

# **Motor Dealers and Chattel Auctioneers Bill 2013**

## **Explanatory Notes**

### **Short title**

The short title of the Bill is the Motor Dealers and Chattel Auctioneers Bill 2013.

### **Policy objectives and the reasons for them**

The objectives of the Bill are to:

1. Contribute to the repeal and split of the *Property Agents and Motor Dealers Act 2000* (PAMD Act) into four separate Acts, with an Act to comprehensively provide for the regulation of the activities, licensing and conduct of motor dealers, chattel auctioneers, and their employees and to protect consumers against particular undesirable practices.
2. Reduce red tape and regulatory burden for motor dealers and chattel auctioneers.
3. Improve the operation of the legislation for the motor dealing and chattel auctioneers sectors.
4. Address the preference of the auctioneering industry that all auctioneering functions remain authorised by licence.
5. Prevent identified participants of criminal organisations from holding or obtaining motor dealer licences or registration certificates.

### **Repeal and split the PAMD Act**

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

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

The Property Occupations Bill 2013, Debt Collectors (Field Agents and Collection Agents) Bill 2013, Agents Financial Administration Bill 2013 and this Bill will provide for the repeal and split the PAMD Act into three industry specific Acts with one common administration Act. This structural change will facilitate a modern legislative framework that is more responsive to the individual needs and characteristics of the regulated industry sectors.

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

While largely consistent with the provisions of the PAMD Act that apply to motor dealers and their employees, and provisions applying currently to general auctioneer licensees that will have comparable effect for the new chattel auctioneer license, the Bill includes amendments to improve the operation of the legislation regulating these sectors and implement significant red tape reduction measures.

In February 2013 drafts of the Agents Bills 2013 were released for public consultation and Red Tape Reduction Review. Over 86 submissions outlining 155 different proposals were received from stakeholders. The objective of the red tape reduction review was to identify provisions of the draft Agents Bills 2013 that could be amended or removed to reduce regulatory burdens on business (i.e. red tape), in consultation with stakeholders. The Red Tape Reduction Review highlighted that there is scope to reduce the regulatory burden imposed on industries regulated by the PAMD Act without adversely impacting on consumers.

To achieve the aim of reducing red tape and improving the operation of the legislation for motor dealers and chattel auctioneers, the Bill:

- simplifies statutory warranty requirements for used motor vehicles
- reduces transactional burdens on businesses by reducing the number of approved form requirements
- facilitates sales of livestock at auction by removing client referee requirements for paying out the proceeds of sales
- introduces more flexible appointment to act arrangements for licensees
- removes transitional registration requirements for chattel auctioneers
- provides appropriate exemptions for administrators, receivers and liquidators
- removes unnecessary obligations imposed on licensees and businesses
- improves the accessibility of the register of enforceable undertakings
- improves means of updating training requirements for licensees and registered employees in response to changes in nationally recognised training packages

### **Licensing of chattel auctioneers**

The Bill provides a licence category authorising chattel auctioneering functions. The auctioneering industry has a strong preference for chattel auctioneering to remain as a licensable activity, despite the potential benefits that might be realized by de-licensing the activity in the pursuit of reducing costs and red tape for sector participants. Stakeholders believe that the existing licensing framework prevents unsuitable persons from entering the industry and ensures high standards of professional practice.

## **Prevent identified participants of criminal organisations from holding or obtaining motor dealer licences or registration certificates**

The objectives of the Bill also align with the Queensland Government's commitment to address serious community concern about recent incidents of violent, intimidating and criminal behaviour of participants of criminal motor cycle gangs, as well as their infiltration into the used motor dealing industry.

## **Achievement of policy objectives**

### **Repeal and split the PAMD Act**

The main object of the Bill is to contribute to the split of the PAMD Act, by preserving and improving a system for licensing and regulating people as motor dealers, motor salespersons and chattel auctioneers. The Bill will strike an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace.

The Bill is one of four Bills (three industry specific Bills and a financial administration Bill) that will facilitate the repeal and split of the PAMD Act. Grouping together all relevant licensing and conduct provisions in one dedicated Act, rather than across a larger Act covering a number of industry sectors, simplifies the regulatory burden for motor dealers and chattel auctioneers and improves the operation of the legislation, encouraging greater compliance on the part of regulated persons. It should be noted that the degree to which the regulatory burden is reduced for existing general auctioneer licensees is moderated by the need to split authorisations of auctioneering functions across two Bills: the Property Occupations Bill 2013 for auctioneers of real property, and this Bill for chattel auctioneers authorised to auction goods including livestock and motor vehicles.

The rationale for combining licensing and conduct regulation for the chattel auctioneer and motor dealer sectors within this Bill is based largely upon the overlap in requirements across licenses for sales of motor vehicles, particularly in terms of statutory warranty requirements, as well as the compatibility of eligibility and suitability requirements of the licensing frameworks.

The Property Occupations Bill 2013 and the Debt Collectors Bill 2013 are the other two industry specific Bills that facilitate the repeal and split of the PAMD Act. Consistent with the PAMD Act, licensees and registered employees regulated by the three industry specific Bills will have particular financial administration requirements, as provided by the Agents Financial Administration Bill 2013. This will provide for the administration of trust accounts held by agents regulated under an Agents Act (including motor dealers and chattel auctioneers) and to establish a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents.

The compliance and inspectorate provisions to enforce the industry specific Bills are provided for in the Fair Trading Inspectors Bill 2013. The Fair Trading Inspectors Bill 2013 consolidates and harmonise inspectors' powers across Acts about fair trading.

## **Red tape reduction**

### Simplification of statutory warranty requirements

Statutory warranty application under the PAMD Act involves three classes of warranted vehicle: class A, class B and restorable. The determination of vehicle class is based on age and kilometres travelled, and the statutory warranty provided for each class was originally designed to reflect reasonable expectations of the reliability of vehicles depending on those two factors.

This system is unwieldy, and the requirement to provide what amount to short term statutory warranties for objectively older and lower value vehicles has been identified as an impediment to the viable legal sale of these vehicles. The former SDPC's 2008 report on the PAMD Act, and stakeholder submissions have also linked these requirements to the prevalence of illegal private purchases and subsequent sales of these vehicles by licensed or unlicensed dealers to avoid statutory warranty, cooling off and stamp duty requirements.

The Bill provides that statutory warranties must be provided for vehicles that meet the current class A definition of a used motor vehicle that is no more than 10 years old, and has travelled fewer than 160,000 kilometres. This is identical to the approach taken in New South Wales and Victoria, is comparable with remaining States and Territories, and in line with recommendations of stakeholders and the 2008 SDPC report. The increased consistency across jurisdictions will assist businesses operating in a national context.

The protections provided by statutory warranties are otherwise unchanged in comparison to the PAMD Act. It is expected that the removal of statutory warranty requirements for older vehicles will increase the viability of their legitimate sale by motor dealers, which will result in fewer illegal sales, broader application of cooling-off periods, and fewer irregularities in ownership transfer.

### Reducing the number of approved form requirements

Under the PAMD Act there is a requirement for motor dealers and auctioneers to provide an approved form to buyers of used motor vehicles that states the responsible licensee guarantees title of the vehicle to the purchaser, and which contains prescribed details of the vehicle and transaction. The purchaser must acknowledge receipt of this form by signing a second approved form. This is in addition to the requirements for motor dealers and auctioneers to provide a statement to the purchaser of the vehicle containing particulars of the vehicle (that may be included in the contract for sale), approved form requirements for statutory warranty, cooling-off period and option to purchase disclosures, and a legislative requirement backed by penalties that the responsible licensee must ensure the purchaser gains clear title.

To reduce red tape associated with conducting transactions for used motor vehicle sales, the Bill removes the requirement to provide an approved form stating the responsible licensee guarantees the buyer gains clear title, and any other particulars that may be prescribed under regulation. Instead, the Bill introduces the simpler requirement that the contract of sale must contain a statement by the responsible licensee that they guarantee title to the buyer. This will provide sufficient notice to consumers that they are guaranteed title. Consumer protection

needs are adequately met by the retained approved form requirements in relation to statutory warranty, cooling-off periods, and certain requirements for contracts of sale prescribed under the Bill or that can be prescribed through regulation.

The PAMD Act includes a requirement that an approved form containing prescribed particulars be provided to buyers taking out an option to purchase a motor vehicle that is currently within the cooling-off period for a contract of sale with another buyer. The requirement that certain information be provided to the person taking the option to purchase has been retained to ensure persons taking out an option to purchase are adequately informed of their associated rights and responsibilities.

It is intended that further efforts will be made to consolidate retained forms during the development of regulations and approved forms required to support the Bill. Through this process it is expected that industry expectations that forms required for transaction be condensed to a single form additional to the contract of sale can be largely met.

#### Removal of trainee auctioneer category of registered employee

The PAMD Act's registered employee category of trainee auctioneer is designed as a transitional category for persons seeking ultimately to obtain an auctioneers licence. The *Property Agents and Motor Dealers Regulation 2001* sets out that an applicant for an auctioneer licence must conduct five auctions as an employed trainee auctioneer under the supervision of an auctioneer.

There is no category of registered employee in either the existing PAMD Act, or the other Agents Bills that is designed to be held transitionally prior to obtaining a full licence. Arguably there is comparable need to ensure that functions authorised by other licences are performed by suitably qualified individuals, however full licenses for other categories can be obtained directly where suitability and eligibility criteria are met, without a requirement that a registration certificate first be obtained.

The Bill does not retain the trainee auctioneer category of registered employee established by the PAMD Act. There is insufficient cause to retain the category, and its removal will greatly simplify the process for obtaining a full chattel auctioneer's licence, and reduce the administrative burden on the Office of Fair Trading. The removal of this category accords with recommendations of the former SDPC's 2008 report on the PAMD Act, and is consistent with the similar removal of a trainee auctioneer category under the Property Occupation Bill 2013. Existing holders of trainee auctioneer registration certificates will transition automatically to hold both an auctioneer licence under the Property Occupations Bill 2013 and a chattel auctioneer licence under this Bill.

#### Removal of client referee requirements for auction sales of livestock

Under the PAMD Act auctioneers selling livestock must not pay out the proceeds of a sale unless the selling client has been known to them for at least 1 year, the selling client is of good repute, and there is no reason to believe the selling client was not lawfully entitled to sell the livestock. Alternatively, the auctioneer may accept a certificate from a referee for the client, establishing these required probity elements for the selling client. The auctioneer must have known the referee for at least one year and consider them to be a person of good repute.

This requirement places undue burden on livestock auctioneers, particularly new entrants to the field. It impedes sales where for example real property and stock is purchased in combination, and sold within a period of time shorter than one year. There is a substantial regime of legislation and administrative systems intended or acting to impede the sale of stolen stock, including the National Livestock Identification Scheme, the *Brands Act 1915*, and the *Stock Act 1915* and its regulations, and the Criminal Code. Furthermore there is no similar requirement for sales of livestock not conducted by auction.

The Bill removes the client referee requirements for sales of livestock by auction. The retention of offences under the Bill and elements of the code of conduct to be remade through supporting regulations, combined with the relevant systems and legislation external to this Bill are sufficient to deal with issues of stolen stock without imposing additional burdens on auctioneers of livestock.

#### Increased flexibility of appointment to act arrangements

Consistent with the PAMD Act, the Bill provides that motor dealers and chattel auctioneers must not act for a client unless the client first appoints the agent in writing. For motor dealers this is relevant for sales on consignment, and for chattel auctioneers this is relevant generally for providing auction services for clients. The approved appointment form requirements for motor dealers and chattel auctioneers impose near identical obligations on licensees to state aspects of the service to be performed, fees and charges payable, authorised expenses and other elements comparable to existing requirements under the PAMD Act.

The Bill retains the categories of single and continuing appointment to allow different styles of appointment as required by clients seeking one-off provision of services or clients seeking longer term service arrangements. The Bill increases the flexibility of continuing appointments by removing the requirement that these must have a stated end date.

Under the PAMD Act continuing appointments may be revoked on the giving of 90 days notice, or if agreed between parties, a period of not less than 30 days. To provide more flexibility for either party to revoke a continuing appointment, the Bill reduces the default notice period to 30 days, and allows the appointment to be revoked at an earlier day by mutual agreement.

#### Exemption for administrators, liquidators, controllers and receivers

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

The Bill maintains this exemption for administrators appointed for corporate licensees and, additionally, provides that external administrators of licensees who are individuals are also exempt from the licensing requirements of the legislation, and the offences of acting as a licensee without the appropriate licence. External administrators that have been appointed to deal with insolvent licensees who are individuals are regulated by the *Bankruptcy Act 1966* (Cwlth). This amendment to the current PAMD Act provisions will benefit industry and remove regulatory duplication for external administrators.

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

#### Display of licence and name and other particulars

The Bill does not continue the PAMD Act requirements for principal licensees to display their licence at their registered office in the way prescribed under a regulation. It similarly removes the requirement that principal licensees must display at each place the licensee carries on business the licensee's name, name of licensee in charge if applicable, and other details as prescribed under a regulation.

Removing these unnecessary prescriptions of display requirements for licences and licensee details will allow display of these relevant details at the discretion of businesses and individual licensees. For corporate licensees this display is largely unnecessary given the registered office is unlikely to deal with customers. To ensure the continued availability of licences for inspection at the request of customers and inspectors, the Bill introduces less burdensome requirements that corporate licensees, principal licensees and individual licensees and registration certificate holders keep a copy of the relevant licence or registration certificate at the relevant places of business.

This change does not impact on the integrity of the licensing or consumer protection elements of the legislation. Licensees will continue to be required to produce their licence for inspection, if asked, to enable clients to determine that the person they are dealing with is licensed. Similarly, the Bill retains the requirement that motor dealers must disclose to a potential buyer or seller of a vehicle that they are a licensed motor dealer, and existing offences for acting as a licensee without a licence are retained.

#### Display of particulars at an auction

Under the PAMD Act an auctioneer must display at an auction in the way and for the period prescribed under a regulation their name and any particulars that may be prescribed under a regulation. Stakeholders have advised that requirements for display of an auctioneer's name for the period of the auction, as currently required by the Act and *Property Agents and Motor Dealers Regulation 2001* may be difficult to comply with, and impose additional costs and labour requirements, in particular circumstances. These include auctions of livestock conducted out of doors that may involve unfavourable weather conditions, and where the auctioneer may need to move from place to place to conduct the auction.

The Bill will require that a chattel auctioneer must disclose, rather than display, their name and particulars in the way and for the period prescribed under a regulation. This will allow prescriptions under the regulations to allow for forms of disclosure suited to particular auctions, to ensure that auction participants will remain informed about the identity of the

auctioneer, while also reducing the impost of the requirement on auctioneers. In addition this will provide a more appropriate mechanism for disclosure requirements adaptable to emerging forms of chattel auctioneer services, for example online auctions.

Remove the requirement to provide photographs with licence applications

Under the PAMD Act applicants for particular types of licences may be required to provide, if requested by the chief executive, 2 recent colour photographs of the former licensee that are of a size prescribed under a regulation and certified as photographs of the former licensee in the way prescribed under a regulation. However, the Office of Fair Trading does not currently licence identification cards that contain a photo of the licensee. As such, it is considered that this is an unnecessary obligation placed on applicants and the Bill removes this requirement

Advising name of auditor

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

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

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

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

Evidence of active trading

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

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

Vocational competence to be a licence holder for a restoration or renewal applicant is sufficiently demonstrated by the eligibility criteria upon which initial issue of the licence was based. The requirement to provide evidence of active trading is an unnecessary red tape burden on the licensee wishing to renew their licence, and this amendment will benefit participants in the industry by streamlining the licence application process. Suitability and non-educational eligibility requirements for renewal and restoration as currently provided by the PAMD Act will remain in place, to ensure that licenses are only provided to otherwise eligible and suitable persons.

#### Directors as licensees

The Bill removes the current requirement under the PAMD Act that to be eligible for a licence a corporation must have a director holding the same category of licence. Instead corporations will be required to have a licence holder that is an individual in charge of the business and each director must still be suitable to hold a licence (that is, a director must meet the suitability criteria prescribed under the Bill for a licence holder). This will ensure that the business is still being managed by suitable persons with knowledge of the legislation and its requirements, but without imposing financial and time costs related to licensing on directors who are unlikely to be directly engaged in performing authorised functions.

#### Employment register

The Bill removes the PAMD Act requirement for a principal licensee to keep an up to date employment register at each of their places of business. Under the PAMD Act the name of each employed licence holder and motor salesperson registration certificate holder, and the authorised activities each motor salesperson is authorised to perform must be kept in the register. This requirement is onerous on business and it is considered appropriate to remove the requirement given that the Bill establishes that registered employees are only permitted to perform the activities that the motor dealer licensee employing them is authorised to perform, and subject to any conditions the chief executive has placed on the registration certificate. The identities of employed licensees at a registered office, and authorised activities of a registered employee and conditions placed on a registration certificate are matters the chief executive can identify without the employment register.

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

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

The Bill introduces the ability for the Commissioner of Police to notify the chief executive of changes in criminal histories of licensees, substitute licensees and motor salespersons. This is done through Suitability, Checking, Reporting and Monitoring Reports (SCRAM), which is an automated process that allows the timely reporting of changes of criminal histories within the jurisdiction of Queensland.

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

for a licence or registration certificate. Without this amendment convictions for serious offences may only be picked up through an investigation of a complaint or at time of renewal or restoration.

The introduction of SCRAM will provide the chief executive with an enhanced capacity to manage potential risks and potentially deliver a saving to licensees and registered employees by enabling the chief executive to reduce the frequency with which a full criminal history report is required for licensing matters. For new applicants, the introduction of SCRAM adds an additional tool for ongoing suitability checking, but will not impose additional requirements on applicants.

### **A licensing framework for chattel auctioneers**

The former SDPC's 2008 review of the PAMD Act recommended that licensing requirements for the function of chattel auctioneering be removed, citing the diminishing numbers of traditional auction services focussing on goods, and an apparent lack of detriment associated with the performance of such activities. However the preference of the auctioneering sector in Queensland is to retain licensing for chattel auctioneers.

Removing chattel auctioneer licensing requirements, as was the approach of the Bill released for consultation in February 2013, would avoid the regulatory burden associated with auctioneers requiring a license to perform auctioneering functions in Queensland. However the sector is strongly opposed to removing licensing requirements for chattel auctioneering, stating it would result in unsuitable persons conducting chattel auctions and lead to a diminution of standards in the sector and possibly detriment to users of auction services.

The conduct requirements of the auctioneer (as provided by the Property Occupations Bill 2013) and chattel auctioneer (as provided by this Bill) licence categories are largely consistent, which minimizes the impact of the change for auctioneers who will in future require dual licenses to continue to perform a full range of auctioneering services. Similarly the trust account requirements are entirely consistent in that they are provided uniformly through the Agents Financial Administration Bill 2013. Auctioneers who perform either auctions of real property, or auctions of chattels, but not both, will not be significantly impacted by the change.

Consistent with the PAMD Act and its regulations, the Bill and supporting regulation to be made will ensure that where a licensee wishes to apply for multiple licences, or seeks to renew or restore multiple licences, they will only be required to pay one licence issue fee component. An administration fee will continue to be charged for each licence to ensure recovery of costs associated with administering the licenses. The administration fee is the lesser component of licensing fees, or approximately 6% of the cost for a three year auctioneer licence. This approach will ensure licensees required to hold multiple licences to perform their intended range of functions will not be significantly disadvantaged in terms of licensing costs in comparison to current arrangements under the PAMD Act.

## **Prevent identified participants of criminal organisations from holding or obtaining motor dealer licences or registration certificates**

The policy objective will be achieved by introducing a new limb to determine whether an applicant for a motor dealer licence or motor salesperson registration, or a current motor dealer licensee or registered motor salesperson, is a suitable person. A person will not be suitable if the Commissioner of Police has identified the person as a participant of a criminal organisation.

This approach is the most effective way of excluding participants in criminal organisations from the used motor dealing industry, and of providing the community with assurance that people authorised to work as used motor dealers or salespersons have been subject to rigorous probity requirements.

The Bill:

- expands current tests of suitability relevant to licensing, renewal and restoration of motor dealer licences and registration certificates to provide that persons identified by the Commissioner of Police as a participant in a criminal organisation are not suitable;
- uses the definitions of ‘participant’ and ‘criminal organisation’ in the Criminal Code;
- provides for immediate cancellation of a motor dealer licence or salesperson registration if the chief executive decides a licensee or registrant is not suitable as they are an identified participant in a criminal organisation;
- allows the Chief Executive to ask for, receive, and use a list, maintained by the Commissioner of Police, that states persons who are identified by the Commissioner as participants in criminal organisations;
- ensures confidentiality of criminal intelligence in providing notification of reasons for decisions by the Chief Executive;
- provides an avenue of appeal to the Queensland Civil and Administrative Tribunal (QCAT) for a refused application or cancellation of a licence or registration on the ground that the person is an identified participant of a criminal organisation. The Commissioner of Police is to be a party to the proceedings. QCAT is also able to consider whether the person has been correctly identified by the Commissioner of Police as a participant in a criminal organisation; and
- ensures non-disclosure of criminal intelligence heard in QCAT or the appeal Court.

## **Improve the operation of the legislation**

### Immediate suspension for failure to file an audit report

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

Accordingly, the Bill includes provision for licence to be immediately suspended if a licensee fails to submit a required audit report.

Capacity to join charges for wrongful conversion and false accounts

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

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

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

Register of enforceable undertakings

Clause 214 of the Bill provides for the chief executive to publish the register of enforceable undertakings on the Department's website. An enforceable undertaking is a written promise by a licensed business not to keep breaching the legislation. This is one of several enforcement options available.

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

Allow training requirements to be approved by the chief executive

The Bill aims to improve mechanisms for updating unit training requirements associated with licences and registration certificates. Under the PAMD Act, the educational qualifications for a motor dealer licence, a motor salesperson registration certificate, and an auctioneer licence are prescribed under regulation. These educational qualifications are provided as lists of select units from nationally endorsed training packages. Training or recognition of competency in these units can be obtained through registered training organisations to satisfy the educational aspects of licensing or registration eligibility.

On each occasion a new training package is endorsed, or unit codes and descriptions are amended, the regulations listing the units and packages must be amended to ensure applicants can rely on those units to establish eligibility, and registered training organisations can provide those units for that purpose. The determination of units required to establish sufficient vocational competence is largely based on advice from national bodies charged with developing the training packages such as Autoskills Australia, and in consultation with registered training organisations such as the Motor Trades Institute of Queensland. As such there is little justification that the units be prescribed by regulation.

To increase the responsiveness of the framework, the Bill removes the prescription of educational qualifications by regulation, and instead provides a capacity for these requirements to be approved administratively by the chief executive. The educational qualifications will be stated on the department's website. This change is consistent with the approach of other relevant Acts administered by the Office of Fair Trading, for example the *Security Providers Act 1993*.

#### Clarify particular provisions

##### *Definition of 'del credere'*

Del credere refers to the practice whereby an agent enters into an agreement with a seller, under which the agent agrees to sell property for the seller and guarantees payment of the purchase price to the seller. This is a common style of appointment for auctioneers selling livestock. The Bill clarifies that a del credere agent guarantees payment of the purchase price to the seller even if the buyer defaults on paying the purchase.

##### *Definition of 'sale by auction'*

Under the PAMD Act, a sale by auction means the sale of property in any way commonly known and understood to be by auction. However there is a risk that this broad definition of auction may capture online sales of personal goods by individuals using online marketplaces that employ a bidding process to conclude a transaction, such as eBay. The potential outcome of such an interpretation is that a motor dealer selling vehicles they own or a non-licensee selling goods they own through such means may be required to hold a chattel auctioneers licence.

The Bill provides that an auction conducted by purely electronic communications, where the goods sold are owned by the person selling the goods by auction (that is they are not acting as an agent for the seller), is not a sale by auction under the Bill. This will mean that such sales fall outside the authorisations of a chattel auctioneer licence, and so the licensing and other conduct requirements will not apply to sellers using such websites as eBay to sell goods they own. It will simultaneously retain the application of licensing requirements for chattel auctioneers acting as agents for sellers and conducting that auction sale through electronic communications.

##### *Clarify offence for charging fee for providing documents etc*

It is an offence for licensees under the PAMD Act to charge a fee for providing or preparing a document for a transaction relating to or arising out of the performance of a licensee's activities. The intent is to ensure that consumers are not charged for the provision of, for

example, certain approved forms and disclosure statements under the Act, while also considering the proscription does not limit the *Legal Profession Act 2007* section 24 or 25.

Stakeholders believe the construction of the offence does not make it clear whether for example a licensee can charge a fee for preparing an Occupational Health and Safety checklist, or other document not required under the Act, but provided as part of the service and agreed (if required) under an appointment to act.

The Bill modifies this offence by proscribing the charging of a fee for documents authorised, or required to be provided, prepared or completed under the Act. This will clarify for licensees that fees may be charged for documents prepared as part of a service to clients, so far as those documents are not either authorised or required under the Act (and the terms of any appointment in place are in accord).

#### *Definition of 'financier'*

A financier may carry on the business of motor dealing without holding a licence where their dealings are limited to a set of activities detailed under the definition of 'financier'. While one of the activities permitted is hiring out of vehicles, leasing of vehicles is not expressly included. Stakeholders queried whether leasing was omitted from the PAMD Act by omission or design, or whether it was intended that 'hiring out' also capture leasing (and if reliance upon the term in that manner was appropriate).

Existing acceptable activities include but are not limited to hiring out under hire purchase agreements, selling on instalment terms, and hiring out where there is no right to purchase the vehicle. Given this range of activities, there is no justification to exclude leasing specifically from the activities for which a financier may carry on the business of motor dealing, or to leave it uncertain as to whether leasing is included in the activity of hiring. For that reason the definition of financier has been amended by the inclusion of 'leasing' on the same terms as 'hiring out' without an option to purchase as an activity for which a financier may carry on the business of motor dealing.

## **Alternative ways of achieving policy objectives**

All submissions and proposals put forward by stakeholders during the public consultation process for the red tape reduction review were considered in detail. Stakeholder proposals consistent with the objectives of the review, to reduce red tape and regulation without adversely impacting on consumers, were largely supported and are reflected in the provisions of the Bill.

The primary exception to the support of red tape reduction proposals is the introduction of the chattel auctioneer licensing requirement and concomitant split of auctioneering functions under the PAMD Act into an auctioneer licence for real property, and a chattel auctioneer licence. The February 2013 consultation version of the Bill removed licensing requirements for chattel auctioneers in order to lessen the potential burden of dual licensing requirements. However this was not supported by auctioneer stakeholders, who cited the potential diminution of standards and entry of unsuitable people into the field as justification for continued licensing. Maintaining the status quo to the extent possible, albeit under two licensing frameworks, was determined to be the most appropriate approach.

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

The appropriateness of adopting interstate approaches in Queensland was also assessed. For motor dealers, the changes effected by the Bill will serve to make the statutory warranty requirements for used motor vehicles similar to those in place in other Australian jurisdictions. In terms of a requirement to be licensed, motor dealers are licensed in each jurisdiction, and several jurisdictions either license or register employees of motor dealers such as salespeople.

While auctioning of real property is primarily a licensable activity across Australian jurisdictions, approaches to licensing of chattel auctioneers are inconsistent. New South Wales licenses auctioneers of livestock, Victoria provides a licence endorsement enabling motor dealers to auction vehicles, and Western Australia provides a general auctioneer licence including chattels. Given that level of inconsistency and the stakeholder preference for full licensing to be retained, there is no compelling justification to adopt any particular interstate approach to either regulation or alternatively deregulation of chattel auctioneers in Queensland.

## **Estimated cost for government implementation**

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

The split of the PAMD Act into four separate pieces of legislation, three of which will relate to the licensing of particular industries, will require the development of a new licensing framework, data system and business processes for the new licensing categories and requirements for the regulated industries. In addition, a change management process will also need to be developed to seamlessly migrate existing licensees into the new licensing, data and business process system. The development and implementation of this new licensing framework and the change management process will impose significant costs on the State Government.

The repeal of the PAMD Act and the changes to the licensing system and other red tape reduction reforms require substantial amendments to be made to the existing approved forms, information on the Office of Fair Trading website, and other related publications. Staff training costs and changes to the complaint management system are also associated with the implementation of the Bill.

Finally, the State Government will incur costs in delivering information and education services to assist stakeholders including existing licensees in understanding their rights and obligations following the changes to regulation of their activities. A substantial communication programme (comprising of updates to the website features and content, social media messaging, a series of media releases, editorials and articles for trade journals and

industry publications, electronic alerts to licensees, publications and direct mail-outs) to ensure existing licensees are well informed of the changes to the licensing framework and existing legislative requirements will be undertaken.

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

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. The majority of the potential breaches (addressed below) of the fundamental legislative principles affected by the Bill are consistent with those which were identified and addressed in the establishment of the PAMD Act. However, some potential breaches (identified below where relevant) are being introduced through the Bill.

### **Does the Bill have sufficient regard to rights and liberties of individuals?**

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

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

Part 2, Division 5 and Part 5, Division 5 of the Bill provide that the chief executive must consider the suitability of a person including their criminal history, their character and the character of the person's business associates when deciding whether or not the person is a suitable person to hold a licence or registration certificate. For motor dealers and motor salespersons, suitability must also be considered in terms of whether the person is an identified participant in a criminal organisation. Suitability must also be considered for the chief executives of corporations. However, this approach may be considered inconsistent with fundamental legislative principle of ensuring legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The potential breach of the fundamental legislative principles is considered justified because the character of a person, their criminal history and the character of a person's business associates are useful indicators by which to judge if a person is suitable to hold a licence or registration certificate. Further, the legislation provides express and relevant criteria for the chief executive to make a decision about a person's suitability, and the administrative powers of the chief executive to make decisions based on suitability are sufficiently defined and reviewable by QCAT.

#### *Eligibility for a licence and age discrimination*

Part 2, Division 6 and Part 5, Division 6 of the Bill provide that the chief executive must consider the eligibility of a person to hold a licence or registration certificate, including whether the person is over the age of 18. This age discrimination is justified on the basis that it provides protection for consumers by ensuring that prospective licensees and registered employees have adequate judgement and capacity to carry out their authorised activities.

Consumers expect to deal with licensees and registered employees that have the necessary maturity, judgement and capacity given the pecuniary nature of the transactions involved in the purchase, sale, exchange and letting of property.

The administrative powers of the chief executive to consider applications for licences and registration certificates are sufficiently defined and reviewable by the QCAT.

The Bill also allows the chief executive to place conditions on licences and registration certificates (clauses 56 and 167), and to suspend licences and registration certificates (clauses 58 and 170). While this may adversely affect the rights and liberties of individuals, the imposition of conditions and the suspension of licences and registration certificates in particular circumstances protect consumers. Additionally, the administrative powers of the chief executive are sufficiently defined and are reviewable by the QCAT.

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

*Chief executive must consider suitability of applicants and licensees (identified participants in criminal organisations)*

Part 2, Division 5 and Part 5, Division 6 of the Bill provide that the chief executive must consider the suitability of a person; including their criminal history, whether the person is an identified participant in a criminal organisation, their character and for licensing, the character of the person's business associates when deciding whether or not the person is a suitable person to hold a licence or registration certificate. The suitability or otherwise of a person must be considered by the chief executive in regard to applications for issue, renewal and restoration of a licence or registration certificate. A person identified as a participant in a criminal organisation is not a suitable person, and so can not hold a licence or registration certificate.

Where the chief executive refuses an application they must provide a written information notice of the decision to the person. However the chief executive must not include in the information notice a reason for the decision, to the extent that the giving of the reason would disclose criminal intelligence. This arguably breaches natural justice principles as it restricts information from a person. However, although criminal intelligence remains confidential, natural justice is afforded as the Bill provides that where a motor dealer licence or registered employee application is refused on the ground that they are an identified participant in a criminal organisation and is therefore not suitable, the person may seek review of the decision through the QCAT. The Commissioner of Police is to be a party to the proceedings and the QCAT is able to consider whether the person has been correctly identified by the Commissioner of Police as a participant in a criminal organisation.

To preserve the confidentiality of criminal intelligence involved in the decision, the Bill provides that the QCAT or the Supreme Court can take steps to maintain the confidentiality of criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of parties to the proceeding and their representatives. This is also arguably a breach of the natural justice principles. However, the provisions are considered justified as restricting the disclosure of the details of criminal intelligence used by the Commissioner of Police to identify a participant of a criminal organisation is necessary to protect the integrity and effectiveness of policing in relation to the operations of organised

crime in Queensland. The Queensland Government's determination to ensure the community is protected from the operations of criminal organisations is absolute, and the measures are considered to be appropriate to prevent such organisations from running their criminal enterprises, as well as ensuring the non-disclosure of criminal intelligence that might jeopardise the Government's objectives.

*Immediate action (cancellation, suspension or amendment) without hearing*

Clauses 61 and 181 of the Bill provide the chief executive with the power to cancel a licence or registration certificate without giving the holder an opportunity to make representations as to why the licence or certificate should not be cancelled. The clauses do not provide for prior notification of cancellation or a 'show cause' process. However, there is a right of review to the QCAT where the cancellation of a motor dealer licence or motor salesperson registration results from the person being an identified participant in a criminal organisation.

Immediate cancellation denies the holder of the licence or registration certificate natural justice. However, the inconsistency with the fundamental legislative principle is justified on the grounds that immediate cancellation is limited to the most serious of instances that could cause the greatest detriment to consumers. In particular, a licence may only be cancelled under clause 61 if the licensee is convicted of a serious offence; where the licensee is an individual, if the licensee is an insolvent under administration; or where the licensee is a corporation, if the licensee has been wound up or struck off under the *Corporations Act 2001* (Cwlth). For a registration certificate, the certificate may only be cancelled under clause 181 if the employee is convicted of a serious offence or is an identified participant of a criminal organisation.

The happening of any of the events goes to the very core of a licensee's or registered employee's ability to perform the activities authorised by the licence or registration certificate. The immediate cancellation of the licence or registration certificate prevents the likelihood of detriment, or further detriment, to consumers.

It should also be noted that the cancellation of a licence or registration certificate does not prevent the licensee or employee from applying for a new licence or registration certificate. However, the person must meet the suitability and eligibility requirements.

Clause 56 and clause 176 also provide the chief executive with capacity to take immediate action without hearing and amend the conditions of a licence or registration certificate. This removes a licensee or registration certificate holder's right to make a submission before a licence or registration certificate is amended on the chief executive's initiative. However, it is considered appropriate for the chief executive to have capacity to immediately amend the conditions to:

for a licence—avoid potential claims against the fund or to ensure compliance with the relevant Acts, as to not comply could result in significant consumer detriment; or

for a registration certificate—ensure compliance with the relevant Acts, as to not comply could result in significant consumer detriment.

Inconsistency with the principles of natural justice may also be raised in relation to the immediate suspension of licences and registration certificates generally (clauses 61 and 180)

as there is no prior notification or ‘show cause’ process. However, a right of review is available to QCAT. In addition, immediate suspension of a licence or registration certificate is limited to specific circumstances and is considered necessary to prevent the likelihood of detriment, or further detriment, to consumers.

Where an application is refused or a licence or registration certificate is immediately cancelled due to the individual being an identified participant in a criminal organisation, the judicial review right is restricted, as Part 4 (Reasons for Decision) of the *Judicial Review Act 1991* does not apply to such a decision of the chief executive. This arguably breaches the natural justice principles of right to be heard, and procedural fairness. However, this is necessary to prevent the release of confidential criminal intelligence. Natural justice is still afforded to an affected person as they are able to apply to the QCAT for a full merit review.

*Limiting the period within which a prosecution or proceeding may be started*

It is also arguable that clause 227, which imposes time limits on the commencement of proceedings and allows the prosecution to elect for an indictable offence to be heard summarily on indictment, is inconsistent with the principles of natural justice.

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

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

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

*Prohibited from making false representations about goods*

Clause 216 of the Bill prohibit a licensee or motor salesperson from making false representations about goods, and places the onus of proving that the person who made the representation had reasonable grounds to do so, on the person accused of making the false representation. The reversal of the onus of proof is justified on the basis that knowledge about the reasonableness or otherwise of the representation is information which is peculiarly within the knowledge of the person who made the representation, and would otherwise be difficult to establish.

*Entries in documents*

Clause 226 of the Bill provides that an entry in a document kept by or belonging to a licensee is evidence that the entry has been made by or with the authority of the licensee. The provision reverses the onus of proof by requiring the licensee to prove that an entry in a document has not been made by the licensee or with the authority of the licensee. However, it

is a reasonable assumption made for the purpose of procedural efficacy to assume that entries in documents in the possession of the licensee or belonging to the licensee have been made with the authority of the licensee, particularly given that evidence related to the authorship of entries in documents is likely to be within the knowledge of the licensee.

*Responsibility for acts of representatives*

Clause 229 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission. The reversal of the onus of proof is justified on the grounds that the information relating to the exercise of reasonable diligence would be peculiarly within the knowledge of the licensee and would otherwise be difficult to establish.

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

*Right not to be defamed*

Clause 231 allows the Minister or chief executive to make or issue public warning statements or information statements that may identify individuals. These public statements may have an adverse affect on individuals. However, before making a statement, the Minister or chief executive must be satisfied that it is in the public interest to do so. Accordingly, the inconsistency with the fundamental legislative principle is justified on the grounds that it is in the public interest to allow the making of warning and information statements for the protection of consumers.

A particular concern may be raised in relation to public statements about business practices regulated under the Bill that are unfair and naming persons who engage in the unfair practices. This is because, unlike making a public statement about disciplinary proceedings or the commission of an offence, determining what constitutes unfair business practices is subjective and has greater potential to adversely affect an individual. Additionally, information about disciplinary proceedings by QCAT and court convictions are already publicly available, whereas information concerning 'unfair business practices' is not. Nevertheless, the Minister or chief executive (noting that this power can not be delegated pursuant to clause 234) will only make a public statement if satisfied it is in the public interest to do so.

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

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

Clause 232 provides that nothing in the Bill affects or limits any civil remedy that a person may have against a licensee or another person for any matter.

*Publication of register of enforceable undertakings on department's website*

Clause 214 of the Bill provides for the chief executive to publish the register of enforceable undertakings on the Department's website. An enforceable undertaking is a written promise by a licensed business not to keep breaching the legislation.

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

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

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

Consistent with the PAMD Act, the Bill provides that QCAT or a court may make an order to cancel a licensee's licence or individual's registration certificate when it is considered appropriate. However, the Bill includes amendments to require QCAT or the court to also make an order disqualifying the licensee or registration certificate order for a period when making an order to cancel a licence and the order is being made in relation to an individual. Without this amendment, some individuals that have had their licence cancelled have subsequently made an application for a licence to the chief executive, not long after the cancellation order was made. While the chief executive has capacity to consider whether an applicant has had their licence cancelled when determining whether or not an individual is a suitable person to hold a licence, the period for which the individual may be considered unsuitable is ambiguous. It is considered more appropriate for QCAT or the court to determine an appropriate period for disqualification based on the circumstances of each case when making a cancellation order. To further clarify the legislation and reduce the administrative burden for the Office of Fair Trading, the Bill (clauses 19 and 155) also provides that particular persons can not make an application for a licence or registration certificate.

The requirement for QCAT or the court to make a disqualification order when making a cancellation order only applies when the cancellation order is being made in relation to an individual. This is because it is foreseeable that a corporation may be sold and have a change in executive officers (as contemplated in clause 19 of the Bill), which could result in the corporation being determined to be suitable to hold a licence. As such, the chief executive will continue to make decisions about a corporation that has had their licence cancelled and subsequently makes an application for a licence on a case by case basis.

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

*Privacy and confidentiality rights*

Part 2, Division 5 and Part 5, Division 5 provide that the chief executive may make investigations about particular persons, including by obtaining a criminal history report, to help the chief executive decide whether or not the persons are suitable to hold a licence or registration certificate. The provision of a criminal history report to the chief executive impacts the privacy of the person who is the subject of the report. Part 5, Division 5 also provides that the chief executive may obtain a criminal participation report for deciding an applicant's or licensee's suitability to hold a motor dealer licence. A criminal participation report is a report about whether or not a person is an identified participant in a criminal organisation.

Clause 26 provides that the chief executive may obtain the same information in relation to business associates. Business associates are persons with whom the applicant or licensee carries on, or intends carrying on, business under the licence. Given the direct involvement of business associates in a licensee's business and their ability to influence business behaviour, investigations into the propriety of these people is a necessary step in ensuring the business operates in accordance with the law, and limits the risk of consumers being subject to any detriment in their dealings with the business. The chief executive does not need to acquire the business associate's consent to obtain the report. These infringements on privacy are justified on the basis that a criminal history report is necessary to ensure that only suitable persons become licensees. Given that significant transactions licensees and registered employees may be conducting, it is considered reasonable to ask for details of a potential licensee's/registered employees probity and propriety.

Clauses 31 and 30 provide safeguards in relation to the use and confidentiality of the reports by providing that the use of the information is limited to decisions on licensing suitability, and that a public service employee performing functions under the Act must not disclose information about a person's criminal history and that the chief executive must destroy a written criminal history report or notice of change in criminal history as soon as practicable after considering a person's suitability.

However under clause 30 there is no requirement that information provided be destroyed. Under information sharing arrangements relevant to identified participants in criminal organisations external to this Bill, the Commissioner of Police will make information about identified participants of criminal organisations available to a range of licensing agencies. There is therefore no requirement to destroy a criminal participation report as it will be updated on an as needs basis by the Commissioner of Police.

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

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

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

*Imposition of liability for the acts of others*

Clause 228 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person provides the person could not, by the exercise of reasonable diligence, have prevented the act or omission. While the clause imposes liability for the actions of others, it is justified on the grounds that it follows the general law of agency in that the principal is liable for the actions of his or her agent. The clause is also consistent with one of the main themes of the Bill in that a principal licensee must ensure their employees comply with the provisions, and are responsible for the acts and omissions of their employees.

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

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

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

*New offence – Sell, lend or borrow registration certificate*

The Bill includes a new offence (clause 175) for motor salespersons which relates to the selling, lending or hiring out a registration certificate. The offence prohibits a motor salesperson from selling, lending or hiring out their registration certificate; notifying or advertising that the registration certificate is for sale, loan or hire to another person; or permitting or allowing someone else to hold out that they are the holder of the registration certificate. The offence also prohibits a person from borrowing, hiring or purchasing a motor salesperson's registration certificate.

While this is a new offence for motor salespersons, the offence (and the maximum penalty applying to the offence) is a direct replicate of an existing offence under the PAMD Act about the selling, lending or hiring out of a licence, which is also included in the Bill (clause 50). Given that the chief executive must consider the suitability and eligibility of each applicant for a registration certificate, in the same way the chief executive must consider the suitability and eligibility of each applicant for a licence, it is considered appropriate that a motor salesperson should not be able to sell, lend or hire out their registration certificate to another person. This new offence is necessary to ensure that only persons who meet the prescribed suitability and eligibility criteria are authorised to work in the motor dealing industry.

*New offence – Return of licence or registration certificate for replacement*

Under the PAMD Act, it is an offence not to return a licence or registration certificate for amendment of the conditions of the licence or certificate. This offence is replicated under the Bill in clause 57 and clause 177. However, the offence has also been extended in the Bill to apply to circumstances where the chief executive is replacing a licence or registration certificate because the chief executive is satisfied that a prescribed change has happened (for example, the licence or registration certificate holder's name has changed) which requires the licence or certificate to be replaced. That is, clause 57 and 177 provide that it is an offence if a licence or registration certificate holder, respectively, does not return the licence or certificate to the chief executive if the chief executive intends to amend the conditions of the licence or certificate or replace the licence or certificate due to the happening of a prescribed change which requires a replacement to be issued.

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

The maximum penalty for the offence provided in is the same as the maximum penalty for the original offences under the PAMD Act.

*New offence – Wrongful conversion and false accounts*

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

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

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

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

The maximum penalty is one of the highest penalties for an offence in the Bill; however, it is considered a significant penalty is required with respect to the handling of consumers' money to act as a sufficient deterrent.

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

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

#### *Limited motor dealer's licence and registration certificate*

Clauses 39 and 167 provide the chief executive the discretion to issue a licence or registration certificate with conditions and limitations on the activities a licensee may perform. This may be considered an inappropriate delegation of legislative power as the criteria for a limited licence or registration certificate will be prescribed by regulation. The administrative power to grant a limited licence is justified through the convenience it allows the licensee, in addition to maintaining a high standard of consumer protection. If a licensee only wishes to undertake certain activities prescribed under a regulation, they may be excused from undertaking particular educational requirements necessary to attain a full licence.

#### *Training requirements approved by the chief executive*

Unlike the PAMD Act which required training requirements to be prescribed by regulation, clauses the Bill allows training requirements to be approved by the chief executive. It is arguable that this approach to imposing training requirements on prospective licensees and registers salespersons may contravene the principle that legislation has adequate regard to the institution of parliament by allowing an inappropriate delegation of legislative power. However, the breach is considered justified because the identifying details for training competencies (for example, the unit names and codes) change relatively frequently as a result of updates to and new releases of nationally endorsed training packages. If competencies are prescribed legislatively, its necessary to amend the supporting regulation to reflect each minor change, and this may create temporary uncertainty in the interim about the competencies that prospective licensees need to complete to be eligible for a licence, and delays in transitions by registered training organisations to providing training in new units.

Rather than prescribing training requirements by regulation (consistent with the existing provisions of the PAMD Act), it is considered preferable and appropriate for the chief executive to approve training requirements, and to make adjustments as necessary to reflect changes in the nationally endorsed training competencies. As is the current practice for other types of licences that have training requirements, the particular requirements will be published on the Office of Fair Trading website. This approach will facilitate a timely

response to changes in training packages and provide certainty to prospective licensees about the specific training requirements for particular types of licences.

#### *Regulation making power*

Clause 236 of the Bill effectively replicates most relevant heads of regulatory power under the PAMD Act, while removing those no longer required due to for example the intention to not deal with commission caps under the regulation, and adding a general power to make regulations about matters relating to the conduct of licensees. The latter power is required to accommodate select elements of the existing code of conduct important to the integrity of the licensing and conduct framework that it is intended will be included in supporting regulations, and for which contravention will be grounds for disciplinary proceedings as is the case for ]code of conduct contraventions under the PAMD Act.

The matters to be prescribed under regulation are those matters usually prescribed under regulations, e.g. fees, minor offences, the keeping of records, and procedural conduct requirements, or particular elements of the existing code of conduct. As these are mostly administrative matters that can be subject to changes over time, it is appropriate that they are provided for in a regulation, rather than primary legislation. The regulation will comply with the requirements of section 4(5) of the *Legislative Standards Act 1992*.

It is also arguable that clause 236 does not confine the delegated power to prescribe fees to the recovery of costs of administering the licensing system. However this is consistent with the approach under the PAMD Act, and it is considered inappropriate for the legislation to confine the power to prescribe fees to a particular methodology—including the recovery of the costs of administering the licensing system. While a fee should have some relationship to the costs of administration, the setting of fees is ultimately a matter for government policy and can be subject to considerations other than cost recovery. As such, it is considered that such matters are not appropriate to be included in the Bill.

#### *Elements of offences prescribed by regulation*

Several clauses of the Bill allow elements of offences to be prescribed by regulation, which may be considered an inappropriate delegation of legislative power. However, it is considered appropriate that particular matters comprising these offences are prescribed by regulation, as they are administrative in nature and subject to change over time. For example, it may be necessary to prescribe an additional matter that a licensee should publish in an advertisement for their business to ensure consumers are provided with enough information to make an informed decision about whether to deal with a particular licensee. This approach allows flexibility in prescribing the offence elements and removes detail from the Bill.

## **Consultation**

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

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

The red tape reduction review was informed by a 6 week public consultation process that commenced in February 2013. Stakeholders were encouraged to make submission to remove unnecessary legislative obligations. Over 86 stakeholder submissions were received and 47 of those submissions included over 30 different categories of proposal in relation to the regulation of motor dealers and chattel auctioneers.

Targeted consultation on an exposure draft of the amended Bill was also conducted in October 2013. Stakeholder feedback to the amendments was generally positive, although the auctioneering sector did not support the effective split of auctioneering functions across two different licenses. Further amendments to improve the operation of the provisions and the Act were subsequently made before the Agents Bills 2013 were ready to be introduced into the Legislative Assembly.

#### *Proposal to split the PAMD Act*

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

In 2010 draft Bills (the 2010 draft Bills) were introduced to split the PAMD Act. Throughout the development of the 2010 draft Bills, a working group comprised of representatives of key industry associations was consulted. Broad public consultation was also conducted on the 2010 draft Bills. In addition, the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC) called for public submissions and held two public hearings to inform its examination of the 2010 draft Bills. The LAPCSESC made a number of recommendations including that the Agents Bills 2010 be passed. However, the 2010 draft Bills lapsed upon the dissolution of Parliament in 2012.

#### *Results of consultation*

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

Australian Finance Conference;  
Australian Resident and Accommodation Managers Association;  
Auctioneers and Valuers Association of Australia;  
Australian Livestock and Property Agents Association;  
Australian Property Institute;  
Australian Resident Accommodation Managers’ Association;  
Institute of Mercantile Agents;  
Motor Trades Association Queensland;  
Property Council of Australia;  
Property Sales Association of Queensland;  
Queensland Consumers Association;

Queensland Law Society;  
Queensland Tourism Industry Council;  
Queensland University of Technology Property Law Academics;  
Royal Automobile Club of Queensland;  
Real Estate Excellence Academy;  
Real Estate Institute of Queensland;  
Shopping Centre Council of Australia; and  
Urban Development Institute of Australia (Queensland)

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

## Consistency with legislation of other jurisdictions

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

# Notes on provisions

## Part 1 Preliminary

### Division 1 Introduction

*Clause 1* sets out the short title as the “*Motor Dealers and Chattel Auctioneers Act 2013*”.

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

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

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

### Division 2 Exemptions

*Clause 5* sets out that part 3 of the Bill, which deals with the authorisations and conduct of motor dealer licensees, does not apply to a financial institution or trustee company. Trustee company is defined for the clause as a trustee company under the *Trustee Companies Act 1968*, or the public trustee performing the activities that may be performed by, exercising the powers that may be exercised by, or holding an office that may be held by, a trustee company.

*Clause 6* provides that part 4 of the Bill, which deals with the authorisations and conduct of chattel auctioneer licensees, does not apply to particular sales. The sales exempted from part 4 include those arising from orders of, or processes issued out of, the courts, and sales fitting other particular circumstances, for which it is determined that the part 4 requirements need not apply. Specifically, the following sales are exempt from Part 4:

- sales ordered by the sheriff, the deputy sheriff, or by a bailiff of a Supreme, District or Magistrates Court, under a process issued by a court
- sales made under a rule, order, or judgement of the Supreme or District Court
- sales made by a person obeying an order or issued process of a court, judge, justice or the registrar of the State Penalties Enforcement Registry for recovery of a fine, penalty or award
- sales of animals seized under the *Animal Care and Protection Act 2001* or another law about seizing or impounding animals
- sales of goods distrained (seized and held) to compel payment for a rent debt
- sales of stamps or coins by postal bids
- sales conducted by “**relevant entities**” (referring to charity, religious and community organisations under the *Collections Act 1966*) where there is no payment for the person conducting the sale, and proceeds of the sale are paid directly to an authorised officer or employee of the relevant entity.

- Sales conducted by or for Magic Millions Sales Pty Limited as part of the Gold Coast Horses in Training Sale event, if the sale is conducted by a person provided prior approval by the chief executive as suitable to conduct the sale
- Sales of goods directly connected with an auction sale of land or a place of residence by a property agent appointed under the *Property Occupations Act 2013*, part 4
- Sales by auction held by an officer under the *Forestry Act 1959*.

*Clause 7* provides an exemption from particular provisions of the Bill for an “**appointee**” while performing their activities in relation to the business of a motor dealer or chattel auctioneer licensee, or former licensee. Appointee includes: administrators, liquidators and other controllers appointed under particular Acts, who may be appointed to manage or control a licensed, or formerly licensed corporate licensee; a receiver appointed under the Administration Act for a licensed or formerly licensed entity; and a trustee in bankruptcy or the Official Receiver for a licensed or formerly licensed individual.

The appointee is exempt from the particular provisions while performing the activity in relation to a business authorised under the licence or former licence. The clause defines “**former licence**” for the clause as a licence that was previously in force, or a motor dealer’s licence or former auctioneers licence under the *Property Agents and Motor Dealers Act 2000* (labelled as “**PAMDA**” by the dictionary in schedule 4 of the Bill).

The intent of clause 7 is to ensure that particular licensing requirements and conduct provisions, and the offences of acting as a motor dealer or chattel auctioneer without a licence do not apply to appointees performing their activities in accordance with the stated circumstances, as the appointee will be required to carry on elements of the business of the licensee or former licensee, but the appointee will not themselves be licensed under the Bill. The clauses from which an appointee is so exempt are:

- 70 Registered office
- 71 Licensee must notify chief executive of change in place of business etc.
- 72 Advertising
- 76 What a motor dealer licence authorises
- 79 Licensee to be in charge of motor dealer’s business at a place
- 80 Motor dealer dealing in motor vehicles
- Part 3, Division 3 Appointment
- 119 Acting as motor dealer
- 122 What a chattel auctioneer licence authorises
- 124 Licensee to be in charge of chattel auctioneer’s business at a place
- Part 4, Division 3 Appointment
- 148 Licensee’s disclosures to persons taking part in auction
- 149 Acting as chattel auctioneer

### Division 3 Object of Act

*Clause 8* sets out the object of the Bill and the ways the object is to be achieved.

## Division 4 Interpretation

*Clause 9* states that the dictionary in schedule 4 defines particular words used in the Bill.

*Clause 10* provides examples of where for the Bill, other than clause 19(2)(a) or 4(b)(i), a licensee or motor salesperson is taken to have a beneficial interest in property.

*Clause 11* provides the meaning of “**in charge**”. A person is in charge of a licensee’s business at a place where the licensee carries on business only if the person personally supervises, manages or controls the conduct of the licensee’s business at the place.

*Clause 12* provides the meaning of “**motor vehicle**”, as: a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle whether or not the vehicle is capable of being operated or used in a normal way; or a caravan. The Clause also sets out specific vehicles that are not a motor vehicle under the Bill – hovercraft, motorised golf buggy, motorised scooter, motorised wheelchair, a trailer (other than a caravan), a tractor or farm machinery, a mining vehicle, a railway vehicle. Definitions for “**motorised golf buggy**”, “**motorised scooter**” and “**motorised wheelchair**” are provided by reference to the *Transport Operations (Road Use Management) Act 1995*.

The purpose of Clause 12 is to ensure the term motor vehicle, upon which the elements of the Bill relevant to dealings in used motor vehicles rely, includes types of vehicle for which it is appropriate to require licensing of dealers and the provision of statutory warranty. These types of vehicle are primarily bought or sold by consumers and relied upon for registered use as personal transport on public roads.

*Clause 13* provides the meaning of “**sale by auction**” for the purposes of the Bill. A sale by auction of goods (including a used motor vehicle) by auction is broadly defined as the sale of goods in any way commonly known and understood to be by auction. However, the sale of goods by auction is not a sale by auction under the Bill if the seller owns the goods and is not selling for someone else, and the auction is conducted wholly by electronic communications.

The intent of clause 13 is to exclude from the meaning of sale by auction such activities as a person selling their own goods through an online marketplace that employs a system of bidding for transactions, and which might be commonly understood to be an auction (for example eBay). Without such exclusion, such sales might arguably require the authorisation of a chattel auctioneer licence, which is not the objective of the licensing and conduct regulation framework provided by the Bill.

## Part 2 Licensing

### Division 1 Categories of licence

*Clause 14* sets out the categories of licence the chief executive may issue under the Bill: a motor dealer licence and a chattel auctioneer licence.

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

*Clause 15* provides that the chief executive may issue a limited motor dealer licence prescribed under a regulation that limits the activities that may be performed under the licence. The clause also sets out that an applicant must have educational qualifications approved by the chief executive to be eligible for the limited licence.

The intent of this clause is to provide a limited category of motor dealer licence authorising a restricted set of dealings in used motor vehicles, with specific educational requirements for eligibility. Under the PAMDA and regulations, the comparable provision forms the basis for establishing a motor dealer (wrecker) licence, authorising the trade in used vehicles for dismantling and part sales.

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

*Clause 16* sets out the steps involved in obtaining a licence, including that the person must establish through an application to the chief executive their eligibility, pay prescribed fees and any criminal history cost requirements, and provide other information required under clause 18 related to business address details. The clause provides that a person who wishes to obtain a licence must be a suitable person to hold a licence under part 2 division 5 (Suitability of applicants and licensees), and that the chief executive in deciding the application must have regard, among other things, to the person's suitability and eligibility to hold the licence.

## **Division 4 Applications for licence**

*Clause 17* prescribes that an application for a licence must be made to the chief executive in the approved form, and sets out required elements of information provided through that form. The clause also provides that the application must be accompanied by fees required under a regulation and costs of a criminal history costs requirement if that requirement is made of the applicant.

*Clause 18* provides that the applicant for a licence if intending to carry on business under the licence immediately must provide in the application the place or places in Queensland where the applicant proposes to carry on business under the licence.

If the applicant does not intend carrying on business immediately after issue, they must state the capacity in which, and business address where, they intend performing activities under the licence; and if they intend to be a person in charge of a licensee's business at a place of business, the name of the employer, and the business address where the applicant will be in charge.

If the applicant intends to carry on business under the licence at more than one place they must state the principal place of business. A place of business or address for this clause must not be a post office box, and must be a place where a document can be served personally.

*Clause 19* prohibits an individual or corporation from making an application for a licence in particular circumstances. A person that is disqualified from holding a licence (*a disqualified person*), as a consequence of an order made by QCAT under clause 199 or a court under

clause 229 is not permitted to make an application for a licence during the period for which they are disqualified.

A corporation that was the holder of a licence that was cancelled is not permitted to make an application for a licence. However, this prohibition does not apply to a corporation if the chief executive is satisfied that because of a genuine sale of the corporation no person who was a shareholder of, held a beneficial interest in, or was in a position to control or influence the affairs of the corporation when the licence was cancelled is a shareholder of, holds a beneficial interest in, or is in a position to control or influence the affairs of the applicant corporation.

The clause also provides that where a person's application for a licence has been refused, the person can not make another application for a licence of that type for 3 months after the date the chief executive gives the information notice about refusal decision. If a person who has been refused a licence by a decision of the chief executive applies to the tribunal for a review of the chief executive's decision and the tribunal confirms the chief executive's decision, the person may not make another application until 3 months after the date of the tribunal's decision.

However, this time restriction applying to licence application following a refused application does not apply if the licence applicant is a corporation and the chief executive is satisfied that because of a genuine sale of the corporation no person who was a shareholder of, held a beneficial interest in, or was in a position to control or influence the affairs of the corporation when the licence was cancelled is a shareholder of, holds a beneficial interest in, or is in a position to control or influence the affairs of the applicant corporation.

*Clause 20* provides that the chief executive in relation to certain applications and requests (application for a licence, renewal of a licence, restoration of a licence, certain matters regarding substitute licensees, reactivation of a licence) may by written notice to the applicant or licensee require they provide information or material within a stated period that the chief executive reasonably considers is needed to consider the application or request.

In the event the applicant or licensee fails to comply with the chief executive's requirements, the applicant or licensee is taken to have withdrawn the application or request.

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

*Clause 21* provides the circumstances in which individuals are not suitable persons to hold a licence, and states that an individual who is not a suitable person can not hold a licence. An individual is not a suitable person to hold a licence if any of the following applies: they are an insolvent under administration; they have been convicted within the preceding 5 years of a serious offence; they are currently disqualified from holding a licence or registration certificate; the chief executive decides under clause 23 the person is not a suitable person to hold a licence. In addition, the individual is not a suitable person to hold a motor dealer licence if they are an identified participant in a criminal organisation.

*Clause 22* provides the circumstances in which corporations are not suitable persons to hold a licence, and states that a corporation who is not a suitable person can not hold a licence. A corporation is not a suitable person to hold a licence if any of the following applies: it has been convicted within the preceding 5 years of a serious offence; it is currently disqualified

from holding a licence; or is a person the chief executive decides under clause 23 is not a suitable person. A corporation is also not a suitable person to hold a licence if any of the circumstances making an individual not a suitable person to hold a licence in clause 21 apply to an executive officer of the corporation.

In the specific case of a corporation holding a motor dealer licence, the corporation is also not a suitable person if an executive officer is a participant in a criminal organisation.

*Clause 23* states all the things the chief executive must consider when deciding whether a person is a suitable person to hold a licence. For both individuals and corporations, the chief executive must consider: the persons character and the character of their business associates; whether the person has been suspended, cancelled or disqualified in relation to a licence or registration certificate under a relevant Act; whether a claim has been paid from the claim fund for something the person did, or omitted to do; whether the person has been disqualified from managing corporations under the Corporations Act; whether in the last five years QCAT or the former tribunal or the District court had made an order adverse to the person under this Bill or PAMDA; and another thing the chief executive may consider under this Bill.

For an individual, the chief executive must also consider the person's criminal history, solvency record, convictions under a relevant Act or the Administration Act, capability to perform licensee activities satisfactorily, whether disqualified from managing corporations under the Corporations Act, and for holding a motor dealer licence whether the individual is an identified participant in a criminal organisation.

For a corporation, the chief executive must also consider whether the corporation has been placed in receivership or liquidation, whether an executive officer is an identified participant in a criminal organisation, the solvency record of its executive officers, any convictions of executive officers under a relevant Act or the Administration Act, and whether each executive officer is a suitable person to hold a licence.

If the chief executive decides a person is not a suitable person to hold a licence they must give them an information notice about the decision. *The Acts Interpretation Act 1954 (AI Act)*, section 27B does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner about whether the person is an identified participant in a criminal organisation (under clause 30). The AI Act section is excluded as it states that where an Act requires a decision maker to give written reasons for a decision, the instrument must also set out findings on material questions of fact and refer to evidence or other material on which those findings were based.

*Relevant Act* is defined for the clause as this Bill, an Agents Act, PAMDA, or a corresponding law.

*Clause 24* states The Public Trustee of Queensland is taken to be a suitable person to hold a licence.

*Clause 25* states the chief executive of a department is taken to be a suitable person to hold a licence.

*Clause 26* provides the chief executive may make investigations about certain persons to assist decisions about whether an applicant, licensee or nominee is a suitable person to hold a

licence. These are: the applicant, licensee or person nominated as a substitute licensee under Clause 51(3) or 52(4); other members of any existing or intended partnership or each person with whom the applicant, licensee or nominee will or does carry on business with; business associates of the applicant, licensee or nominee; and for corporations each executive officer.

The clause provides that the chief executive may ask the commissioner of the police service for a criminal history report about any of the persons, and that the commissioner must give the report to the chief executive. The report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access. The criminal history report must be written if the person's criminal history includes a conviction recorded against them.

*Clause 27* provides that where the commissioner of the police service reasonably suspects a person is a licensee or a substitute licensee, and the person's criminal history changes, the commissioner may notify the chief executive that the person's criminal history has changed. The chief executive may confirm the commissioner's suspicions regarding licencing status of the person.

The notice of change in criminal history must state details including the person's name including aliases, date and place of birth, and brief description of the nature of the offence giving rise to the charge or conviction to which the change in history relates. A change in criminal history includes the acquisition of a criminal history where there was none previously. For the purposes of the clause, "**criminal history**" is defined to include a charge that has not been dismissed in addition to the definition under the Bill, and "**offence**" includes an alleged offence

*Clause 28* states that the chief executive may require a licensee, or applicant mentioned in clause 20(1), to pay reasonable, but no more than actual, costs of obtaining a criminal history report under clause 26, and this requirement is defined as a "**criminal history cost requirement**". This report may be about the applicant or licensee, a member of any existing or intended partnership, a person with whom the applicant or licensee will or does carry on business in conjunction, for corporations an executive officer of the corporation, a business associate of the applicant, or person nominated as a substitute licensee under clause 51 or 52.

The chief executive may notify the applicant or licensee of the requirement to pay the criminal history costs requirement in an approved form, on the department's website or in a written notice to the applicant or licensee. If such written notice is given the notice must include a requirement the costs be paid within a stated reasonable period. The applicant or licensee is taken to have withdrawn the application if they fail to comply with the requirement to pay within that period.

Where the application is refused by the chief executive without asking for the report, or the applicant withdraws the application before the chief executive asks for the report, the chief executive must refund the amount paid under the criminal history cost requirement to the applicant.

*Clause 29* deals with use of information about charges and convictions obtained under clause 26 or 27, either about: an applicant, licensee or nominated person (as a substitute licensee) – each a *relevant person*; or about an associate of a relevant person. The clause provides that information obtained about a conviction of a relevant person or associate may be used only

for making a decision about the relevant person's suitability to hold a licence. The clause also provides that information about a charge against a relevant person obtained under clause 27 may not be relied upon as a basis for making a decision about the person's suitability.

Associate of a relevant person is defined for this clause as a person to whom clause 26(1)(b),(c) or (e) applies for deciding whether the person is suitable to hold a licence (that is - other members of partnerships, executive officers of a corporation, business associates).

*Clause 30* applies to the chief executive for deciding whether an applicant mentioned in clause 20(1) or a motor dealer is a suitable person to hold a motor dealer licence. It provides that the chief executive must ask the commissioner of the police service if, an applicant, motor dealer, or if the applicant or motor dealer is a corporation – an executive officer of the corporation, is an identified participant in a criminal organisation. The commissioner must comply with the chief executive's request. The chief executive may use the advice only for deciding whether the applicant or motor dealer is, or continues to be, a suitable person to hold a motor dealer licence.

*Clause 31* prohibits a public service employee from directly or indirectly disclosing to anyone else a criminal history report or information contained in the report, or the contents of a notice given under clause 27. The clause states a penalty for contravention of 100 penalty units.

The person does not contravene this prohibition if disclosure of the relevant information is authorised by the chief executive to the extent necessary to perform a function under or relating to the Bill or the disclosure is otherwise required or permitted by law.

The clause also requires the chief executive to destroy a criminal history report and a notice given under clause 27, as soon as practicable after considering the relevant person's suitability to hold a licence.

## **Division 6 Eligibility for licence**

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

*Clause 32* states the eligibility criteria for a motor dealer licence. An individual is eligible to obtain a motor dealer licence only if they are at least 18 years old, and have educational or other qualifications approved by the chief executive for the licence. An individual is to be taken to satisfy the educational or other qualifications if the chief executive is satisfied the individual has comparable qualifications to those approved by the chief executive, or within 2 years prior to the application being received the individual was licensed as a motor dealer or has been the holder of a comparable licence under PAMDA.

A corporation is eligible to obtain a motor dealer licence only if a person in charge of the corporation's business is a motor dealer.

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

*Clause 33* states the eligibility criteria for a chattel auctioneer licence. An individual is eligible to obtain a chattel auctioneer licence only if they are at least 18 years old, and have educational or other qualifications approved by the chief executive for the licence. An

individual is to be taken to satisfy the educational or other qualifications if the chief executive is satisfied the individual has comparable qualifications to those approved by the chief executive, or within 2 years prior to the application being received the individual was licensed as a chattel auctioneer or has been the holder of an auctioneer's licence under PAMDA.

A corporation is eligible to obtain a chattel auctioneer licence only if a person in charge of the corporation's business is a chattel auctioneer.

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

*Clause 34* provides that the Public Trustee of Queensland is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.

*Clause 35* provides that the chief executive of a department is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.

### **Division 7 Issue of licences**

*Clause 36* provides that the chief executive may issue or refuse to issue a licence to an applicant, and sets out the circumstances in which the chief executive may issue a licence. The chief executive may issue a licence only if satisfied the applicant: is a suitable person to hold a licence; each member of any intended partnership or each person the applicant intends carrying on business in conjunction with is a suitable person; for applicants that are corporations, each executive officer of the corporation is a suitable person to hold a licence; the applicant is eligible to obtain the licence being applied for; and, the application is properly made under clauses 17 and 18.

Where the chief executive decides to refuse to issue the licence they must give the applicant an information notice about the decision within 14 days after making the decision. The *Acts Interpretation Act 1954*, section 27B does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner under clause 28A(3).

*Clause 37* states the chief executive may issue a licence to the public trustee in the name 'The Public Trustee of Queensland'. The licence authorises an officer or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence. The clause declares, for the purposes of removing any doubt, that an officer or employee so authorised is not required to be licensed or registered under the Bill to perform the activity.

*Clause 38* states the chief executive may issue a licence to the chief executive of a department in the name 'The Chief Executive of the (name of department)', and that licence is taken to be issued to the chief executive for the time being of the department. The licence authorises an officer or employee of that department to perform any activity authorised by that chief executive that the chief executive may perform under the licence. The clause declares, for the purposes of removing any doubt, that an officer or employee so authorised is not required to be licensed or registered under the Bill to perform the activity.

*Clause 39* states the chief executive may issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the

licence. A condition may limit or prohibit the performance of an activity authorised under this Bill or the Administration Act, or require a licensee to hold insurance of a kind and in an amount prescribed under a regulation. This allowance for specific conditions does not limit the conditions that may be placed upon issue of a licence.

Where the chief executive decides to issue a licence on condition, they must give the applicant an information notice about the decision within 14 days after the decision is made.

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

*Clause 40* places restrictions on the activities a licensed corporation may perform under its licence at a place. Generally, the corporation may only perform an activity if it is permitted to be performed by a licensed person in charge of the corporation's business at the place, or a duly appointed liquidator, controller, administrator or receiver. However for the specific case of a corporation that holds a motor dealer licence, a used motor vehicle may be sold by auction if that sale is conducted by a chattel auctioneer as an employed licensee of the corporation.

A corporation that is a former licensee, defined for the purpose as a licensee under a licence that was previously in force or a PAMDA motor dealer licence may perform an activity authorised under the former licence if the activity is performed by a duly appointed liquidator, controller, administrator or receiver.

Where a corporation performs an activity it is not authorised to perform, it is taken to be a person who acts as a licensee without a licence for performance of that activity. This outcome is intended to make applicable particular prohibitions under the Bill related to acting without a licence or acting without authority under a licence, including clause 88 Restriction on remedy for reward or expense (*note - motor dealer*), clause 119 Acting as motor dealer, clause 132 restriction on remedy for reward or expense (*note - chattel auctioneer*), 149 Acting as chattel auctioneer.

*Clause 41* places restrictions on the activities an employed licensee may perform under the individual's licence. Generally, an employed licensee may perform an activity authorised by licence only if the activity may also be performed by the individual's employer under the employer's licence. However this restriction does not prevent an employed chattel auctioneer licensee from selling goods by auction for the individual's licensed employer. This exception allows a chattel auctioneer to sell motor vehicles by auction for an employer who is a licensed motor dealer (a licence that does not authorise the performance of sale by auction).

Where an employed licensee performs an activity they are not authorised to perform considering the restrictions and specific exemption above, they are taken to be a person who acts as a licensee without a licence for performance of that activity. This outcome is intended to make applicable particular prohibitions under the Bill related to acting without a licence or acting without authority under a licence, including clause 88 Restriction on remedy for reward or expense (*note - motor dealer*), clause 119 Acting as motor dealer, clause 132 Restriction on remedy for reward or expense (*note - chattel auctioneer*), 149 Acting as chattel auctioneer.

*Clause 42* states that a licensee who performs an activity under their licence they are not authorised to perform because of a condition on their licence is taken to be a person who acts

as a licensee without a licence for the performance of the activity. This outcome is intended to make applicable particular prohibitions under the Bill related to acting without a licence or acting without authority under a licence, including clause 88 Restriction on remedy for reward or expense (*note - motor dealer*), clause 119 Acting as motor dealer, clause 132 Restriction on remedy for reward or expense (*note - chattel auctioneer*), 149 Acting as chattel auctioneer.

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

### **Subdivision 1 Renewal**

*Clause 43* states a licensee may only apply for renewal of their licence before the licence expires. The clause sets out that the application must be made to the chief executive in the approved form, and provides the information, payment of fees, proof regarding required insurance, payment of criminal history costs, and information relevant to trust accounts that must accompany the application.

*Clause 44* provides that the chief executive must consider a renewal application, and may renew or refuse to renew the licence. The chief executive may renew the licence only if satisfied that: the licensee is a suitable person to hold a licence; each member of any intended partnership or each person the applicant will carry on business in conjunction with is a suitable person; for a corporation each executive officer of the corporation is a suitable person; the application is made under clause 43; and the licensee meets eligibility requirements other than those of an educational nature.

In the event the chief executive refuses the application, they must give the applicant an information notice about the decision within 14 days after the decision is made. *The Acts Interpretation Act 1954*, section 27B does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner about whether the person is an identified participant in a criminal organisation (under clause 30).

*Clause 45* provides that when an application for renewal of a licence is made under clause 43, the licence is taken to continue in force from the day that it would otherwise have expired, until the application is either decided under clause 44, withdrawn by the licensee, or taken to be withdrawn due to failure to comply with a requirement to provide additional information under clause 20.

The intent of this clause is to ensure that an applicant can retain the authorisation of a licence that would otherwise have expired during the time the application for renewal is being considered.

### **Subdivision 2 Restoration**

*Clause 46* states a person may apply for restoration of a licence if the person's licence expires. The application must be made within 3 months after the expiry. The clause sets out that the application must be made to the chief executive in the approved form, and provides the information, payment of fees, proof regarding required insurance, payment of criminal history costs, and information relevant to trust accounts that must accompany the application.

*Clause 47* provides that when an application for restoration of a licence is made under clause 46, the licence is taken to have continued in force from the day that it would otherwise have expired, until the application is either decided under clause 48, withdrawn by the person, or taken to be withdrawn due to failure to comply with a requirement to provide additional information under clause 20. The intent of this clause is to ensure that the person's authorisations under a licence continue, despite expiry of the licence, so long as they apply for restoration within the three month period, and up to the point and depending on the outcome of the restoration decision.

*Clause 48* provides that the chief executive must consider a restoration application, and may restore or refuse to restore the licence. The chief executive may renew the licence only if satisfied that: the applicant is a suitable person to hold a licence; each member of any intended partnership or each person the applicant will carry on business in conjunction with is a suitable person; for a corporation each executive officer of the corporation is a suitable person; the application is properly made (under clause 45); and the licensee meets eligibility requirements other than those of an educational nature.

In the event the chief executive refuses the application, they must give the applicant an information notice about the decision within 14 days after the decision is made. *The Acts Interpretation Act 1954*, section 27B does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner about whether the person is an identified participant in a criminal organisation (under clause 30).

If the chief executive restores the licence, it is taken to have been renewed on the day it would apart from clause 47 have expired, and a thing done during the period starting on the initial expiry date and ending on the day the licence is restored is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date. The intent of this clause is to ensure that where the chief executive decides to restore the licence, the authorisations of the licence are taken to still apply to activities of the person, for the interval between expiration and restoration.

## **Division 10 Dealings with licences**

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

*Clause 49* prohibits transfer of a licence.

*Clause 50* prohibits the lending or hiring out of a licensee's licence to someone else, prohibits making known that a licence is available for sale, loan or hire or on another basis to someone else, whether licensed or not; and prohibits permitting or allowing someone else to hold out that the person is the holder of the licence issued to the licensee. A penalty of 200 penalty units or 2 years imprisonment is stated for contravention of this prohibition.

The clause also prohibits borrowing, hiring or buying a licensee's licence, and sets a penalty of 200 penalty units or 2 years imprisonment for contravention.

The clause states that if a person is in effective or apparent management or control of a licensee's business, and is not either the holder of an appropriate licence or the licensee's substitute (as per Clause 51 or 52), the licensee is taken to have lent, and the person is taken to have borrowed, the licensee's licence.

## **Subdivision 2 Substitute licences**

*Clause 51* provides for the appointment of a substitute licensee for an individual principal licensee. A principal licensee may appoint an adult as the licensee's substitute licensee for a period of not more than 30 days, only if the licensee will be absent from the registered office for the period, the adult consents to the appointment, and the adult is covered by appropriate insurance if required under the conditions of the licensee's licence.

The principal licensee must ensure that such an appointment and the substitute's consent are in writing and state the period of appointment and must ensure that the appointment, consent and evidence of any required insurance are kept at the licensee's registered office and made available for inspection by an inspector. Contravention of this requirement is associated with a maximum penalty of 100 penalty units.

A principal licensee who will be absent from the licensee's registered office for a period of more than 30 days must apply to the chief executive for appointment or extension thereof of an adult as the licensee's substitute licensee. Contravention of this requirement is associated with a maximum penalty of 200 penalty units. If the principal licensee is deceased, or an administrator under the *Guardianship and Administration Act 2000* has been appointed for the principal licensee, the licensee's representative may make the substitute licensee application to the chief executive.

The application to the chief executive for the substitute licensee appointment or appointment extension must be accompanied by the nominated person's signed consent and other details to enable the chief executive to determine whether the person is suitable to hold a licence, sufficiently qualified to perform the duties, and is covered appropriately by insurance should that be required. The application must also be accompanied by the prescribed application fee and any criminal history cost requirement payment required.

*Clause 52* provides for the appointment of a substitute licensee for an employed licensee in charge of a licensee's business at a place, where the employed licensee will be absent for any reason other than resignation or termination of employment. The principal licensee who employs the employed licensee may appoint an adult as employees substitute licensee for a period of not more than 30 days.

The principal licensee must ensure that such an appointment and the substitute's consent are in writing and state the period of appointment and are kept at the licensee's registered office and made available for inspection by an inspector. Contravention of this requirement is associated with a maximum penalty of 100 penalty units.

If the employed licensee will be absent from the place for a period of more than 30 days the principal licensee must apply to the chief executive for appointment or extension thereof of an adult as the licensee's substitute licensee. Contravention of this requirement is associated with a maximum penalty of 200 penalty units. If the principal licensee is deceased, or an administrator under the *Guardianship and Administration Act 2000* has been appointed for the principal licensee, the licensee's representative or administrator may make the substitute licensee application to the chief executive.

The application to the chief executive for the substitute licensee appointment or appointment extension must be accompanied by the nominated person's signed consent and other details to enable the chief executive to determine whether the person is suitable to hold a licence, sufficiently qualified to perform the duties, and is covered appropriately by insurance should that be required. The application must also be accompanied by the prescribed application fee and any criminal history cost requirement payment required.

*Clause 53* provides the chief executive may appoint or refuse to appoint a nominated person under clause 51 or 52 as a licensee's substitute licensee. The chief executive may appoint the nominated person only if satisfied that the person is a suitable person to hold a licence under part 2 division 5, is sufficiently qualified to perform the licensee's activities, and satisfies any insurance requirements.

An appointment of a substitute licensee may be made subject to conditions the chief executive considers appropriate. The chief executive must give written notice of the appointment to the licensee and the substitute licensee.

If the chief executive refuses or imposes conditions on the appointment, they must give the licensee an information notice about the decision within 14 days after making the decision. *The Acts Interpretation Act 1954*, section 27B does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner about whether the person is an identified participant in a criminal organisation (under clause 30).

*Clause 54* provides that a substitute licensee upon appointment must act as substitute for the licensee form whom they are appointed, and are taken to be the licensee for the period of the appointment. The clause makes it an offence for a licensee for whom a substitute has been appointed to act under authority of their licence while the appointment of the substitute continues, with a maximum penalty of 200 units.

The clause provides the circumstances in which the appointment of the substitute ends. The appointment ends when the period of the appointment ends. The appointment also ends if the principal licensee gives written notice to end the appointment from a stated date, to the substitute licensee, and if the appointment was one requiring application to the chief executive, also to the chief executive. Similarly the appointment ends if the substitute licensee gives written notice to end the appointment from a date stated in the notice to the principal licensee, and if the appointment was one requiring application to the chief executive, also to the chief executive. The appointment also ends if the chief executive revokes the substitute licensee's appointment, or the licensee's licence is suspended or cancelled, or in the case of a principal licensee – the licensee stops carrying on business as a licensee.

*Clause 55* states that a principal license may not appoint a substitute licensee for themselves, or for an employed licensee, for more than 12 weeks in any period of 12 months. The chief executive may not appoint a substitute licensee for more than 26 weeks in any period of 12 months.

### **Subdivision 3 General**

*Clause 56* sets out the circumstances in which the chief executive may amend the conditions of a license. These are upon application by the licensee, on order of QCAT after a disciplinary hearing, or on the chief executive's own initiative.

The clause provides for amendments upon application of the licensee that the application must be made in the approved form and accompanied by the prescribed application fee. The chief executive must be satisfied the licensee meets the eligibility requirements they consider relevant to amending the condition. If the chief executive refuses to amend a licence on upon application of the licensee, they must give the applicant an information notice within 14 days of making the decision.

Before the chief executive amends conditions of a licence on their own initiative they must first give written notice to the licensee of: the particulars of the proposed amendment to conditions, and that the licensee may make written submissions to the chief executive before a stated day not later than 14 days after the notice is given to the licensee. The chief executive must also have regard to submission made to the chief executive before the stated day.

However if the chief executive decides the amendment must be made urgently to avoid potential claims against the fund or to ensure compliance with the Bill or the Administration Act, the requirement to give written notice and consider submissions does not apply.

Where the chief executive acts on their own initiative to amend conditions of a licence they must give the licensee and information notice about the decision within 14 days after making the decision.

Amendment of the licence conditions takes effect on the day written notice is given to the licensee or if provided, a later day stated in the notice.

*Clause 57* states that where the chief executive acts to amend licence conditions under clause 56 or replace the licence under clause 67 (in relation to a prescribed change in licensee details) they may require a licensee to produce their licence within a stated period of not less than 14 days. The maximum penalty for non-compliance with this requirement without a reasonable excuse is 100 penalty units.

*Clause 58* provides that a person whose licence has been suspended or cancelled under clause 229 sub-section 1 (order of Court) or an order made by QCAT must return the licence to the chief executive within 14 days. The maximum penalty for non-compliance with this requirement without a reasonable excuse is 100 penalty units. This requirement does not apply if clause 61(6), 62(2) or 63(4) applies (each of these sub-clauses provides a specific requirement for return based on circumstances under those clauses).

*Clause 59* states that a licensee may surrender their licence by giving written notice to the chief executive and returning the licence. The licence stops having effect on the day it is surrendered.

*Clause 60* provides that a licensee may request the chief executive to deactivate the licensee's licence. Such requests must be made in the approved form and accompanied by the licence to

be deactivated and prescribed fee, and deactivation takes effect upon the chief executive receiving all required aspects of the request.

A deactivated licence does not authorise the performance of any activity under authority of the licence. Deactivation does not affect the term of the licence, and there is no entitlement to refund of licence fees for term remaining.

The holder of a deactivated licence may apply for renewal or restoration as a deactivated licence, at a reduced fee prescribed under regulation. Where the licence has been deactivated for 5 years or more, the licensee must satisfy any educational or other requirements for the licence for it to be reactivated.

The holder of a deactivated licence may apply for reactivation in the approved form and accompanied by fee prescribed under a regulation.

## **Division 11 Suspension and cancellation of licences**

*Clause 61* provides the circumstances in which the chief executive may suspend a licensee's licence, and the specific circumstance where the chief executive may suspend the licence held by an employee of the licensee. Licences may be suspended whether or not disciplinary proceedings have been started under the Bill.

The circumstances for which the chief executive may suspend the licensee's licence are: the chief executive reasonably believes a licensee's licence was obtained, renewed or restored because of incorrect or misleading information; the chief executive considers an irregularity or deficiency exists in a licensee's trust account; the licensee has failed to file an audit report under the Administration Act; a receiver is appointed under the Administration Act over property held by, or held for, or recoverable by, a licensee; the chief executive reasonably considers the licensee has contravened this Bill or the Administration Act or PAMDA or is likely or proposing to engage in conduct that would contravene this Bill or the Administration Act.

Where the chief executive reasonably considers that an irregularity or deficiency exists in a licensee's trust account they may suspend a licence held by an employee of the licensee if the chief executive considers the employee is responsible for the irregularity or deficiency.

Where the chief executive suspends a licence for failure to file an audit report, the licence is suspended until either the licensee files the audit report, or an application to QCAT for cancellation of the licence is heard and decided, whichever occurs first. For suspension of licences for other reasons, the licence may be suspended for a period of not more than 28 days, and on the conditions, that the chief executive decides.

If the chief executive suspends a licence, they must give the licensee an information notice for the suspension within 14 days after suspending the licence.

The licensee is required to return the licence to the chief executive within 14 days of receiving notice of suspension. The maximum penalty for non-compliance with this requirement without a reasonable excuse is 100 penalty units.

*Clause 62* states the relevant events for which a licensee's licence is cancelled immediately. These relevant events include: the licensee is convicted of a serious offence; if the licensee is an individual, the licensee is an insolvent under administration; and, if the licensee is a corporation, the licensee has been wound up or deregistered under the Corporations Act.

The licensee must return the licence to the chief executive upon the happening of any these events. The maximum penalty for non-compliance with this requirement without a reasonable excuse is 100 penalty units.

*Clause 63* states that the chief executive may cancel a motor dealer licence if the chief executive becomes aware that a licensee, or where the licensee is a corporation, an executive officer is an identified participant in a criminal organisation. The chief executive must give the licensee an information notice for the decision within 14 days after making the decision. The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice.

The decision takes effect on the day on which the information notice is given, and the licensee must return the licence to the chief executive within 14 days after that notice is given. The maximum penalty for non-compliance with this requirement without a reasonable excuse is 100 penalty units.

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

*Clause 64* sets out that a licence must be in an approved form, and provides for approval of forms of licences for display or alternatively personal identification purposes. The clause allows the chief executive to issue to corporations a form of licence with the categories of licence issued in the corporation's name. The clause sets out the particulars required of a licence, and provides a maximum penalty of 100 penalty units for contravention of the requirements.

*Clause 65* requires that corporate licensees and principal licensees must keep a copy of their licence for inspection at each place of business of the licensee. The clause requires employed licensees to keep a copy of their licence for inspection at each place where they are employed by the principal licensee. The maximum penalty for contravening these requirements is 100 penalty units.

*Clause 66* provides that a licence may be issued for a 1-year or 3-year term.

*Clause 67* provides that a licensee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence, and that application must be made in the approved form and accompanied by prescribed fee. The chief executive must grant the application if satisfied the license has been lost, stolen etc. in a way to require its replacement, and then issue another licence to replace the original.

The clause provides that the chief executive may also replace a licence if the holder has provided written notice to the chief executive of a prescribed change in circumstances (under clause 69), and that change requires the licence be replaced. The chief executive may also replace a licence if they believe a prescribed change has happened and that change requires the licence be replaced.

When a licence is replaced under this clause, it continues subject to the same conditions and term, and the holder must pay the chief executive the prescribed fee.

*Clause 68* states the chief executive must keep a register of licences and applications for licences, in any way the chief executive considers appropriate. The clause sets out the details the licence register must contain for each applicant for a licence and each licensee.

The clause provides that a person may pay a prescribed fee to inspect or obtain a copy of details in the part of the register containing the details required by this clause, and that access may be arranged at places decided by the chief executive, or by using a computer.

### **Division 13 General provisions about licensees**

*Clause 69* requires a licensee to give written notice to the chief executive of a prescribed change (as prescribed under a regulation) in their circumstances within 14 days of the change. The maximum penalty for contravention of this requirement is 100 penalty units.

*Clause 70* sets out what is a licensee's *registered office*. For a principal licensee it is the place stated in the licensee's licence application as their principal place of business, or another place the licensee notifies the chief executive of in the approved form as their place of business.

For an employed licensee it is the place stated in the licensee's application for licence to be the licensee's business address, or another place the licensee notifies the chief executive of in the approved form as their business address.

*Clause 71* requires that a principal licensee must notify the chief executive in the approved form, and within 14 days of the event, of a change in the licensee's principal place of business or the opening or closure of any place where the licensee carries on business. The clause also requires that an employed licensee must notify the chief executive in the approved form, and within 14 days, of any change in the licensee's business address. The maximum penalty for contravention of either of these requirements is 200 penalty units.

*Clause 72* prohibits a licensee from publishing or permitting to be published an advertisement for the licensee's business without stating the particulars prescribed under a regulation, and sets a maximum penalty of 100 penalty units for contravention of the prohibition.

*Clause 73* provides the requirement for a licensee to obtain a signed statement from the seller of a vehicle stating any required particulars about the seller and the vehicle being sold, where the licensee buys a motor vehicle, or accepts a motor vehicle on consignment. The particulars are those prescribed under a regulation. Contravention of this requirement carries a maximum penalty of 200 penalty units.

The licensee must keep a copy of the statement at their place of business. Contravention of this requirement carries a maximum penalty of 200 penalty units.

However these requirements do not apply where the seller is a financier of the business of the licensee, or another licensee (a current motor dealer or chattel auctioneer licensee).

*Clause 74* states a licensee that sells a motor vehicle in the course of carrying on their business must provide the buyer a signed statement stating any required particulars about the vehicle and particulars about the vehicle's owner. The statement must be provided to the buyer immediately after the sale. The particulars are those prescribed under a regulation. Contravention of this requirement carries a maximum penalty of 200 penalty units.

The licensee must keep a copy of the statement at their place of business. Contravention of this requirement carries a maximum penalty of 200 penalty units.

The clause states that nothing in the clause prevents the statement being contained in the contract for sale of the vehicle.

*Clause 75* requires that a licensee must produce their licence for inspection by a person with whom they are dealing, if the person asks to inspect their licence. The maximum penalty for contravention of this requirement is 100 penalty units.

## Part 3 Motor dealers

### Division 1 Motor dealers' authorisation and responsibilities

*Clause 76* provides the authorisations of a motor dealer licence. A motor dealer licence authorises the holder to perform a defined set of activities in the carrying on of a business of motor dealing, and these are in relation to used motor vehicles: acquiring, primary for resale; selling; selling on consignment as an agent for reward; selling a leased motor vehicle to the lessee under terms of the lease; acquiring to break up for sale as parts; selling acquired vehicles as parts; negotiating under a consultancy arrangement purchases or sales for a non-licensee.

The clause provides a motor dealer may perform the authorised activities in the carrying on of a business, either alone or with others; or they may perform the authorised activities as an employee of a motor dealer who carries on the business of motor dealing.

The definition of “*sell*” under the Bill (Schedule 4 – Dictionary) is broad. The clause states that a motor dealer licence does not authorise the sale of a used motor vehicle by auction, which in combination with the authorisations of the chattel auctioneer licence (clause 122) ensures sale by auction of used motor vehicles is possible only under the authorisation of a chattel auctioneer licence. However the clause provides that a motor dealer may employ a chattel auctioneer to sell a used vehicle by auction for the motor dealer.

The clause provides that the “***business of motor dealing***” does not include the business of a financier. The term of financier is further defined in the dictionary to the Bill (Schedule 4 – Dictionary). The clause also defines a “***consultancy arrangement***”.

*Clause 77* requires that a motor dealer who is a principal licensee must take reasonable steps to ensure each motor salesperson they employ is properly supervised and complies with the requirements of the Bill. Similarly an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each motor salesperson employed at the place is properly supervised and complies with the requirements of the Bill. Failure to comply with these requirements renders a motor dealer liable to disciplinary action under Part 7, division 1, subdivision 2 (Clause 194).

An intent of this clause is to ensure that motor salespersons, who are authorised to perform any activity (subject to any conditions on their registration certificate) that may be performed by the motor dealer who employs them, are adequately supervised by the employer from whom their authorisations derive, and their employer ensures they are acting in compliance with the Bill while performing those activities. It is also the intent that where that employer fails in this duty, that they be liable for disciplinary action.

## **Division 2 Carrying on business**

*Clause 78* provides that an individual who carries on the business of a motor dealer with others is not required to hold a motor dealer licence if at least one of the persons with whom they carry on business is a motor dealer, and the individual does not perform the activities of a motor dealer, and the individual is a suitable person to hold a licence.

*Clause 79* provides the requirements for licensees to be in charge of motor dealer places of business and registered offices.

A motor dealer who is an individual and a principal licensee must be in charge of the motor dealer's business at their registered office, and if they have more than one place of business, ensure that at each other place an individual motor dealer is in charge of the dealer's business at that place. The maximum penalty for contravening this requirement is 200 penalty units.

A motor dealer that is a corporation and a principal licensee must ensure that the individual in charge of its business at its registered office is a motor dealer, and if the corporation has more than one place of business it must ensure there is an individual motor dealer in charge of its business at each other place. The maximum penalty for contravening this requirement is 1000 penalty units for a corporation, and for an individual guilty under the Criminal Code, chapter 2 (*Parties to offences*) of an offence the maximum penalty is 200 penalty units.

The clause also prohibits an individual from being in charge of a motor dealer's business at more than 1 place of business, with a maximum penalty of 200 penalty units for contravention. However it is not an offence for an individual to be in charge of more than 1 place of business if each business is on land contiguous to land on which the other place of business is located.

*Clause 80* provides that a motor dealer performing an activity they are authorised to perform in relation to a used motor vehicle under their licence is taken to be performing these duties whether or not the motor dealer is the registered operator of the motor vehicle as defined under the *Transport Operations (Road Use Management) Act 1995*, or whether or not the motor dealer or the motor dealer's associate used the motor vehicle for private purposes.

The motor dealer must disclose that they are a licensed motor dealer to a potential buyer or seller of a vehicle. The maximum penalty for contravening this requirement is 400 penalty units.

The clause states that if a person agrees to purchase a motor vehicle from, or sell a motor vehicle to, the motor dealer, the person must sign a written acknowledgement stating the motor dealer disclosed to the person that they are a licensed motor dealer.

## **Division 3 Appointment**

### **Subdivision 1 Requirements**

*Clause 81* sets out the requirement for a motor dealer to be appropriately appointed for consignment sales. The clause provides that a motor dealer must not act as a motor dealer for a client to sell on consignment unless the client first appoints the motor dealer in writing under a motor dealer appointment, or unless a previous motor dealer appointment is assigned to the motor dealer under the terms of the appointment or under clause 85 and the appointment is in force. The maximum penalty for contravening this requirement is 200 penalty units.

A motor dealer appointment may be either a single appointment or a continuing appointment, which provides allowance for appointments that cater to short-term arrangements for the sale of a vehicle or particular vehicles, and for appointments that cater to longer-term arrangements to act for a client as allowed by the appointment.

*Clause 82* provides that all motor dealer appointments must state the service to be performed and how it is to be performed. For a single appointment, the appointment must state the period of the appointment; and for a continuing appointment it must state the times, circumstances or occasions when the relevant service is to be performed.

All motor dealer appointments must state: the fees, charges and any commission payable for the relevant service; the expenses the motor dealer is authorised to incur in connection with the performance of the relevant service; the source and the estimated amount or value of any rebate, discount, commission or benefit that the motor dealer may receive for any expenses the motor dealer is authorised to incur; any conditions, limitations or restrictions on the performance of the service; when the fees, charges and any commission for the service are due for payment; and that the appointment may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.

The intent of this clause is to ensure that services, costs, conditions and other relevant elements of an appointment are sufficiently and transparently detailed for the benefit of the client and the motor dealer, and that an appropriate mechanism for timely revocation of appointments is available to both parties.

*Clause 83* provides that a motor dealer appointment must be in the approved form which must include a prominent statement that the client should seek independent legal advice before signing the appointment. An appointment that does not comply with this requirement is ineffective from the time it is made.

*Clause 84* provides that a motor dealer appointment must be signed and dated by the client and the motor dealer or someone authorised or apparently authorised to sign for the dealer. The motor dealer must give a copy of the signed appointment to the client immediately after it is signed. The maximum penalty for contravening this requirement is 200 penalty units.

## **Subdivision 2 Assignment**

*Clause 85* applies if a motor dealer who holds a motor dealer appointment proposes to assign the appointment to another motor dealer without changing the terms of the appointment. The requirements of this clause do not apply to the assignment of a motor dealer appointment if the terms of the appointment authorise the assignment of the appointment and the assignment is made under the terms of the appointment.

For assignment to which the clause does apply, the motor dealer must give the client written notice of the proposed assignment at least 14 days before the motor dealer assigns the appointment.

The written notice must state: the proposed assignee's name; that the appointment is to be assigned without changing its terms; that the client may agree or refuse to agree to the proposed assignment; and, when the proposed assignment is to take effect. If the client agrees to the assignment and the motor dealer assigns the appointment is taken, for clause 81, to be an appointment by the client of the proposed assignee and to continue to have effect according to the terms of the appointment.

The intent of this clause is to provide a mechanism for assignment of appointments by motor dealers to other motor dealers, subject to the client being informed of and approving the assignment, for appointments that do not include arrangements for, and terms of, assignment of the appointment.

## **Division 4 Particular conduct provisions**

### **Subdivision 1 Consignment selling**

*Clause 86* provides that a motor dealer must not accept a trade-in from the buyer of a motor vehicle being sold on consignment. The maximum penalty for contravening this requirement is 200 penalty units or 1 year's imprisonment. However, there is no contravention if the motor dealer purchases the motor vehicle offered as a trade-in as part of a separate transaction between the dealer and the buyer.

### **Subdivision 2 Recovery of reward or expense**

*Clause 87* provides that a motor dealer who sells a motor vehicle on consignment for the payment of a commission must not claim commission worked out on an amount that is more than the actual sale price of the vehicle. The maximum penalty for contravening this requirement is 200 penalty units.

*Clause 88* provides that a person is not entitled to sue, recover or retain a reward or expense for a motor dealer activity unless, at the time of the activity the person held a motor dealer licence, was authorised under licence to sell motor vehicles on consignment; and had been properly appointed by the person to be charged with the reward or expense.

It is an offence for a person to so sue, recover or retain a reward or expense for an activity as a motor dealer other than under these circumstances, with a maximum penalty for contravention of 200 penalty units.

*Clause 89* provides that if a person is convicted of an offence against subclause 87(2) or 88(2) and the court is satisfied that in connection with the offence the person has recovered or retained an amount they were not entitled to from a client they performed an activity for, the court must order the person to pay the amount to the client.

The order must be made whether or not any penalty is imposed on the conviction. The client may file the order in a court having jurisdiction for recovery of a debt of the amount and the order may be enforced as if it were a judgment of that court.

### **Subdivision 3 Interests in motor vehicles**

*Clause 90* provides the meaning of “*obtain*”, which includes being in any way concerned in obtaining.

*Clause 91* sets out the offences of either a motor dealer or a motor salesperson obtaining from the owner of a used motor vehicle, other than another motor dealer, an option to purchase the vehicle in which the dealer or salesperson has a beneficial interest. A motor dealer commits an offence if the motor dealer sells a motor vehicle if the motor dealer has a beneficial interest in an option to purchase the vehicle, other than an option to purchase given by another motor dealer. The maximum penalty for each of the three offences is set at 200 penalty units or 3 years imprisonment.

*Clause 92* provides that a motor dealer commits an offence if a motor dealer obtains a beneficial interest in a vehicle which has been placed with them for sale on consignment. A motor salesperson employed by the motor dealer commits an offence if the salesperson obtains a beneficial interest in the vehicle. The maximum penalty for these offences is 200 penalty units or 3 years imprisonment. These offences do not apply if clause 91 applies.

There is no contravention if the motor dealer or motor salesperson obtains the client’s written acknowledgement in the approved form that the client is aware that the person is interested in obtaining a beneficial interest in the motor vehicle, and consents to the person obtaining the interest. The person must also act fairly and honestly in relation to the sale, there must be no commission or other reward payable for the sale and the client must be in as good a position as if the motor vehicle were sold at fair market value.

*Clause 93* provides that if a person is convicted of an offence against subclauses 92(2) or (3) and the court decides that the person has recovered or retained an amount of commission from the client that they were not entitled to, then the court must order the person to pay the amount to the client. The order must be made whether or not any penalty is imposed on the conviction. The client may file the order in a court having jurisdiction for recovery of a debt of the amount and the order may be enforced as if it were a judgment of that court.

### **Subdivision 4 Prescribed conduct provisions**

*Clause 94* provides that a regulation may provide for a conduct standard or “*prescribed conduct provision*” for motor dealers and motor salespersons in carrying on motor dealing practice. The clause notes that contravention of a prescribed conduct provision is grounds for starting disciplinary proceedings (see clause 194).

## **Subdivision 5 Sales of used motor vehicles that are written-off vehicles**

*Clause 95* applies when a used motor vehicle that is an unregistered written-off vehicle is to be sold by a motor dealer, other than by auction. Before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a written-off vehicle. If the vehicle is a repairable write off the dealer must state that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under the *Transport Operations (Road Use Management) Act 1995* before it can be registered. If the vehicle is a statutory write-off, the motor dealer must tell the buyer that the vehicle can not be registered. The maximum penalty for contravening this requirement is 200 penalty units

The motor dealer must also ask the buyer to sign an acknowledgement that identifies the used motor vehicle as a written-off vehicle and states whether the vehicle is a repairable write-off or a statutory write-off. The maximum penalty for contravening this requirement is 200 penalty units.

The motor dealer must give the original of the acknowledgement to the buyer and keep a copy themselves. The maximum penalty for contravening this requirement is 200 penalty units.

## **Division 5 Sale of motor vehicles by motor dealer**

*Clause 96* applies if a used motor vehicle is to be sold by or for a motor dealer to someone else other than by auction.

The responsible licensee must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer. The selling agent is the responsible licensee if they own the vehicle or are appointed to sell the vehicle on consignment for someone other than a chattel auctioneer or motor dealer. If the selling agent is selling the vehicle for another motor dealer or chattel auctioneer, that other licensee is responsible licensee. The maximum penalty for contravening this requirement is 200 penalty units.

In a proceeding for an offence under this clause it is a defence for the defendant to prove that they took all reasonable steps to comply with the requirement to ensure the buyer gain clear title. A proceeding against a motor dealer or chattel auctioneer for an offence against this section does not affect any civil liability of any person, including the motor dealer or chattel auctioneer, arising out of the same facts that constitute the offence. The requirement to ensure the buyer gains clear title does not apply to the extent that a security interest in the motor vehicle is registered under the *Personal Property Securities Act 2009* (Cwlth). In this clause “**sold**” includes sold on consignment.

*Clause 97* states that a contract for the sale of a used motor vehicle by a selling agent must state that the responsible licensee guarantees that the buyer will have clear title to the vehicle when property in the vehicle passes to the buyer. If the contract does not comply with these requirements, the buyer may avoid the contract, by giving written notice to the selling agent. The notice must be within 7 days after the day property in the vehicle passes to the buyer.

## Division 6 Cooling-off period

*Clause 98* provides definitions or modifications for “***business day***”, “***cooling-off period***”, “***non-refundable deposit***”, and “***used motor vehicle***” within division 6.

*Clause 99* provides the meaning of “***cooling-off period***”. The cooling-off period for the purchase of a used motor vehicle from a motor dealer starts on the day a contract for the purchase of the vehicle is enforceable against the motor dealer.

If the motor dealer’s close of business on the next business day is 5pm or later, the cooling-off period ends at the time of the motor dealer’s close of business on that business day. If the motor dealers close of business on their next business day is earlier than 5pm, the cooling off period ends at the time of the motor dealer’s usual close of business on the business day immediately following the next business day. The cooling off period ends at any earlier time the person takes physical possession of the vehicle for a purpose other than a vehicle inspection or a test drive. The intent of this clause is to ensure a cooling-off period of at least a full business day is provided to the buyer once the contract becomes enforceable, unless the buyer acts to end the cooling-off period.

*Clause 100* set out that division 6 applies to sales of used motor vehicles by motor dealers, but that it does not apply to a sale by auction, a sale on consignment unless the owner of the vehicle is a motor dealer or chattel auctioneer, or a sale to another motor dealer. This clause acts to exempt these specific types of sales from the cooling-off period requirements.

*Clause 101* provides that a motor dealer must not advertise or display for sale a motor vehicle for sale on consignment unless it is advertised or displayed that the vehicle is not subject to a cooling-off period. The maximum penalty for contravening this requirement is 100 penalty units. This does not apply to a sale on consignment of a motor vehicle owned by a motor dealer or chattel auctioneer, as the cooling-off period is still required for such sales.

*Clause 102* provides that if a used motor vehicle is not subject to any prior contract with a prospective buyer for its sale, a motor dealer must give to the prospective buyer of the vehicle a written statement in the approved form. The maximum penalty for contravening this requirement is 200 penalty units.

This statement must include: the clearly identified motor vehicle; the names and addresses of the motor dealer and prospective buyer; a clear statement that the prospective buyer may avoid any contract for the purchase of the vehicle during the cooling-off period; the day and time when the statement is given; the day and time the cooling-off period ends; and the amount of non-refundable deposit forfeited by the prospective buyer if the buyer avoids the contract. This statement must be signed and dated by the prospective buyer and the motor dealer or someone authorised to sign for the motor dealer.

The motor dealer or authorised person must give the original of the statement to the prospective buyer immediately before the buyer signs any contract for the purchase of the vehicle. The maximum penalty for contravening this requirement is 200 penalty units.

The motor dealer must keep a copy of the statement. The maximum penalty for contravening this requirement is 100 penalty units.

*Clause 103* provides that if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable, the motor dealer may give one other person an option to purchase the vehicle even though the vehicle is subject to a prior contract. It is an offence if the motor dealer gives an option to purchase the motor vehicle to someone else while an option to purchase is still current, and the maximum penalty for contravention is 100 penalty units.

The motor dealer must give the option holder a written statement under this clause. The maximum penalty for contravening this requirement is 200 penalty units.

The clause sets out details the statement must include: the clearly identified motor vehicle; names and address of motor dealer and option holder; that the option to purchase is conditional on the prior contract being avoided; that the option holder has no legally enforceable rights under the option to purchase unless the contract is avoided; when the option holder may exercise rights under the option; the day and time when the statement is given; the amount of non-refundable deposit forfeited by the option holder if they decline to purchase; and, any other things prescribed under a regulation.

The statement must be signed and dated by the option holder and the motor dealer or someone authorised to sign for the motor dealer. The motor dealer or authorised person must give the statement to the option holder immediately before the option holder signs the option to purchase the vehicle. The maximum penalty for contravening the requirement to give the statement is 200 penalty units.

The motor dealer must keep a copy of the statement. The maximum penalty for contravening this requirement is 100 penalty units.

*Clause 104* provides that if the buyer has purchased a used motor vehicle and has not been given the appropriate statement under clause 102 or if that statement is defective, the buyer may, by written notice, avoid the contract for the sale of the used motor vehicle.

The written notice must be given by the buyer to the motor dealer within 7 days after the vehicle passes to the buyer. If the contract is avoided under this clause, the motor dealer must do everything in their power to return the buyer to the position the buyer was in before the vehicle was purchased. If the buyer can not be returned to that position, the motor dealer is liable for any resultant financial loss suffered by the buyer.

*Clause 105* provides that the contract for the sale of a used motor vehicle by a motor dealer must contain a clause clearly headed ‘COOLING-OFF PERIOD’ stating the required particulars: day and time the cooling-off period starts and ends; that property does not pass to the buyer until the end of the cooling-off period unless they take physical possession other than for inspection or a test drive; that the buyer may possess the vehicle during the cooling-off period for inspection or test drive; that the buyer may avoid the contract during the cooling-off period by giving written notice to the dealer; the amount of non-refundable deposit paid by the buyer if the contract is so avoided; that if the contract is avoided during cooling-off the motor dealer must return any trade-in vehicle offered by the buyer and any deposit paid by the buyer less the non-refundable amount.

If the contract does not comply with this requirement the buyer may avoid the contract for the sale by providing a written notice to the motor dealer within 7 days after the property in the vehicle passes to the buyer.

The intent of this clause is to ensure that the buyer may rely on information provided within the contract of sale to determine their rights and responsibilities in relation to the cooling-off period provided for their used vehicle purchase. In the event the buyer is not appropriately provided that information within the contract, they are provided the capacity to avoid the contract.

*Clause 106* provides that the consideration payable for the cooling-off period for the purchase of a used motor vehicle is that prescribed or worked out under a regulation.

The non-refundable deposit may be paid as the deposit or part of the deposit for the vehicle. If the contract is not avoided during the cooling-off period, the non-refundable deposit must be deducted from the purchase price of the vehicle.

If the amount of the deposit paid for the vehicle is more than the amount of the non refundable deposit, the deposit is taken to include the non-refundable deposit. If the amount of the deposit is equal to or less than the amount of the non-refundable deposit, the deposit is taken to be the non-refundable deposit. If no deposit is paid for the vehicle, the motor dealer is taken to have waived the payment of the non-refundable deposit.

*Clause 107* provides that the consideration payable for an option for the purchase of a used motor vehicle under clause 103 is the amount prescribed or worked out under a regulation.

If the option holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided, the amount of non-refundable deposit is forfeited by the option holder.

If the option holder enters into a contract for the purchase of the vehicle, the amount of non-refundable deposit paid for the option is taken to be the non-refundable deposit for the cooling-off period.

If no consideration is paid for the option, the motor dealer is taken to have waived the payment of the non-refundable deposit for the option and the option is enforceable by the option holder against the motor dealer despite the absence of consideration.

*Clause 108* provides that a motor dealer or other person must not harass or coerce a person for the purpose of dissuading or preventing the person from exercising a right conferred on the person by this division. The maximum penalty for contravening this requirement is 200 penalty units or 2 years imprisonment.

*Clause 109* provides that property in a used motor vehicle subject to a cooling-off period does not pass to the buyer of the vehicle until the end of the cooling-off period. Property in a motor vehicle offered to the motor dealer as a trade-in does not pass to the dealer until the end of the cooling-off period. A deposit, other than a non-refundable deposit, given to a motor dealer by a buyer remains the buyer's property until the end of the cooling-off period.

*Clause 110* provides that the buyer of a used motor vehicle may avoid the contract to purchase the vehicle during the cooling-off period.

*Clause 111* provides that a buyer of a used motor vehicle wishing to avoid the contract must give the motor dealer or a person apparently working for the dealer at their place of business a written notice indicating that the buyer terminates the contract. The notice must be given before the cooling-off period ends.

*Clause 112* sets out what happens when a contract is avoided under clause 111. The clause provides that notice given under clause 111 brings the contract, and any related contract, to an end. If the motor dealer has given an option to purchase to an option holder, the motor dealer must immediately advise the option holder that the prior contract has been avoided, and that a contract to purchase the vehicle must be entered into before the end of the motor dealer's next business day or any non-refundable deposit is forfeited.

In this clause “**related contract**” includes a contract about the provision of finance to purchase the vehicle, and a contract of insurance for the vehicle.

*Clause 113* provides that motor dealer may accept a trade-in or other consideration from a buyer of a used motor vehicle before the end of the cooling-off period. However, the motor dealer must not deal in the trade-in or other consideration during the cooling-off period. The maximum penalty for contravening this requirement is 200 penalty units or 1 year’s imprisonment.

The motor dealer must return the trade-in or other consideration immediately to the buyer, at no cost to the buyer, if the buyer avoids the contract under clause 111. The maximum penalty for contravening this requirement is 200 penalty units or 1 year’s imprisonment. This does not require the return to the buyer of any non-refundable deposit paid as consideration for the cooling-off period.

## **Division 7 Dealing with warranted and unwarranted vehicles**

*Clause 114* provides that in this division, “**motor dealer**”, for the sale of used motor vehicles, includes a person carrying on the business of a motor dealer without a licence.

*Clause 115* states that Schedule 1 provides for a statutory warranty for warranted vehicles sold by a motor dealer in particular circumstances.

*Clause 116* provides a motor dealer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale as a vehicle that does not have a statutory warranty, in the way provided under a regulation. The maximum penalty for contravening this requirement is 100 penalty units. This requirement does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.

## **Division 8 General**

*Clause 117* provides that a motor dealer must keep a register of transactions at each place the motor dealer carries on business. The maximum penalty for contravening this requirement is 200 penalty units or 1 year’s imprisonment. The form of the register may be prescribed under a regulation.

The motor dealer must enter, and keep entered, in the transactions register the particulars prescribed under a regulation for each transaction within 24 hours after the transaction is completed. The maximum penalty for contravening this requirement is 200 penalty units or 1 year's imprisonment.

If the register is kept in electronic form, the motor dealer is taken to comply with the requirement to keep a register if information in the register can be accessed electronically and as hard copy from the place of business.

In this clause motor dealer means a motor dealer who is a principal licensee or a person in charge of a licensee's business at a place, but does not include a motor dealer whose licence is conditioned to allow the dealer to perform only the activity of negotiating, under a consultancy arrangement, for a person who is not a motor dealer or chattel auctioneer for the purchase of a motor vehicle for the person.

*Clause 118* requires a motor dealer to ensure that a contract for the sale of a motor vehicle by the motor dealer is in writing and contains the particulars prescribed under a regulation in the way prescribed under the regulation. The maximum penalty for contravening this requirement is 200 penalty units.

The motor dealer must give 1 copy of the contract to each other person signing the contract immediately after it is signed. The maximum penalty for contravening this requirement is 200 penalty units.

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

## **Division 9 Particular offences**

*Clause 119* provides that a person must not carry on the business of a motor dealer unless the person holds a motor dealer licence and the activities performed in the carrying on of business as a motor dealer are authorised under the person's licence. The maximum penalty for contravening this requirement is 400 penalty units or 2 years imprisonment.

The clause provides ways in which a person carries on business as a motor dealer, without limiting the ways a person may carry on the business of a motor dealer. A person carries on business as a motor dealer if the person: advertises, notifies or states that the person carries on the business of motor dealing, either generally or for a single transaction; or, in any way holds out as being ready to carry on the business of motor dealing, either generally or for a single transaction.

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

*Clause 120* provides a motor dealer must not act for more than one party to a transaction. The maximum penalty for contravening this requirement is 200 penalty units. If the motor dealer acts for more than one party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

*Clause 121* provides that a motor dealer must not employ a person as a motor salesperson where the motor dealer knows or ought to know ought to know the person does not hold a motor salesperson registration certificate. The maximum penalty for contravening this requirement is 200 penalty units.

A principal licensee who is an individual and carries on the business of a motor dealer must not employ themselves or another individual with whom they carry on business as a motor dealer, as a motor salesperson for the business. The maximum penalty for contravening this requirement is 200 penalty units.

A principal licensee that is a corporation and carries on business as a motor dealer must not employ an executive officer of the corporation as a motor salesperson for the business. The maximum penalty for contravening this requirement for an individual guilty under the Criminal Code, chapter 2 (*Parties to offences*) of an offence is 200 penalty units, or for a corporation is 1000 penalty units.

## **Part 4 Chattel auctioneers**

### **Division 1 Chattel auctioneers' authorisation**

*Clause 122* provides the authorisations of a chattel auctioneer licence. A chattel auctioneer licence authorises the holder to perform the activity of selling goods by auction, and selling goods by any means during the auction period. Auction period is defined for the purpose of the clause as the period for which the chattel auctioneer is duly appointed or otherwise authorised or permitted under this Bill or another Act to sell the goods.

The clause also provides that a chattel auctioneer may perform the authorised activities in the carrying on of a business, other alone or with others; or as an employee of a chattel auctioneer or motor dealer.

### **Division 2 Carrying on business**

*Clause 123* provides that an individual who carries on the business of a chattel auctioneer with others is not required to hold a chattel auctioneer licence if: at least one of the persons with whom they carry on business is a chattel auctioneer; and the individual does not perform the activities of a chattel auctioneer; and the individual is a suitable person to hold a licence. The intent of this clause is to allow the conduct of a business under partnership arrangements and other ways in which individuals may carry on a business in conjunction, without requiring all parties to hold a licence, so long as there is an appropriately licensed person carrying on the business.

*Clause 124* provides the requirements for licensees to be in charge of chattel auctioneer places of business and registered offices.

A chattel auctioneer who is an individual and a principal licensee must be in charge of the chattel auctioneer's business at their registered office, and if they have more than one place of business, ensure that at each other place an individual chattel auctioneer is in charge of the chattel auctioneer's business at that place. The maximum penalty for contravening this requirement is 200 penalty units.

A chattel auctioneer that is a corporation and a principal licensee must ensure that the individual in charge of its business at its registered office is a chattel auctioneer, and if the corporation has more than one place of business it must ensure there is an individual chattel auctioneer in charge of its business at each other place. The maximum penalty for contravening this requirement is 1000 penalty units for a corporation, and for an individual guilty under the Criminal Code, chapter 2 (*Parties to offences*) of an offence the maximum penalty is 200 penalty units.

The clause also prohibits an individual from being in charge of a chattel auctioneer's business at more than 1 place of business, with a maximum penalty of 200 penalty units for contravention. However it is not an offence for an individual to be in charge of more than 1 place of business if each business is on land contiguous to land on which the other place of business is located.

## **Division 3 Appointment**

### **Subdivision 1 Requirements**

*Clause 125* provides that a chattel auctioneer must not act as a chattel auctioneer for a client unless the client first appoints the chattel auctioneer in writing under a chattel auctioneer appointment, or unless a previous, and in force, chattel auctioneer appointment is assigned to the chattel auctioneer under the terms of the appointment or under clause 124. The maximum penalty for contravening this requirement is 200 penalty units.

The clause also provides that the requirement for a written appointment does not apply if the activity is the sale of livestock, or authorised under a motor dealer appointment. This intent of this exemption is in part to ensure the efficient conduct of livestock sales by auction, where auctioneers may act for numerous clients on a day, arranged on an as needs or as available basis, and where they are often acting under continuing del credere arrangements (guaranteeing payment to sellers in the event a buyer defaults). A further intent of this exemption is to ensure that a second appointment is not required to sell a motor vehicle by auction where there is a motor dealer appointment already in place for the sale.

A chattel auctioneer appointment may be either a single appointment or a continuing appointment, which provides allowance for appointments that cater to short-term arrangements for the sale of particular goods, and for appointments that cater to longer-term arrangements to act for a client as allowed by the appointment.

*Clause 126* provides that all chattel auctioneer appointments must state the service to be performed and how it is to be performed. For a single appointment, the appointment must state the day set for the auction; and for a continuing appointment it must state the times, circumstances or occasions when the relevant service is to be performed.

All chattel auctioneers appointments must state: the fees, charges and any commission payable for the relevant service; the expenses the chattel auctioneer is authorised to incur in connection with the performance of the relevant service; the source and the estimated amount or value of any rebate, discount, commission or benefit that the chattel auctioneer may receive for any expenses the chattel auctioneer is authorised to incur; any conditions, limitations or restrictions on the performance of the service; when the fees, charges and any

commission for the service are due for payment; and, that the appointment may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.

For sale of goods where commission payable is expressed as a percentage of an estimated sale price, the appointment must state that the commission is worked out only on the actual sale price.

*Clause 127* provides that a chattel auctioneer appointment must be in the approved form which must include a prominent statement that the client should seek independent legal advice before signing the appointment. An appointment that does not comply with this requirement is ineffective from the time it is made.

*Clause 128* provides that a chattel auctioneer appointment must be signed and dated by the client and the chattel auctioneer or someone authorised or apparently authorised to sign for the chattel auctioneer. A copy of the signed appointment must be given to the client immediately after it is signed. The maximum penalty for contravening this requirement to give a copy is 200 penalty units.

### **Subdivision 2 Assignment**

*Clause 129* provides for the assignment of appointments by chattel auctioneers. However this clause does not apply to assignment of a chattel auctioneer appointment if the assignment is authorised by and done in accordance with the terms of the appointment.

A chattel auctioneer who proposes to assign an appointment they hold with a client to another chattel auctioneer, without changing the terms of the appointment, must give the client written notice of the proposed assignment at least 14 days before the appointment is assigned. The notice must state the proposed assignee's name, that the appointment is to be assigned without changing its terms, that the client may agree to or refuse the proposed assignment, and the date the proposed assignment is to take effect.

If the client agrees to the assignment, and the chattel auctioneer assigns the appointment under this clause, the appointment is taken for clause 126 to be an appointment by the client of the proposed assignee.

### **Division 4 Particular conduct provisions**

#### **Subdivision 1 Auctions of goods**

*Clause 130* deals with buyers premiums for sales of goods by auction. A buyer's premium means an amount payable to a chattel auctioneer by a buyer on purchase of goods.

The clause prohibits a chattel auctioneer from charging the buyer of goods a buyer's premium unless the premium is not more than prescribed or worked out under a regulation, and the chattel auctioneer obtains the written consent of the owner of the goods before the auction and discloses as prescribed under regulation that a buyer's premium is payable on purchase of the goods. The maximum penalty for contravention of this requirement is 200 penalty units.

The clause states that the chattel auctioneer does not act for the buyer only because the chattel auctioneer accepts a buyer's premium.

### **Subdivision 2 Recovery of reward or expense**

*Clause 131* prohibits a chattel auctioneer, when performing the service of selling goods for the payment of a commission, from claiming commission worked out on an amount that is more than the actual sale price of the goods. The maximum penalty for contravening this prohibition is 200 penalty units.

*Clause 132* provides the circumstances in which a person is entitled to sue for, or keep, or retain, a reward or expense for the performance of an activity as a chattel auctioneer. The person is only so entitled if at the time the activity was performed, they held a chattel auctioneer licence, and were authorised under the licence to perform the activity, and had been properly appointed under part 4 division 3 by the person to be charged with the reward or expense.

The clause sets a maximum penalty of 200 penalty units for the offence of suing for, recovering or keeping, a reward or expense for the performance of an activity as a chattel auctioneer other than in those circumstances.

*Clause 133* deals with prohibition of recovering a reward or expense above an allowed amount. A person is not entitled to sue for, or recover or retain a reward for performance of an activity that is more than the reward stated in the appointment. However if the reward is limited under a regulation, the person is not entitled to sue for, or recover, or retain a reward more than the amount allowed under the regulation. This potential limitation under a regulation does not prevent the person from suing for in addition to the amount allowed under a regulation, an amount for GST payable.

The clause also provides that a person is not entitled to sue for, recover or keep expenses that are actually expended, and that are more than the amount stated in the appointment. As with rewards, there is a similar prohibition on suing etc. for expenses in an amount greater than any prescribed limitation under a regulation.

The clause states that it is an offence with a maximum penalty of 200 penalty units for a person to sue for, recover or keep a reward or expense for the performance of an activity other than as provided by the clause.

*Clause 134* provides the circumstances in which a court must order a person to pay an amount to a client in relation to a conviction for certain offences.

Where a person is convicted of an offence against clause 131(2), clause 132(2) or clause 133(6), and the court is satisfied on the balance of probabilities that the person has recovered or retained from the client an amount to which the person was not entitled, the court must order the person to pay the amount to the client.

The order must be made whether or not any penalty is imposed on the conviction. The clause provides that the client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount, and the order may be enforced as if it were a judgement of that court.

### **Subdivision 3 Interests in goods**

*Clause 135* defines “**obtain**” as including being in any way concerned in obtaining, for the subdivision.

*Clause 136* applies where goods are placed by a client with a chattel auctioneer for sale. It is an offence for the chattel auctioneer to obtain an option to purchase the goods in which the chattel auctioneer has a beneficial interest, and the maximum penalty for contravention is 200 penalty units or three years imprisonment.

The clause also prohibits a chattel auctioneer from selling goods in which they obtain a beneficial interest in an option to purchase the goods, with a maximum penalty of 200 penalty units or 3 years imprisonment for contravention.

*Clause 137* applies where goods are placed by a client with a chattel auctioneer, but does not apply if clause 136 applies. The chattel auctioneer commits an offence if they obtain a beneficial interest in the goods, and there is a maximum penalty of 200 penalty units or 3 years imprisonment for the offence.

However that beneficial interest offence does not apply if all of the following circumstances are met: the chattel auctioneer obtains the client’s written acknowledgement in the approved form that the client is aware of the chattel auctioneers interest in obtaining a beneficial interest, and that they consent to them obtaining that interest; and the chattel auctioneers acts fairly and honestly in relation to the sale; and no commission or other reward is payable for the sale; and the client is in substantially as good a position as the client would be if the goods were sold at fair market value.

If a chattel auctioneer knows or ought to know that an associate intends bidding at the auction, and the chattel auctioneer has not obtained the required acknowledgment in the approved form from the client, they must identify the associate to those present at the auction and announce that that person is an associate that intends bidding at the auction, immediately before the auction. Where the chattel auctioneer makes this announcement, they are taken to have satisfied the described requirement to obtain written acknowledgment regarding beneficial interest from the client.

*Clause 138* sets out orders of payment to be made by the court where a person is convicted of the offence of obtaining a beneficial interest in goods under clause 137. If the court convicting the person is satisfied that on the balance of probabilities the person recovered or retained from the client an amount of commission to which the person was not entitled, the court must order the person to pay the amount to the client, and this order must be made whether or not any penalty is imposed on the conviction. The client may file the order in a court having jurisdiction for debt recovery of an equal amount, and the order may be enforced as if it were a judgment of that court.

*Clause 139* provides that clause 137 does not apply to livestock sales if the chattel auctioneer obtains the client’s written acknowledgment that the client is aware the chattel auctioneer is interested in obtaining a beneficial interest in the livestock and the client consents to the chattel auctioneer obtaining the interest.

## **Subdivision 4 Prescribed conduct provisions**

*Clause 140* states that a regulation may provide for conduct standards for chattel auctioneers in carrying on chattel auctioneering practice, and that such a provision is a ***prescribed conduct provision***. The clause notes that contravention of a prescribed conduct provision is grounds for starting disciplinary proceedings (see clause 194).

## **Subdivision 5 Sales of written-off vehicles**

*Clause 141* provides requirements for announcements before auctions of categories of unregistered written-off vehicles. If the vehicle is an unregistered written-off vehicle the chattel auctioneer must announce immediately before the auction that the vehicle is a written-off vehicle. If the vehicle is repairable the chattel auctioneer must also state that it is a repairable write-off and that it must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered. If however the vehicle is a statutory write-off the chattel auctioneer must announce that the vehicle can not be registered.

The maximum penalty for contravening these requirements is 100 penalty units. However chattel auctioneer does not contravene the requirements if 2 or more written-off vehicles that are repairable write-offs are to be auctioned in consecutive lots, and immediately before the first vehicle is to be auctioned the chattel auctioneer identifies the vehicles and makes the announcement that the vehicles are repairable write-offs.

## **Division 5 Sale of motor vehicles by auction**

*Clause 142* provides that the responsible licensee must ensure the buyer gains clear title to the motor vehicle, where the responsible licensee is determined by the circumstances of the sale. The clause applies if a used motor vehicle is to be sold by a chattel auctioneer (selling agent) at auction to a buyer.

Where the selling agents owns the vehicle or is acting for another person who is not a motor dealer or chattel auctioneer, the selling agent must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer. Where the selling agent is auctioning the vehicle for another person who is a motor dealer or another chattel auctioneer, that other person must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer. These requirements do not apply to the extent that a security interest in the motor dealer is registered under the *Personal Property Securities Act 2009 (Cwlth)*.

The maximum penalty for contravening the requirement to ensure clear title is 200 penalty units, and it is noted that a person may make a claim against the claim fund under the Administration Act for financial loss due to contravention.

However it is a defence for the defendant to prove that they took all reasonable steps to ensure the requirement to ensure clear title was complied with. A proceeding against a chattel auctioneer or motor dealer for an offence under this clause does not affect any civil liability of any person, including the chattel auctioneer or motor dealer, arising out of the same facts constituting the offence.

*Clause 143* provides that a contract for the sale of a used motor vehicle by a selling agent must state that the responsible licensee guarantees the buyer clear title to the vehicle when the property in the vehicle passes to the buyer. A buyer may avoid a contract that does not comply with this requirement by giving written notice to the selling agent within 7 days after the day the vehicle passes to the buyer.

### **Division 6 Dealing with warranted and unwarranted vehicles**

*Clause 144* provides that for this division the term chattel auctioneer includes a person performing the activities of a chattel auctioneer without a licence.

*Clause 145* states that Schedule 1 provides for a statutory warranty for warranted vehicles sold by a chattel auctioneer in particular circumstances.

*Clause 146* provides the requirement that a chattel auctioneer may only advertise or display for sale an unwarranted vehicle as a vehicle that does not have a statutory warranty, in the way provided under a regulation. This requirement does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle. The maximum penalty for contravention of this requirement is 100 penalty units.

*Clause 147* provides the requirement that a chattel auctioneer must announce immediately before the auction of any unwarranted vehicle that the vehicle does not have a statutory warranty. Contravention of the requirement carries a maximum penalty of 100 penalty units. However the requirement is not contravened where 2 or more vehicles that do not have a statutory warranty are to be auctioned in consecutive lots, and immediately before the first vehicle is to be auctioned the chattel auctioneer identifies the vehicles and announces they do not have a statutory warranty.

### **Division 7 General**

*Clause 148* requires a chattel auctioneer who conducts an auction to disclose their name and any other particulars prescribed under a regulation, in the way and for the period prescribed under a regulation, to persons taking part in the auction. The maximum penalty for contravention of this requirement is 100 penalty units.

This clause is intended to allow for a range of display requirements appropriate to different types of auctions to be prescribed under the regulations (for example particular requirements suited to auctions of livestock), while also ensuring that auction participants are informed of the auctioneer's name and other particulars.

### **Division 8 Particular offences**

*Clause 149* provides offences for performing the activities of, and acting as, a chattel auctioneer other than as allowed under the Bill or another Act.

A person must not perform an activity that may be done under the authority of a chattel auctioneer licence unless they hold a chattel auctioneer licence and the activity is authorised under that licence, or they are otherwise permitted under this Bill or another Act to perform the activity. The maximum penalty for contravention is 200 penalty units or 2 years imprisonment.

A person must not act as a chattel auctioneer unless the person holds a chattel auctioneer licence and the act is done under the authority of that licence, or the act is otherwise permitted under this Bill or another Act. The maximum penalty for contravention is 200 penalty units or 2 years imprisonment.

The clause includes a non-exhaustive list of ways in which a person acts as a chattel auctioneer, including performing an auction for the sale of goods, representing that the person performs auctions or is willing to perform auctions for the sale of goods, or in any way holding out that they are ready to perform auctions for the sale of goods.

*Clause 150* states that a chattel auctioneer must not act for more than 1 party to a transaction. If the chattel auctioneer acts for more than 1 party to a transaction an appointment to act for a party to the transaction is ineffective from the time it is made. This prohibition does not apply to sales of livestock by chattel auctioneers.

## **Part 5 Registration of motor salespersons**

### **Division 1 categories of registration**

*Clause 151* provides that the chief executive may issue the following categories of registration certificates: a *general registration certificate* that authorises the performance of all the activities that may be performed under clause 152 by the holder of the registration certificate; and, a *limited registration certificate*, prescribed under a regulation, that limits the activities that may otherwise be performed under a general registration certificate.

To be eligible for a limited registration certificate, an applicant for the certificate must have the educational or other qualifications approved by the chief executive for obtaining the certificate.

### **Division 2 Motor salespersons' authorisation**

*Clause 152* provides that a registration certificate held by a motor salesperson authorises the holder to perform any activity that may be performed by the motor dealer who employs the motor salesperson. However, a registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform because of a condition to which the certificate is subject.

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

*Clause 153* provides that a person who wishes to obtain registration as a motor salesperson must be a suitable person under division 5 (Suitability of Applicants). The person must apply for registration by giving the chief executive an application showing, that the person is eligible to obtain registration and by paying the prescribed fees. In deciding the application, the chief executive must have regard to the person's suitability to hold a registration certificate and the person's eligibility to hold the registration certificate.

## **Division 4 Applications for registration**

*Clause 154* provides that an applicant for registration as a motor salesperson must be an individual, and must apply to the chief executive in the approved form. The clause sets out required elements of information provided through that form. The applicant must establish their suitability and eligibility for registration, and provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a motor salesperson.

The application must be accompanied by the application fee and the registration fee as prescribed under a regulation. If, before or when the application is made, a criminal history costs requirement is made, the application must be accompanied by the amount of the costs required to be paid.

*Clause 155* states that a person who is a disqualified person can not make an application for a registration certificate while they are disqualified. A disqualified person is one disqualified from holding a registration certificate as a consequence of an order of QCAT under clause 199, or an order of court under clause 229.

The clause also provides that where the person applies for, and is refused, a registration certificate, the person can not make another application for a registration certificate for: 3 months after the chief executive provides an information notice about the decision; or, if the person applies to QCAT to review the chief executive's decision, for 3 months after QCAT confirms the decision.

*Clause 156* applies to an applicant for a registration certificate, renewal of a registration certificate, or a restoration of a registration certificate. The chief executive may, by written notice, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the application. The applicant is taken to have withdrawn the application if, within the stated period, the applicant fails to comply with the chief executive's requirement.

## **Division 5 Suitability of applicants**

*Clause 157* provides that a person is not a suitable person to hold a registration certificate, if the person has been convicted, in Queensland or elsewhere, within the preceding five years of a serious offence, or if the person is currently disqualified from holding a licence or registration certificate. A person is also not a suitable person to hold a registration certificate if the chief executive decides under clause 158 that they are not suitable, or if they are an identified participant in a criminal organisation.

*Clause 158* provides that the chief executive must, when deciding whether a person is a suitable person to hold a registration certificate, consider all of the following things: the person's character; whether the person held a licence or registration certificate under a relevant Act that was suspended or cancelled; payments from the claim fund; whether the person has been disqualified under a relevant Act from holding a licence or registration certificate; whether QCAT, the former tribunal or the District Court has made an order under this Act or PAMDA adverse to the person within the previous 5 years; the person's criminal history; whether the person has been convicted of an offence against a relevant Act or the

Administration Act; whether the person is an identified participant in a criminal organisation; whether the person is capable of performing the activities of a motor salesperson; whether the person's name appears in the register of persons disqualified from managing corporations; and, another thing the chief executive may consider under this Bill. In addition, if the person is an insolvent under administration, the chief executive must consider the circumstances giving rise to that insolvency, whether the person took all reasonable steps to avoid those circumstances, and whether the person is in a position to influence management of a motor dealer's business.

If the chief executive decides a person is not a suitable person to hold a registration certificate, the chief executive must give the person an information notice about the decision within 14 days after the decision is made. *The Acts Interpretation Act 1954*, section 27B does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner about whether the person is an identified participant in a criminal organisation (under clause 163).

*Clause 159* provides that the chief executive may make investigations about an applicant mentioned in clause 156(1) or a motor salesperson to help decide whether the applicant or motor salesperson is a suitable person to hold a registration certificate.

The clause states that the chief executive may ask the commissioner of police for a criminal history report about the applicant or motor salesperson. The commissioner must give the report requested to the chief executive. However, a criminal history report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

A criminal history report about a person must be written if the person's criminal history includes a conviction recorded against the person.

*Clause 160* applies if the commissioner reasonably suspects a person is a motor salesperson, and the person's criminal history changes. The commissioner may notify the chief executive that the person's criminal history has changed. This notice must state: the person's name and any aliases; the person's date and place of birth; and, a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates.

The chief executive may confirm the commissioner's suspicions regarding whether the person is a motor salesperson. For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history. In this clause "**criminal history**", in relation to a person, includes a charge of an offence laid against the person that has not been dismissed, and "**offence**" includes an alleged offence.

*Clause 161* provides that the chief executive may require an applicant mentioned in clause 156(1) or a motor salesperson to pay the costs of obtaining a criminal history report about the applicant. The chief executive may notify the applicant of the requirement to pay a criminal history costs requirement in the approved form or on the department's website, or in a written notice given by the chief executive to the applicant.

If the criminal history costs requirement is made in a written notice, the notice must include a requirement for the costs to be paid within a stated reasonable period. The applicant is taken

to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement to pay the criminal history costs requirement.

The chief executive must refund to the applicant an amount paid under the requirement if the chief executive refuses the application without asking for the report; or if the applicant withdraws the application before the chief executive asks for the report.

*Clause 162* applies to the chief executive in considering information about a person obtained under clause 159 or 160. Information about a charge against the person under clause 160 may not be relied upon as a basis for making a decision as to whether the person is, or continues to be, a suitable person to hold a registration certificate. Information about a conviction of a person under clause 159 or 160 may be used only for making a decision as to whether the person is, or continues to be, a suitable person to hold a registration certificate.

*Clause 163* provides that the chief executive must ask the commissioner of the police service if whether an applicant mentioned in clause 156(1) or a motor salesperson is an identified participant in a criminal organisation. The commissioner must comply with the request. The chief executive may use the advice provided for deciding whether the applicant or motor salesperson is, or continues to be, a suitable person to hold a registration certificate.

*Clause 164* prohibits a public service employee performing functions under this Bill disclosing to anyone else, a criminal history report or information contained in the report, or the contents of a notice given under clause 160. The maximum penalty for contravening this requirement is 100 penalty units.

However, the person does not contravene clause 164 if the chief executive authorises the disclosure to the extent necessary to perform a function under this Bill, or if the disclosure is required or permitted by law.

The chief executive must destroy the criminal history report about the person and the notice given under clause 160 as soon as practicable after considering the person's suitability to obtain registration as a motor salesperson.

## **Division 6 Eligibility for registration**

*Clause 165* states an individual is eligible for registration as a motor salesperson only if the individual is at least 18 years and has the educational or other qualifications approved by the chief executive for the relevant category of registration.

An individual is taken to meet the educational or other qualifications requirement if the chief executive is satisfied that the individual has a comparable qualification to those required. The individual is also taken to meet those requirements if within two years before the day the individual's application for registration is received the individual held a registration certificate authorising the performance of activities at least equivalent activities, or the individual held a registration certificate as a motor salesperson granted under PAMDA.

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

*Clause 166* provides that the chief executive may issue or refuse to issue a registration certificate to an applicant. The chief executive may issue a certificate to an applicant only if:

the chief executive is satisfied the applicant is a suitable person to obtain registration; the applicant is eligible to obtain registration; the application is made under clause 154; and any further information or material required by the chief executive under clause 156 has been given within the reasonable period stated in the notice given under that clause.

If the chief executive decides to refuse to issue the registration certificate, they must give the applicant an information notice about the decision within 14 days after the decision is made. The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under clause 163.

*Clause 167* provides that the chief executive may issue a registration certificate on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the certificate, or for another purpose consistent with the achievement of the objects of this Bill or of the Administration Act.

A condition may be imposed to limit or prohibit the performance of an activity authorised under this Bill or the Administration Act. If the chief executive decides to issue the certificate on condition, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

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

### **Subdivision 1 Renewal**

*Clause 168* provides that a motor salesperson may only apply for renewal of the motor salesperson's registration certificate before the certificate expires. The application must be made to the chief executive in the approved form and must state the term of the registration being applied for, and be accompanied by the application fee and the registration certificate renewal fee prescribed under a regulation. The application must also be accompanied by the amount of the costs required if, before or when the application is made, a criminal history costs requirement is made of the motor salesperson.

*Clause 169* provides that the chief executive must consider the renewal application and may renew or refuse to renew the registration certificate. The chief executive may renew the certificate only if the chief executive is satisfied the motor salesperson is a suitable person to obtain the registration, the application is made under clause 168, and the motor salesperson meets the eligibility requirements, other than those of an educational nature.

If the chief executive decides to refuse the application to renew, the chief executive must provide an information notice about the decision within 14 days after the decision is made.

*Clause 170* provides that if an application is made under clause 168, the motor salesperson's registration certificate is taken to continue in force from the day that it would have expired until: the motor salesperson's application for renewal is decided under clause 169; or the application is withdrawn by the salesperson; or the application is taken to have been withdrawn under clause 156 due to failure to provide within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the application.

## **Subdivision 2 Restoration**

*Clause 171* states that if a motor salesperson's registration certificate expires, the person may apply for restoration of the certificate. The application must be made within 3 months after the expiry and be made to the chief executive in the approved form, stating the term of the registration being applied for. The form must be accompanied by the application fee, the registration renewal fee and the registration restoration fee, prescribed under a regulation. If before or when the application is made, a criminal history costs requirement is made of the former employee, the application must also be accompanied by the amount of the costs required to be paid.

*Clause 172* provides that the chief executive must consider the restoration application and may restore or refuse to restore the registration certificate. The chief executive may restore the certificate only if the chief executive is satisfied the applicant is a suitable person to obtain registration, the application is made under clause 171, and the applicant meets the eligibility requirements, other than those of an educational nature.

If the chief executive decides to refuse the application to restore, the chief executive must provide an information notice about the decision within 14 days after the decision is made. The *Acts Interpretation Act 1954*, section 27B does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner about whether the person is an identified participant in a criminal organisation.

If the chief executive decides to restore the certificate, the certificate is taken to have been renewed on the day it would have expired (apart from clause 170). To remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the certificate is restored under this section, is taken to have been as validly done as it would have been if the certificate had been renewed immediately before the initial expiry date.

*Clause 173* provides that if an application is made under clause 171, the applicant's registration certificate is taken to continue in force from the day that it would have expired until: the employee's application for restoration is either decided under clause 172; or the application is withdrawn by the salesperson; or the application is taken to have been withdrawn under clause 156 due to failure to provide within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the application.

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

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

*Clause 174* states that a registration certificate may not be transferred.

*Clause 175* sets out offences for selling, lending or borrowing a registration certificate. The clause states that a motor salesperson must not: sell, lend or hire out the salesperson's registration certificate to someone else; or notify or advertise that a registration certificate is available for sale, loan or hire, or on another basis, to another person, whether or not the other person is registered as a motor salesperson; permit or allow someone else to hold out that the person is the holder of the motor salesperson's registration certificate. The maximum penalty for contravening these requirements is 200 penalty units or 2 years imprisonment.

A person must not borrow, hire or buy a motor salesperson's registration certificate. The maximum penalty for contravening this requirement is 200 penalty units or 2 years imprisonment.

## **Subdivision 2 General**

*Clause 176* provides that the chief executive may amend the conditions of a motor salesperson's registration certificate either on the motor salesperson's application, or on the order of QCAT after a disciplinary hearing (clause 199), or on the chief executive's own initiative.

An application by the motor salesperson to amend conditions must be made to the chief executive in the approved form and be accompanied by the prescribed application fee. Before making an amendment in response to such an application, the chief executive must be satisfied the motor salesperson meets the eligibility requirements the chief executive considers relevant to the amendment of the condition. If the chief executive decides to refuse to make an amendment requested by the motor salesperson, the chief executive must give the motor salesperson an information notice about the decision within 14 days after the decision is made.

Before the chief executive makes an amendment on their own initiative, the chief executive must give written notice to the motor salesperson stating the particulars of the proposed amendment; and stating that the motor salesperson may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the motor salesperson. The chief executive must also have regard to submissions made to the chief executive by the motor salesperson before that stated day.

However the requirements to provide written notice of proposed amendments and have regard to submissions does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Bill or the Administration Act.

Where the chief executive decides to amend the conditions of a registration certificate on their own initiative, the chief executive must give the motor salesperson an information notice about the decision within 14 days after the decision is made.

The amendment takes effect on the day the written notice of the amendment is given to the motor salesperson, or a stated later day if one is provided in the notice.

*Clause 177* states the chief executive may require a motor salesperson to produce the salesperson's registration certificate for amendment or replacement within a stated period of not less than 14 days, if the chief executive intends to amend the conditions of the certificate under clause 176, or to replace the certificate under clause 186 (sub-clause 5, prescribed change in circumstances).

The motor salesperson must comply with the requirement, unless the person has a reasonable excuse. The maximum penalty for contravening this requirement is 100 penalty units.

*Clause 178* requires that a person whose registration certificate has been suspended or cancelled by a court under clause 229, or an order made by QCAT, must return the certificate

to the chief executive within 14 days after the suspension or cancellation unless the person has a reasonable excuse. The maximum penalty for contravening this requirement is 100 penalty units. This clause does not apply where subclause 180(5), 181(2) or 182(5) applies (each subclause requires return of a certificate under the circumstances relevant to the clause).

*Clause 179* states that a motor salesperson may surrender the motor salesperson's registration certificate by giving written notice to the chief executive and returning the certificate. A registration certificate surrendered under this section stops having effect on the day it is surrendered.

### **Division 10 Suspension and cancellation of registration certificates**

*Clause 180* sets out circumstances in which the chief executive may suspend a motor salesperson's registration certificate. The chief executive may suspend a motor salesperson's certificate if the chief executive believes on reasonable grounds that: the motor salesperson obtained, renewed or restored a registration certificate because of incorrect and/or misleading information; or the motor salesperson may be responsible for an existing irregularity or deficiency in their employer motor dealer's trust account; or the motor salesperson has contravened or is contravening this Bill or the Administration Act, or has contravened PAMDA, or is likely or proposing to engage in conduct that would contravene this Bill or the Administration Act.

The chief executive may suspend the motor salesperson's registration certificate in any of these circumstances, whether or not disciplinary proceedings have been started under this Bill. The certificate may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.

The chief executive must give the motor salesperson an information notice about the decision to suspend the motor salesperson's registration within 14 days after the suspension. The motor salesperson must return the certificate to the chief executive within 14 days after the motor salesperson receives the notice, unless the motor salesperson has a reasonable excuse. The maximum penalty for contravening the requirement to return the certificate is 100 penalty units.

*Clause 181* provides that a motor salesperson's registration certificate is cancelled if the salesperson is convicted of a serious offence. The motor salesperson must return the certificate to the chief executive within 14 days after the conviction, unless they have a reasonable excuse. The maximum penalty for contravention of the requirement to return the certificate is 100 penalty units.

*Clause 182* states that the chief executive may cancel a salesperson's registration certificate if the chief executive becomes aware that the salesperson is an identified participant in a criminal organisation. The chief executive must give the licensee an information notice for the decision within 14 days after making the decision. The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice.

The decision takes effect on the day on which the information notice is given. The motor salesperson must return the certificate to the chief executive within 14 days after the

information notice is given. The maximum penalty for non-compliance with this requirement without a reasonable excuse is 100 penalty units.

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

*Clause 183* states that a registration certificate must be in the approved form. However, the chief executive may approve a form of certificate for office display purposes, and for personal identification purposes. The certificate must contain the name of the motor salesperson, the date of issue of the certificate, the expiry date of the certificate and other particulars prescribed under a regulation.

*Clause 184* states that a motor salesperson must keep a copy of their registration certificate available for inspection at each place of business where the salesperson is employed as a motor salesperson. The maximum penalty for contravening this requirement is 100 penalty units.

*Clause 185* provides that registration certificate may be issued for a 1 year or 3 year term.

*Clause 186* provides that a motor salesperson may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate. The application must be made in the approved form and be accompanied by the fee prescribed under a regulation. The chief executive must grant the application if they are satisfied the original certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement. If the chief executive grants the application made, the chief executive must issue a replacement registration certificate to the applicant.

The chief executive may also replace a registration certificate if, either the holder of the certificate has given written notice to the chief executive of a prescribed change (clause 188) or if the chief executive reasonably believes a prescribed change for the holder of the certificate has happened; and the chief executive is satisfied that the prescribed change requires a replacement of the certificate.

If the chief executive replaces a registration certificate under this clause it continues to be subject to the same conditions and terms it was subject to before being replaced. The holder of the replacement certificate must pay the chief executive the fee prescribed under a regulation.

*Clause 187* provides that the chief executive must keep a register of registration certificates and applications for registration certificates. The registration certificate register may form part of the licence register. The clause sets out the particulars the registration certificate register must contain for each applicant, and for each motor salesperson.

A person may on payment of a fee inspect or get a copy of details in the part of the register containing the particulars required by this clause, at a place or places decided by the chief executive or by using a computer. A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive. The register may be kept in any way the chief executive considers appropriate.

*Clause 188* states that a motor salesperson must give written notice to the chief executive of a prescribed change in the motor salesperson's circumstances within 14 days after the change.

The maximum penalty for contravening this requirement is 100 penalty units. In this clause *prescribed change* means a change prescribed under a regulation.

*Clause 189* provides that a motor salesperson must produce the salesperson's registration certificate for inspection if asked by a person with whom the salesperson is dealing. The maximum penalty for contravening this requirement is 100 penalty units.

*Clause 190* provides that person must not act as a motor salesperson unless the person holds a registration certificate as a motor salesperson. The maximum penalty for contravening this requirement is 200 penalty units. In this clause to "***act as a motor salesperson***" includes where a person holds out that they are a motor salesperson.

## **Part 6 Trust accounts**

*Clause 191* provides that a principal licensee must open and maintain a trust account under the Administration Act if an amount is likely to be received by the licensee for a transaction, or with written direction for its use, when performing the activities of a motor dealer or chattel auctioneer. The maximum penalty for contravening this requirement is 200 penalty units or 2 years imprisonment.

This trust account requirement does not apply to a del credere agent for selling livestock under a del credere agreement while the agreement is in force. In this clause, "***del credere agreement***" means a written agreement between a del credere agent and a livestock seller under which the agent agrees to sell the livestock for the seller and guarantees payment of the purchase price of the livestock to the seller.

In this clause "***amount***", likely to be received by a licensee for a transaction or with written direction for its use includes deposit and purchase monies for a transaction but does not include an amount payable to the licensee for a transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.

## **Part 7 Proceedings**

### **Division 1 QCAT proceedings**

*Clause 192* defines "***licensee***" - which includes a person who held a licence under this Bill at any time within 3 years before a proceeding under this part is started involving the person, and defines "***motor salesperson***" - which includes a person who was a motor salesperson at any time within 1 year before a proceeding under this part is started involving the person.

*Clause 193* provides that for this Bill, QCAT has jurisdiction to hear and decide disciplinary matters involving a licensee or a motor salesperson, and to review decisions of the chief executive relating to licensing and registration.

### **Subdivision 2 Disciplinary proceedings**

*Clause 194* lists the grounds for starting a disciplinary proceeding against a licensee or motor salesperson. The grounds listed generally are:

- the licensee or salesperson has been convicted of an indictable offence or an offence against this Bill or the Administration Act
- the licensee or salesperson has contravened or breached this Bill, or a prescribed conduct provision, or the Administration Act, or an undertaking given under part 8, division 2 (Undertakings) of this Bill, or a corresponding law
- the licensee or salesperson has been disqualified from holding an authorisation, similar to a licence or registration certificate, under a corresponding law
- an amount has been paid from the fund because the licensee or salesperson did, or omitted to do, something that gave rise to a claim against the fund
- the licensee or salesperson fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate
- the licensee or salesperson has failed to comply with an order made by a court, the former tribunal or QCAT

Additional grounds are listed specific to licensees:

- the licensee is not a suitable person to hold a licence
- the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence
- the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way
- the licensee has failed to ensure that the licensee's employed licensees or motor salespersons, or employees under the licensee's supervision are properly supervised in the performance of their duties; or comply with this Bill
- the licensee has failed to comply with a condition of the licensee's licence
- the licensee is an executive officer of a corporation against whom QCAT finds grounds exist to take disciplinary action under clause 199 (Orders QCAT may make on disciplinary hearing)
- if the licensee is a corporation - an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or an executive officer of the corporation is disqualified under this Bill from being an executive officer of a corporation

Additional grounds are listed specific to motor salespersons:

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

The chief executive must not start a disciplinary proceeding under subclause (1)(g)(vi), that is - against an executive officer on the grounds that the licensee is an executive officer of a corporation against whom QCAT finds grounds exist to take disciplinary action under section 199, if the chief executive is satisfied the act or omission relevant to the proceeding against the corporation was done or made without the executive officer's knowledge, and the executive officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.

*Clause 195* states the chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under clause 194 for taking disciplinary action against a licensee or motor salesperson.

### **Subdivision 3 Review proceedings**

*Clause 196* states a person who is dissatisfied with a decision of the chief executive made under a provision mentioned in schedule 2 (Decisions subject to review) of the Bill may apply to QCAT to have the decision reviewed.

*Clause 197* states a decision of the chief executive, other than a decision made under clause 61 or 180, that is being reviewed is stayed for the purpose of securing the effectiveness of the review. However, the period of a stay does not extend past the time when QCAT decides the application.

*Clause 198* states QCAT may extend the time to seek review of a decision of the chief executive if it is satisfied the application is made within 42 days after the person receives notice of the decision to be reviewed, and it is appropriate to extend time having regard to the application, and the justice of the matter, generally. No appeal lies against QCAT's decision under this clause.

### **Subdivision 4 QCAT's orders**

*Clause 199* lists the orders QCAT may make on disciplinary hearing. QCAT may make 1 or more of the following orders against a person in relation to whom QCAT finds grounds exist to take disciplinary action under this Bill:

- an order reprimanding the person
- an order that the person pay to the State, within the period stated in the order, a fine of not more than 200 penalty units for an individual, or 1000 penalty units for a corporation
- an order that the person pay compensation (inclusive of any non-entitled commission) to someone else who has suffered loss or damage because of the act or omission that resulted in the finding
- an order that the person's licence or registration certificate be suspended for the period stated in the order
- if the person is the holder of a licence or registration certificate when the order is made, an order that the licence or registration certificate be cancelled; or whether or not the person is the holder of a licence or registration certificate when the order is made, an order that the person be disqualified permanently, or for the period stated in the order, from holding a licence or registration certificate
- an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate
- another order QCAT considers appropriate to ensure the person complies with the Bill

QCAT may not make a disqualification order under this clause (subclause (1)(e)(ii)) if QCAT is satisfied that a court has, in relation to the matter, been asked to make an order under

clause 229 disqualifying the person from holding a licence or registration certificate; and the court declined to do so.

If QCAT makes a cancellation order under this clause (subclause(1)(e)(i)) in relation to an individual, QCAT must also order that the person be disqualified, for the period stated in the order, from holding a licence of the type to which the order relates or a registration certificate.

If QCAT orders a fine to be paid by the person to the chief executive, the chief executive may recover the fine as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.

*Clause 200* applies if QCAT is satisfied, on application by the chief executive, that a person is doing, or is about to do, something in contravention of this Act. QCAT may make an order prohibiting the person from starting or continuing to do the thing.

QCAT may make an order under this clause on the chief executive's application made without notice to the prohibited person. However QCAT must allow the prohibited person in such cases a reasonable opportunity to show cause why the order should not be confirmed. If QCAT, after considering the prohibited person's evidence and submissions and any further evidence or submissions of the chief executive, is not satisfied the order should continue in force, QCAT must rescind the order.

A person must not contravene an order under this section. The maximum penalty for contravening this requirement is 540 penalty units. An order under this clause has effect when a copy of the order is given to the prohibited person.

### **Subdivision 5 Chief executive's right of appeal**

*Clause 201* states the chief executive may appeal to the appeal tribunal against any decision of QCAT under this Bill, but only on the ground of error of law. In this clause *appeal tribunal* means QCAT as constituted under the section 166 of the QCAT Act for the purposes of an appeal.

### **Division 2 Conduct of proceedings**

*Clause 202* maintains the confidentiality of criminal intelligence in an application for review in QCAT or the Supreme Court where an application for a licence was refused or licence was cancelled as the chief executive was advised by the commissioner of the police service that the person seeking the review was an identified participant in a criminal organisation. The clause provides that the commissioner of the police service is to be a party to any proceedings.

The clause also provides that in any proceedings relating to a review of a decision about an identified participant, QCAT or the Supreme Court must be given a statement of reasons by the commissioner of the police service about the identification of the person by the commissioner of the police service as an identified participant in a criminal organisation. Furthermore, QCAT or the Supreme Court may review the identification by the commissioner of the police service of the person as an identified participant in a criminal organisation.

As it considers appropriate to protect the confidentiality of criminal intelligence, QCAT or the Supreme Court may receive evidence and hear argument in the absence of parties to the proceeding and their representatives. QCAT or the Supreme Court, as it considers appropriate, may take evidence consisting of criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If QCAT or Supreme Court considers information has been incorrectly categorised by the commissioner of the police service as criminal intelligence the commissioner of the police service may withdraw the information from consideration by QCAT or the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by QCAT or the Supreme Court.

The clause defines “**criminal intelligence**” as advice given by the commissioner to the chief executive under clause 30(3) or 163(2) that a relevant person is a participant in a criminal organisation, as well as information held by the commissioner relevant to whether the person is an identified participant.

*Clause 203* relates to relevant decisions of the chief executive mentioned in section 202(1), subject to clause 193 and this division. The *Judicial Review Act 1991*, part 4 does not apply to the relevant decisions. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity). Also except for jurisdictional error, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision mentioned in subsection (2) to the extent it is affected by jurisdictional error.

## **Part 8 Injunctions and undertakings**

### **Division 1 Injunctions**

*Clause 204* states the District Court may grant an injunction if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute contravention or attempted contravention of the Bill or a prescribed conduct provision, whether personally, or with others, or through others. Specifically, the capacity to grant an injunction applies where the conduct constitutes or would constitute in relation to the Bill or a prescribed conduct provision:

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

*Clause 205* states that the chief executive, or a person aggrieved by the respondent’s conduct may apply to the District Court for an injunction.

*Clause 206* provides that an injunction under this division may be granted by the District Court against a person at any time.

*Clause 207* states 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 or repeat conduct of that kind, and whether or not the person has previously engaged in conduct of that kind.

The power of the court to grant an injunction requiring a person to do an act or thing may be exercised whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and whether or not the person has previously failed to do the act or thing. An interim injunction may be granted under this part until the application is finally decided. The District Court may rescind or vary an injunction at any time.

*Clause 208* states the District Court may grant an injunction in the terms the court considers appropriate. Without limiting the court's power to grant injunctions under this clause, an injunction may be granted restraining a person from carrying on a business as a licensee for a stated period or except on stated terms and conditions.

The court may grant an injunction requiring a person to take stated action to remedy any adverse consequences of the person's contravention of this Bill or a prescribed conduct provision. This stated action can include disclosing information or publishing advertisements.

*Clause 209* states that if the chief executive applies for an injunction under this division, no undertaking as to damages or costs may be required or made.

## **Division 2 Undertakings**

*Clause 210* states that if the chief executive believes on reasonable grounds a person has contravened or been involved in a contravention of this Act or a prescribed conduct provision, the chief executive may, by written notice given to the person: state the act or omission the chief executive believes is the contravention; and, ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.

The chief executive can not start an offence proceeding against the person for the contravention if the person: gives the undertaking; and stops the conduct (where the contravention is a conduct consisting of a series of acts or omissions); and does not repeat the act or admission, and the chief executive accepts the undertaking. However the restriction on the chief executive starting an offence proceeding does not apply if the chief executive withdraws the undertaking under clause 212 (Variation and withdrawal of undertakings).

*Clause 211* provides that without limiting clause 210, the chief executive may accept an undertaking given by a person about anything for which the chief executive or an inspector has a function or power.

*Clause 212* states that if the chief executive accepts the undertaking, it may be varied or withdrawn at any time by the person who gave it, but only if the chief executive agrees to the variation or withdrawal. The undertaking may also be varied or withdrawn at any time by the

chief executive, if they believe on reasonable grounds that: before it was accepted, the person who gave it contravened this Bill or PAMDA in a way unknown to the chief executive; and, if the chief executive known about the contravention, they would not have accepted the undertaking, or would not have accepted it without a change of terms.

The chief executive may also withdraw the undertaking if they believe on reasonable grounds that it is no longer necessary. If the chief executive varies or withdraws the undertaking (or agrees to same) they must give the person who gave it written notice of its variation or withdrawal. The variation or withdrawal takes effect when the written notice is received by the person.

*Clause 213* provides for enforcement of undertakings through application to the District Court. If the chief executive believes on reasonable grounds a person has contravened a term of an undertaking, the chief executive may apply to the District Court for an order. If the court is satisfied the person has contravened the term, it may make one or more of the following orders: direct the person comply with the term; direct the person to pay to the State an amount up to the financial benefit obtained by the person from the contravention; direct the person to pay compensation to someone else who has suffered loss or damage because of the contravention; direct the person to give a security bond to the State for a stated period; or, another order the court considers appropriate.

The District Court may order the forfeiture to the State of all or part of a security bond given by a person. This applies where the chief executive applies to the court for the order, and the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

*Clause 214* provides that the chief executive must keep a register of each undertaking given to the chief executive by a person under this division, and the register may be kept in the way the chief executive considers appropriate. The register must contain a copy of the undertaking. The chief executive may publish information contained in the register on the department's website. A person may, on payment of the fee prescribed under a regulation and as arranged by the chief executive, inspect, or get a copy of details in the register at a place or places decided by the chief executive or by using a computer.

## **Part 9 General contraventions and evidentiary matters**

### **Division 1 General contraventions**

*Clause 215* applies if a licensee or motor salesperson, in the performance of their activities as a licensee or a motor salesperson, receives an amount belonging to someone else, or if they falsely account for money. A licensee or motor salesperson who dishonestly converts the amount to the licensee's or salesperson's own or someone else's use, or dishonestly renders an account of the amount knowing it to be false in a material particular, commits a crime. The maximum penalty for this crime is 1000 penalty units or 5 years imprisonment.

For a prosecution concerning dishonest conversion (subclause (2)(a)), it is enough for the prosecution to prove that the licensee or motor salesperson dishonestly converted an amount belonging to someone else to the licensee's or salesperson's own use or someone else's use without having to prove that the amount belonged to a particular person.

If conduct alleged to constitute an offence of dishonest conversion or dishonest rendering of an account (subclause 2) is recurrent so that each instance of the conduct would allegedly constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute 1 alleged offence committed over the period stated in the complaint or indictment in relation to the conduct, and may be charged and proceeded against on 1 charge. The intent of this subsection is to facilitate proceedings involving courses of conduct that would otherwise require cumbersome proceedings involving numerous separate charges. This is comparable to The Criminal Code section 548 allowances for joining charges for indictments involving fraud or the *Trust Accounts Act 1973*.

A licensee or motor salesperson, in the performance of the activities of a licensee or motor salesperson, must not, including by the rendering of an account, represent that the licensee or salesperson has received an amount from someone else when the licensee or salesperson had not in fact received the amount. The maximum penalty for contravening this requirement is 540 penalty units.

In this clause “**licensee**” includes a former licensee and a person who is not licensed, but who acts as a licensee. A “**former licensee**” is a person who held a licence under this Bill, or a motor dealer’s or auctioneers licence under PAMDA.

*Clause 216* sets out an offence for false or misleading representations. It states a licensee or motor salesperson must not represent in any way to someone else anything that is false or misleading about the sale or auction of goods. The maximum penalty for contravention is 540 penalty units.

A representation is taken to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not exist, whether or not the representation indicates that state of affairs does exist. This description of a representation taken to be false or misleading does not limit the ways in which a licensee or motor salesperson might make a representation that is false or misleading.

Also, if a person makes a representation about a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading. The onus is on the persons for establishing that the person had reasonable grounds for making the representation.

It is not a defence in a proceeding under this clause for the defendant to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.

This clause does not limit another Act or law about false or misleading representations, for example, the Australian Consumer Law, section 29. In this clause, “**false or misleading**”, in relation to a representation, includes the wilful concealment of a material fact in the representation.

The intent of this clause is to prohibit and penalise the making of false or misleading representations in relation to the sale or auction of goods in the person’s capacity as a licensee or registered employee.

*Clause 217* provides the chief executive with the power to ask for substantiation of representations. Where the chief executive believes, on reasonable grounds, that a licensee or motor salesperson has made a representation in contravention of clause 216, the chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.

The notice must state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive. The notice must warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse for that failure. The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to comply. The maximum penalty for contravening this requirement is 100 penalty units.

It is provided that a reasonable excuse for an individual to fail to comply with the requirement to respond to the notice is if complying with the subsection would tend to incriminate the individual.

*Clause 218* states a person must not wilfully represent in any way to someone else, anything that is false or misleading about the total distance travelled by a motor vehicle. The maximum penalty for contravening this requirement is 540 penalty units.

*Clause 219* states a person must not tamper with or replace a motor vehicle's odometer with intent to falsely represent that the vehicle has travelled a distance less or more than a specified distance. The maximum penalty for contravening this requirement is 200 penalty units or 2 years imprisonment.

If a court finds a person guilty of an offence under this clause, the court may order that person to compensate a person who suffered loss due to the offence. The court may make such an order on its own initiative, on the application of the prosecution, or on application of the person who suffered the loss. The subclause (2) providing that the court may make a compensation order does not limit a court's powers under the *Penalties and Sentences Act 1992* or any other law.

In any proceeding, the distance shown at any time on the odometer tampered with or replaced is evidence of a false representation by the person who tampered with or replaced the odometer that the vehicle has travelled a distance more or less than a specified distance shown on the odometer.

*Clause 220* states a licensee or a motor salesperson must not charge a fee for the provision, preparation or completion of a document that is authorised or required to be provided, prepared or completed under the Act. The maximum penalty for contravening this requirement is 200 penalty units or 1 year's imprisonment.

This prohibition does not limit the *Legal Profession Act 2007*, section 24 or 25.

*Clause 221* states that a person must not state anything to an official that the person knows is false or misleading in a material particular. The maximum penalty for contravention is 200 penalty units or 2 year's imprisonment

*Clause 222* states a person must not give an official a document containing information the person knows is false or misleading in a material particular in relation to this Act. The maximum penalty for contravention is 200 penalty units or 2 year's imprisonment.

This offence does not apply to a person if the person, when giving the document informs the official, to the best of the person's ability, how it is false or misleading; and if the person has, or can reasonably obtain, the correct information, gives the correct information.

The clause also provides that a person must not make an entry in a document required or permitted to be made or kept under this Bill knowing the entry to be false or misleading in a material particular. The maximum penalty for contravention is 200 penalty units or 2 year's imprisonment.

## **Division 2 Evidentiary matters**

*Clause 223* provides that evidence that a motor vehicle's odometer reading when the vehicle was in the possession of a motor dealer or chattel auctioneer was less than its reading when the dealer or chattel auctioneer took possession of the vehicle is evidence that: the motor vehicle's odometer was tampered with or replaced; and the dealer or chattel auctioneer contravened subclause 219(1)(a).

Similarly the clause provides that evidence that a motor vehicle's odometer was tampered with or replaced to increase the distance shown on the odometer when the vehicle was in a motor dealer's or chattel auctioneer's possession is evidence that the dealer or chattel auctioneer contravened clause 219(1)(b).

*Clause 224* applies if, in any proceeding, there is evidence that a person intentionally tampered with or replaced the odometer of a motor vehicle so that it showed that the vehicle at that time either not travelled, or had travelled more than, the distance shown on the odometer before it was tampered with.

If the relevant evidence relates to tampering or replacement to show that the vehicle had not travelled the distance shown on the odometer before it was tampered with, the distance shown at any time afterwards is evidence of false representation at that later time that the vehicle had not travelled more than the distance shown on the odometer.

If the relevant evidence relates to tampering or replacement to show that the vehicle had travelled more than the distance shown on the odometer before it was tampered with, the distance shown at any time afterwards is evidence of false representation by the person at that later time that the vehicle had travelled more than the distance shown on the odometer.

*Clause 225* applies to a proceeding under this Bill. The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of the appointment of the inspector, or the inspector's power to do anything under this Bill. A signature purporting to be the signature of the chief executive is evidence of the signature it purports to be.

A certificate purporting to be signed by the chief executive, a member of QCAT or the registrar stating any of the following matters is evidence of the matter: These matters include that:

A stated document is -

- an order, direction, requirement or decision, or a copy of an order
- direction, requirement or decision, given or made under this Bill
- a notice, or a copy of a notice, given under this Bill
- a record, or a copy of a record, kept under this Bill
- a document, or a copy of a document, kept under this Bill

On a stated day, a stated person -

- was, or was not, the holder of a stated licence or registration certificate under this Bill
- was given a stated notice, order, requirement or direction under this Bill

In this section “**registrar**” means the principal registrar under the QCAT Act.

*Clause 226* states an entry in a document kept by or belonging to a licensee or found in the licensee’s premises is evidence that the entry has been made by or with the authority of the licensee.

### **Division 3 Proceedings**

*Clause 227* states that subject to subclause (2), a proceeding for an offence against this Bill must be taken in a summary way under the *Justices Act 1886* within the later of the following: 1 year after the offence is committed; or 6 months after the complainant becomes aware the offence was committed, but within 2 years after the offence was committed.

A proceeding for an indictable offence may be taken, at the prosecution’s election by way of summary proceedings under the *Justices Act 1886* or on indictment. A proceeding against a person for an indictable offence must take place before a magistrate if it is for summary conviction of the person, or for an examination of witnesses in relation to the charge.

Where a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

If a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be instead prosecuted on indictment, or the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment; the magistrate: must not decide the charge as a summary offence, and must proceed by way of committal proceeding. If a magistrate so acts, any plea of the person made at the start of the proceeding must be disregarded, any evidence brought already brought before the magistrate is taken to be evidence in the committal proceeding, and before committing the person for trial or sentence the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).

The maximum penalty that may be imposed on a summary conviction of an indictable offence is 200 penalty units or 1 year’s imprisonment.

In this clause “**indictable offence**” means an offence against this Bill for which the maximum penalty of imprisonment is more than 2 years.

*Clause 228* applies in a proceeding for an offence against this Bill. To prove a person's state of mind about a particular act or omission, it is enough to show the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and that the representative had the state of mind.

An act done or omitted to be done for a person by a representative within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves they could not have prevented the representative's act or omission by the exercise of reasonable diligence.

The clause defines "**offence**", "**representative**", and "**state of mind**" for the purposes of the clause. An offence includes a contravention of the Bill for which the District Court or QCAT may make an order for an amount to be paid as a penalty. Representative of a corporation means an executive officer, employee or agent of the corporation. Representative of an individual means an employee or agent of the individual. State of mind includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for the intention, opinion, belief or purpose.

*Clause 229* states that a court may, in addition to any other penalty it may impose, order that a licence or registration certificate be suspended for a stated period or cancelled if the licensee or motor salesperson has been convicted of an offence against this Bill. Where the court orders cancellation of an individual's licence, or cancellation of a motor salesperson's registration certificate, the court must also order that the licensee or motor salesperson be disqualified for a stated period, or permanently, from holding a licence or registration certificate.

The court may also order that a person convicted of an offence against this Bill be disqualified from holding a licence or registration certificate under this Bill for a stated period or permanently.

The court may make an order to cancel, suspend or disqualify (under subclauses (1) or (4)) on the chief executive's application or on the court's own initiative. If an order is made by a court under this section on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

*Clause 230* states that in any proceeding for an offence against this Bill involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state that the statement, representation, entry or information was 'false or misleading'.

## **Part 10 General**

*Clause 231* provides that the Minister or chief executive may make or issue a public statement identifying and giving warnings or information about particular things. These include contraventions of a prescribed conduct provision for which disciplinary action has been taken and the persons who committed those contraventions, business practices regulated under the Bill that are unfair and the persons who engage in those practices, and the commission of offences against the Bill and the persons who commit them.

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

The intent of this clause is to provide an appropriate means through which the Minister or chief executive can minimise consumer detriment through increasing awareness about behaviours and persons causing or likely to cause such detriment, and also to encourage relevant persons and businesses to engage in conduct in compliance with the requirements of the Bill.

*Clause 232* provides that nothing in the Bill affects or limits any civil remedy that a person may have against a licensee or another person for any matter.

*Clause 233* states that nothing in the Bill limits the *Criminal Proceeds Confiscation Act 2002*.

*Clause 234* provides that the chief executive may delegate their powers, other than power under clause 231 (Public warning statements), to an appropriately qualified public service employee.

*Clause 235* provides that the chief executive may approve forms for use under this Bill.

*Clause 236* provides generally that the Governor in Council may make regulations under this Act. The clause also states particular matters that a regulation may be made about. These are:

- matters relating to the conduct of motor dealing practice by a motor dealer or salesperson, and chattel auctioneering practice by a chattel auctioneer
- fees, including refunding of fees payable under this act or PAMDA and the discount for entities applying for more than one licence under one or more of this Bill and the Agents Acts
- the amount of fees that may be charged for transactions by licensees
- imposing a penalty for a contravention of a regulation of no more than 20 penalty units
- the keeping or destruction of motor vehicle identifiers
- the display at a motor dealer's registered office of their usual business hours
- imposing time limits for payment of sale proceeds by del credere agents (chattel auctioneers under a del credere agreement)
- financial or insurance protection requirements for del credere agents
- limiting out-of-pocket expenses incurred in the performance of activities under a licence
- the keeping of records, including the form of the record
- the keeping of receipts and evidence of expenditure
- the period for which a document required to be kept under this act is to be kept

## **Part 11 Transitional provisions**

*Clause 237* notes that the *Property Occupations Act 2013*, part 14 includes provisions of a saving or transitional nature about particular matters arising from the repeal of PAMDA, including for example: continuation of motor dealer's licences under PAMDA as motor dealer licences under this Bill; continuation of motor salesperson registration certificates

under PAMDA as motor salesperson registration certificates under this Bill; continuation of particular licences or registration certificates under PAMDA as chattel auctioneer licences under this Bill; dealing with relevant undecided applications concerning licence and registration certificates; continuation of reviews of decisions under PAMDA; dealing with pre-commencement conduct of a kind regulated by this Bill; continuing statutory warranties for used motor vehicles under PAMDA.

The clause is included for the purposes of informing consumers of the Bill about relevant transitional provisions contained within the *Property Occupations Act 2013*.

## **Part 12 Minor and consequential amendments**

*Clause 238* provides that Schedule 3 contains consequential amendments for the Bill.

## **Schedule 1 Statutory Warranty Provisions**

### **Part 1 Preliminary**

*Clause 1* sets out the definitions for schedule 1 statutory warranty provisions.

*Clause 2* defines “**defect**” for schedule 1 for a warranted vehicle.

*Clause 3* defines “**warranted vehicle**”.

*Clause 4* defines “**warranty period**” for a warranted vehicle.

*Clause 5* provides that schedule 1 is to apply to each warranted vehicle sold by a licensee as the owner of the vehicle, or on consignment for another licensee. Schedule 1 does not apply to the sale of a motor vehicle by a licensee to another licensee.

### **Part 2 Provisions about statutory warranty**

*Clause 6* states that a licensee who sells a warranted vehicle must give the buyer a notice in the approved form about the statutory warranty. The clause sets out when the notice must be given. There is a maximum penalty of 100 penalty units if the licensee fails to do so.

*Clause 7* establishes the terms of the statutory warranty for a warranted vehicle.

*Clause 8* outlines the defects not covered by a statutory warranty.

*Clause 9* outlines the buyer’s obligations if they believe the warranted vehicle has a defect, including giving the warrantor a defect notice before the end of the warranty period and delivering to the warrantor or a nominated qualified repairer the warranted vehicle.

*Clause 10* prescribes that the warrantor must keep a record of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer and the day the vehicle is returned to the buyer. There is a maximum penalty of 100 penalty units if the licensee fails to record these particulars in the way prescribed under a regulation.

*Clause 11* makes it mandatory for a warrantor to advise the buyer whether the defect is covered by the statutory warranty within 5 business days after receiving the defect notice and delivery of the vehicle. If the warrantor fails to give the warranty advice within 5 business days, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.

*Clause 12* states that if the warrantor accepts that the defect in the vehicle is covered by the statutory warranty, the warrantor must repair the defect at the warrantor's expense. The defect must be repaired within 14 days unless the warrantor has a reasonable excuse. Failure to do so carries a maximum penalty of 200 penalty units.

*Clause 13* allows a buyer to apply to QCAT if the warrantor has refused to accept that the defect is covered by the statutory warranty or has accepted the defect is covered by the statutory warranty but has failed to repair the defect within the repair period or failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function. The clause sets out orders QCAT may make, without limiting the order that QCAT may make.

*Clause 14* applies if an application is made to QCAT but the application is for more than the prescribed amount under the QCAT Act. In this scenario, a reference to QCAT is taken to be a reference to a court having jurisdiction for the application amount and the provision applies with necessary changes as if QCAT were the court.

## **Schedule 2 Decisions subject to review**

Schedule 2 sets out the provisions of the Act that allow an application for review to QCAT to be made if a person is dissatisfied with a decision of the chief executive.

## **Schedule 3 Consequential amendments**

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

*Clause 1* amends the Long title to remove the references to the consequential amendments made to other Acts. This is because on commencement, schedule 3 will be removed after the consequential amendments have been enacted.

*Clause 2* omits schedule 3, this is because schedule 3 will be removed after the consequential amendments in the schedule have been enacted.

*Clause 3* renames schedule 4 as schedule 3, this is because schedule 3 will be removed after the consequential amendments in the schedule have been enacted.

### **Part 2**

#### ***Criminal Organisation Act 2009***

*Clause 1* omits the reference to "acting as a motor dealer as defined under the *Property Agents and Motor Dealers Act 2000*" in paragraph (f) of the definition of "prescribed

activity” from the *Criminal Organisation Act 2009*. It is replaced with a new paragraph (f) “acting as a motor dealer under the *Motor Dealers and Chattel Auctioneers Act 2013*”.

### **Duties Act 2001**

*Clause 1* omits the definition of “vehicle dealer” in schedule 6 of the *Duties Act 2001* and replaces the definition with reference to the *Motor Dealers and Chattel Auctioneers Act 2013*.

### **Forestry Act 1959**

*Clause 1* omits a redundant provision in the *Forestry Act 1959* that referenced the *Property Agents and Motor Dealers Act 2000*.

### **Police Powers and Responsibilities Act 2000**

*Clause 1* omits a reference to the *Property Agents and Motor Dealers Act 2000* in section 66(8) and replaces it with the “*Motor Dealers and Chattel Auctioneers Act 2013*”.

### **Queensland Civil and Administrative Tribunal Act 2009**

*Clause 1* omits a reference to the *Property Agents and Motor Dealers Act 2000* in section 12(4) and replaces it with a reference to schedule 1 of the Act for this Bill.

*Clause 2* omits a reference to the *Property Agents and Motor Dealers Act 2000* in section 13(4)(a) and replaces it with a reference to schedule 1 of the Act for this Bill.

*Clause 3* omits a reference to the *Property Agents and Motor Dealers Act 2000* in schedule 3 and replaces it with a reference to reference to schedule 1 of the Act for this Bill.

### **Second-hand Dealers and Pawnbrokers Act 2003**

*Clause 1* omits a reference to the *Property Agents and Motor Dealers Act 2000* in section 6(2)(b) and replaces it with a reference to the Act for this Bill.

*Clause 2* omits a reference to the *Property Agents and Motor Dealers Act 2000* in section 6(4)(a) and replaces it with a reference to the Act for this Bill.

*Clause 3* omits a reference to the *Property Agents and Motor Dealers Act 2000* in section 35(2)(b) and replaces it with a reference to the Act for this Bill.

### **Transport Operations (Road Use Management) Act 1995**

*Clause 2* omits a reference to the *Property Agents and Motor Dealers Act 2000* in section 46A(1)(a)(i) and replaces it with a reference to the Act for this Bill.

## **Schedule 4 Dictionary**

*Schedule 4* contains the Dictionary for the Bill.