prescribed by regulation.

Division 3—Recovery of commission or reward

Clause 123 provides that where a real estate agent performs services and claims commission based on a percentage for the service, the commission must be based on the percentage of the actual sale price of the property or the amount of rent collected.

Clause 124 provides that a person must not sue for, recover or retain a commission, reward or expenses as a real estate agent unless at the time the function was performed, the person held a real estate agent's licence, was authorised under the person's licence to perform the function and the person was properly appointed in writing by the client to do so.

A person cannot sue for, recover or retain a commission, reward or expense which is more than was stated in the written appointment or, if these amounts are prescribed, more than the amount allowed under the regulation.

Clause 125 provides that where a person is convicted of an offence related to excessive commission, expenses or the like, the court may, if it is satisfied on the balance of probabilities that the person was not entitled to charge that amount, order that the amount be paid to the client whether or not a penalty is imposed for the offence. The amount ordered may be recovered in a court of competent jurisdiction.

Division 4—Interests in property

Clause 126 provides that a definition for division 4.

Clause 127 provides that a real estate agent or real estate salesperson commit an offence if they obtain from a client an option to purchase the property in which they have a beneficial interest. The real estate agent must not sell the property if the agent or a real estate salesperson employed by the agent obtain a beneficial interest in an option to purchase the property. For a definition of “beneficial interest” see clause 15. It is a defence to a prosecution for the real estate agent to show that the agent was not aware that the salesperson obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 128 applies to beneficial interest in relation to property placed by a client with an agent, but does not apply to options to purchase property.

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

A person does not contravene the section if the real estate agent or real estate salesperson obtains the acknowledgment of the client that the agent or salesperson has a beneficial interest in the property and the consent of the client to the agent or salesperson obtaining the interest and acts fairly and honestly in relation to the sale, for a sale other than livestock, and the agent or salesperson does not accept reward for the sale and the client is in substantially as good a position as the client would have been if the property were sold at a fair market value.

It is a defence to a prosecution for the real estate agent to show that the agent was not aware that the salesperson obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Note that this provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*, however, further provisions have been added in relation to the conduct of the agent, in that the agent must act fairly and honestly. The agent must also show that the client is in substantially as good a position as if the property were sold at a fair market value.

Note also that there is a partial exemption from the provision in relation to livestock sales. Because of the relatively low populations of country communities, where agents know most of the people in the community and are related to many of them, it is difficult for livestock agents to comply totally with the beneficial interest provisions. This provision therefore reflects this.

Clause 129 provides for the additional orders that the court may make if a court convicts a person of an offence under clauses 127 or 128.

Clause 130 provides for the non-application of clause 128.

Division 5—Representations about finance

Clause 131 provides a definition for division 5.

Clause 132 provides for representations about finance. This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*. The difference between this provision and that in the *Auctioneers and Agents Act*, is that under this provision, the notice is only required to be given when the representation is made.

Clause 133 provides for the buyers rights after misrepresentation about availability of finance. This provision is a also a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 134 has a provision about the application of sections 132 and 133. This provision is a also a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 135 provides that liability to punishment under sections 132 or

133 is in addition to any other liabilities at law. This provision is also a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Division 6—Lands not lawfully useable for residential purposes

Clause 136 provides a definition for this division.

Clause 137 provides for the application of division 6.

Clause 138 provides that a notice must be given about vacant land. This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 139 provides the buyer's rights if the notice is not given or is materially defective. This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 140 provides that the liability to punishment under section 138 or 139 is additional to other liabilities at law. This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Division 7—Sales of certain businesses

Clause 141 states that this division applies to the sale of a business for which a restricted letting agent's licence is required.

Clause 142 provides that a real estate agent who is authorised to sell a restricted letting agent's business by the seller of the business must give to a proposed buyer of the business a written statement under the section.

The real estate agent must give the statement to the proposed buyer before the buyer signs the contract in relation to the sale. The statement must contain certain details which include a statement that to carry on business the proposed buyer must have body corporate approval of the complex and that a licence is required to carry on the business of a restricted letting agent.

A signed statement must be given to the proposed buyer and a copy of the signed statement must be kept at the real estate agent's registered office

and made available for immediate inspection by the chief executive or an inspector who asks for it.

Division 8—Code of conduct

Clause 143 provides that a regulation may be made to prescribe a code of conduct about real estate agency practice which may include setting the standard for real estate agents and their employees, principles of fair trading and providing a system of complaint resolution.

Clause 144 provides that a person aggrieved by the conduct of a real estate agent or real estate salesperson may complain to the chief executive in writing. The chief executive may investigate the matter and take action under the Act, even if the person is no longer a real estate agent or a real estate salesperson.

PART 4—GENERAL

Clause 145 This clause defines the registered office of a principal licensee as the one specified in the real estate agent's application as being the principal place of business. In the case of a real estate agent who is employed, it is the place specified in the application as the agent's business address.

Clause 146 provides that a principal licensee is required to notify the chief executive within 14 days in the approved form of any change in the registered office as well as the closure or opening of any place of business. An employed licensee must also notify the chief executive within 14 days of any change in the registered office.

Clause 147 provides that a principal licensee must display at each place of business in a prescribed manner, the licensee's name, the name of the person in charge (if it is not the principal licensee) and any other particulars prescribed. Where the licensee advertises in a newspaper or elsewhere, the licensee must also state particulars as prescribed.

Clause 148 provides that the principal licensee must keep at each place of

business an employment register, the form of which is prescribed by regulation, into which the names and other prescribed particulars of each employed real estate agent, auctioneer or real estate salesperson employed at that place are recorded as well as the functions the salesperson is authorised to perform. These details must be entered into the register immediately after the person is employed at that place and if there is a change in the details, the entry is to be corrected in the manner prescribed.

PART 5—OFFENCES

Clause 149 provides that a person must not perform real estate functions under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under an Act. A person cannot act, or advertise a willingness to act as a real estate agent unless the person is the holder of real estate agent's licence.

Clause 150 provides that a person must not act for more than one party to a transaction. This is in order to avoid conflict of interest between agent and client. If the person does accept more than one appointment to act in the transaction, all appointments are ineffective. This does not apply to transactions involving livestock sales.

Clause 151 provides that when requested, a real estate agent must produce their licence for inspection by the person with whom they are dealing.

Clause 152 provides that a real estate agent must not knowingly employ a person as a real estate salesperson who is ineligible for such employment or employ in any capacity an ineligible person. These person are listed in the register of ineligible persons maintained by the chief executive. However, the chief executive may approve, subject to conditions, the employment of such ineligible persons. Both the real estate agent and the ineligible person employed commit an offence against this Act if the employment has not been approved by the chief executive.

Clause 153 provides that a principal licensee who is an individual and carries on the business of a real estate agent, must not employ, as a real estate salesperson for the business, himself or herself or another individual

with whom the principal licensee carries on business. This provision means that a principal licensee cannot employ, for example, a partner as a salesperson. This is because the partner would, in effect, be performing the same functions as the licensee, and should be licensed in his or her own right.

The clause also provides that a principal licensee that is a corporation and carries on the business as a real estate agent must not employ an executive officer of the corporation as a real estate salesperson for the business. This provision was inserted for the same reason as outlined above, ie that an executive officer who performs the functions of a licensee for the corporation must be licensed.

CHAPTER 5—PASTORAL HOUSES, PASTORAL HOUSE LICENSEES AND PASTORAL HOUSE SALESPERSONS

PART 1—PASTORAL HOUSES

Division 1—Pastoral house licences

Clause 154 provides that a pastoral house licence authorises the holder, for reward as an agent for others, to perform the functions of a real estate agent restricted to sale of rural land and livestock and the functions of an auctioneer restricted to the auctioning of rural land (including 4 auction sales of non-rural land for each place of business), livestock, wool, plant, machinery and other items situated on rural land.

The pastoral house may perform the functions in the carrying on of business alone or with another, with a real estate agent or an auctioneer. In the case of a partnership with either a real estate agent or an auctioneer, the pastoral house must not take advantage of any of the trust account exemptions that it specifically holds in relation to those joint transactions.

Clause 155 provides that a pastoral house director's licence authorises the holder, as a director of a pastoral house, to perform the functions of a

real estate agent restricted to sale of rural land and livestock for a pastoral house.

Clause 156 provides that the pastoral house manager's licence authorises the holder to manage a place of business of the pastoral house, other than its principal place of business, and to perform the functions of a real estate agent in respect of rural land and livestock.

Clause 157 provides that the pastoral house auctioneer's licence authorises the holder to perform the functions of an auctioneer restricted to the auctioning of rural land (including 4 auction sales of non rural land for each place of business), livestock, wool, plant, machinery and other items situated on rural land for a pastoral house.

Division 2—Pastoral house responsible for acts and omissions of salespersons

Clause 158 provides that a pastoral house and the pastoral house manager in charge at a place of business, must take reasonable steps to ensure that each pastoral house salesperson is properly supervised and acts only within the scope of the employee's authority and complies with the Act. Failure to do so makes the licensee liable for disciplinary action.

PART 2—PASTORAL HOUSE SALESPERSONS

Division 1—Introduction

Clause 159 This clause defines a pastoral house salesperson as a person employed to perform any of the functions of a pastoral house but does not include a person who only performs secretarial or clerical duties.

Division 2—Provisions about employment

Clause 160 This clause details the criteria which would render a person

to be ineligible to be employed as a pastoral house salesperson. The person must be at least 18 years and not have a conviction for a serious offence within the last 5 years which is punishable by 3 or more years imprisonment. A person is ineligible for employment if the person has been declared ineligible for employment as a restricted letting agent (employee), real estate salesperson or pastoral house salesperson by a court or whose name is entered in the register of ineligible person for such employment. In addition, corporations and persons who hold a restricted letting agent's licence are ineligible to be employed as a pastoral house salesperson.

Clause 161 provides that before a pastoral house employs a pastoral house salesperson, the pastoral house must sight proposed employee's criminal history check the register of ineligible persons to determine that the proposed employee is not ineligible for employment.

Clause 162 provides that the pastoral house must give each pastoral house salesperson an employment authority which clearly specifies the functions the salesperson is authorised to perform.

Clause 163 provides that the court may declare by order that a person is ineligible for employment as a pastoral house salesperson where the court is satisfied that the salesperson has contravened a code of conduct made under this Act, has been convicted of an offence under this Act, or convicted of an indictable offence which would render the person as unsuitable for employment. The order can be made on the court's own initiative, on the prosecutor's application or by application of the chief executive at any time. The court may make the order subject to conditions and may vary or revoke the order.

Division 3—Functions of pastoral house salespersons

Clause 164 This clause provides that the pastoral house salesperson may, as an employee of the pastoral house and subject to the person's employment authority, perform the functions which the pastoral house is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee’s business

Clause 165 provides that a pastoral house must not carry on the business of a pastoral house with another person unless the person is another pastoral house, a real estate agent or an auctioneer.

Clause 166 provides that a pastoral house must ensure that a licensed pastoral house director is in charge of the pastoral house’s business at the pastoral house’s registered office. Where the pastoral house has more than 1 place of business, the pastoral house must ensure that there is a pastoral house director, pastoral house manager or real estate agent in charge of the pastoral house’s business at each place. A person cannot be in charge of a pastoral house’s business at more than one place.

Division 2—Appointment

Clause 167 provides that a pastoral house cannot perform a function for a client until the client appoints the pastoral house in writing. When the appointment is made, it must state the services to be provided and that fees, charges and commissions are negotiable. If the commission is payable as a percentage of sale price or rent, it is to be expressed in dollars based on the listed sale price or rent to be charged but the commission payable is based on the actual sale price or rent received.

The appointment must state the fees, charges and commissions payable, when they become payable and any condition, limitation or restriction on the provision of services. Expenses, including advertising, marketing and travelling expenses, which the pastoral house is authorised to incur must also be stated. Where is a continuing appointment, it must state details of the expenses to be incurred for each service or category of services as well as stating when the appointment ends and that it may be revoked in writing at any time by either party.

The appointment must be signed by both parties and a copy of the signed agreement must be given the client. Where there is an authority to sell by auction, a separate appointment as an auctioneer is not required. This

section does not apply to the sale of livestock.

Clause 168 provides that in addition to the requirement to give a copy of signed appointment for the sale of land to the client, where a pastoral house is appointed for a sole or exclusive agency, the pastoral house is required to give to the client a notice in the approved form. This notice must state the term of the appointment and that it is negotiable up to a maximum of 90 days, whether it is a sole or exclusive agency and an explanation of the difference and the consequences for the client if the property is sold by someone else during the term of appointment. The appointment may include a provision that the agency continues as an open listing at the expiration of the appointment. These provisions do not apply to property prescribed by regulation.

Clause 169 provides that the pastoral house may be reappointed for a further term not exceeding 90 days but the reappointment must not be made until 14 days or less before the expiry of the term.

Clause 170 provides, among other things, that the appointment of the pastoral house is ineffective if the clause 168 notice has not been given or the appointment is for more than 90 days.

Division 3—Recovery of commission or reward

Clause 171 provides that where a pastoral house performs services and claims commission based on a percentage for the service, the commission must be based on the percentage of the actual sale price of the property.

Clause 172 provides that a person must not sue for, recover or retain a commission, reward or expenses as a pastoral house unless at the time the function was performed, the person held a pastoral house licence, was authorised under the person's licence to perform the function and the person was properly appointed in writing by the client to do so.

A person cannot sue for, recover or retain a commission, reward or expenses more than was stated in the written appointment or, if these amounts are prescribed, more than the amount allowed under the regulation.

Clause 173 provides that where a person is convicted of an offence related excessive commission, expenses or the like, the court may, if it is

satisfied on the balance of probabilities that the person was not entitled to charge that amount, order that the amount be paid to the client whether or not a penalty is imposed for the offence. The amount ordered may be recovered in a court of competent jurisdiction.

Division 4—Interests in property

Clause 174 provides that a definition for division 4.

Clause 175 provides that a pastoral house or pastoral house officer commit an offence if they obtain from a client an option to purchase the property in which they have a beneficial interest. The pastoral house must not sell the property if the pastoral house or pastoral house officer obtain a beneficial interest in an option to purchase the property. For a definition of “beneficial interest” see clause 15. It is a defence to a prosecution for the pastoral house to show that the pastoral house was not aware that the salesperson obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Clause 176 applies to beneficial interest in relation to property placed by a client with a pastoral house, but does not apply to options to purchase property.

A pastoral house commits an offence if the pastoral house or pastoral house officer obtains a beneficial interest in the property. A pastoral house officer commits an offence if the pastoral house officer obtains a beneficial interest in the property.

A person does not contravene the section if the pastoral house or pastoral house officer obtains the acknowledgment of the client that the agent or salesperson has a beneficial interest in the property and the consent of the client to the agent or salesperson obtaining the interest and acts fairly and honestly in relation to the sale, for a sale other than livestock, and the agent or salesperson does not accept reward for the sale and the client is in substantially as good a position as the client would have been if the property were sold at a fair market value.

It is a defence to a prosecution for the pastoral house to show that the pastoral house was not aware that the pastoral house officer obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Clause 177 provides for the additional orders that the court may make if a court convicts a person of an offence under clauses 175 or 176.

Clause 178 provides for the non-application of clause 176.

Division 5—Representations about finance

Clause 179 provides a definition for division 5.

Clause 180 provides that the pastoral house must ensure that a proposed buyer of land is given a written statement under this section if the pastoral house or pastoral house officer has made a representation to the proposed buyer about finance.

Clause 181 provides for the buyers rights after misrepresentation about availability of finance.

Clause 182 has a provision about the application of sections 180 and 181.

Clause 183 provides that liability to punishment under sections 180 or 181 is in addition to any other liabilities at law.

Division 6—Lands not lawfully useable for residential purposes

Clause 184 provides a definition for this division.

Clause 185 provides for the application of division 6.

Clause 186 provides that the pastoral house must give a statement to the buyer about vacant land before the buyer enters into a contract of sale. This provision ensures that the aware that the land which he or she is buying is not able to be used for residential purposes. A similar provision exists in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 187 provides the buyer's rights if the notice is not given or is materially defective.

Clause 188 provides that the liability to punishment under section 138 or 139 is additional to other liabilities at law.

Division 7—Code of conduct

Clause 189 provides that a regulation may be made to prescribe a code of conduct about pastoral house practice which may include setting the standard for their salespersons, principles of fair trading and providing a system of complaint resolution.

Clause 190 provides that a person aggrieved by the conduct of a pastoral house or pastoral house officer may complain to the chief executive in writing. The chief executive may investigate the matter and take action under the Act, even if the person is no longer a pastoral house or pastoral house officer.

PART 4—GENERAL

Clause 191 This clause defines the registered office of a pastoral house as the one specified in the pastoral house's application as being the principal place of business. In the case of a pastoral house director, pastoral house manager and pastoral house auctioneer, it is the place specified in their application as their business address.

Clause 192 provides that a pastoral house is required to notify the chief executive within 14 days in the approved form of any change in the registered office as well as the closure or opening of any place of business. A pastoral house director, manager or auctioneer must also notify the chief executive within 14 days of any change in their registered office.

Clause 193 provides that a principal licensee must display at each place of business in a prescribed manner, the licensee's name, the name of the person in charge (if it is not the principal licensee) and any other particulars prescribed. Where the licensee advertises in a newspaper or elsewhere, the licensee must also state particulars as prescribed.

Clause 194 provides that a pastoral house must keep at each place of business an employment register, the form of which is prescribed by regulation, into which the names and other prescribed particulars of each pastoral house manager, pastoral house auctioneer and pastoral house salesperson employed at that place are recorded as well as the functions the

pastoral house salesperson is authorised to perform. These details must be entered into the register immediately after the person is employed at that place and, if there is a change in the details, the entry is to be corrected in the manner prescribed.

PART 5—OFFENCES

Clause 195 provides that a person must not perform pastoral house functions under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under an Act. A person cannot act, or advertise a willingness to act as a pastoral house unless the person is the holder of pastoral house licence. This section does not apply to a financial institution, trustee company or friendly society.

Clause 196 provides that a person must not perform functions of a pastoral house director under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under this Act.

Clause 197 provides that a person must not perform functions of a pastoral house manager under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under this Act.

Clause 198 provides that a person must not perform functions of a pastoral house auctioneer under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under this Act.

Clause 199 provides that a person must not act for more than one party to a transaction. If the person does accept more than one appointment to act

in the transaction, all appointments are ineffective. This does not apply to transactions involving livestock sales.

Clause 200 provides that when requested, a pastoral house officer must produce their licence for inspection by the person with whom they are dealing.

Clause 201 provides that a pastoral house must not knowingly employ a person as a pastoral house salesperson who is ineligible for such employment or employ in any capacity an ineligible person. These person are listed in the register of ineligible persons maintained by the chief executive. However, the chief executive may approve, subject to conditions, the employment of such ineligible persons. Both the pastoral house and the ineligible person employed commit an offence against this Act if the employment has not been approved by the chief executive.

Clause 202 provides that a pastoral house must not employ an executive officer of the pastoral house as a pastoral house salesperson. This provision was inserted because a pastoral house officer who performs the functions of the pastoral house should be licensed.

CHAPTER 6—AUCTIONEERS AND TRAINEE AUCTIONEERS

PART 1—AUCTIONEERS

Clause 203 provides that an auctioneer's licence authorises the holder of the licence to perform the function, as an agent for another for reward, of selling or attempting to sell any property by way of auction. The licence also allows the auctioneer to sell the property during the auction period which starts 1 month before the auction and concludes 1 month after the auction. An auctioneer may perform these functions in the carrying on of business, either alone or with others or as an employee of an auctioneer, real estate agent, pastoral house or motor dealer.

PART 2—TRAINEE AUCTIONEERS

Clause 204 provides that the trainee auctioneer's licence authorises the holder to perform the functions of an auctioneer but as a condition of the licence required to be imposed by chief executive, only under the direct supervision and instruction of specified auctioneers.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Clause 205 provides that an individual who carries on the business of an auctioneer is not required to hold an auctioneer's licence if the individual does not perform the functions of an auctioneer, is a suitable person to hold a licence and there is at least 1 person with whom the individual carries on business who holds a licence as an auctioneer.

Clause 206 provides that an auctioneer who is an individual, and a principal licensee, must be in charge of the agent's business at the auctioneer's registered office and, in the case of a corporation, the corporation must ensure that the person in charge of the business at the registered office is an auctioneer. Where there is more than 1 place of business, the auctioneer must ensure that there is a person in charge at each business at the place who is an auctioneer. A auctioneer cannot be in charge of an auctioneer's business at more than one place.

Division 2—Appointment

Clause 207 provides that an auctioneer cannot perform a function for a client until the client appoints the auctioneer in writing. When the appointment is made, it must state the services to be provided and that fees, charges and commissions are negotiable. If the commission is payable as a percentage of sale price, it is to be expressed in dollars based on the listed sale price or reserve, but the commission payable is based on the actual sale price received.

The appointment must state the fees, charges and commissions payable, when they become payable and any condition, limitation or restriction on the provision of services. Expenses, including advertising, marketing and

travelling expenses, which the auctioneer is authorised to incur must also be stated. Where is a continuing appointment, it must state details the expenses to be incurred for each service or category of services as well as stating when the appointment ends and that it may be revoked in writing at any time by either party.

The appointment must be signed by both parties and a copy of the signed agreement must be given the client.

Clause 208 provides that in addition to the requirement to give a copy of signed appointment as auctioneer to the client, where an auctioneer is appointed for a sole or exclusive agency, the auctioneer is required to give to the client a notice in the approved form. This notice must state the term of the appointment and that it is negotiable up to a maximum of 90 days, whether it is a sole or exclusive agency and an explanation of the difference and the consequences for the client if the property is sold by someone else during the term of appointment. The appointment may include a provision that the agency continues as an open listing at the expiration of the appointment. In the case of prescribed property, the requirement to limit the terms up to a maximum of 90 days is not applicable.

Clause 209 provides that the auctioneer may be reappointed for a further term not exceeding 90 days but the reappointment must not be made until 14 days or less before the expiry of the term.

Clause 210 provides that the appointment of the auctioneer is ineffective, among other things, clause 208 notice has not been given or the appointment is for more than 90 days.

Division 3—Chattel auctions

Clause 211 allows for chattel auctioneers to charge buyer's premiums in relation to their auction sales. A buyer's premium is an amount payable to the auctioneer by a buyer on the purchase of a chattel. This provision reflects the current business practices of auctioneers.

Division 4—Recovery of commission or reward

Clause 212 provides that where an auctioneer performs services and

claims commission based on a percentage for the service, the commission must be based on the percentage of the actual sale price of the property.

Clause 213 provides that a person must not sue for, recover or retain a commission, reward or expenses as a auctioneer unless at the time the function was performed, the person held an auctioneer's licence, was authorised under the person's licence to perform the function and the person was properly appointed in writing by the client to do so.

A person cannot sue for, recover or retain a commission, reward or expenses more than was stated in the written appointment or, if these amounts are prescribed, more than the amount allowed under the regulation.

Clause 214 provides that where a person is convicted of an offence related excessive commission, expenses or the like, the court may, if it is satisfied on the balance of probabilities that the person was not entitled to charge that amount, order that the amount be paid to the client whether or not a penalty is imposed for the offence. The amount ordered may be recovered in a court of competent jurisdiction.

Division 4—Interests in property

Clause 215 provides a definition for division 4.

Clause 216 provides that an auctioneer or trainee auctioneer commit an offence if they obtain from a client an option to purchase the property in which they have a beneficial interest. The auctioneer must not sell the property if the auctioneer or trainee obtain a beneficial interest in an option to purchase the property. For a definition of "beneficial interest" see clause 15. It is a defence to a prosecution for the auctioneer to show that the auctioneer was not aware that the trainee obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Clause 217 applies to beneficial interest in relation to property placed by a client with an auctioneer, but does not apply to options to purchase property.

An auctioneer commits an offence if the auctioneer or trainee auctioneer obtains a beneficial interest in the property. A trainee auctioneer commits an offence if the trainee obtains a beneficial interest in the property.

A person does not contravene the section if the auctioneer or trainee obtains the acknowledgment of the client that the auctioneer or trainee has a beneficial interest in the property and the consent of the client to the auctioneer or trainee obtaining the interest and acts fairly and honestly in relation to the sale, for a sale other than livestock, and the agent or salesperson does not accept reward for the sale and the client is in substantially as good a position as the client would have been if the property were sold at a fair market value.

Note that this provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*, however, further provisions have been added in relation to the conduct of the agent, in that the agent must act fairly and honestly. The agent must also show that the client is in substantially as good a position as if the property were sold at a fair market value.

The provision also adds an extra provision that if the auctioneer or trainee have not obtained the acknowledgement and they know or ought to know that an associate of theirs intends bidding at auction, they must identify the associate to those present at the auction and announce to those present that the person is an associate and intends bidding at the auction.

It is a defence to a prosecution for the auctioneer to show that the auctioneer was not aware that the trainee auctioneer obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Clause 218 provides for the additional orders that the court may make if a court convicts a person of an offence under clauses 216 or 217.

Clause 219 provides for the non-application of clause 217.

Division 5—Representations about finance

Clause 220 provides a definition for division 6.

Clause 221 provides for representations about finance. This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*. The difference between this provision and that in the *Auctioneers and Agents Act*, is that under this provision, the notice is only required to be given when the representation is made.

Clause 222 provides for the buyers rights after misrepresentation about availability of finance. This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 223 has a provision about the application of sections 221 and 222.

Clause 224 provides that liability to punishment under sections 221 or 222 is in addition to any other liabilities at law.

Division 6—Lands not lawfully useable for residential purposes

Clause 225 provides a definition for this division.

Clause 226 provides for the application of division 7.

Clause 227 provides that a notice must be given about vacant land. This provision is a continuation of a similar provision in Part 5, Division 5 of the *Auctioneers and Agents Act 1971* and provides that the buyer must be informed if the land which the person is buying is not useable for residential purposes.

Clause 228 provides the buyer's rights if the notice is not given or is materially defective.

Clause 229 provides that the liability to punishment under section 138 or 139 is additional to other liabilities at law.

Division 8—Sales of livestock

Clause 230 provides provisions which are carried forward from the *Auctioneers and Agents Act* and which are designed to prevent the sale of stolen livestock.

Clause 231 provides protection for the auctioneer.

Division 9—Guarantee of title for motor vehicles

Clause 232 is a similar provision to section 60 of the *Auctioneers and Agents Act* in relation to guarantee of title for the sale of used motor

vehicles. The auctioneer must ensure that the buyer of the vehicle gains clear title to the vehicle. This clause makes special provision for the auctioning situation by providing that the auctioneer must, within 48 hours of the property passing to the buyer, give the buyer a security interest certificate for the vehicle. If the certificate shows that a security interest is registered for the vehicle, the sale is ineffective from the beginning and the auctioneer must refund the full amount paid by the purchaser.

This provision differs from the present section 60 in that the auctioneer has 48 hours in which to supply the certificate. This provision was inserted because in practice, finance companies will not clear the title until after the sale of the vehicle is made, so that it is most difficult for an auctioneer to supply a certificate of clear title at the time of the fall of the hammer. The provision therefore recognises the practical operation of auction proceedings whilst at the same time giving protection to the consumer.

The clause also provides that a dealer may only charge the buyer for the provision of the certificate at cost.

Division 10—Code of conduct

Clause 233 provides that a regulation may be made to prescribe a code of conduct about auctioneering practice which may include setting the standard for their salespersons, principles of fair trading and providing a system of complaint resolution.

Clause 234 provides that a person aggrieved by the conduct of an auctioneer or trainee auctioneer may complain to the chief executive in writing. The chief executive may investigate the matter and take action under the Act, even if the person is no longer an auctioneer or trainee auctioneer.

PART 4—STATUTORY WARRANTY

Clause 235 provides the definitions for part 4 of this chapter.

Clause 236 provides that a warranted vehicle has a defect if a part of the vehicle does not perform its intended function or a part of the vehicle has deteriorated to such an extent where it cannot be reasonably relied on to

perform its intended function.

Clause 237 provides that the warranty period will be for 1 month or 1000km, whichever occurs first.

Clause 238 provides that this part applies to each warranted vehicle sold by an auctioneer if the vehicle is auctioned by the auctioneer on the auctioneer's own behalf.

The statutory warranty will apply to vehicles which tend to be used by consumers for private use. For this reason, the clause provides that the warranty will not apply to:—

- commercial vehicles;
- an unregistered vehicle that is incapable of being registered in Queensland because of its design;
- an unregistered vehicle if it is sold for wrecking or dismantling;
- motor vehicles sold to a motor dealer;
- vehicles sold on consignment unless the owner of the vehicle is an auctioneer or motor dealer; or
- another motor vehicle prescribed by regulation.

Note that a “used motor vehicle” does not include a commercial vehicle, a caravan or a motor cycle.

The clause provides that the part does not apply to the sale of a motor vehicle by the public trustee if the public trustee is acting as an agent for another government entity.

Clause 239 provides that a vehicle which is not subject to the statutory warranty may be advertised or displayed for sale only if it is advertised or displayed in the way provided under a regulation. This provision ensures that the buyer is aware that the vehicle is not subject to the statutory warranty.

The clause also provides that if a motor vehicle is being put to auction by an auctioneer, the auctioneer must announce, immediately before the auction, that the vehicle does not have a statutory warranty.

Clause 240 provides that an auctioneer must, immediately after the sale of a warranted vehicle, give the buyer a written notice about the length of the warranty, the defects that are not covered by the statutory warranty.

Clause 241 provides that if an auctioneer sells a warranted vehicle, the auctioneer warrants that the vehicle is free from defects at the time of sale and for the warranty period and that defects in the vehicle which are reported during the warranty period will be repaired free of charge.

The clause provides that an auctioneer “sells” a vehicle if the auctioneer owns the vehicle and sells the vehicle personally or causes the vehicle to be sold on consignment.

The clause provides that “defects” does not include the defects to which the statutory warranty does not apply under clause 242.

Clause 242 provides that the following defects are not covered by the statutory warranty —

- components such as tyres, lights, radiator hoses and batteries.
- a defect in the vehicle’s paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the buyer took delivery;
- a defect arising after the buyer takes delivery arising from accidental damage or damage caused by negligence or misuse or in an accessory to the vehicle not fitted to the vehicle when it was sold.

Clause 243 provides that if the buyer of a warranted vehicle believes that the vehicle has a defect which the seller of the vehicle is obliged to repair, the buyer must give the seller a defect notice before the end of the warranty period and deliver the warranted vehicle to the seller to repair the defect or to someone else nominated by the seller in writing.

The clause provides that the buyer is taken to deliver the vehicle and the seller is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle but is unable to do so because the seller refuses to accept delivery of the vehicle.

Clause 244 provides that the seller must keep a record of the day the warranted vehicle is delivered under clause 243 and the day the vehicle is returned to the buyer.

Clause 245 provides that where a vehicle is delivered to the seller under clause 269, the seller must give the buyer a warranty advice stating whether the seller accepts or refuses to accept that the defect is covered by the statutory warranty.

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

Clause 246 provides that if the seller accepts that a defect is covered by the statutory warranty, the seller must repair the defect at the seller's expense and must ensure that the defect is repaired within 14 days. If the seller nominates someone else to repair the vehicle, the seller must advise the buyer of the person's name and the address where the defect is to be repaired.

The seller is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.

The seller's obligation to repair the defect under this section continues even though the seller is no longer performing the functions of an auctioneer.

Clause 247 provides that if the seller refused to accept that the defect is covered by the statutory warranty or accepted the defect is covered by the statutory warranty but failed to repair the defect within 14 days or failed to repair the defect so that the part could be reasonably relied on to perform its intended function, the buyer may refer the matter to the small claims tribunal.

The clause further provides for the orders that the small claims tribunal may make which are in addition to those orders which it is empowered to make under the *Small Claims Tribunals Act 1973*.

If after an order is made by the small claims tribunal in the buyer's favour and the seller contravenes the order, the contravention is a ground for starting disciplinary proceedings against the licensee.

Clause 248 allows a claim for a statutory warranty to be heard in a court of competent jurisdiction if the amount of the claim is in excess of the monetary jurisdiction of the small claims tribunal.

PART 4—GENERAL

Division 1—Auctioneers

Clause 249 This clause defines the registered office of a principal licensee as the one specified in the auctioneer's application as being the principal place of business. In the case of a auctioneer who is employed, it is the place specified in the application as the auctioneer's business address.

Clause 250 provides that a principal licensee is required to notify the chief executive within 14 days in the approved form of any change in the registered office as well as the closure or opening of any place of business. An employed licensee must also notify the chief executive within 14 days of any change in their registered office.

Clause 251 provides that a principal licensee must display at each place of business in a prescribed manner, the licensee's name, the name of the person in charge (if it is not the principal licensee) and any other particulars prescribed. Where the licensee advertises in a newspaper or elsewhere, the licensee must also state particulars as prescribed.

Division 2—Trainee auctioneers

Clause 252 This clause defines the registered office of a trainee auctioneer as the one specified in the trainee's application as being the registered office of the supervisor or another place as notified to the chief executive in the approved form.

Clause 253 provides that a trainee auctioneer is required to notify the chief executive within 14 days in the approved form of any change in their registered office.

PART 6—OFFENCES

Clause 254 provides that a person must not perform auctioneer functions under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under an Act. A person cannot act, or

advertise a willingness to act as an auctioneer unless the person is the holder of auctioneer's licence.

Clause 255 provides that a person must not perform trainee auctioneer functions under this Act unless the person holds the appropriate licence and is authorised by that licence to perform those functions or unless the person is otherwise permitted to do so under an Act.

Clause 256 provides that a person must not act for more than one party to a transaction. If the person does accept more than one appointment to act in the transaction, all appointments are ineffective. However, a person does not contravene the section if the transaction is one involving a livestock sale.

Clause 257 provides that a trainee auctioneer must not carry on or advertise, notify or state that the trainee carries on the business of an auctioneer or receive, hold, or deal with an amount from a sale conducted by the trainee under the authority of the trainee's licence.

Clause 258 provides that when requested, an auctioneer or a trainee auctioneer must produce their licence for inspection by the person with whom they are dealing.

CHAPTER 7—MOTOR DEALERS AND THEIR SALESPERSONS

PART 1—MOTOR DEALERS

Division 1—Motor dealer's licence

Clause 259 provides that the motor dealer's licence authorises the holder to perform the functions, in the carrying on the business of motor dealing, to acquire used motor vehicles for resale, to sell leased vehicles to the lessee under the terms of a lease, to acquire vehicles for breaking up and sale as parts and to sell vehicles on consignment as an agent for others for reward. The motor dealer may perform these functions as an employee of another motor dealer.

Division 2—Motor dealer responsible for acts and omissions of salespersons

Clause 260 provides that the motor dealer, who is the principal licensee, or who is the licensee in charge at a place of business, must take reasonable steps to ensure that each motor salesperson is properly supervised and acts only within the scope of the employee's authority and complies with the Act. Failure to do so makes the licensee liable for disciplinary action.

PART 2—MOTOR SALESPERSONS

Division 1—Introduction

Clause 261 This clause defines a motor salesperson as a person employed to perform any of the functions of a motor dealer but does not include a person who only performs secretarial or clerical duties.

Division 2—Provisions about employment

Clause 262 This clause details the criteria which would render a person to be ineligible to be employed as a motor salesperson. The person must be at least 18 years and not have a conviction for a serious offence within the last 5 years which is punishable by 3 or more years imprisonment. A person is ineligible for employment if the person has been declared ineligible for employment as a motor salesperson by a court or whose name is entered in the register of ineligible person for such employment. In addition, corporations are ineligible to be employed as a motor salesperson.

Clause 263 provides that before a motor dealer employs a motor salesperson the motor dealer must sight proposed employee's criminal history and check the register of ineligible persons to determine that the proposed employee is not ineligible for employment.

Clause 264 provides that the motor dealer must give each motor

salesperson an employment authority which clearly specifies the functions the salesperson is authorised to perform.

Clause 265 provides that the court may declare by order that a person is ineligible for employment as a motor salesperson where the court is satisfied that the salesperson has contravened a code of conduct made under this Act, has been convicted of an offence under this Act, or convicted of an indictable offence which would render the person as unsuitable for employment. The order can be made on the court's own initiative, on the prosecutor's application or by application of the chief executive at any time. The court may make the order subject to conditions and may vary or revoke the order.

Division 3—Functions of motor salespersons

Clause 266 This clause provides that the motor salesperson may as an employee of the motor dealer perform the functions which the motor dealer is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Clause 267 provides that an individual who carries on the business of an motor dealer is not required to hold a motor dealer's licence if the individual does not perform the functions of a motor dealer, is a suitable person to hold a licence and there is at least 1 person with whom the individual carries on business who holds a licence as a motor dealer.

Clause 268 provides that a motor dealer who is an individual, and a principal licensee, must be in charge of the dealer's business at the dealer's registered office and, in the case of a corporation, the corporation must ensure that the person in charge of business at its registered office is a motor dealer. Where there is more than 1 place of business, the motor dealer must ensure that there is a person in charge of business at each place

who is a motor dealer. A motor dealer cannot be in charge of a motor dealer's business at more than one place.

Division 2—Consignment selling

Clause 269 provides that a motor dealer must not sell a motor vehicle on consignment unless the motor dealer has first been appointed in writing. The appointment may be for a single service or for a number of services performed over a period. When the appointment is made, it must state the services to be provided and that fees, charges and commissions are negotiable. If the commission is payable as a percentage of the sale price, it is to be expressed in dollars based on the reserve price but the commission payable is based on the actual sale price received.

The appointment must state the fees, charges and commissions payable, when they become payable and any condition, limitation or restriction on the provision of services. Expenses, including advertising, marketing and travelling expenses, which the motor dealer is authorised to incur must also be stated. Where it is a continuing appointment, it must state details the expenses to be incurred for each service or category of services as well as stating when the appointment ends and that it may be revoked in writing at any time by either party.

The appointment must be signed by both parties and a copy of the signed agreement must be given the client. Where there is an authority to sell by auction, a separate appointment as an auctioneer is not required.

Clause 270 provides that a motor dealer must not accept a trade in from the buyer of a motor vehicle on consignment, but the motor dealer can purchase the vehicle as a separate transaction between the buyer and the motor dealer to enable the motor dealer to account to the seller for the full purchase price.

Division 3—Recovery of commission or reward

Clause 271 provides that where a motor dealer performs a function of selling a vehicle on consignment for someone and claims commission based on a percentage, the commission must be based on the percentage of

the actual sale price of the vehicle.

Clause 272 provides that a person must not sue for, recover or retain a commission, reward or expenses as a motor dealer unless at the time the function was performed, the person held a motor dealer's licence, was authorised under the person's licence to perform the function and the person was properly appointed in writing by the client to do so.

A person cannot sue for, recover or retain a commission, reward or expenses more than was stated in the written appointment or, if these amounts are prescribed, more than the amount allowed under the regulation.

Clause 273 provides that where a person is convicted of an offence related excessive commission, expenses or the like, the court may, if it is satisfied on the balance of probabilities that the person was not entitled to charge that amount, order that the amount be paid to the client whether or not a penalty is imposed for the offence. The amount ordered may be recovered in a court of competent jurisdiction.

Division 4—Interests in property

Clause 274 provides a definition for the section.

Clause 275 provides that a motor dealer commits an offence if the motor dealer or a motor salesperson employed by the dealer obtain from the owner of a used motor vehicle an option to purchase the vehicle in which the dealer or salesperson has a beneficial interest. This provision is similar those contained in Part 5, Division 5 of the *Auctioneers and Agents Act 1971*.

Clause 276 applies to beneficial interest in relation to motor vehicle placed by a client with a motor dealer for sale by consignment, but does not apply if clause 275 applies.

A motor dealer commits an offence if the motor dealer or motor salesperson obtains a beneficial interest in the vehicle. A motor salesperson commits an offence if the salesperson obtains a beneficial interest in the property.

A person does not contravene the section if the motor dealer or salesperson obtains the acknowledgment of the client that the motor dealer or salesperson has a beneficial interest in the property and the consent of the

client to the motor dealer or salesperson obtaining the interest and acts fairly and honestly in relation to the sale, and the agent or salesperson does not accept reward for the sale and the client is in substantially as good a position as the client would have been if the property were sold at a fair market value.

It is a defence to a prosecution for the motor dealer to show that the motor dealer was not aware that the salesperson obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Clause 277 provides for the additional orders that the court may make if a court convicts a person of an offence under clauses 275 or 276.

Division 5—Code of conduct

Clause 278 provides that a regulation may be made to prescribe a code of conduct about motor dealing practice which may include setting the standard for motor dealers and their salespersons, principles of fair trading and providing a system of complaint resolution.

Clause 279 provides that a person aggrieved by the conduct of a motor dealer or motor salesperson may complain to the chief executive in writing. The chief executive may investigate the matter and take action under the Act, even if the person is no longer a motor dealer or motor salesperson.

PART 4—GUARANTEE OF TITLE

Clause 280 continues the provisions of section 60 of the Auctioneers and Agents Act and requires the dealer to guarantee title to the purchase of a motor vehicle. The clause also provides that a dealer may only charge the buyer for the provision of the certificate at cost.

PART 5—STATUTORY WARRANTY

Clause 281 provides the definitions for part 6 of this chapter.

Clause 282 provides that a warranted vehicle has a defect if a part of the vehicle does not perform its intended function or a part of the vehicle has deteriorated to such an extent where it cannot be reasonably relied on to perform its intended function.

Clause 283 provides that the warranty period will be for one month or 1000km, whichever occurs first.

Clause 284 provides that this part applies to each warranted vehicle sold by a motor dealer.

The statutory warranty will apply to vehicles which tend to be used by consumers for private use. For this reason, the clause provides that the warranty will not apply to:—

- commercial vehicles;
- an unregistered vehicle that is incapable of being registered in Queensland because of its design;
- an unregistered vehicle if it is sold for wrecking or dismantling;
- a motor vehicle in the possession, or under the control, of the buyer of the motor vehicle for a continuous period of at least 3 months immediately before the sale to the buyer.
- motor vehicles sold to a motor dealer;
- vehicles sold on consignment unless the owner of the vehicle is an auctioneer or motor dealer; or
- another motor vehicle prescribed by regulation.

Note that a “used motor vehicle” does not include a commercial vehicle, a caravan or a motor cycle.

Clause 285 provides that a vehicle which mentioned in clause 284(2)(b) or (e) which is not subject to the statutory warranty may be advertised or displayed for sale only if it is advertised or displayed in the way provided under a regulation. This provision ensures that the buyer is aware that the vehicle is not subject to the statutory warranty.

Clause 286 provides that a motor dealer must, immediately after the sale of a warranted vehicle, give the buyer a written notice stating the length of the warranty, the defects that are not covered by the statutory warranty.

Clause 287 provides that if a motor dealer sells a warranted vehicle, the motor dealer warrants that the vehicle is free from defects at the time of sale and for the warranty period and that defects in the vehicle which are reported during the warranty period will be repaired free of charge.

The clause provides that a motor dealer “sells” a vehicle if the motor dealer owns the vehicle and sells the vehicle personally or causes the vehicle to be sold on consignment.

The clause provides that “defects” does not include the defects to which the statutory warranty does not apply under clause 288.

Clause 288 provides that the following defects are not covered by the statutory warranty —

- components such as tyres, lights, radiator hoses and batteries.
- superficial damage to paintwork or to upholstery that should have been apparent on any reasonable inspection of the vehicle before delivery;
- a defect arising after the buyer takes delivery arising from accidental damage or damage caused by negligence or misuse or in an accessory to the vehicle not fitted to the vehicle when it was sold.

Clause 289 provides that if the buyer of a warranted vehicle believes that the vehicle has a defect which the seller of the vehicle is obliged to repair, the buyer must give the seller a defect notice before the end of the warranty period and deliver the warranted vehicle to the seller to repair the defect or to someone else nominated by the seller in writing.

The clause provides that the buyer is taken to deliver the vehicle and the seller is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle but is unable to do so because the seller refuses to accept delivery of the vehicle.

Clause 290 provides that the seller must keep a record of the day the warranted vehicle is delivered under clause 289 and the day the vehicle is returned to the buyer.

Clause 291 provides that where a vehicle is delivered to the seller under clause 289, the seller must give the buyer a warranty advice stating whether the seller accepts or refuses to accept that the defect is covered by the statutory warranty.

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

Clause 292 provides that if the seller accepts that a defect is covered by the statutory warranty, the seller must repair the defect at the seller's expense and must ensure that the defect is repaired within 14 days. If the seller nominates someone else to repair the vehicle, the seller must advise the buyer of the person's name and the address where the defect is to be repaired.

The seller is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.

The seller's obligation to repair the defect under this section continues even though the seller is no longer performing the functions of a motor dealer.

Clause 293 provides that if the seller refused to accept that the defect is covered by the statutory warranty or accepted the defect is covered by the statutory warranty but failed to repair the defect within 14 days or failed to repair the defect so that the part could be reasonably relied on to perform its intended function, the buyer may refer the matter to the small claims tribunal.

The clause further provides for the orders that the small claims tribunal may make which are in addition to those orders which it is empowered to make under the *Small Claims Tribunals Act 1973*.

If after an order is made by the small claims tribunal in the buyer's favour and the seller contravenes the order, the contravention is a ground for starting disciplinary proceedings against the seller.

Clause 294 allows a claim for a statutory warranty to be heard in a court of competent jurisdiction if the amount of the claim is in excess of the monetary jurisdiction of the small claims tribunal.

PART 6—GENERAL

Clause 295 This clause defines the registered office of a principal licensee as the one specified in the motor dealer's application as being the principal place of business. In the case of a motor dealer who is employed, it is the place specified in the application as the dealer's business address.

Clause 296 provides that a motor dealer must not carry on the business of motor dealing unless the motor dealer carries on the business at a place that meets any minimum standard that may be prescribed. A regulation may make different provision for the type of motor dealing business being conducted.

Clause 297 provides that a principal licensee is required to notify the chief executive within 14 days in the approved form of any change in the registered office as well as the closure or opening of any place of business. An employed licensee must also notify the chief executive within 14 days of any change in their registered office.

Clause 298 provides that a principal licensee must display at each place of business in a prescribed manner, the licensee's name, the name of the person in charge (if it is not the principal licensee) and any other particulars prescribed. Where the licensee advertises in a newspaper or elsewhere, the licensee must also state particulars as prescribed.

Clause 299 provides that the principal licensee must keep at each place of business an employment register, the form of which is prescribed by regulation, into which the names and other prescribed particulars of each employed motor dealer and motor salesperson employed at that place are recorded as well as the functions the salesperson is authorised to perform. These details must be entered into the register immediately after the person is employed at that place and, if there is a change in the details, the entry is to be corrected in the manner prescribed.

Clause 300 provides that the motor dealer must keep a register of transactions at the dealers registered office. The motor dealer must enter in the register the prescribed particulars of each transaction entered into in the course of business through the registered office within 24 hours of the transaction being completed. This register is also required to be kept under the Auctioneers and Agents Act and is used to assist in compliance with the Act.

Clause 301 provides that a motor dealer when buying a vehicle or accepting a motor vehicle on consignment from a seller, must obtain from the seller a statement about the vehicle and the seller. This provision exists

under the Auctioneers and Agents Act and is used to assist in compliance with the Act.

Clause 302 provides that a motor dealer must, when selling a motor vehicle, either personally or on consignment, give to the buyer a statement showing the particulars about the owner of the vehicle and the vehicle. This provision exists under the Auctioneers and Agents Act and is used to assist in compliance with the Act.

Clause 303 provides that a contract of sale of a motor vehicle by a motor dealer must be in writing and contain the particulars that may be prescribed under a regulation. The motor dealer must give one copy of the contract to each person signing the contract immediately after it is signed. A contract which is not in writing is not enforceable against the buyer of a motor vehicle.

PART 7—OFFENCES

Clause 304 provides that a person must not carry on the business of a motor dealer or advertise in any way a willingness to carry on such a business unless the person holds a motor dealer's licence and the functions are authorised by the licence. This section does not apply to a person authorised under an Act, to a financial institution, trustee company, friendly society or to a person who carries on business primarily concerned with the hiring or leasing of motor vehicles.

Clause 305 provides that a person must not act for more than one party to a transaction. If the person does accept more than one appointment to act in the transaction, all appointments are ineffective.

Clause 306 provides that when requested, a motor dealer must produce their licence for inspection by the person with whom they are dealing.

Clause 307 provides that a motor dealer must not knowingly employ a person as a motor salesperson who is ineligible for such employment or employ in any capacity an ineligible person. These persons are listed in the register of ineligible persons maintained by the chief executive. However, the chief executive may approve, subject to conditions, the employment of such ineligible persons. Both the motor dealer and the ineligible person

employed commit an offence against this Act if the employment has not been approved by the chief executive.

Clause 308 provides that a principal licensee who is an individual and carries on the business of a motor dealer must not employ, as a motor salesperson for the business, himself or herself or another individual with whom the principal licensee carries on business as a motor dealer.

A principal licensee that is a corporation and carries on business as a motor dealer must not employ an executive officer of the corporation as a salesperson for the business. For the policy reasons for these provisions, see explanation to clause 153.

CHAPTER 8—COMMERCIAL AGENTS AND THEIR EMPLOYEES

PART 1—COMMERCIAL AGENTS

Division 1—Commercial agent's licence

Clause 309 provides that a commercial agent's licence authorises the holder to perform functions, for reward as an agent for a client, to find or repossess goods or chattels that the client is entitled to repossess under an agreement, as well as collect debts, and serve any writ, claim, application, summons or other process. The commercial agent may perform these functions in the carrying on of business or as an employee of someone else.

Division 2—Commercial agent responsible for acts and omissions of employees

Clause 310 provides that the commercial agent, who is the principal licensee, or who is the licensee in charge at a place of business, must take reasonable steps to ensure that each commercial agent (employee) is properly supervised and acts only within the scope of the employee's authority and complies with the Act. Failure to do so makes the licensee liable for disciplinary action.

PART 2—COMMERCIAL AGENTS (EMPLOYEE)

Division 1—Introduction

Clause 311 This clause defines a commercial agent (employee) as a person employed to perform any of the functions of a commercial agent, but does not include a person who only performs secretarial or clerical duties.

Division 2—Provisions about employment

Clause 312 This clause details the criteria which would render a person to be ineligible to be employed as a commercial agent (employee). The person must be at least 18 years and not have a conviction for a serious offence in the last 5 years which is punishable by 3 or more years imprisonment. A person is ineligible for employment if the person has been declared ineligible for employment as a commercial agent (employee) by a court or whose name is entered in the register of ineligible person for such employment. In addition, corporations are ineligible to be employed as a commercial agent (employee).

Clause 313 provides that before a commercial agent employs a commercial agent (employee), the commercial agent must sight proposed employee's criminal history and check the register of ineligible persons to determine that the proposed employee is not ineligible for employment.

Clause 314 provides that a commercial agent must give each commercial agent (employee) an employment authority which clearly specifies the

functions the employee is authorised to perform.

Clause 315 provides that the court may declare by order that a person is ineligible for employment as a commercial agent (employee) where the court is satisfied that the employee has contravened a code of conduct made under this Act, has been convicted of an offence under this Act, or convicted of an indictable offence which would render the person as unsuitable for employment. The order can be made on the court's own initiative, on the prosecutor's application or by application of the chief executive at any time. The court may make the order subject to conditions and may vary or revoke the order.

Division 2—Functions of commercial agents (employee)

Clause 316 This clause provides that the commercial agent (employee) may, as an employee of the commercial agent, perform the functions which the commercial agent authorised to perform under this Act provided the employee is not an ineligible person.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Clause 317 provides that an individual who carries on the business of a commercial agent is not required to hold a commercial agent's licence if the individual does not perform the functions of a commercial agent, is a suitable person to hold a licence and there is at least 1 person with whom the individual carries on business who holds a licence as a commercial agent.

Clause 318 provides that a commercial agent who is an individual, and a principal licensee, must be in charge of the business at the agent's registered office and, in the case of a corporation, the corporation must ensure that person in charge is a commercial agent. Where there is more than 1 place of business the commercial agent must ensure that there is a person in

charge of the business at each place who is a commercial agent. A commercial agent cannot be in charge of a commercial agent's business at more than one place.

Division 2—Appointment

Clause 319 provides that a commercial agent cannot perform a function for a client until the client appoints the agent in writing. When the appointment is made, it must state the services to be provided and that fees, charges and commissions are negotiable. If the commission is payable as a percentage of an amount to be recovered or the value of an item to be recovered, it is to be expressed in dollars based on that amount or the agreed value of the item.

The appointment must state the fees, charges and commissions payable, when they become payable and any condition, limitation or restriction on the provision of services. Expenses, including travelling expenses, which the commercial agent is authorised to incur must also be stated. Where is a continuing appointment, it must state details the expenses to be incurred for each service or category of services as well as stating when the appointment ends and that it may be revoked in writing at any time by either party.

The appointment must be signed by both parties and a copy of the signed agreement must be given the client.

This provision does not apply to an appointment for repossession or the service of a writ, claim, application, summons or other process. This is because commercial agents are often appointed to these tasks at short notice, and it is not possible to obtain a written appointment prior to acting.

Division 3—Recovery of commission and expenses

Clause 320 provides that where a commercial agent performs a service of collecting a debt or repossessing or finds goods or chattels for someone and claims commission based on a percentage, the commission must be based on the percentage of the amount collected or the value of the goods or chattels repossessed or found.

Clause 321 provides that a person must not sue for, recover or retain a commission, reward or expenses as a commercial agent unless at the time the function was performed, the person held a commercial agent's licence, was authorised under the person's licence to perform the function and the person was properly appointed in writing by the client to do so.

A person cannot sue for, recover or retain a commission, reward or expenses more than was stated in the written appointment or, if these amounts are prescribed, more than the amount allowed under the regulation.

Clause 322 provides that where a person is convicted of an offence related excessive commission, expenses or the like, the court may, if it is satisfied on the balance of probabilities that the person was not entitled to charge that amount, order that the amount be paid to the client whether or not a penalty is imposed for the offence. The amount ordered may be recovered in a court of competent jurisdiction.

Clause 323 provides that a person may not recover from a debtor the cost of collecting a debt or repossessing goods or chattels unless there is a provision in the agreement with the debtor for the person to collect the costs and expense of the commercial agent to perform these functions from the debtor. This section is also subject to the Consumer Credit Code.

Division 4—Code of conduct

Clause 324 provides that a regulation may be made to prescribe a code of conduct about commercial agency practice which may include setting the standard for commercial agents and their employees, principles of fair trading and providing a system of complaint resolution.

Clause 325 provides that a person aggrieved by the conduct of a commercial agent or a commercial agent (employee) may complain to the chief executive in writing. The chief executive may investigate the matter and take action under the Act, even if the person is no longer a commercial agent or a commercial agent (employee).

PART 4—GENERAL

Clause 326 This clause defines the registered office of a principal licensee as the one specified in the commercial agent's application as being the principal place of business. In the case of a commercial agent who is employed, it is the place specified in the application as the agent's business address.

Clause 327 provides that a principal licensee is required to notify the chief executive within 14 days in the approved form of any change in the registered office as well as the closure or opening of any place of business. An employed licensee must also notify the chief executive within 14 days of any change in their registered office.

Clause 328 provides that a principal licensee must display at each place of business in a prescribed manner, the licensee's name, the name of the person in charge (if it is not the principal licensee) and any other particulars prescribed. Where the licensee advertises in a newspaper or elsewhere, the licensee must also state particulars as prescribed.

Clause 329 provides that the principal licensee must keep at each place of business an employment register, the form of which is prescribed by regulation, into which the names and other prescribed particulars of each employed commercial agent and commercial agent (employee) employed at that place are recorded as well as the functions the employee is authorised to perform. These details must be entered into the register immediately after the person is employed at that place and, if there is a change in the details, the entry is to be corrected in the manner prescribed.

PART 5—OFFENCES

Clause 330 provides that a person must not carry on the business of a commercial agent or advertise in any way a willingness to act as a commercial agent unless the person holds a commercial agent's licence and the functions are authorised by the licence. This section does not apply to a financial institution, trustee company, friendly society or to a person authorised under an Act.

Clause 331 provides that where a commercial agent is appointed by a client to perform a function in relation to another person, the commercial

agent must not accept an appointment from that other person while the appointment with the original client continues.

Clause 332 provides that when requested, a commercial agent must produce their licence for inspection by the person with whom they are dealing.

Clause 333 provides that a commercial agent must not knowingly employ a person as a commercial agent (employee) who is ineligible for such employment or employ in any capacity an ineligible person. These person are listed in the register of ineligible persons maintained by the chief executive. However, the chief executive may approve, subject to conditions, the employment of such ineligible persons. Both the commercial agent and the ineligible person employed commit an offence against this Act if the employment has not been approved by the chief executive.

Clause 334 provides that a commercial agent must not be employed as a commercial agent (employee) by a business carried on by himself or with another. Similar provisions apply to a corporation where a commercial agent, who is an executive officer, cannot be employed as a commercial agent (employee). For the policy reasons behind these provisions, see clause 153.

Clause 335 provides that a commercial agent must not represent that the licence enables the exercise of a power which the person may not lawfully use or use the licence to exercise such as power.

Clause 336 provides that the commercial agent must not enter any premises without lawful authority.

Clause 337 provides that a commercial agent must not make false of misleading statements to induce a person to enter into an arrangement for the payment of a debt.

Clause 338 provides that a creditor must not use the name, description, a document or device to induce a debtor to believe that the person is not dealing with the creditor but with someone acting on the creditor's behalf. The commercial agent must not do or give anything which would enable this to occur.

CHAPTER 9—ACCOUNTS AND FUNDS

PART 1—TRUST ACCOUNTS

The trust account provisions have essentially been reproduced from the existing legislation, except that the provisions have been rewritten in a more understandable form and have been reordered into a logical sequence, beginning with the notification of intention to open a trust account, through to the ultimate disposal and accounting for moneys held.

Division 1—Application of Part 1

Clause 339 provides that the trust account provisions apply only to principal licensees.

Division 2—Opening trust accounts

Clause 340 requires a licensee to give notice of intention to open a general or special trust account and provide information about the office or branch of the approved financial institution at which the trust account is to be opened and maintained. A copy of the chief executive's acknowledgement of the licensee's notice of intention is provided by the licensee to the financial institution.

Clause 341 provides that trust accounts shall be include the words "general trust account" and "special trust account".

Clause 342 requires written notice by the licensee for the opening, closing or re-naming of a trust account.

Division 3—Dealing with Trust money

Subdivision 1—Payments to trust accounts

Clause 343 provides that the subdivision applies when an amount is received by a licensee for a transaction or with a written direction for its use.

Clause 344 requires a licensee immediately upon receipt of trust moneys, to bank those moneys to a general or special trust account.

Clause 345 provides that when an amount is received on a sale which is not to be completed for more than sixty days and there is a direction to the licensee to invest the money, the licensee must invest the moneys in a special trust account.

Clause 346 provides that no other moneys can be paid into the trust account, other than moneys received by the licensee in the course of a transaction. This prevents the mixing of trust and non-trust moneys.

Clause 347 allows a multiple licence holder to operate one trust account in respect of moneys received by the licensee in any licensing capacity.

Clause 348 provides protection for trust moneys held by a licensee in not being available to the licensee's creditors.

Subdivision 2—Payments from trust accounts

Clause 349 This clause establishes when and how drawings from trust accounts may be made. The way permitted under a regulation will take account of electronic fund transfers and other technology used in the transfer of moneys from person to person.

Clause 350 sets out the licensee's obligation to pay over moneys to clients entitled to trust moneys, and when drawings are permitted on the trust account.

Subdivision 3—Other trust account obligations

Clause 351 requires the licensee to provide to the client a written account of all moneys received and how amounts were or are to be paid out.

Division 4—Disputes about trust money

Clause 352 concerns the application of division 4 to trust moneys

Clause 353 establishes when a licensee may pay out trust moneys which are or have been in dispute after receiving notice from the parties that the matter has been resolved, or that legal proceedings have commenced to establish ownership of the moneys.

Clause 354 provides where moneys in dispute may be paid if notice is given.

Clause 355 provides the alternatives to licensees for dealing with moneys in dispute where notice under clause 353 has not been given.

PART 2—AUDIT REQUIREMENTS

Division 1—Interpretation

Clause 356 establishes the meaning of “auditor” for this part and provides scope for the appointment of qualified or approved auditors.

Division 2—Provisions about auditors

Clause 357 requires a principal licensee to appoint an auditor for the licensee’s trust accounts

Clause 358 provides that a person may apply to the chief executive for approval to act as auditor for a licensee as an “approved auditor”

Clause 359 establishes how the chief executive considers applications for approval of auditors.

Clause 360 determines when approval of person as approved auditor ends.

Clause 361 requires a licensee who has not already advised the chief executive of the appointment of an auditor to provide notice and evidence of an auditor’s appointment within one month of the appointment.

Clause 362 provides steps to be taken if the auditor’s appointment ends.

Clause 363 provides that chief executive may withdraw approval as approved auditor.

Clause 364 allows the chief executive to make information available to professional supervisory bodies of the auditor.

Division 3—Audit of trust accounts

Clause 365 Definitions for division 3

Clause 366 provides that trust accounts must be audited unless the trust account has not been operated. In these cases the licensee must lodge a statutory declaration in lieu of an audit report.

Clause 367 provides time for audit. The time of the audit period has been expanded from 2 months to 4 months to allow for larger or more complex audits to be completed and to link the audit report to renewal of the licensee's licence.

Clause 368 establishes the auditor's functions, including conducting the audit, surprise visits, and making a report on the audit.

Clause 369 provides for auditor's advice to chief executive if auditor detects during the course of an audit or surprise visit that trust accounts have not been satisfactorily kept.

Clause 370 provides that the auditor may ask a licensee to produce other accounts, including general accounts and to provide information about those accounts.

Clause 371 provides for the audit of a trust account on ceasing to be a licensee or ceasing to carry on business as a licensee.

Clause 372 provides for content of audit reports.

PART 3—FIDELITY GUARANTEE FUND

Division 1—The fund

Clause 373 establishes the fidelity guarantee fund.

Clause 374 provides how the fund may be applied.

Clause 375 provides for additional levy which might be imposed on licensees should there be an insufficient amount in the fund to pay claims.

Clause 376 allows the chief executive to enter agreements with financial institutions for payment of interest on amounts in trust accounts held with those financial institutions into the fund.

Clause 377 provides for the Treasurer to pay interest on amounts held in the fund.

**PART 4—FREEZING TRUST ACCOUNTS AND
APPOINTING RECEIVERS AND SPECIAL
INVESTIGATORS*****Division 1—Definitions***

Clause 378 provides definitions for part 4.

Division 2—Freezing licensees' accounts

Clause 379 provides that the chief executive may freeze licensee's accounts in particular cases, such as the stealing, misappropriation or misapplication of trust moneys. Moneys may be banked to the account but drawings may only be effected with the chief executive's written approval so as to safeguard any remaining funds.

Clause 380 provides that financial institution must comply with a direction from the chief executive about freezing a trust account or trust

accounts.

Clause 381 provides that an account cannot be operated unless chief executive first signs any cheque or other instrument for payment out of the trust account.

Clause 382 provides that in certain circumstances the chief executive or a person authorised by the chief executive may operate the trust account alone.

Clause 383 allows for withdrawal of a direction to freeze a trust account.

Division 3—Receivers

Subdivision 1—Appointment

Clause 384 establishes the grounds by which a receiver may be appointed by the chief executive. Receivers are appointed where the chief executive believes that a defalcation may have occurred in a licensee's trust account.

The functions and powers of a receiver are substantially the same as under the present legislation, the *Auctioneers and Agents Act 1971*.

Clause 385 provides for property of a licensee which a receiver may be appointed over.

Clause 386 provides that only appropriately qualified persons may be appointed as receivers.

Clause 387 provides that receivers are appointed by notice given by the chief executive.

Subdivision 2—Receiver's functions and powers

Clause 388 establishes the functions which may be performed by receivers.

Clause 389 provides that a receiver may seek information from a person about receivership property and require the person to provide the

information unless the person has a reasonable excuse not to give the information. A person has reasonable excuse for not providing information, if that information may tend to incriminate the person.

Clause 390 allows the receiver to take possession of receivership property.

Clause 391 provides for orders made by the receiver for a person to give possession of receivership property to the receiver. The order may be enforced in a court of competent jurisdiction.

Clause 392 allows a court to make orders concerning possession of receivership property which may authorise a police officer, the receiver or another person to enter premises, search and seize property and move it to a place the receiver considers appropriate.

Clause 393 establishes an offence for improperly withdrawing, destroying or concealing property over which a receiver has been appointed.

Clause 394 establishes how a receiver deals with receivership property.

Clause 395 provides offence for a person obstructing a receiver in the performance of the receiver's functions.

Subdivision 3—Distributing receivership property

Clause 396 provides that the receiver must give notice to claimants who may have a claim against receivership property.

Clause 397 requires the receiver to provide, for claimants, access to documents to allow particulars and grounds of the claim to be given. This access must be free of any charge by the receiver.

Clause 398 establishes that receiver must consider all claims against receivership property and decide whether claims by trust creditors are allowable or that the receiver may refuse the claimant's claim.

Clause 399 establishes how and when a receiver may make payment of allowable claims.

Clause 400 requires that money not dealt with by the receiver must be paid over to the chief executive who must pay the moneys into the fund. These moneys may be applied to pay unsatisfied claims in relation to the

licensee or to pay claims by the licensee against the money.

Subdivision 4—Receivers' remuneration and costs

Clause 401 provides that the chief executive must pay remuneration and costs for the receiver from the fund. The clause also provides that in any dispute between the receiver and the chief executive over the amount of remuneration, the Minister may decide the amount of remuneration and/or costs.

Clause 402 provides that the receiver's liabilities may be paid from the fund for an act or omission done in good faith in the performance of the receiver's functions.

Clause 403 provides for recovery of remuneration, costs or liabilities from a licensee to the fund. The recovery is as recovery for a debt in a court of competent jurisdiction.

Clause 404 establishes that a person who is or becomes liable for payment of receiver's remuneration and/or costs (a licensee) may apply to the court to review that remuneration, costs or liability.

Subdivision 5—Ending receivership

Clause 405 establishes when a receiver's appointment ends.

Clause 406 provides for dealing with receivership property if a receiver's appointment has ended, the provision requires the receiver to give the property to the new receiver (if appointed), or, in other cases, to return the property to the licensee or other persons who may have a right to the property.

Clause 407 provides that the receiver must give a report about the receivership when the chief executive directs and also when the receivership ends.

Subdivision 6—Miscellaneous

Clause 408 establishes that the receiver is not the personal representative of a deceased licensee.

Clause 409 provides that receivership property cannot be levied and is free from execution or attached under a judgment.

Division 4—Special investigators

Clause 410 establishes that the chief executive may appoint, as a special investigator, a person with appropriate qualifications. The appointment of special investigators under this division intends to provide an alternative to the appointment of receivers. Under the Auctioneers and Agents Act 1971 the only option available when a licensee's trust account appears to be deficient or where the true state of the trust account cannot be readily ascertainable is to appoint receivers who then control the licensee's business until the conclusion of the receivership. Most receiverships result in the closure of the licensee's business.

The appointment of special investigators allows a less intrusive means of ascertaining the true state of a licensee's accounts, including construction of incomplete trust account records and audit. This allows the licensee, unless suspended, to continue to trade. However, if the special investigator's report indicates that a deficiency exists or that moneys have been misappropriated, misapplied or stolen, a receiver may still be appointed at the conclusion of the special investigator's function.

Clause 411 provides for the functions of special investigators, including inspection of trust accounts and records, preparing or constructing trust account records, accounting tasks to establish the true state of the accounts and reporting to the chief executive.

Clause 412 provides for the powers of a special investigator which enable the chief executive to appoint a special investigator with all or any of the powers of an inspector set out in chapter 12, part 2.

Clause 413 requires a licensee to comply with a special investigator's lawful requests unless the licensee has lawful excuse.

Clause 414 requires a special investigator to make reports to the chief executive, and particularly requires the special investigator to report to the chief executive immediately where the special investigator considers there

are sufficient grounds to appoint a receiver.

Clause 415 provides for the remuneration and costs of a special investigator, in a similar manner as for receivers (see clause 401), except that where an inspector (appointed under clause 486) acts as a special investigator, the inspector is only entitled to the inspector's salary.

Clause 416 provides that the special investigator's liabilities may be paid from the fund in similar manner to clause 402 (receiver's liabilities).

Clause 417 provides for recovery of remuneration, costs or liabilities from a licensee to the fund. The recovery is as recovery for a debt in a court of competent jurisdiction.

Clause 418 establishes that a licensee or other person who is or may become liable to reimburse the fund for special investigator's remuneration may ask the court to review remuneration, costs or liabilities.

Clause 419 provides for the ending of a special investigator's appointment.

CHAPTER 10—AGENTS AND MOTOR DEALERS BOARD

PART 1—AGENTS AND MOTOR DEALERS BOARD PANEL AND MEMBERS

Clause 420 provides that the Governor in Council, may by gazette notice, appoint individuals as members of a panel of agents and dealers board members. The clause provides that the panel is to consist of specified industry members, a consumer representative and a lawyer. It is to be noted that the pastoral house industry is not represented on the panel. This is because there are currently only two pastoral houses licensed in Queensland and it would lead to a possible conflict of interest if one pastoral house were to decide matters against another. The Bill therefore provides that the Minister may appoint at least 2 members who represent pastoral house interests. It is to be noted, however, that the Minister may convene a meeting of the board to provide policy advice, and a pastoral house may be

represented on this board (see clause 426).

Clause 421 provides that a panel member may be appointed for a term not more than 3 years, that the appointment as a panel member is on a part-time basis, and that a member may resign by written notice given to the Minister.

Clause 422 provides that a panel member is to be paid from the fund the remuneration and allowances decided by the Governor in Council for acting as a member of the board. It also provides that a member holds office on the conditions not provided in this Act decided by the Governor in Council.

Clause 423 provides that the Governor in Council may remove a panel member from office if the member is incapable of properly discharging the functions of a panel member or is unfit to hold office.

PART 2—ESTABLISHMENT AND COMPOSITION OF AGENTS AND MOTOR DEALERS BOARDS

Clause 424 provides that the registrar may establish an agents and motor dealers board to deal with matters within the jurisdiction of the boards. A board must consist of 3 panel members.

PART 3—JURISDICTION

Clause 425 provides that a board, other than a board that includes a pastoral house representative, has jurisdiction to review fees chargeable by licensees, hear and decide disciplinary matters involving licensees and to hear and decide claims against the fund.

A board established to advise the Minister on any matter referred for advice by the Minister may include a pastoral house representative.

PART 4—GENERAL

Clause 426 provides that the Minister may refer matters to the board for advice.

Clause 427 provides that where a panel member has a direct or indirect interest in a matter being or to be considered by a board of which the panel member is a member, that conflicts or may conflict with the discharge of the member's duties in considering the matter, the member must disclose the interest to the Minister if the matter is a policy advice matter, or the registrar for other matters.

Unless the Minister or the registrar decide otherwise, the member must not be present during the board's deliberation of the matter and must not take part in the board's decision on the matter.

Clause 428 provides that every court must take judicial notice of the appointment of a panel member and the signature of a panel member if it appears on a document issued by a board.

Clause 429 provides that the chief executive may appoint a registrar of agents and dealers boards for the Act.

Clause 430 provides that the department must provide administrative support services to the board. The cost of providing the services is payable from the fund.

CHAPTER 11—COMPLIANCE, DISCIPLINE AND CLAIMS AGAINST THE FUND

PART 1—FEE REVIEW PROCEEDINGS

Division 1—Preliminary

Clause 431 provides for the definitions for part 1.

Clause 432 provides for the giving of objections about fees to the chief

executive. The provision requires a complainant to provide a written objection to the fess charged by a licensee only after attempting unsuccessfully to resolve the matter with the licensee. The complainant shall provide information relating to the fee and service and a copy of any material relevant to the objection. For example: a copy of the agent's appointment to act which sets out the services to be provided and the fees, expenses and charges for the provision of those services.

Division 2—Starting fee review proceedings

Clause 433 provides the grounds for the chief executive to start fee review proceedings.

Clause 434 provides for how to start fee review proceedings. The chief executive must give the licensee a notice about the objection. The chief executive will give a complaint about the fees, charges etc. to the registrar who will convene an agents and motor dealers board for the hearing of the complaint. The registrar will issue to the licensee an attendance notice requiring the licensee to attend before the board to answer the complaint.

Clause 435 provides for when proceedings are taken to start.

Clause 436 provides that the hearing date must be at least 14 days after the complaint and attendance notice is given to the licensee.

PART 2—DISCIPLINARY PROCEEDINGS

Division 1—Definitions

Clause 437 provides the definitions for part 2.

Division 2—Starting disciplinary proceedings

Clause 438 provides the grounds for starting disciplinary proceedings.

Disciplinary proceedings may be taken against a licensee or salesperson or a former licensee or former salesperson.

The provision provides grounds for proceeding against individuals, corporations and executive officers of corporations.

Clause 439 provides the grounds for starting disciplinary proceedings against an executive officer.

Clause 440 provides for how to start disciplinary proceedings. The chief executive files a complaint against a person (respondent) with the registrar who will constitute an agents and motor dealers board for the hearing of the disciplinary proceeding. The respondent must receive both a copy of the complaint, setting out the grounds for the disciplinary proceeding and an attendance notice requiring the respondent to attend at a stated time and place before the board.

Clause 441 provides for when a disciplinary proceedings is taken to start.

Clause 442 provides that the hearing date must be at least 14 days after the attendance notice is given.

PART 3—CLAIMS AGAINST THE FUND

Division 1—Definitions

Clause 443 provides for the definitions for part 3.

Division 2—Who can claim

Clause 444 provides for the circumstances in which a person may claim against the fund. Claims may be made by a person who suffers financial loss as a result of specified contraventions of the Act, stealing, misappropriation or misapplication of property entrusted to a relevant person, a contravention of the *Land Sales Act 1984* by a licensee appointed by the owner of land to which that Act applies or for the failure of a motor dealer or auctioneer to ensure that the buyer of a motor vehicle gains clear title to the vehicle at the time possession of the vehicle passes to the buyer.

Clause 445 provides for the persons who cannot claim against the fund. Exclusions from claims include the loss of trust moneys received with a direction for their investment under clause 345, the sale of livestock under a *del credere* arrangement, a licensee in the course of performing a function or carrying on business as a licensee, a financier of a motor dealer's business who suffers loss as a result of financing the motor dealer's business or a person who suffers loss as a result of guaranteeing the motor dealer's obligations under a financial arrangement with the motor dealer.

Division 3—Making and dealing with claims

Clause 446 provides for the time limits for a claimant to make a claim against the fund.

Clause 447 provides how to make a claim against the fund. The claim is taken to be made from the day it is given to the chief executive even if the claimant cannot provide all of the information required to be made about the claim. The chief executive may require a claimant to verify the claim or part of the claim.

Clause 448 provides that the chief executive may investigate claims to establish the grounds for the claim, and in circumstances where the grounds set out in clause 444 are not made out, but the chief executive is satisfied that because the person suffered loss because of the actions of a licensee and that it is reasonable in the circumstances that a payment from the fund should be made, the chief executive may recommend to the Minister that an *ex gratia* payment be made and if the Minister accepts the recommendation, the chief executive shall authorise the payment from the fund.

Clause 449 provides that the chief executive must give the respondent notice of the claim. The purpose of this notice is twofold. It is to inform the respondent that a claim may lie against the respondent and the grounds upon which the claim is based so that the respondent might —

- (a) provide information to the chief executive about the claim; or
- (b) attempt to settle the claim with the claimant.

If the claimant and respondent settle the claim and the respondent satisfies the chief executive that the claim has been settled, the claim is taken to be withdrawn.

Clause 450 provides for dealing with unsettled claims. The chief executive must refer all unsettled claims to the registrar. The registrar must decide a minor claim (less than \$5,000) and refer all claims other than minor claims which the registrar deals with personally to an agents and dealers board which the registrar will convene for the purpose of deciding those claims.

Clause 451 provides for the matters which must be taken into account when deciding claims. The registrar or board deciding a claim must not decide the claim until the time for the respondent to give the chief executive information about a claim notice has expired or if subsequent to the respondent advising that the matter was to be settled between the claimant and respondent, a reasonable time has elapsed without notice of settlement. The registrar or board must, in deciding the claim, take into account any amount the claimant might reasonably have received or recovered if not for the claimant's neglect or default.

Clause 452 provides that the registrar must hear minor claims. A "minor claim" is defined in clause 443 as being a claim of not more than \$5000. The clause provides that the registrar must determine the claim without a hearing. The registrar may require the claimant or respondent to provide further information or documents in order to determine the claim. The registrar may accept or reject the claim wholly or in part and make any order a board may make under clause 481.

Clause 453 provides that a board may determine a claim without a hearing in a similar manner to the process for the registrar's decisions. However the board may determine that it is not appropriate to decide the claim on the information available and refers the claim back to the registrar to convene a hearing.

Division 4—Payment of claims

Clause 454 provides that if a claim is allowed the chief executive must authorise payment from the fund for the amount allowed. However no payment is to be made until the end of the appeal period for an appeal against the decision maker, or if an appeal has been made, until the appeal is finally decided. Payment is taken to be in full settlement of the claim.

Clause 455 provides that a claimant cannot recover from the fund an amount greater than the claimant's loss after taking into account the value of

any benefit received or recovered by the claimant or any amount, including any benefit the decision maker considers the claimant might reasonably have received or recovered if not for the claimant's neglect or default. The provision imposes a ceiling of \$500,000 as the most a claimant may claim from the fund.

Clause 456 provides that the claimant must give the chief executive written notice of any other amount or benefit received in relation to the claimant's loss.

Division 4—Reimbursements to fund

Clause 457 provides that the chief executive may ask a claimant to produce documents to allow the chief executive to exercise the chief executive's subrogation rights. The chief executive may defer payment of any claim allowed until the document is executed.

Clause 458 provides for the subrogation rights of the chief executive. To the extent of the amount paid from the fund, the chief executive stands in the stead of the claimant for all rights and remedies against the relevant person in relation to whom the claim arose.

Clause 459 provides for the recovery by the chief executive of overpayments.

Clause 460 provides for reimbursement to the fund by executive officers in certain circumstances. The executive officers of a corporation are taken to be jointly and severally liable to reimburse the fund for a payment made for a claim.

Division 5—Miscellaneous

Clause 461 provides for a payment schedule when there is any insufficiency in the fund.

Clause 462 provides that the chief executive is not liable for payments from the fund.

PART 4—HEARINGS***Division 1—Procedure***

Clause 463 provides for the establishment of the board for a hearing to review fees, hear and decide disciplinary matters, or to hear and decide claims against the fund. Each board is established by the registrar who must select from the agents and motor dealers board panel (clause 420) one industry member who holds a licence in the industry in which the respondent is employed or engaged, one panel member who is a lawyer and who will be chairperson of the board and one member representing consumer interests.

Clause 464 provides that the board may appoint, with the registrar's approval, a lawyer to assist the board for a hearing.

Clause 465 provides for the conduct of hearings.

Clause 466 provides for venues for hearings.

Clause 467 provides that hearings of the board must be held in private.

Clause 468 provides for rights of appearance and representation.

Clause 469 provides for the procedure when there is non-appearance by the respondent.

Clause 470 provides for matters which must be taken into consideration by the board.

Clause 471 provides for the amendment of the complaint.

Division 2—Attendance notice

Clause 472 provides for the issue of attendance notices.

Division 3—Agents and dealers board's powers

Clause 473 provides for the powers of the board relating to taking of evidence.

Clause 474 provides for inspection of documents by the board.

Clause 475 provides for the power of the board to refer a matter for expert opinion.

Clause 476 provides for the power to adjourn hearings.

Clause 477 provides for contempt of the board's hearings.

Clause 478 provides for protection of members of the board and others appearing before the board.

Division 4—Agents and motor dealers board's orders

Clause 479 provides for the orders that the board may make on a fee review hearing. The orders include an order about fees and orders about payment of an amount to a person or any other order considered appropriate.

Clause 480 provides for the orders that the board may make after the disciplinary charge hearing. These orders include an order reprimanding a person, and a fine or not more than 50 penalty units.

Clause 481 provides for the orders the board may make on a claim hearing. Orders include an order about allowing a claim wholly or partially.

Clause 482 provides for form of orders, requiring the order to be signed by the presiding member and stating the boards findings on the facts of the case.

Clause 483 provides for service of orders.

Clause 484 provides for recovery of fines or other amounts.

Clause 485 provides that the chief executive may cause publication of about a hearing of the board, including matters about the respondent, the board's findings and any order made at the hearing.

CHAPTER 12—ENFORCEMENT

PART 1—INSPECTORS

Clause 486 provides that the chief executive is an inspector and that the chief executive may appoint persons whom the chief executive is satisfied has the necessary expertise to be an inspector.

Clause 487 requires the chief executive to give each inspector an identity card.

Clause 488 requires inspectors to produce the identity card before exercising a power given under the Act.

PART 2—INSPECTORS’ POWERS

Clause 489 provides under what circumstances an inspector may enter a place.

Clause 490 establishes an inspector’s power to request a licensee to produce the licensee’s licence or to produce documents relating to the licensee’s trust account or to produce documents and things relating to the licensee’s business and to provide information about the document or thing produced. The inspector may request the document, thing or information to be produced immediately or at a stated place and at a stated time.

The inspector may inspect a produced document or thing and audit or copy a produced document. The inspector may seize a document or thing if the inspector reasonably believes that the document or thing is evidence of an offence against the Act and that the seizure is necessary to prevent the document or thing from being hidden, lost or destroyed.

The clause provides reasonable excuse for a person failing to give information that if by giving the information it may tend to incriminate the person.

Clause 491 inserts a new provision that an inspector may apply to a magistrate for a warrant and the grounds upon which the warrant may be issued.

Clause 492 provides that the inspector may, in urgent or special circumstances, apply for the warrant by phone, fax, radio or another form of communication.

Clause 493 establishes an inspector’s powers under a warrant. The warrant may allow the inspector to search any part of the place, inspect,

photograph or film the place, seize the evidence for which the warrant was issued or seize a thing which is evidence of an offence, copy any document and take into the place any person, materials or equipment reasonably required to exercise a power under the Act.

Clause 494 provides for the procedure to be observed by an inspector after having seized any thing, including its ultimate return to the person.

Clause 495 establishes an inspector's power to require a person to give the person's name and address if the inspector finds the person committing an offence or reasonably suspects that the person has committed or assisted in the commission of an offence against the Act. The inspector must warn the person that it is an offence to fail to give the person's name and address without reasonable excuse.

Clause 496 sets out the powers of an inspector requiring a person to give information about an offence at a stated place and time.

PART 3—OTHER PROVISIONS ABOUT ENFORCEMENT

Clause 497 sub clause (a) requires the manager or principal officer of a financial institution to allow an inspector to inspect and copy any documents relating to an account to which trust moneys have been deposited.

Sub clauses (b) and (c) require the manager or principal officer to notify the chief executive immediately if the licensee's account becomes overdrawn or if there are insufficient moneys in a licensee's trust account to meet a cheque drawn on the trust account.

Clause 498 establishes an offence for any person threatening or obstructing an inspector from exercising a power.

Clause 499 allows the chief executive to enquire about licensee's employees. This power is ancillary to the requirement for licensees to ensure that all salespersons employed are "eligible" for employment.

Refer, for example, to Chapter 4, part 2, *div 2-Provisions about employment*. Whilst salespersons are to be de-registered, it will be necessary to be able to check on the eligibility of a salesperson.

CHAPTER 13—INJUNCTIONS AND UNDERTAKINGS

PART 1—INJUNCTIONS

Clause 500 establishes that an injunction may be granted by a District Court against a person.

Clause 501 provides that the chief executive or a person aggrieved by the conduct of a person (respondent) may apply to the District Court for an injunction.

Clause 502 sets out the grounds by which a District Court may grant injunctions, including that a person has engaged in conduct which is a contravention of the Act or of a code of conduct prescribed under the Act.

Clause 503 provides that the power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised whether or not it appears to the Court that the person intends to continue to engage in the conduct. Likewise the Court may grant an injunction requiring a person to do something regardless of whether the person fails, or continues to fail to do the thing. The provision allows for interim and final injunctions.

Clause 504 allows the District Court to grant an injunction in the terms the Court considers appropriate and may restrain a person from carrying on a business of supplying goods or services for a stated time or on stated terms and conditions. For example the chief executive may seek an injunction against an unlicensed motor dealer and the Court may grant an injunction restraining that unlicensed motor dealer from carrying on the business of motor dealing or supplying motor vehicles.

Clause 505 provides that where the chief executive applies for an injunction, no undertaking as to damages or costs is required.

PART 2—UNDERTAKINGS

Clause 506 establishes the capacity for the chief executive, in circumstances where the chief executive reasonably believes that a person may have contravened the Act or a code of conduct, to seek an undertaking from the person to cease to continue or repeat the act or omission. Where the chief executive accepts an undertaking, proceedings for an offence cannot be brought, except as provided below.

Clause 507 provides for the variation or withdrawal of undertakings.

Clause 508 establishes how an undertaking may be enforced in a District Court, including an order of the Court for the person who gave the undertaking to pay a security bond, or to forfeit a security bond for a contravention of the undertaking.

Clause 509 requires the chief executive to keep a register of all undertakings and make the register available at the department's head office for inspection or copy by any person for a fee.

CHAPTER 14—GENERAL OFFENCES, EVIDENTIARY MATTERS AND LEGAL PROCEEDINGS

PART 1—GENERAL OFFENCES

Clause 510 provides that a licensee who dishonestly converts moneys received on behalf of someone else to the licensee's or some other person's use or dishonestly renders an account of the amount knowing it to be false in a material way commits a crime and a severe penalty is imposed, recognising the seriousness of the offence.

Clause 511 provides that offences against the Act, other than an offence against clause 510 is a summary offence. It should also be noted that for offences, the penalty is set out within the provision for which the contravention may have arisen. The penalties have been increased from the

existing Act and have been assessed in accordance with the seriousness of the offence.

Clause 512 sets out the ways in which a proceeding for an offence against clause 510 may be taken. The matter may be dealt with summarily or on indictment. If proceedings are taken summarily, the maximum penalty which can be imposed is 200 penalty units or 3 years imprisonment.

Clause 513 establishes an offence for false representation about property. A licensee or salesperson commits an offence if the person represents in any way to someone else anything false or misleading about property that the licensee has for sale, letting or auction. The provision defines that a representation is false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that did not in fact exist, whether or not the representation indicates that the state of affairs does exist. The provision expands on the existing provision in that it now deals with representations the licensee or salesperson may make to a vendor/ landlord/owner or other persons about property, as well as to buyers, prospective buyers, tenants, prospective tenants, lessees, prospective lessees.

Clause 514 provides for an offence for tampering with an odometer. It provides that a person must not tamper with a motor vehicle's odometer with intent to falsely represent that the vehicle has travelled more than a specified distance or less than a specified distance.

Clause 515 establishes an offence for a licensee to charge a fee for preparing, providing or completing a document for a transaction. The provision specifically excludes the provision of a security certificate, where the fee for providing the security certificate is established under clauses 232(10) and 280(5).

Clause 516 provides for an offence for excessive commission or reward where the commission or fees is prescribed under a regulation. This provision enables enforcement of offences for excessive or improper remuneration, if commissions, fees, and charges were to be re-regulated.

Clause 517 establishes an offence for a licensee to fail to comply with a court order. The order must relate to something the licensee did, failed to do or refuses to do in connection with the licensee's functions as a licensee.

Clause 518 creates an offence for a person to operate a licensee's trust

account other than the licensee, a person employed by the licensee and authorised to operate on the trust account, or someone otherwise permitted to do so under this Act.

Clause 519 provides that a licensee must not lend or hire out the licensee's licence to someone else or notify or advertise that the licence is available for sale, loan, hire or any other basis or permit someone to hold themselves out that the person is the holder of the licence issued to the licensee. The provision also establishes that a person who is not licensed and has effective or apparent control of a licensee's business is taken to have borrowed the licensee's licence and the licensee is taken to have lent the licence.

Clause 520 establishes that a person must not state to an official (the chief executive, inspector or other officer of the department in which the Act is administered) anything the person knows to be false or misleading in a material way.

Clause 521 provides that a person must not give an official a document containing information the person knows to be false or misleading. For example an applicant for a licence who completes details in the application which s/he knows to be false about the person's identity, qualifications, address or any other material matter commits an offence.

Clause 522 prohibits any person from supplying addresses, or advertising that they will supply, addresses of real property for sale or rental to any person or display photographs of real property for sale or supply particulars of the property, unless that person is a licensed real estate agent, or pastoral house properly appointed by the seller or landlord to supply the particulars. Newspapers are excluded from this provision.

PART 2—EVIDENTIARY MATTERS

Clause 523 concerns evidence of tampering by a motor dealer.

Clause 524 provides for a continuing false misrepresentation in relation to a tampered odometer.

Clause 525 provides for evidentiary matters.

Clause 526 establishes that an entry in a book kept by, belonging to the licensee or found in the licensee's premises is evidence that the entry was made by or with the authority of the licensee.

Clause 527 places a limitation on time for commencing a proceeding for an offence against this Act.

Clause 528 provides for responsibility for acts or omissions of representatives.

Clause 529 provides that executive officers of a corporation must ensure that the corporation complies with the Act.

Clause 530 provides that the court may in addition to any penalty imposed may order that a licensee's licence be suspended or cancelled. The court may also order that a person convicted of an offence under this Act be disqualified from holding a licence for a stated period or permanently. Orders may be made on the court's own initiative or upon the application of the chief executive.

Clause 531 provides that for offences involving a false or misleading statement, representation or entry or false or misleading information, it is enough for a charge to state the statement, representation or entry or information was false or misleading.

CHAPTER 15—APPEALS

Clause 532 establishes that a person aggrieved by a decision of the chief executive specified in schedule 1, part 1 of the Act may appeal against the decision in a magistrates court.

Clause 533 establishes that a person aggrieved by a decision of the registrar concerning claims against the fund may appeal against the decision in a magistrates court.

Clause 534 establishes that a person aggrieved by a decision of an agents and motor dealers board specified in schedule 1, part 2 of the Act may appeal against the decision in a magistrates court.

Clause 535 sets out how a person may start an appeal against a decision. The notice of appeal must be filed within 28 days of receipt of a notice of a

decision and must state the grounds of the appeal.

Clause 536 provides for stay of operation of decisions.

Clause 537 establishes hearing procedures for the appeal court.

Clause 538 establishes the powers which a magistrates court has in deciding an appeal.

Clause 539 allows appeals against a decision of a magistrates court concerning an appeal, to a District Court, but only on a question of law.

CHAPTER 16—GENERAL

Clause 540 requires the chief executive to establish and keep a register of persons who are ineligible to be employed (refer to clauses 88 and 91, clauses 112 and 115, clauses 160 and 163, clauses 262 and 265, clauses 312 and 315). The chief executive must make the register available for persons to search or obtain copies of the entries in the register at the department's head office.

Clause 541 provides that nothing in the Act affects or limits any civil remedy a person may have against a licensee or other person.

Clause 542 provides that this Act does limit the *Crimes (Confiscation) Act 1989*.

Clause 543 provides that the chief executive may delegate the chief executive's powers to an appropriately qualified officer of the department.

Clause 544 provides that an official is not liable for an act done or omission made honestly and without negligence under the Act. Liability shall instead attach to the State.

Clause 545 provides that the chief executive may approve forms for use under this Act. Those forms include, for example, forms of application for agents and dealers licence.

Clause 546 establishes that the Governor in Council may make regulations under this Act.

Clause 547 provides for amendment to Acts listed in schedule 2

(consequential amendments).

Clause 548 repeals the *Auctioneers and Agents Act 1971*, the existing legislation regulating real estate agents, pastoral houses, motor dealers, auctioneers, commercial agents and their employees.

CHAPTER 17—TRANSITIONAL AND SAVINGS

Clause 549 provides definitions which apply for chapter 17.

Clause 550 provides that the rights and liabilities of the former fund (the Auctioneers and Agents Fidelity Guarantee Fund) are taken to be the rights and liabilities of the fund established under this Act.

The provision also allows for any claim commenced under the former Act but not decided, continues as if it were a claim against the fund in this Act. Additionally, any claim which could be made under the former Act and not made, may be made under this Act.

The provision also provides that where the committee has commenced a proceeding to recover an amount paid out of the former fund, the proceeding is taken to have started by the chief executive as if the amount had been paid out of the fund.

Clause 551 provides that where the committee was subrogated to the rights and remedies of a claimant whose claim has been settled out of the former fund, the chief executive is taken to be subrogated to the same extent, in relation to that claim. An agreement or anything else done by the committee under the subrogation is taken to be entered or done by the chief executive.

Clause 552 provides for the transition for employees who held certificates of registration under the former Act and continue to be employed in that capacity are taken to be eligible for employment while the employment continues. The provision also applies to employees of pastoral houses who were employed by a pastoral house, immediately before the commencement of this Act and continue to be employed by the pastoral house.

Clause 553 provides that a substitute licensee whose substitution was

approved under the repealed Act shall continue under this Act on the same conditions which applied under the repealed Act.

Clause 554 provides that all persons who held a licence under the repealed Act of a class listed in column 1 (“former licence”) is taken to hold the licence shown in column 2 opposite the column 1 licence (“A&D licence”). If a former licence was subject to any conditions, the condition is taken to continue under the licensee’s A&D licence.

Clause 555 provides for existing applications.

Clause 556 provides that the section applies if an application for a grant, renewal or restoration of a licence has been made, but not decided, under the repealed Act. An objection about the grant, renewal or restoration made under the repealed Act with or without the Minister’s approval before the commencement, is taken to have been made about the issue, renewal or restoration of the licence under this Act. The chief executive must have regard to the objection when considering the application.

Clause 557 provides that if, immediately before the commencement, a person was exempted from a provision of the repealed Act for which there is an equivalent provision under this Act, the person is taken to be exempted from the equivalent provision under this Act. If the exemption under the repealed Act was subject to a condition, the exemption from the equivalent provision under this Act is also taken to be subject to the condition.

Clause 558 provides that a financial institution that was an approved financial institution under the repealed Act immediately before the commencement, is taken to be an approved financial institution under this Act.

Clause 559 provides that an agreement entered into between the registrar and an approved financial institution under the repealed Act about the keeping of general trust accounts by licensees is taken to be an agreement entered into between the chief executive and a financial institution about the keeping of general trust accounts by licensees under this Act.

Clause 560 provides that a general trust account or special trust account opened under the former Act is taken to have been opened under this Act.

Clause 561 provides that if an agreement has been entered into by the auctioneers and agents committee and any other entity and is in force immediately before the commencement, the agreement is taken to be an agreement entered into between the chief executive and the entity under this Act.

Clause 562 provides that where an auditor is appointed by a licensee or applicant for a licence under the repealed Act and whose appointment is in force immediately before the commencement, the auditor is taken to be appointed by the principal licensee under this Act on the same conditions as the appointment under the repealed Act.

If the auditor was appointed by the Minister under the repealed Act section 124, the auditor is taken to be approved by the chief executive under section 359 to audit the principal licensee's trust accounts.

Clause 563 provides that a receiver appointed by the committee under the repealed Act is taken to be a receiver appointed over the property by the chief executive under this Act. If the receiver is in possession of the property immediately before the commencement, the receiver is taken to be in possession of the property under this Act.

Clause 564 provides that where an act was done or a decision made by a registrar or deputy registrar of auctioneers and agents under the repealed Act, the act or decision is taken to have been done or made by the chief executive under this Act.

Clause 565 provides that if a licensee under the repealed Act was engaged or appointed to act for a particular transaction, section 76 of the repealed Act continues to apply to the engagement or appointment and if the licensee was to sue for or recover remuneration under the engagement or appointment, the licensee must do so under the repealed Act as if it had not been repealed.

Clause 566 provides that if the committee had started, but not finished, disciplinary action under the repealed Act before the commencement, the action may be finished under that Act as if that Act had not been repealed and an agents and motor dealers board were the committee. However, if the committee had started, but not finished hearing a disciplinary proceeding under the repealed Act before the commencement, the disciplinary proceeding must be reheard under that Act as if that Act had not been repealed and an agents and motor dealers board were the committee.

Clause 567 provides that if a person had appealed to the District Court under the repealed Act before the commencement against a decision of the committee and the appeal had not been decided before the commencement, the District Court may hear and decide the appeal under that Act as if it had not been repealed.

If a person could have appealed to a District Court under the repealed Act before the commencement against a decision of the committee and the

person had not appealed before the commencement, the person may appeal under that Act as if it had not been repealed.

Clause 568 provides that a legal proceeding by or against the committee that has not been finished before the commencement may be continued and finished by or against the chief executive.

Clause 569 provides that in any Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

Clause 570 provides that in an Act or document, a reference to the former fund may, if the context permits, be taken as a reference to the fidelity guarantee fund.

SCHEDULE 1

This schedule provides for the decisions under provisions which are subject to appeal.

SCHEDULE 2

This schedule provides for the consequential amendments to the Act.

SCHEDULE 3

This schedule contains the dictionary for the Act.