PRICEWATERHOUSECOOPERS

Department of Equity & Fair Trading

NCP Review of the Auctioneers and Agents Act

May 2000

Contents

Executive Summary

Background

The *Auctioneers & Agents Act 1971* and the *Auctioneers & Agents Regulation 1986* governs occupations in the following industries:

- real estate agency
- auctioneering
- motor dealing
- commercial agency
- pastoral houses.

The restrictions placed on occupations in these industry groups include barriers to entry (via a system of positive licensing featuring numerous entry requirements) and conduct restrictions on the activities of service providers. The *Mutual Recognition (Queensland) Act 1992* also applies to these occupations and provides registrants from other States and Territories with a similar registration entitlement to practice in Queensland, thereby facilitating freedom of movement of service providers in a national market.

A review of the legislation was required to be undertaken to meet the Queensland Government's obligations under National Competition Policy (NCP) which requires the review, and where necessary the reform by the year 2000, of all legislation containing restrictions on competition. The guiding principle of NCP, as set out in Clause 5(1) of the Competition Principles Agreement (CPA), is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition.

The key stakeholders to the review include:

- consumers; including vendors, buyers, renters and the wider community
- industry; including each of the broad occupational groups in each of the industries above
- Government; including the Department of Equity and Fair Trading and other Government departments where relevant.

Stakeholder positions expressed during the review process are addressed in detail in the body of the main report.

Legislation Objectives

The single objective of the legislation, as detailed in the Public Benefit Test (PBT) plan developed by the Department of Equity and Fair Trading, is to comprehensively provide for consumer protection. For the purposes of the review process, consumer protection was the sole objective against which any restrictions on the occupation groupings were assessed, having regard also to Clause 5(1) of the CPA.

Alternative Options

A number of regulatory alternatives were subjected to the Public Benefit Test process to identify their overall incremental net benefit/cost over the base state (status quo) and their ability to satisfy the consumer protection objective of the legislation. For this review, the list of options considered included:

- retention of the status quo or base state (a positive licensing system) – this is implicit as an option should there be no net public benefit from any of the options to be considered.
- the proposed Bill (currently developed by the Department of Equity and Fair Trading to policy stage only)
- negative licensing (removal of up front barriers to entry).

Each option is described in detail in the main body of the report.

Conclusions

The option expected to achieve the greatest net public benefit, and that supports the consumer protection objective of the legislation, is a hybrid model developed from the beneficial elements identified in the PBT. This 'hybrid' model differs for each industry as outlined below.

The recommended hybrid model for **real estate agents** includes:

- relaxation of age requirements
- removal of residency requirements
- substitution of suitability assessment for character and fitness tests
- relaxation of business premises standards to include any registered office
- maintenance of requirement for a license holder to operate at principal office
- introduction of a 60 day time limit on individual or sole exclusive agency arrangements
- removal of the managers license which will be rationalised into the general license
- introduction of competency assessment including recognition of prior learning

- inclusion of developers and real estate marketers within the scope of the legislation
- introduction of a requirement that agents can act for only one party
- retention of the requirements for salespeople to sit a test approved by the licensing authority
- removal of maximum commissions on sales and rentals subject to monitoring and transitional arrangements including disclosure, information and education campaigns
- allowing restricted letting agents to manage contiguous buildings.

It should be noted that the removal of maximum commissions is recommended to be co-ordinated with the introduction of a public education campaign.

The recommended hybrid model for **auctioneers** includes:

- relaxation of age requirements
- removal of residency requirements
- substitution of suitability assessment for character and fitness tests
- relaxation of business premises standards to include any registered office
- introduction of competency assessment including recognition of prior learning
- deregulation of regulated maximum commissions
- exemption from trust accounting provisions where auctioneers act as del credere agents
- no maximum cap on buyers premium commissions.

The recommended hybrid model for **motor dealers** includes:

- relaxation of age requirements
- removal of residency requirements
- removal of maximum commissions on vehicles sold on consignment
- relaxation of business premises standards to include any registered office
- substitution of suitability assessment for character and fitness tests
- introduction of competency assessment including recognition of prior learning
- rationalisation of motor dealer managers license.

It is recommended that cooling off periods and statutory warranties for used motor vehicles should be introduced as part of the hyrbid model as a net benefit has been identified during the PBT from the additional regulatory requirements.

The recommended hybrid model for **pastoral houses** includes:

- relaxation of age requirements
- removal of residency requirements
- substitution of suitability assessment for character and fitness tests
- removal of work experience requirements
- introduction of a requirement that agents can act for only one party (except livestock auctions)
- relaxation of business premises standards to include any registered office.

The recommended hybrid model for **commercial agents** includes:

- relaxation of age requirements
- removal of residency requirements
- removal of the managers (commercial agency) license which will be rationalised into the general generic commercial agency license
- introduction of competency assessment including recognition of prior learning
- introduction of a requirement that agents can act for only one party
- relaxation of business premises standards to include any registered office.

Transitional Issues

Adoption and implementation of the recommended hybrid models would not involve significant adjustments to the base state. Nonetheless, it is essential that market participants be made aware of any changes in their rights and responsibilities in order to achieve a smooth transition and to avoid the negative impacts of potential information asymmetries. It is recommended that a public education campaign be part of the hybrid model. The transition to the hybrid model would need to be coordinated to ensure that any such public education campaign has been put in place with adequate time to ensure it is effective.

It is recommended that a subsequent review of the restrictions examined under this review be performed within five years. This is necessary as many impacts from the removal or retention of certain restrictions cannot currently be measured and actual impacts are expected to be identifiable after five years. To assist in measuring the impacts, it is recommended that the Office of Fair Trading collect market research directed towards the collation of meaningful quantitative data.

1

Introduction

1.1 Introduction

In November 1999, PricewaterhouseCoopers was commissioned by the Queensland Department of Equity and Fair Trading (DEFT) to assist the Review Committee in its assessment of the *Auctioneers and Agents Act 1971*(the Act) against National Competition Policy principles (NCP). The Terms of Reference for the Review Committee's inquiry and a description of tasks assigned to PricewaterhouseCoopers are provided in Appendix A.

Through restricting who may enter markets and how they conduct business, the Act regulates the activities of:

- real estate agencies
- auctioneers
- motor dealerships
- pastoral houses
- commercial agents.

The objective of the legislation is to protect consumers against incompetent or unscrupulous operators. Consumers are disadvantaged in market transactions through some combination of their limited access to commercial information, lack of commercial experience, limited choice of service provider or difficulty accessing practical avenues for dispute resolution. Each of these factors detracts from the economic efficiency with which markets operate and may violate accepted notions of social equity by disadvantaging people in the community least able to afford it.

In order to achieve its objective, the Act prescribes entry requirements in relation to:

- character
- residency
- qualifications
- work experience
- business premises
- other specific matters according to occupation.

A service provider must meet these prescribed requirements before being able to establish a presence within the market. The *Mutual Recognition (Queensland) Act 1992* also applies and provides registrants from other States and Territories with a similar registration entitlement to practice in Queensland, thereby facilitating freedom of movement of service providers in a national market.

Practitioners also face restrictions on what kind of services a provider may supply and the way in which service delivery takes place in terms of price, advertising, disclosure of information and other factors.

Under NCP, any of the Act's restrictions considered to impact on competition need to be identified and then examined in terms of the net impact of the restriction on stakeholders, and the degree which the objectives of the Act are met. Queensland Treasury *Public Benefit Test (PBT) Guidelines* provide a process through which NCP issues can be analysed and presented.[1]

1.2 Objectives of the Legislation

The PBT Plan compiled by DEFT notes that the objectives of the Act are not articulated in the legislation. However the plan does detail that the single objective of the legislation, in relation to all the markets upon which it impacts, is to comprehensively provide for consumer protection.

The interpretation provided by the PBT plan is supported by an examination of the second reading of the Act in Parliament which identified a growing level of consumer dissatisfaction and complaints to Government as the rationale for the Act's development. This interpretation was, in turn, supported by the Auctioneers and Agents NCP Review Committee.

Comprehensive consumer protection is the objective against which any restrictions on competition imposed by the Act, or regulatory alternatives, should be assessed; having regard also to Clause 5(1) of the Competition Principles Agreement (CPA). Clause 5(1) of the CPA requires that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition.

1.3 Scope of the Review

In line with the specific scope provided by NCP, the review undertaken has addressed only those parts of the Act, and the alternative regulatory models, which give rise to clear impediments to market competition. Not all provisions in the Act, or the alternatives, have direct, or significant implications, for competition; despite the fact that they remain important in safeguarding consumer interests. Measures which neither raise barriers to market entry, nor limit the avenues through which rivalry between service providers can occur were therefore excluded from the analysis.

Regulatory measures that were not include in the analysis on this basis include:

- trade-ins on consignments
- dealer options on motor vehicles
- prohibition on bogus advertising
- proposals for cooling off periods
- other miscellaneous issues.

[1] Queensland Treasury, *Public Benefit Test Guidelines*, Brisbane, October 1999.

These types of conduct issues were not considered to significantly impede competition either before or after market entry for at least two reasons:

- the costs of compliance appear small and as a result, the barriers to entry are limited
- the provisions apply uniformly across all agencies and therefore lead to few inequalities.

1.4 Report Structure

The remainder of this report begins by discussing NCP methodologies as they relate to legislative review. This is followed by separate chapters dealing with the competition and related impacts of the Act and other regulatory options in each relevant market. At the end of the analysis of each regulatory alternative, an impact matrix is presented to summarise the impacts of that alternative on each broad stakeholder group.[2]

The chapters are self-contained by including the full range of NCP issues for each occupational group. Each chapter ends with a final section presenting the stakeholder positions. The positions presented reflect the outcomes of the face to face consultation process and written submissions provided by the key stakeholder groups. The final chapter of the report draws together the conclusions regarding which regulatory model provides the greatest net benefit for each market and makes recommendations.

2 The impact measures used in the impact matrix denote a small , medium or large benefit or cost by the number of ticks or crosses used respectively. The tick or cross will range from one for small impacts, two for moderate impacts and three for large impacts.

2

Review Methodology

2.1 Project Methodology

The review commenced in late November 1999. A Review Committee was appointed to oversee the review and meetings were held at agreed milestones during the review, where the consultancy team provided feedback on project developments and sought agreement on the project process.

Using Queensland Treasury's *PBT Guidelines* as the basis for analysis, PricewaterhouseCoopers was charged with preparing an initial report on the NCP review of the Act, from which the Review Committee could prepare a final report and recommendations. The review process involved the following steps.

1 Project initiation meeting with the Steering Committee to clarify issues of project scope, timing and reporting milestones.

2 Identification of the impacts, and relevant stakeholders, to be assessed as part of the review.

3 Research and data collection of industry statistics and interstate regulatory models that govern the practice of relevant markets.

4 Review of written submissions received by the Department of Equity and Fair Trading from interested parties in response to an issues paper, published and released on 2 February 2000.

5 Face to face consultation with a representative sample from each of the key affected groups. Consultation participants were agreed with the Steering Committee and are listed in Appendix B.

6 Analysis of the information collected and development of findings regarding the Base State situation and the expected impacts associated with the nominated options. In this regard, the following areas of analysis were applied under an NCP-Public Benefit Test framework:

- an assessment of the base state

- an assessment of expected impacts from the introduction of regulatory alternatives.

7 In applying these tests, the report focuses on the impact of the Act and its alternatives on consumers. This reflects the objective of the legislation to protect consumer interests. While the effects of regulation on all stakeholders are covered in the report, the analysis of consumer effects is accorded the highest priority.

8 Preparation of draft and final reports and a Competition Impact Statement and Employment Impact Statement.

It should be noted that research, review of written submissions and public consultation produced relatively limited amounts of quantitative data. This restricted the degree to which the Act could be scrutinised using quantitative measures, as well as the extent to which comparisons could be made of regulatory experience in other areas of Australia. Other states have also experienced a lack of data when undertaking similar reviews. In preparing the report, data on real estate agencies was more readily available than data on the remaining areas of industry. By comparison, the effects of regulation on motor dealers, auctioneers, pastoral houses and commercial agents, are examined on a more qualitative level due to a paucity of reliable quantitative information.

2.2 Alternatives to the Act

Discussions with the Review Committee resulted in two major alternatives to the Act being identified. These two options are discussed further below and include:

- a proposed Bill (hereafter, 'the proposed Bill') which is at policy development stage within DEFT
- negative licensing.

The Proposed Bill

The proposed Bill represents an attempt to simplify the existing Act and to moderate some of its more anti-competitive elements while retaining the objective of protecting consumer interests through a combination of restrictions to market entry by service providers and control over their market conduct. Among other things, it seeks to:

- provide greater flexibility in the way that would-be service providers might satisfy minimum requirements for market entry in relation to formal qualifications and work experience, through the introduction of competency standards

- bring under a regulatory umbrella those parts of the real estate market whose actions are not currently regulated but have given rise to consumer complaints, namely developers and marketers of real estate property

- strengthen the position of consumers in terms of the information, product warranties and quality of services delivered.

From an administrative standpoint, the proposed Bill would feature a rationalisation of the various occupational licenses into a single generic license featuring a number of different classes. In addition, license holders would also be afforded the option of taking out a three year license rather than an annually renewable license only. A more complete description of the proposed Bill is provided in Appendix A.

Negative Licensing

Negative licensing allows entry into the market in a largely unrestricted manner and regulation focuses instead on controlling the conduct of market participants once entry has taken place. It contrasts with 'positive licensing' characterised by the Act and the proposed Bill which both seek to address the problems faced by consumers through pre-emptive measures designed to prevent market entry by unskilled or untested service providers. The Act and the proposed Bill are based on the premise that "…it is better at the outset to exclude from the market incompetent or dishonest practitioners rather than deal with the consequences of their actions later."[3]

Options not reviewed

Service providers in the industries under review have noted consumers as being relatively vulnerable to deceptive or inexpert behaviour. Deregulation would allow unskilled or unscrupulous service providers to enter the market and operate in an undesirable manner. Deregulation would decrease the level of consumer protection in the market and thereby contravene the objectives of the legislation. The option of deregulating the market altogether by removing the Act and declining any form of regulatory replacement was therefore set aside by the Review Committee as it would not meet the objectives of the legislation.

The Review Committee also set aside the option of co-regulation, where rules relating to market entry and conduct are agreed between Government and industry, and administered by an industry association. Co-regulation was not adopted as an alternative by the Review Committee on the basis that membership of industry associations often fails to cover a significant proportion of providers within the market, and that the threat of exclusion from membership is therefore an ineffectual means of regulatory enforcement. The Review Committee was also concerned that to have one set of service providers imposing penalties on another raises potential problems in relation to equity and competition.[4]

The final option set aside by the Review Committee was a 'functional regulation' alternative. This alternative model is based on the proposition that consumer interests can best be supported through addressing two of the major problems faced by consumers in the purchase of goods or services, namely insufficient information and a lack of choice of service provider. The latter is caused by either the cost to consumers of searching for reputable sources of service, or the fact that a small number of providers may dominate supply.

Functional regulation offers a number of advantages by being geared to some of the principal problems faced by consumers and relying on relatively few regulatory instruments. Its disadvantages are that regulation may be costly and consumers are still left with the difficult task of having to discriminate between reputable and disreputable providers of a service. Public education campaigns must be correctly targeted, broadly based and maintained as more or less permanent features of the market. In practice, this may create complex logistical and researching issues. Surveillance is also resource intensive partly because it requires benchmarking of service provider costs and regular adjustments to regulated prices to reflect fluctuations in demand and other features of the market.

The Review Committee considered that these disadvantages outweighed any potential benefits and decided against proceeding with functional regulation as a stand-alone alternative to the Act. However, it recognized that public education campaigns in particular can make a valuable contribution to the efficient operation of the market, and this should be considered as a potential additional component of accepted alternative models.

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3 Victorian Department of Premier and Cabinet, *Guidelines for the Review of Legislative Restrictions on Competition*, Melbourne, 1998, p.71.

4 A more complete framework for co-regulation which is geared to real estate agencies but may also be applicable to other parts of the Act and its alternatives is described in Prices Surveillance Authority, Inquiry into Real Estate Agents Fees relating to Residential Property Transactions - Final Report, Report No. 43, Melbourne, September 1992, p.9.

3

Real Estate Agents

3.1 Market Profile

3.1.1 Market structure

The market for real estate agents may be defined in terms of the provision of services in valuing, purchasing, managing, renting or selling residential and commercial real estate (by licensed agencies and their employees). The key functions of agencies, which consist of agents, managers, salespeople and administrative support staff, include:

- securing listings of properties for sale or rental
- developing and applying a marketing and advertising plan in consultation with the vendor (or seller)
- determining a sales or rental price
- assisting with buyer (or purchaser or renter) inquiries including inspections
- managing negotiations with buyers on price and other matters
- facilitating contract preparation.[5]

In Queensland, the real estate services market consists of approximately 1,800 businesses that generate an aggregate annual income of over $600 million and employ more than 12,000 people most in a full-time capacity.[6] Almost 90 percent of agencies employ fewer than 10 people and more than 60 percent of agencies operate as independent enterprises outside franchising structures or marketing group affiliations.[7] Approximately 50 percent of the value of the market is comprised of residential sales, and up to an additional 20 percent in residential property management.[8] Currently, more than 300,000 residential units are rented across the State, around 15,000 for holiday accommodation.[9]

The real estate market is essentially local in its geographic dimensions. That is, persons residing in a particular suburb will normally only access agents in that suburban area. However, little is known about the average size and number of agencies within regions except that in rural areas the market is likely to be dominated by a very small number of players. The only major reference to the issue of relative firm sizes or so-called market concentration in recent years has come from the Prices Surveillance Authority (PSA). The PSA alluded to reasonably high levels of concentration when it concluded that "the local operation of most firms is best evaluated on the basis of there being a large number of local markets generally comprising a small number of firms having a high degree of interdependence."[10]

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5 Real Estate Institute of Australia (REIA), *Submission to PSA's Inquiry into Real Estate Agent's Fees*, 1992, pp.5-6.

6 Australian Bureau of Statistics (ABS), *Real Estate Agents Industry - Australia 1995-96*, Catalogue No. 8663.0, p.13. Latest available data. Income is measured in terms of the revenues received by agencies for the services they provide and exclude the value of properties or rental payments subject to transactions.

7 ABS, *Real Estate Agents Industry - Australia 1995-96, op. cit.,* p.8 and p.12. Figures based on national average.

8 IBIS Business Information, Industry Outlook - L7720 Real Estate Agents, Sydney 1999, p. 5.

9 Data provided by REIQ and Queensland Resident Accommodation Managers' Association (QRAMA), Submission to Office of Fair Trading, , February, 2000, p. 10.

10 PSA, *Inquiry into Real Estate Agents Fees relating to Residential Property Transaction,* Melbourne, 1992*,* p.16.

The legislative barriers to entry and logistical requirements for market operation that exist include:

- occupational licensing (under the *Auctioneers and Agents Act*) which stipulates minimum experience and/or educational requirements for agents and their sales staff

- advertising and other costs of attracting listings

- capital costs for business formation.[11]

Although the market may be relatively concentrated, the barriers to entry faced by new firms are not considered high as:

- vertical and horizontal integration in the market is at a low level
- membership of industry associations is not compulsory and does not appear to be a driving factor in consumer's choice of agency
- access to office accommodation and advertising outlets is readily available
- agencies can be expanded through the incremental addition of staff from a significant pool of qualified practitioners
- the reputation of an agency has a limited impact on vendor and buyer behaviour given that most market participants are infrequent sellers or buyers of real estate services.

Demand for agency services is influenced less by what agencies charge for their services through commissions and other fees than by a broad combination of:

- the price of property which is influenced by broad and sometimes volatile range of economic factors such as interest rates, taxation policies, population growth and household income

- the personal financial imperatives of the vendor

- the property design, location and other preferences of buyers.

Few substitutes are available for the services offered by agencies. Relatively small numbers of vendors seek to sell or rent their own properties as they are not familiar with market practices.[12] However, this does not mean that vendors are totally indifferent to what competing agencies might charge. While agency commissions and other costs may not greatly influence the decision of a vendor to sell or rent a property, or the decision of a buyer to enter the market, they may marginally affect the vendor's choice of agency to engage for assistance.

[11] These are estimated to be as high as $130,000 per agency but significantly lower amounts may well apply. IBIS Business Information, *Industry Outlook - L7720 Real Estate Agents, op.cit.,* p.7. We note that a lower bound of $10,200 has been quoted by the PSA in its inquiry into residential real estate. See PSA, *Inquiry into Real Estate Agents Fees relating to Residential Property Transaction, op.cit*., p. 29.

[12] It is estimated that less than five percent of vendors market their own property.

3.1.2 Market conduct

Market conduct by agencies is characterised by the absence of price competition and a strong tendency for agencies to charge at the uniform regulated maximum commission specified in the *Auctioneers & Agents Regulations 1986*. There is little or no variation in prices charged by various agents throughout Queensland for comparable services. Competition is based on non-price factors, such as quality of advertising or particular expertise in property valuation.[13] Two factors help to explain the lack of price competition:

- a reluctance on the part of vendors to 'shop-around' before selecting an agency given the search costs involved and the fact that agency fees constitute a small proportion of the total price of a property. This partially indicates that the market is local in its nature
- the way in which the market is organised, particularly those aspects of market structure which limit inter-agency rivalry. The combination of these factors discourages price competition as agents offering lower commissions are not likely to be easily recognised or rewarded with additional turnover and are also likely to receive negative pressure from their fellow agents.

3.1.3 Market performance

In 1992 the Prices Surveillance Authority inquired into the issue of low price competition for residential real estate. Their study addressed the issue of whether regulated maximum commissions provided agencies with adequate revenues. The Prices Surveillance Authority used median house prices and applicable commission rates to estimate changes in average revenue per agency, and the Consumer Price Index (CPI) as a proxy for changes in agency costs, to determine that the revenue of real estate agents in Brisbane had increased by a net 26 percent from 1978 to 1992.

To update the calculation of the Prices Surveillance Authority in 1992, PricewaterhouseCoopers applied the same methodology for the period 1974 to 1997. The result was an average net rise of 7.3 percent per annum.[14]

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13 *Ibid.,* pp.23-24.

14 The approach taken assumes no change in real estate sales volumes or the number of agents operating within the market, which are potentially important variables, although the assumption of a constant ratio of transactions to agents does not appear unrealistic. Data for Brisbane is assumed to reflect patterns for Queensland as a whole. The CPI may not be an accurate reflection of efficient agency costs given its broad ranging nature. To this extent, use of the CPI or RPI understates the real extent of the difference between revenues and costs. CPI changes for 1993-97 are based on figures for Brisbane only. CPI-RPI figures for 1974 to 1997 are based on average price movements for all capital cities. As indicated by the PSA, the results may not be greatly effected by price discounting which was estimated by the Authority to apply in less than 20 percent of cases. See PSA, *Inquiry into Real Estate Agents Fees relating to Residential Property Transaction, ibid.* and p.63. In the estimates above, CPI data is taken from the Australian Bureau of Statistics (ABS), *Consumer Price Index Australia,* Catalogue Number 6401.0. RPI data is taken from the ABS, *Year Book Australia 1995*, Catalogue No. 1301.0, p.585. Median property price data was provided by the Real Estate Institute of Queensland. Price indexes were recalculated to 1974 base year.

Based on the latest available data for the year to June 1996, real estate businesses generated an average operating profit margin of approximately 8.3 percent;[15] from PricewaterhouseCoopers' experience with service industry operators, this level of profitability is not abnormally high. However, information on agency performance in other States, or other efficient benchmarking information, is not available, therefore there is no accurate way of determining whether it reflects a satisfactory or unsatisfactory level of performance.

In light of the limitations of profit data perhaps the most useful measure of market performance is the level of consumer dissatisfaction with agency services as reflected in official complaints statistics. This data should be treated with care given that consumers are not always well informed of the quality of services they are entitled to receive or about access to complaints handling mechanisms and may understate the true level of consumer disquiet in the market/community.

Data from the Queensland Auctioneers and Agents Committee indicates that in 1998-99 formally registered complaints to the Auctioneers and Agents Committee, against real estate agencies, numbered 229.[16] Of the complaints to the Auctioneers and Agents Committee, only 27 real estate agents or managers, and two real estate salespersons, lost their license and/or were fined as a result of the complaint.[17] This constitutes around 0.4 percent and 0.02 percent of the total number of licensed or registered people in each occupational category, respectively. Assuming that formal action was taken by the Committee only against agency staff for whom a legitimate and substantial complaint existed, the data reveals relatively low levels of overall consumer dissatisfaction and reasonable levels of overall market performance.

3.1.4 Market Profile Conclusions

Available data on market structure, conduct and performance provides an incomplete picture of the different factors promoting and restraining competition within the market and the degree to which agencies may hold market power.[18] More specifically, very limited data is available to reliably determine levels of market (seller) concentration, the impact of barriers to entry on competition and both price and cost efficiency.

[15] ABS, *Real Estate Agents Industry - Australia 1995-96, op. cit.,* p.12. Figure based on the national average. Calculated as profit before extraordinary items are brought to account and prior to the deduction of income tax and appropriations to owners.

[16] Office of Fair Trading, *Committees - Auctioneers and Agents Committee*, Brisbane, 1999, p.1. It should also be noted that the Office of Fair Trading also provides a general complaints mechanism and receives more complaints for real estate agency than any other industry.

[17] Attachment 6 sets out the number of agents, managers and salespeople disciplined by the Committee since 1992-93.

[18] Market power is defined as the ability of an agency to raise prices without losing market share. The basic paradigm for examining market power is set out in the function (P-MC/P) = s/e(1+dQ/dq). For the left hand side of the function, (P-MC/P) is the well known Lerner Index of market power where P represents price and MC represents marginal costs. For the right hand side of the function, s represents an agency's market share, e represents the market price elasticity of demand and dQ/dq represents how rivals will respond to changes in their levels of output. The equation shows that the degree of market power held by a firm will be higher when demand for its services are inelastic, there are few firms within the market and rivals choose to co-operate rather than compete due to the prevailing market culture. Inelastic demand is not sufficient by itself to provide market power if concentration and other factors do not support it. For a more complete discussion of the issue see F.M Scherer and D. Ross, *Industrial Market Structure and Economic Performance*, Houghton Mifflin, Boston, 1990, pp. 412-413.

Four factors suggest that levels of competition may be constrained within the market:

- evidence of price uniformity
- the availability of few viable substitutes for services supplied by agencies
- indications that local markets contain relatively few service providers
- consumers who are somewhat insensitive to the prices charged by agencies.

Against this, two factors suggest that if limits to competition do exist they may be lower than expected:

- barriers to market entry appear to be in the low-moderate range
- recorded numbers of substantive consumer complaints to the Auctioneers and Agents Committee that reflect the quality of service which agencies provide, are small but in contrast DEFT indicates that complaints through the Office of Fair Trading avenue are the highest of any industry.

Drawing these factors together, the available data suggests that competition in the market is constrained, but the market power that is subsequently conferred on agencies is moderate.

3.2 The Act supporting the Base State

3.2.1 Objective of the Act

The objective of the *Auctioneers and Agents Act 1971* is to protect consumers of the services offered by real estate agencies. There is nothing in the Act, either expressed or implied, which suggests that the legislation has been established to protect the financial (or other interests) of real estate service providers. The rationale underlying the Act is that vendors and buyers of real estate, particularly residential real estate, are disadvantaged in market transactions through some combination of:

- a lack of familiarity with property values and the processes associated with property transfers including legal obligations

- the costs of obtaining and comparing data on the price and quality of services offered by competing real estate agencies

- a lack of competition between agencies that may raise the price of services and unduly restrict the range and quality of services offered.

3.2.2 Restrictions on market entry

The Act defines a real estate agent as any person who, acting for others and in exchange for some kind of reward, engages in buying, selling, exchanging or letting houses, land or estates.[19] The legislation stipulates that no person shall perform the tasks of a real estate agent unless that person holds a

[19] Agencies may of course advise buyers instead of sellers particularly in relation to property valuation issues. Agencies do not value a property directly. Instead, they seek to assist vendors in reaching a valuation by providing data for similar types of property in similar areas. The later activity differs from most other areas of Australia in that licensed agents and their employees in Queensland are engaged directly in contractual matters. In other jurisdictions, such matters are normally handled by solicitors. We note that residential property sales are affected using Standard Conditions of Contract endorsed by the Queensland Law Society.

license. Practicing without a license is an offence subject to 100 penalty points or a current fine of $7,500.[20]

The Act does not prohibit persons selling their own property. In addition, accountants are exempted from the Act when selling, assisting in selling or advertising real estate for sale without a license but only in their capacity as receivers or executors involved in insolvency work. Solicitors may not sell real estate without a license. For practical purposes, property developers and their marketers are not regulated under the Act.

Success in applying for an initial real estate agent's license depends upon the applicant:

- being a resident of Queensland[21]

- being 21 years of age or more

- being of good fame and character and a fit and proper person; tested through reference any criminal record of an applicant, previous breaches of similar regulations and objections to an application by interested parties

- operating from business premises suitable for real estate transactions; interpreted as premises that provide an appropriate atmosphere for the consideration of commercial issues including signing of contracts. For agencies operating from a residential location this requires a separate office within the premises with its own entrance. Local Government require a standard of premises consistent with occupational health and safety requirements as well as appropriate signage and parking

- having a license holder at the principal place of business

- paying a license fee

- either completing a suitable training course and/or having appropriate business experience; the training and work experience requirements for a license can be satisfied through four avenues:

    - completion of 23 modules of a new training course structured by the Property Services Training Authority and conducted by any training provider accredited by the Australian National Training Authority (ANTA)

    - completion of the Real Estate Practice Course conducted by a Queensland College of Technical and Further Education (TAFE) plus at least two years work experience in the past five years as a registered salesperson with a licensed agent[22]

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[20] A similar fine applies to salespersons that are acting while unregistered. This provision is enforced by the Queensland Office of Fair Trading (OFT). OFT inspectors initiate reviews of agencies as well as respond to consumer complaints. However, there is a general consensus that the scope of pro-active enforcement is limited and that not all consumers are aware of either their legal right to lodge a complaint or the sources from which they might obtain assistance.

[21] Under the Act, Queensland residency also extends to persons living within 65 kilometres of the State boundary.

[22] Equivalent courses operated by other institutions may also satisfy the legislation. These include the Diploma of Business (Real Estate Valuation) or the Bachelor of Administration (Real Property Valuation and Administration) both conducted by the Queensland Agricultural College (University of Queensland) and the Diploma as an Associate Fellow of the Real Estate and Stock Institute of Australia.

- five years work experience which provides a level of competency deemed acceptable by the Auctioneers and Agents Committee
- other business qualifications which satisfy the Committee.[23]

Annual renewals require that, in addition to these factors, the applicant has at least one year of relevant work experience in the past five years. Licenses must be renewed each year and require payment by the applicant of an annual fee of $413.[24]

The licensing requirements for a real estate manager are similar to those of an agent with the exception that regulations governing business premises and a license holder at each place of business are not applicable.

The requirements for a real estate salesperson are somewhat lower. Salespeople must be registered only and therefore incur lower penalties for breaching the Act. They are not required under the Act to complete a suitable training course and/or to have appropriate business experience. The regulatory requirements for a salesperson to enter the market are limited to:

- being a resident of Queensland
- being 21 years of age or more
- being of good fame and character, a fit and proper person
- having successfully completed a short written examination set by the Auctioneers and Agents Committee
- paid a registration fee.

The Act does not contain a direct or explicit requirement that salespeople be supervised by a licensed agent or manager.

A separate license category applies to restricted letting agents whose activities within the market are limited primarily to letting holiday units. The principal regulatory requirements for market entry by a restricted letting agent are the same as those of a salesperson with the added provisos that the license holder:

- is limited to a single building complex
- must reside within the complex
- must have an office within the complex
- must operate with the approval of the complex's body corporate.

The Act is unusual in the sense that letting agents may rent units in a complex without the need for formal training or qualifications, while real estate agents must satisfy these requirements in order to perform exactly the same function. One explanation for this is that letting agents are confined to a

23 Refer to regulation 18 under the *Auctioneers & Agents Regulations 1986*.
24 The initial license fee for new real estate auctioneers, agents and managers is currently $436. Two or more licenses may be obtained for an initial fee of $726 and annual renewal fee of $703. Real estate sales persons face initial registration and annual renewal fees of $97 each.

single complex and, as a result, are likely to acquire a level of skill comparable to that of agents with more formal qualifications simply by concentrating on a narrower range of property.

3.2.3 Restrictions on market conduct

In addition to the regulation of market entry, the Act also specifies certain rules in relation to market conduct. Prominent among these are maximum *ad valorem* rates of commission which include:

- on the sale of residential property, maximum commission is 5 percent on the first $18,000 of the value of the property, and 2.5 percent thereafter
- on the rental of property, maximum commission is set at various levels depending on the duration of the rental and other factors.[25]

A real estate agency may introduce an additional charge to cover the costs of advertising the vendor's property, travel and Government taxes. Such charges can be recouped only if actually expended, must be agreed with the vendor prior to any service agreement and must be accounted for before payment is received. With respect to rental commissions, additional fees are permitted to be negotiated between the agent and the landlord for agency services provided in supervising repairs and maintenance. This fee is not capped by regulation. This loophole effectively gives the agent a means by which to charge any amount to the landlord where their services extend beyond collection of rent. In practice, DEFT indicates that rental commissions are therefore observed around the 10% level.

3.3 Impacts of the Base State

3.3.1 Consumers

Impacts on consumers from the different requirements of service providers as listed in the Act are discussed in this section.

Queensland residency and age requirements

There is little direct evidence to suggest that the requirement to reside in Queensland or be over 21 years of age have greatly impeded market entry by individuals or firms. Few applications are received by the Auctioneers and Agents Committee from interstate residents, or from persons under 21 years of age. Therefore these requirements do not appear to have a significant impact on competition in the market and are therefore not significantly restricting consumers (including buyers, vendors and renters) choice of providers.

These requirements in the Act deliver few visible direct benefits to consumers. Stakeholders contacted as part of the review supported the proposition that vendors, buyers and renters would have little to lose if the Act's residency and age requirements were relaxed as neither requirement is an accurate predictor of a person's behaviour after entering the market. A small net benefit to consumer choice may be achieved by removing these requirements, without jeopardising the objectives of the legislation.

[25] Rates were last altered in April 1986.

Good fame and character test

There is little evidence to suggest that many applicants are refused on the basis of failing to comply with the good fame and character and a fit and proper person requirements and they therefore do not appear to be limiting consumer choice in the market. Although it should be recognised that persons with criminal records are unlikely to apply with the knowledge that they will almost certainly fail the fit and proper person test.

Fame, character and fitness tests are an important safeguard of vendor welfare given that agents and their staff have access to the keys for properties offered for sale, or rental; and to real estate trust funds. This position was supported during consultation with industry whom indicated that access to real estate trust funds does act as a powerful attraction to people with criminal tendencies.

Queensland Shelta (a consumer support organisation) also provided input to the review that lower income earners are protected by the good fame and character tests as they are vulnerable to improper practice by real estate agents. This is due to the fact that lower income consumers usually rely heavily on rental accommodation, and being in a poor position to interpret and apply legal and other real estate agreements. This is particularly relevant where the State Housing Authority has contracted out a number of its responsibilities for the allocation and management of housing for welfare recipients to the private sector.

This finding is further supported by the majority of consumer complaints registered against agencies being concerned with unethical behaviour.

Therefore, the good fame and character tests present a net benefit for all categories of consumers and supports the objectives of the legislation.

Requirement for business premises

There are two elements of this requirement of the Act that need to be considered when assessing the impacts on consumers. These include the requirements to have:

- suitable business premises
- a license holder in charge of the principal agency office.

Suitable business premises

Suitable business premises, and the presence of a licensed agent at principal business locations, are designed to ensure that real estate transactions are processed with high levels of technical efficiency. This avoids transactional errors, or delays, which raise costs for the agency, and are usually passed on to vendors, buyers and renters. A commercial or relatively high quality business location may assist Government inspectors to perform their functions and provide a higher degree of certainty that a business can be located should a consumer complaint need to be pursued. However, these benefits are difficult to quantify and may be small.

There appear to be relatively few gains from a residential premise having a separate office, entrance, parking and signage to handle real estate transactions that could not be accommodated by many private residences without these attributes.

Therefore the benefits provided to consumers from this restriction are expected to be small, however, the restriction does impose costs that are passed on to consumers.

This restriction limits the ability of agencies to operate their business from lower cost residential premises (which may be based on electronic data transfers or virtual offices facilitated by e-commerce) and forces agencies towards higher cost commercial sites.

This has the impact of restricting innovative service methods that could provide the consumer with more efficient service delivery. The Prices Surveillance Authority's study indicates that the exclusion from the market of innovative firms may deny vendors, buyers and renters a potentially significant source of improvement in industry efficiency.[26] Local Councils, or the Auctioneers and Agents Committee, have prescribed standards for premises to meet the legislated requirement. Although no reliable data is available to indicate the degree to which these authorities have set standards above those necessary to deliver a minimum acceptable standard of service, the costs of altering a private residence, to allow for a discrete area from which to conduct business, could be considerable and deter new firms from entering the market.

Restrictions that limit access to services are a significantly larger issue for rural and regional consumers as compared to urban counterparts, where the key consideration is range of choice.

Further, firms could be dissuaded from establishing a market presence if forced to sign expensive leases for commercial office accommodation. In some cases, where costs are indeed sunk, this may represent a significant barrier to exit. However, agencies choose commercial over residential sites due to the advertising and other advantages which commercial locations can offer in promoting vendor properties and an agency's brand name. If agencies prefer commercial sites as part of their normal business practice, the Act's requirement covering business premises does little to impede competition or to improve consumer protection.

The clear point to emerge is that agencies only require some kind of fixed or identifiable premises so that consumers and authorities have a point of reference for inquiries or complaints. This could be achieved through agencies being required to prescribe a fixed residential address. This would present a reduction in the restrictions in the legislation that may provide a small benefit to consumers (including vendors, buyers and renters) through slightly lower prices, or a slightly larger choice of providers, but would not decrease the ability of the legislation to meet its objectives.

License Holder in Principal Office

The need for a license holder to be located in an agency's principal office does not impose a significant cost to the consumer. As discussed under section 3.3.2, this restriction creates few barriers to entry and therefore does not restrict a vendor's, buyer's or renter's choice of provider, and should not impact on the price paid by all categories of consumer.

[26] *Ibid.*, p.118.

Having a license holder in the principal office does improve exchanges and processing of information, as the license holder has a higher level of training and education than a real estate manager or salesperson which can be a small benefit to consumers.

Therefore, the requirement to have a license holder in the principal office provides a small net benefit to the consumer and supports the legislative objective.

License fee

The license and registration fees appear low enough to facilitate substantial entry of providers into the market, and therefore does not restrict consumer choice and should not impact on the price paid by consumers. The key benefit of the license fee is that it adds to the financial resources available to the Office of Fair Trading which assist to monitor and enforce the Act, and provide a greater level of protection to the consumer by identifying and addressing providers who do not comply with the Act.

Therefore, the requirement to pay a license fee provides a moderate net benefit to the consumer and supports the objectives of the legislation.

Qualifications and work experience

The benefits to consumers of formal training and work experience for license holders is the provision of a level of quality assurance which is aimed at affecting services provided in the following ways:

- more accurate property valuations
- proper handling of contractual matters
- improved sales and rental rates
- speedier and less costly transactions
- lower agency operating expenses (due to more productive operations).

These benefits flow to agencies, vendors, buyers and renters. These benefits take on considerable importance given that agents and managers are required to supervise salespeople with minimal formal training or work experience.

No quantitative data is available to indicate the magnitude of this benefit to the consumers, due mostly to problems in obtaining data with which to compare the experience of consumers in Queensland against the experience of consumers in other States.

Section 3.3.2, which addresses impacts on industry, discusses how the requirements to have formal qualifications and work experience have not created undue barriers to market entry and therefore have not greatly impeded competition to the detriment of consumer choice or service.

However, one aspect of the minimum qualifications required by real estate agents and their staff under the Act appears to impose a small net cost to the consumer. This is that part of the curriculum for TAFE and PSTA courses relating to training units on general business management. These units comprise up to 30 percent of overall course content and add to the market entry barriers faced by applicants in seeking a license or registration by extending the duration and cost of training. It can be argued that general business management training may improve the service to the consumer, however this is unlikely due to:

- lower costs need not translate into lower prices where competition is restricted and rivalry takes place mainly on the basis of non-price factors whose content can be difficult for consumers to compare across agencies
- such units are aimed directly at agency owners and their staff rather than at protecting consumer interests
- at least some portion of the requirement for general business training may already be generated from the normal functioning of the market.

Overall, while the requirements for qualifications and work experience do present a benefit to the consumer, an incremental net benefit could be achieved for consumers if the content and range of applicable courses was reviewed.

Relevant work experience for renewals

The Act's requirement that agents and managers wishing to renew their license have relevant work experience of at least one year in the past five years, ensures that applicants who have been outside the market for an extended period are familiar with recent trends in market practice. These changes to market practice may include market prices, advertising methods, changes to legislation or other factors impacting on service delivery. Real estate agents who are not aware of up to date market practices expose vendors, buyers and renters to financial and emotional risk factors.

Therefore this requirement provides a small to moderate net benefit to consumers and supports the objectives of the legislation.

Contractual Skills

Currently, the Act allows real estate agents and their sales staff to become involved in contractual aspects of real estate transactions. The social benefits of this are that staff involvement may minimise the delays and other expenses to consumers that can arise if solicitors become involved. These benefits may be considerable across the market given that a solicitor's costs for individual transactions average between $300 and $500.

The costs involved are the extra time and effort required by some or all staff to obtain the necessary legal skills which may act as a barrier to market entry and impede competition. These appear to be relatively small.

Section 3.3.2 discusses the issue of whether agents and their staff are becoming involved in legal matters that they do not have the training to address competently. The conclusion of this discussion is that there would be a further small net benefit to consumers through sales people undergoing some formal training in relation to the legal and contractual aspects of transactions.

Restrictions on letting agents

Entry barriers which are specific to restricted letting agents include a limit to operating a business for one building complex only, coupled with the need to reside in the complex, have a business office within the complex and operate with the approval of the complex's body corporate. The rationale for these measures is that consumers, who own or rent units within the complex, are better served through the Act making the agent more accessible, more familiar with the complex's unique characteristics, and more accountable to the body corporate and tenants.

The disadvantages to consumers from the practice of an on site restricted letting agent may include:

- a prohibition to natural competition between the on site service provider and established agents. For example, the on site service provider may exploit their privileged position through the use of inappropriate tactics such as prohibition to building access via control over security doors

- limitations to the degree to which an agent's costs might be reduced through alternative residency and office locations

- limitations to which an agent's costs may be reduced through economies of scale savings arising from multi-complex management.

These impacts might flow on to consumers in the form of higher agency charges and/or a lower quality of service.

If the restrictions on letting agents were removed, consumers would not be adversely affected as vendors owning units in a complex have a direct say in the terms and conditions on which an agent is employed, through the actions of the body corporate. That body is normally able to decide, based on the complex's individual characteristics and the preferences of both unit owners and tenants, whether a dedicated resource in the form of an agent is needed and how an agent might best function. In this way the market arrives at a form of 'regulation' which is less restrictive than the Act, but still meets the essential requirements of stakeholders.

One difficulty with this approach is that restricted letting agents are involved mainly in the rental of holiday accommodation for tenants whose stays are either once-off and/or of a relatively short duration. These tenants are very poorly placed to either formulate views on the appropriate role of letting agents or to have those views accepted by bodies corporate. As result, they may be exposed to a higher degree of commercial risk if regulations governing letting agents are relaxed and a poorer level of service quality emerges through agents stretching their resources too thinly. Very little evidence was available to assess this issue. However, it is not considered significant given that it is in the interest of owners to limit 'overstretching' by an agent.

Therefore, there would be a small net benefit to consumers to the removal of the restrictions on letting agents, which would support the objectives of the legislation.

Maximum Commissions

Maximum commissions can create distortions that detract from market efficiency and impact on the consumer. These distortions fall into three broad categories, each of which works against the interests of consumers, and are discussed below.

1. Maximum commissions help to establish a target to which all agencies can aim, they contribute to a high degree of uniformity in pricing across the market and tend to push competition towards non-price factors (such as advertising). Vendors are disadvantaged in attempting to determine the value for money associated with the non-price services offered by agencies. There is an absence of information to both differentiate and validate the claims of agencies on their range and depth of services. The Real Estate Institute of Queensland and other stakeholders support a more comprehensive disclosure by agencies to vendors, buyers and renters regarding the deliverables under service agreements.

2. A maximum rate of commission which is fixed, may not reflect or reward the effort required by an agency to sell or rent a property. This provides few incentives for that agency to service vendors with lower value properties, or properties which have unpopular or unusual locations, designs or other characteristics. While maximum commissions do not restrict the ability of agencies to deal with unusual characteristics, they do limit the attention agency staff can direct to other aspects of promoting a property, such as valuation and inspections by buyers or renters.

3. Fixed maximum rates of commission may encourage agencies to endorse bids for a property which are lower than vendors wish to achieve. In its 1992 report on residential property transactions, the Prices Surveillance Authority noted that fixed maximum rates of commission can create an incentive for agencies to pursue a sale or rental even if the price received by vendors falls short of expectations. A sale or rental at a lower price may reduce the dollar value of a commission. However an agency may still be better off supporting this option than maintaining a higher asking price if it perceives such a price delays a transaction and prevents timely payment of its fees.[27] Vendors do not share the same preference.

Provided vendors are aware of their right to negotiate the maximum downwards, the commission structure allows for the emergence of lower agency charges and facilitates direct price competition. In these circumstances, the costs to consumers may be relatively small. Nevertheless, anecdotal evidence obtained during the review suggested that vendors are not generally aware of their rights.

Overall, this suggests that the present system is inconsistent with the legislative objective and delivers a moderate net cost to consumers. However, the removal of a maximum commission has theoretical disadvantages for selected consumer groups that also need to be considered, these include:

- the potential for a substantial rise in commissions
- the potential for commission rate changes / redistributions detract from social equity by producing a rise that is higher in relative terms for lower income earners.

[27] See PSA, *Inquiry into Real Estate Agents Fees relating to Residential Property Transaction, op.cit.*,

Possibility of higher commission rates

Real estate agencies currently operate in a market with high levels of concentration, low price sensitivities, moderate to low barriers to entry and asymmetries of information. Deregulation might push commissions to higher levels even if existing rates already generate revenues sufficient to meet efficient costs. However, four factors suggest that substantial rises in overall rates of commission are unlikely in an environment with more flexible commission structures. There is little or no data to indicate that the level of rate increases, following commission liberalisation in other States, has been excessive, this point is discussed further below.

New South Wales removed set commissions from its relevant legislation in 1993. A written survey of its members conducted by the NSW Real Estate Institute, three months after maximum regulated commissions were removed, indicated that 52 percent of respondents were continuing to charge commissions at equivalent to or below the old scale, and the remaining 48 percent of respondents had increased their commission by no more than an average of four percent. A follow-up telemarketing survey conducted by the Institute six months later indicated that the proportion of respondents charging at the old scale or below had moved to 67.9 percent by November 1993. An independent survey conducted by the NSW Government's Real Estate Services Council in October 1993 showed a figure of 71.7 percent. The Institutes telemarketing survey results suggested that rates of commission had fallen in higher income metropolitan areas and risen in lower income metropolitan and non-metropolitan areas of the State.[28]

Investigations undertaken since 1993 discovered divergent charges in the market that preclude the measurement of how overall commissions have moved. In the absence of definitive measures of performance, NSW appears to have relied on numbers of consumer complaints to gauge the effectiveness of deregulation of maximum commissions. The fact that relatively few complaints have been received has provided justification for the State to maintain the policy.

The Victorian Real Estate Institute provided input to the review that following deregulation of maximum commissions in 1996, rates in Victoria have not risen appreciably; and while some changes have occurred to differentiate rates applying to low and higher value properties, the overall quantum of rises has been minimal.

The experience in New South Wales also helps to illustrate that the removal of maximum commission rates, accompanied by the introduction of a public education campaign, can provide benefits to consumers. In New South Wales, the removal of maximum commissions coupled with strengthening property demand increased competition between agencies by attracting more agents into the sector and producing more innovative service packages. These shifts coincided with the introduction of an intensive public information campaign by the NSW Government. The campaign required that agency outlets openly displayed to consumers the fact that commissions were negotiable and with considerable buoyancy in the property market. These changes in the market lead to greater innovation and greater price flexibility for consumers.

28 The Real Estate Institute of New South Wales, *De-Regulation*, Sydney, June-July 1994.

Higher rises for lower income earners

At present, a uniform rate of commission applied across the market may generate cross-subsidies. This may occur through rates applied to higher value properties yielding a return to agencies which is substantially higher than service costs, and these returns might be used by agencies to provide the vendors of lower value properties with a more comprehensive service than would otherwise apply. Regional or remote consumers may also experience higher rates of commission as there are a limited number of suppliers in these areas for the consumer to negotiate between.

Stakeholders to the review provided input that there is little difference in the methods and costs used by an agent in servicing a property worth $200,000 and servicing a property twice that value. However, the agent gets a larger return from servicing the higher value property.

Where control over rates of commission are removed, it is possible that those rates will decline for higher value properties (that are typically owned by higher income earners). This can be explained by a combination of one or more of the following factors:

- higher value properties can sometimes be sold with relatively little effort due to their superior features, locations, environments etc
- deregulation may shift the method for rivalry between agencies back towards price
- higher income earners are typically in a stronger position to bargain with agencies to achieve price discounts given a relatively high probability that they will have more extensive business experience and enjoy access to sufficient resources to obtain and compare offers from rival agencies.

Equally, it can be argued that where control over rates of commission is removed, those rates will increase for less valuable properties. The factors at work in this case include:

- lower value properties sometimes require special effort to sell
- agencies are often disinclined to focus on these properties given the lower dollar commissions involved
- lower income earners are typically in a weaker position to bargain with agencies to achieve price discounts given a relatively high probability that they will have limited business experience and fewer resources with which to seek and compare quotes from different agencies.

While lower income earners, or regional and remote consumers, may be more exposed to increases in commission rates, there are alternatives to legislation that can assist lower income earners in addressing this issue. For example, a public information campaign could inform consumers (vendors, buyers and renters) of their rights in negotiating prices with agents, and could require agents to disclose certain information to these consumers that would assist them in the negotiation process.

Maximum commissions on rentals

At present, supervision of repairs and maintenance provisions allow agents working with rental properties to recover costs agreed between the parties in writing, without a regulated maximum commission for these services. This practice usually results in revenue being received above maximum commission levels and effectively means the maximum commission rate for rental properties has been deregulated in practice for many years. The exploitation of this provision may represent a hidden cost to less astute consumers and circumvents the direct commission restriction. Overall this commission restriction is ineffectual in practice and therefore does not meet the objectives of the legislation. This would justify removal of the provision.

Maximum commissions conclusions

Maximum commissions present a greater cost than benefit to consumers including vendors, buyers and renters. While lower income earners may be more at risk to commission rate increases if maximum commissions are removed from the regulation, this issue can be addressed through other means than regulation. Therefore, there is a net benefit to consumers from the removal of maximum commission rates. It should also be noted that to minimise any potential negative impacts on consumers, the removal of maximum commissions should be coordinated with an effective public education campaign. Such a campaign should be commenced in a timeframe to allow it to take impact prior to the removal of regulated maximum commissions.

3.3.2 Industry

Impacts on industry (that is service providers currently in the market) from the different requirements of the Act are discussed in this section.

Queensland residency and age requirements

As discussed under section 3.3.1, there is little evidence to suggest that the requirements to reside in Queensland or be over 21 years of age have greatly impeded market entry by individuals or firms. Few applications are received by the Auctioneers and Agents Committee from interstate residents, or from persons under 21 years of age. Therefore these requirements do not appear to have a significant impact on competition in the market, and therefore do not have any significant impact on industry.

Good fame and character test

The Act's requirement to be of good fame and character and a fit and proper person places no additional cost on industry and has resulted in relatively few applications for a license or registration being rejected. This requirement does provide a small net benefit to industry through assisting to improve the industry's reputation from screening applicants with criminal history and preventing them from entering the market as a service provider.

Requirement for business premises

The current requirements for business premises place a cost on industry, however this cost may be borne by industry as part of good business practice, even without these legislative requirements.

The requirement to maintain suitable business premises may have the effect of limiting the ability of agencies to operate their business from lower cost residential premises. As discussed under section 3.3.1, businesses may be dissuaded from establishing a market presence if forced to sign expensive leases for commercial office accommodation.

However, this cost may be incurred by agencies in the absence of these restrictions in regulation. For example, agencies may choose commercial over residential sites due to the advertising and other advantages which commercial locations can offer in promoting vendor properties and an agency's brand name. If agencies prefer commercial sites as part of their normal business practice, the Act's provisions covering business premises does not impose an additional cost.

However, operators who choose to practice business from residential premises are required to have a separate office, entrance, parking and signage, which impose additional costs to these operators.

Business premises restrictions impose a net cost on industry to the degree that it impacts on businesses that would not choose commercial premises as part of their business practices.

The need for a license holder to be located in an agency's principal office imposes no net cost on industry. It does not restrict the ability of an established agency to expand into new geographic areas where offices can be administered by managers and salespeople, nor places a significant constraint on how agencies configure their overall staffing to meet the prevailing business environment. Table 3.1 indicates a substantial rise in agent numbers over recent years, which suggests that the costs of this kind of regulation to industry are minimal.

Table 3.1
Licensee and Registrant Numbers 1996-1999

License Type	1996	1997	1998	1999
Agents	5,651	5,982	6,088	6,346
Managers	166	156	138	113
Total	5,817	6,138	6,226	6,459

Source: Office of Fair Trading

License holders operating in the principal office of business contribute to the performance of a business through improved exchanges and processing of information. This requirement in the legislation therefore provides a small net benefit to industry.

License fee

License fees impose a cost to industry. The initial fee for a new license for real estate agents and managers is $426. Two or more licenses may be obtained for an initial fee of $726 and annual renewal fee of $703. Real estate salespeople face an initial registration and annual renewal fees of $97 each.

This cost is not thought to be significant to industry, as profitability levels of 8.3 percent are still being achieved across industry (as discussed in section 3.1.3).

Qualifications and work experience

The Act requires that applicants undergo a formal training course prior to licensing. The formal training course structured by Property Services Training Australia (PSTA) and the established course operated through TAFE and related systems both require that participants meet the direct cost of course entry. Total course enrolment costs are estimated at around $3,000, and involve around five to six months of part-time study. In recent years course failure rates have been no higher than 5 percent, indicating the course does not provide a significant barrier to entry, or cost to industry.

The Act also requires that an applicant for a license with TAFE qualifications have at least two years work experience. Those who have not successfully completed a TAFE course or PSTA designed course require at least five years experience as a real estate salesperson or work experience in another industry that delivers a similar competency. Barriers to entry from these requirements arise through the obstacles faced by applicants in gaining employment to acquire that experience with a real estate agency or other type of business that develops comparable skills. However, the substantial number of agencies in the market and reasonably high staff turnover rates both suggest that the Act's requirements in relation to work experience have had a minimal adverse impact in this regard.

High numbers of agencies and a constant supply of job vacancies create reasonable opportunities to gain employment within the industry for training purposes. Increased numbers of licensing applicants tends to give qualified support to this conclusion.

Added to the case that formal qualifications and work experience do not create a significant cost for industry, is the fact that the requirements applying in Queensland are similar to those in other States and Territories (which in recent years have adopted less stringent overall approaches to market regulation). As Table 3.2 illustrates, most jurisdictions around Australia have formal training courses similar in structure and content to those in Queensland. With the exception of South Australia, all have comparable requirements in terms of work experience.

Table 3.2
Formal Training and Work Experience in Other States and Territories
Real Estate Managers and Agents

State	Formal Training	Minimum Work Experience (years)
ACT	Diploma level (33 ACTRAC modules)	3
WA	Diploma or Bachelor of Commerce (property)	2
NSW	Diploma (31 ACTRAC modules) or Bachelor of Land Economics	2
TAS	Diploma (31 ACTRAC modules) or Bachelor of Land Economics	2
VIC	Certificate IV Business Agency Practice (24 modules)	1
NT	Agents Representative Course plus 18 ACTRAC modules	3
SA	Six months full-time or 18 month part-time course	None

Source: REIQ

Real estate agents, managers and salespeople must undertake the written test prepared by the Auctioneers and Agents Committee. This test does not impose a significant cost on these occupational groups as the applicant's preparation time and examination completion time is not cumbersome.[29] Nevertheless, a cost to industry is indicated as failure rates suggest that the test has limited, to at least some degree, the numbers of qualified salespeople entering the market. Evidence from the PSA indicates that between 1988 and 1992 Queensland's average failure rates for tests were as high as 24 percent for agents, 60 percent for managers and 20 percent for salespeople while more recent data from the Auctioneers and Agents Committee and Office of Fair Trading covering the period 1996-99 shows considerably lower rates averaging 10 percent across each operator category.[30] The latter rates may overstate actual failure rates given that unsuccessful candidates may do the test more than once in order to achieve a successful result.

The Auctioneers and Agents Committee's written examination provides a rudimentary screening of applicants for registration and is not designed to probe the depth of an applicant's commercial understanding. For practical purposes, the legislation therefore relies heavily on the supervision of salespeople in particular by more experienced managers and agents in order to ensure adequate levels of consumer protection. In the absence of formal obligations or directives under the Act by which effective supervision can be achieved much depends upon voluntary effort.

Despite the fact that the tests undertaken by agents, managers and salespeople are considered by the REIQ and others to be less than fully comprehensive, it provides successful applicants with a significantly higher degree of knowledge than non-applicants. This knowledge may substantially

[29] DEFT indicates that the salesperson exam incurs 15 to 20 minutes completion time plus a few hours study time and for a managers up to an hour is required to complete the exam and several hours study time.

[30] Prices Surveillance Authority Report, *Inquiry into Real Estate Agents Fees relating to Residential Property Transaction*, op.cit. p.116. Office of Fair Trading. Applicant preparation time and costs therefore rise but are still held to be relatively modest.

assist salespeople, managers and agents to avoid delays or complications connected with contractual and other aspects of the property sales or rental process.

Overall given the minimal cost to industry from qualification and work experience requirements, there is net benefit to industry from this requirement through more efficient business operation and avoidance of business mistakes that can be costly, such as delays or complications connected with the contractual process. It should be noted however that mandatory business management training (versus specific industry related content) undertaken by industry is considered to present a net cost to industry in isolation of other requirements, as discussed in section 3.3.1. Nonetheless a net benefit is seen for the broad requirement as a whole.

Relevant work experience for renewals

The Act requires agents and managers wishing to renew their license to have relevant work experience of at least one year in the past five years. This is to ensure that applicants who have been outside the market for an extended period are familiar with recent trends in market prices, advertising methods, changes to legislation or other factors impacting on service delivery. This requirement presents a benefit to industry.

Contractual Skills

Currently, the Act allows real estate agents and their sales staff to become involved in contractual aspects of real estate transactions. At present, there is no requirement for agencies to inform clients that they should seek independent legal advice.[31] The costs involved are the extra time and effort required by some or all staff to obtain a satisfactory level of legal skills, however, these appear to be relatively small.

However, the question arises of whether the Act provides agents and their staff with the opportunity to become involved in contractual aspects of a transaction but with insufficient skill to resolve important legal issues. It has been suggested that the Act enables agency staff with a limited knowledge of the law to become engaged in encumbrance, deposit and other legal aspects of a transaction with which they are not fully equipped to deal.[32] More particularly, it allows sales people with no formal qualifications and work experience to become involved in complex legal issues.

The Act does not require an agency to put in place formal arrangements for the supervision of sales people by agents or managers with (relatively) more extensive knowledge of the law. In situations where that salesperson is compensated mainly through commission, a commercial incentive exists for him or her to complete a transaction even if certain legal issues are not resolved to the complete satisfaction of vendors and buyers. The potential downside of this incentive structure is a financial cost, personal inconvenience and stress to vendors and purchasers, and financial risk for the business, if special clauses in contracts are unenforceable due to incorrect completion.

[31] OFT indicates that they support consumers obtaining independent legal advice before committing to any transaction.
[32] Discussions and written submission from Mr Tim O'Dwyer.

A number of important factors limit the degree to which these problems may arise:

- agencies apply 'plain English' Standard Conditions of Contract which have been approved by the Queensland Law Society
- agencies are, for the most part, called upon only to complete routine schedules within the contract
- the vendor and buyer are the only parties with the right to initiate and approve changes to the contract
- to the degree that agencies are involved in changing a contract, they often rely on standard wording for changes which has been approved by a qualified solicitor.[33]

The most contentious aspects of agency involvement in the legal aspects of a transaction centre on encumbrances. On occasion, this aspect of the contract may not be able to be completed at an early stage of the contractual process and agencies rely on the term 'search will reveal' as a temporary solution. The extent to which this adversely effects consumers is unclear but appears relatively small for three reasons:

- very few contracts appear to have been delayed through the use of the term
- a number of solicitors also resort to the term when involved in real estate matters
- few if any complaints have been lodged with Government which involve inexpert application of the Standard Conditions of Contract by real estate agencies.

For these reasons, the costs of current arrangements to industry are small. However it is noted that an improved market outcome may be obtained if a regulatory requirement is introduced to ensure salespeople undergo some formal training in relation to the legal and contractual aspects of transactions. It is likely that a short training course would generate a net benefit, presenting another level of risk management for the real estate business and greater protection for vendors and rental property owners.

Restrictions on letting agents

Restrictions on letting agents create an overall cost for industry operators. Real estate agents experience a cost through letting agents (the on site service provider) sometimes exploiting their privileged position through the use of inappropriate tactics such as prohibition to building access via control over security doors. Letting agents are disadvantaged through not being able to take possible cost cutting measures such as alternative residency and office locations, as well as access to economies of scale and scope arising from multi-complex management.
As discussed in section 3.3.1, there appear to be few justifications for regulating restricted letting agents in this way. This restriction places a net cost on industry.

[33] For example, REIQ issues to each of its member agencies a guidebook setting out the suggested legal terminology which might be used to effect a contractual amendment. The wording has been prepared by a qualified solicitor.

Maximum Commissions

Section 3.3.1 discusses many issues relating to maximum commissions in detail from a consumer perspective. From this discussion it is clear that maximum commissions present a net benefit to industry. In summary, the following factors support the net benefit the industry experiences from maximum commissions:

- maximum commissions help to establish a target to which all agencies can aim
- a high degree of uniformity in pricing across the market tends to push competition towards non-price factors (such as advertising) that consumers are poorly placed to evaluate given their lack of familiarity with the commercial structure of advertising media and limited exposure to how agents and their staff should operate in assisting vendors and buyers
- a rate of commission which is fixed irrespective of the effort required by an agency to sell or rent a property provides capacity for the agency to make abnormal profits on higher valued properties
- fixed maximum rates of commission places a greater emphasis on turnover (or frequent sale) of properties, not on achieving the vendor's sale price target
- as discussed under section 3.1.2, maximum commissions in Queensland adequately cover the agencies full cost of operation.

It should be noted that the amount of benefit to industry from maximum commission rates (uniformly adopted across the industry as the standard rate) will have differing effects on agencies with different cost and revenue structures. For example, rural area agencies may face a different set of input costs, median house and unit prices, and levels of demand, to those of their metropolitan counterparts, and may not benefit as much from maximum commission rates.

Industry also benefits from maximum commission rates on rental properties. As discussed under section 3.3.1, additional charges imposed by agents usually result in revenue being received above maximum commission levels and effectively the maximum commission rate for rental properties has been deregulated for many years.

Other industry operators

Agencies and insolvency accountants benefit through the Act protecting them against unlicensed operators including other accountants and solicitors who may wish to become involved in selling or renting real estate. Unlicensed operators who practice in the market place would enjoy a competitive advantage over licensed persons as they would not incur the same compliance costs as licensed service providers. As they are unlikely to possess the same competencies, unlicensed practitioners may also deliver inappropriate services resulting in costs to consumers and potentially bringing the industry into disrepute, lessening its reputation and thereby deliver moderate costs to licensed practitioners. Accordingly the exclusion of persons who do not meet licensing conditions delivers a moderate overall net benefit to licensed practitioners.

3.3.3 Government

The principal impact of the Act on Government has been to require expenditure on administering relevant systems of licensing and registration and the activities of the Auctioneers and Agents Committee. Substantial revenue to offset this cost has been generated through licensing and registration fees. Data provided by the Office of Fair Trading (OFT) for 1998-99 indicates real estate license and registration revenue of approximately $3 million from license fees and approximately $906,000 Government administrative costs allocated on a pro-rata license basis across all relevant markets.[34]

3.3.4 Base State Conclusions

Summarising the analysis presented above, a net public benefit is provided by the following elements of the Act, that support the objectives of the legislation:

- good fame and character tests
- the requirements for qualifications and work experience (other than training aimed at general business development) including requirements for license renewals
- the requirement of a licensed agent to be located in principal business locations
- exempting from the requirements of the Act accountants who become involved in real estate transactions as part of an insolvency case.

Across the stakeholder groups, a moderate net benefit can be associated with the first two provisions. The latter two provisions also provide a small net benefit across the stakeholder groups.

An NCP Public Benefit Test analysis does not support those provisions of the Act and its regulations dealing with:

- minimum age requirements
- Queensland residency requirements
- standards for premises set down by the Auctioneers and Agents Committee, relating to office entrances, parking and signage
- maximum commissions
- limiting restricted letting agents to a single complex, residing within that complex and having an office within that complex.

[34] This cost data includes OFT wages for license administration as well as the costs for the Auctioneers and Agents Committee and secretariat. It excludes OFT costs for consumer complaints and investigations.

Across the stakeholder groups, a small net cost can be associated with each these provisions except for maximum commissions which delivers a moderate net cost.

Overall, the base state delivers a small net benefit across stakeholder groups. An impact matrix is provided on the following pages to summarise these conclusions.

Table 3.3 Real Estate Impact Matrix – Base State

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Licensing Fees	✓	×	✓✓✓	✓	Distribution impact only.
Residency & 21 years of age	×	×	×	×	Little evidence of impediments to competition.
Good fame & character, fit & proper person	✓✓	✓	✓	✓✓	Prevents unscrupulous operators from entering the market.
Committee Test	✓	✓	✓	✓	Provides some additional skills to successful applicants.
Business premises	×	×	✓	×	Are potentially a significant impediment to market entry
License Holder in principal office	✓	✓	✓	✓	Helps to ensure adequate supervision of sales staff.
Experience Requirements	✓✓	✓	✓	✓✓	Important for sales staff supervision and to keep abreast of market practices.
Formal Training (market specific)	✓✓	✓	✓	✓✓	Ensure good business practice. Provides better service to consumer and minimises business risk.
Formal Training (general business)	×	×	✓	×	No direct link to real estate consumer protection can be established for general business training requirements.
Restricted letting agents (scope and location)	×	×	×	×	Restricts competition and does not allow letting agents to achieve cost reductions that could be passed on to consumers
Real estate activities of insolvency accountants	✓	✓	✓	✓	The activities of insolvency accountants are in the capacity of firm representative rather than as an external agent.
Maximum Commissions (sales and rental)	××	✓✓	-	××	The restriction moderately disadvantages consumers through reduced access and scope of services, particularly in remote and rural areas. Removal should be accompanied by a public education campaign
Legal Involvement	✓	✓	-	✓	Despite some problems, activities of real estate persons in legal contacts delivers cost savings.
Total Impact	✓	✓	✓	✓	**Overall, a small net benefit can be concluded.**

3.4 The Proposed Bill

The Department of Equity and Fair Trading provided details of the policy basis for a proposed new Bill. The table below summarises the potential changes to the Act.

Table 3.4
Comparison of Legislative Requirements

The Act	The Proposed Bill
Age 21	Age 18
Resident or live within 65 km of border	No requirement
Good Fame and Character	Suitability
Fit and Proper Person	Suitability
Suitable business premises	Registered office of any type
Maximum commissions (all real estate services)	Maximum commission for residential sales only
Auctioneers and agents test for salespeople	No requirement
Public trustee exempt	No crown exemption
Letting agents restricted to one building	Letting agents allowed to manage contiguous buildings
Academic test, qualifications and experience	Competency assessment option
No requirement	Time limit of 60 days on sole or exclusive agencies
No requirement	Employment register of sales people
No requirement	Principals and managers to supervise salespeople
No requirement	5 day cooling off period for unsolicited sales
No requirement	Increased information disclosure for marketeers
Beneficial interest provisions	Beneficial interest test

The proposed Bill includes a rationalisation of the various occupational licenses in the industry into a single base license. In addition, service providers will be given the option of obtaining a three year license, rather than renewing the license annually. Full details of the policy proposals are contained in Appendix A.

3.5 Impacts of the Proposed Bill

3.5.1 Consumers

The incremental impacts on consumers from the different elements of the proposed Bill are discussed below. Based on the analysis provided in the base state assessment in section 3.3, the following elements of the proposed Bill are not expected to have any significant incremental impact on consumers:

- the removal of the residency requirement and reduction in age requirement
- the retention of good fame and character, and fit and proper person tests.

Net benefit changes for the consumer

Allowing letting agents to manage contiguous buildings

Allowing restricted letting agents to operate in more than one complex should improve the process of competition by allowing the most efficient agents to expand their scale of operation where buildings are contiguous. These agents and the bodies corporate for whom they work will gain through some combination of higher letting rates and lower agent commissions arising from economies of scale and scope. There is little to indicate the degree to which multi-complex management will be taken up and therefore the degree to which the proposed Bill's provision to limit agents to contiguous complexes will inhibit higher efficiencies from being achieved. However, it is expected that changes will be more apparent for smaller complexes given that in this situation an agent can absorb additional responsibilities with a lower risk of exceeding his or her work capacity.

The degree to which the interests of bodies corporate and tenants may be harmed through a rise in market concentration should be manageable through contractual agreements that limit the period of an agent's appointment and specify conditions of employment.

Therefore a small net benefit is anticipated for consumers.

Sole or Exclusive Agency Periods

Under the proposed Bill, maximum time limits on sole and exclusive agencies are proposed. This would provide vendors with greater flexibility in their choice of agency and raise the prospect of extracting lower agency commissions or higher levels of service by being able to 'play-off' one agency against another more frequently (within a given time period). The fact that a vendor would be able to renegotiate a sole or exclusive agency agreement once it expires minimises any disadvantage faced by both agencies and vendors in developing and implementing a longer term sales or rental strategy. A small social cost of the change would be incurred in additional agency charges from negotiating agreements at more frequent intervals than may apply currently. However, this appears small given that a renewed agreement is often a simple extension of an existing agreement.

Overall, the proposed 60 day period delivers a moderate net benefit to vendors through increased competition.

It should be noted that several submissions received by the Review Committee have suggested that a 90 day rather than a 60 day upper limit may be appropriate. The Property Sales Association of Queensland (PSAQ) noted that 60 days provides insufficient time for agencies to obtain a listing, prepare quality advertising and signage, market the property to attract a wide-range of inquiries, give the seller accurate feed-back, make necessary adjustments to pricing and conclude a contract. A 90 day limit was also supported by Professor W.D. Duncan although his comments noted that 90 days may be needed only if the market was sluggish. However, the re-negotiation of an exclusive or sole agency arrangement once it expires can extend the overall period and should address these industry concerns.

Competency Assessments

The proposed Bill will require a relatively small number of competency units to be satisfied and will provide for levels of competency no higher than those currently in place. The competition effects of a shift away from formal training and work experience to competency standards as a criteria for licensing agents depend on the number of competency units to be applied.

The shift to competency standards should not markedly alter the number of licensed agents within the market although some increase can be expected given the fact that a competency-based approach provides people with greater flexibility in the methods through which necessary qualifications can be obtained. Consumer benefits may arise if levels of market competition increase, however the impact on market competition would be expected to be small.

Overall, a small benefit would be delivered across stakeholder groups from the implementation of this provision.

Business Premises

The proposed Bill intends to remove the requirement for real estate agencies in residential locations to have a separate entrance and discrete business area. This would see a reduction in price for consumers who use the services of agents operating from private residences. This reduction in entry barriers should encourage movement into the market by innovative agencies who offer the potential to deliver an improved price, quality and range of services to consumers. While a resultant reduction in the quality of premises may give rise to some costs in terms of less efficient or less effective transactions, such losses appear minimal. A small net benefit to consumers is anticipated and supports the legislative objective.

Increased information disclosure for marketeers

Duncan (1999) describes property marketeering activities of property developers as a system of property marketing where building unit prices are overstated and effective commissions are charged in excess of standard rates prescribed for other real estate transactions. Property marketeering usually includes significant amounts of advertising and marketing activities. These include flying potential investors from interstate or overseas locations to view premises and attempting to sign purchasers under contracts during their inspection visits. These conditions may include other high pressure selling tactics and do not provide consumers with a complete level of information disclosure required for informed purchasing. This issue may be addressed by the proposed Bill, as it would treat property developers/marketeers as it does real estate agents.

Bringing larger scale property developers/marketeers within a regulatory umbrella established by the proposed Bill raises a number of complex issues. As indicated by Duncan (1999), consumers who rely on the services of major property developers/marketeers tend to be those:

> "…with relatively few financial resources whose major assets appear to be a fully or partially paid off principal place of residence, who may have some funds for investment as a result of superannuation, but who are persons lacking the knowledge and experience in real estate investment of the previous group."

Such people are vulnerable to the sales methods used by developers/marketeers that centre on:

> " …a regime for the marketing of much more sophisticated investment products than the real estate alone based on borrowing against real estate and the creation of supposed tax advantages through negative gearing".[35]

Together with anecdotal evidence that developers/marketeers have inflated property prices and sales commissions, these two points suggest that consumers would gain from major developers/marketeers being covered by the proposed Bill.

However, care is needed before rendering a conclusion that the gains to consumers will be substantial. At least four factors suggest that the proposed Bill may have a lower than expected positive impact:

- the services offered by developers/marketeers go well beyond those of typical real estate agents to include investment advice and financial planning. These factors lie at the heart of most consumer complaints but may not be covered by the competency standards enshrined in the proposed Bill

- the proposed Bill will impose on developers/marketeers a maximum regulated rate of commission for residential sales. However, if rates share the same economic characteristics as those currently applying to other areas of the real estate market the proposed Bill may create additional distortions in the market

- a number of measures contained in the proposed Bill such as disclosure of information and the operation of trust accounts already apply to developers/marketeers through the *Land Sales Act 1984* and *Body Corporate and Community Management Act 1997*

- while the proposed Bill will impose on developers/marketeers a mandatory Code of Conduct it will be up to the licensed developer to apply and monitor the Code in respect of the actions of unlicensed salespeople. Under the proposed Bill, these people are not required to complete formal training or to have relevant work experience. As noted above, the adequacy with which these staff will be supervised, and the proposed Bill enforced, is open to question.

The proposed Bill will, however, bring incremental benefits to consumers. Amongst other things, it will make a broader range of consumers eligible for protection under the proposed Bill through cooling-off periods, information disclosure rules and professional indemnity insurance for marketers.

Removing maximum commissions on rental properties and commercial sales

The proposed Bill's removal of maximum commissions on rental properties and commercial sales should add to the welfare of consumers by helping to avoid the distortions to the market, as discussed under the assessment of the base state in section 3.3.

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35 Professor W. D. Duncan, *Submission to the Office of Fair Trading, "Marketeering" - Regulatory Options for Inclusion in Draft Legislation, op.cit.,* p.72.

However, it should be noted that this benefit will only accrue to renters, and vendors and buyers of commercial property. The benefit to consumers could be broadened if the maximum commission rate did not apply to residential sales (as discussed in detail in section 3.3).

Net cost changes for the consumer

Test for Salespeople

Consumer complaints currently received by DEFT centre on the ethical behaviour of agents and their staff. Therefore actions to remove formal testing for salespeople is likely to have a marginal adverse effect on consumers.

The removal of the test is not expected to increase the number of salespeople in the market, as the test is not thought relatively difficult to pass at the moment. Therefore, no significant benefit to the consumer is expected.

However, the removal of the test is expected to increase costs to the consumer. Removal of the formal test for salespeople would require greater supervision by a licensed agent to ensure consumer protection does not decrease and the objectives of the legislation are not compromised. Consumer costs may also increase if the agent fails to adhere to the proposed Bill's new requirements that the duties of salespeople should be clearly defined and carried out in accordance with a more stringent Code of Conduct.

Supervision of staff by agents is expected to impose an additional cost on the agent's business that may be passed on to consumers, due to a change in business practice. Much of sales staff contact with vendors and buyers currently takes place outside a real estate office, without the supervision of a licensed agent. This practice would need to change to meet the requirements of the proposed Bill and involve an agent accompanying the salesperson, which creates an additional cost for the business.

In the absence of very strict monitoring and enforcement by Government, the measures designed to replace a test may be less than fully effective. This kind of monitoring is resource intensive.

Overall, removal of formal test requirements for sale staff is expected to produce a net cost for consumers and does not support the legislative objective.

3.5.2 Industry

The proposed Bill involves the removal of residency requirements and the lowering of the age requirement. These requirements do not have a significant impact on the current market as discussed under the base state assessment in section 3.3.

Those service providers in industry that operate from residential premises will experience a net benefit from the removal of requirements to have particular facilities at the business premises. This will be a direct saving to these industry participants.

Competency requirements

The proposed Bill intends to replace current qualifications with competency assessments. The cost of this approach to industry are minimal provided the controlled-condition or on-the-job appraisals to gauge competency are conducted efficiently and effectively. Interviews with stakeholders confirmed this. Overall, change to encompass competency assessments will deliver a small net benefit to consumers without reduced consumer protection.

The introduction of competency assessment to replace qualifications and work experience should produce a net saving to businesses, as agents and staff can be assessed at their work location, decreasing the opportunity cost of attending formal training. This is expected to be a small benefit, as most formal training is currently undertaken on a part time basis.

Agents are expected to experience a net incremental cost from the removal of the requirement for sales staff to undertake formal training. This issue will either require greater supervision of sales staff, increasing business costs in this area, or expose agents to the risk of legal action if the conduct of salespeople is inappropriate. There may be a small benefit for agents in that they would have a wider choice of candidates for sales staff positions, but this benefit would not outweigh the costs.

Property developers/marketeers

Property developers/marketeers would face greater compliance costs under the proposed Bill as they would now be covered by the proposed competency standards for the first time. In some cases, property developers/marketeers may be unable to achieve the competency standards and will no longer be able to practice, resulting in moderate income reductions. Practitioners who satisfy the requirements will be insulated from the competition of previous rivals who would now be excluded from the industry. This would result in a transfer effect between these groups. The existing pool of business opportunities and consumer demand would now be shared between a smaller number of operators resulting in increased earnings for these practitioners. Regardless of this nominal transfer effect, it can be concluded that property developers/marketeers will incur a small net cost due to the imposition of competency standards.

The small net cost for property developers/marketeers will offset some of the moderate net benefits experienced by other practitioners. Overall, a small net benefit can be concluded for industry.

3.5.3 Government

Government is expected to benefit from the changes in the proposed Bill through a decrease in costs. The costs are currently incurred in monitoring aspects of the standards of real estate agency premises in residential locations, reducing consumer complaints, investigating breaches and formal testing of sales staff.

Government will experience incremental costs to the degree that the monitoring and regulating of developers/marketeers is added to its administrative workload and enforcement of a mandatory Code of Conduct is needed. The additional cost of processing developer's licenses is exceeded by the associated license revenue, therefore an overall small net gain to the Government is expected in this regard.

Currently the Public Trustee is provided an exemption under the current legislation. The proposed Bill intends to require Government agencies, including the Public Trustee, to comply with general provisions. The proposed Bill should have no material effect on the Public Trustee. It should not materially alter the willingness of the Trustee to perform real estate functions in its role as executor, nor entice it to move into more general real estate activity. Any impacts from this provision will be transfer effects only between two segments of Government.

Overall, implementation of the proposed Bill will deliver to Government a small net benefit.

3.5.4 The Proposed Bill Conclusions

Based on the above analysis, the following elements of the proposed Bill present a small incremental benefit over the base state, across the stakeholder groups, and support the objectives of the legislation:

- letting agents being allowed to manage contiguous buildings
- a time limit of 60 days being placed on individual, sole or exclusive agency agreements
- competency based tests which replace formal training and work experience, provided competency levels are no more onerous than those which apply currently
- bringing developers/marketeers within the scope of regulation proposed for real estate agents under the proposed Bill.

An NCP Public Benefit Test analysis does not support those provisions of the proposed Bill dealing with:

- the removal of requirements for salespeople to sit a formal test
- offering legislative exemptions to the accounting profession (at present insolvency accountants are not required to be licensed to sell real estate in the course of relevant duties).

The analysis presented earlier indicates that a moderate net cost can be assigned to the first provision and a small net cost assigned to the second provision across the stakeholder groups examined.

Overall, the reform option as a whole could be expected to deliver a small incremental net benefit across all of the stakeholder groups. An impact matrix is provided on the following page to summarise these conclusions.

Table 3.5 Real Estate – Impact Matrix - The Proposed Bill

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Competency Standards	✓	✓	✓	✓	Assumes standards that are no more onerous than those already in place.
Removal of residency requirements	-	-	-	-	No significant incremental impact expected.
Reduced Age Limits	-	-	-	-	No significant impact expected.
Retention of good fame and character and proper person test	-	-	-	-	No significant impact expected.
Lower Salesperson Qualifications	✗✗	✗	✓	✗✗	May aggravate the problem of salespeople with insufficient skills becoming involved in service delivery, if supervision is inadequate.
Multi-complex coverage of restricted letting agents	✓	✓	✓	✓	Allows for the development of economies of scale and scope.
Relaxing Business premises requirements	✓	✓	✓	✓	Allows innovative service delivery with lower costs without eliminating consumer protection benefits all together.
Regulation of developers/marketeers	✓	✗	✓	✓	Beneficial impact may be lower than initially expected.
Remove maximum commissions on rentals	✓	✓	✓	✓	Base state regulated commissions have been ineffectual.
No Public Trustee exemption	-	-	✓	✓	Achieves objectives of competitive neutrality.
Time limit on sole/exclusive agreements	✓	✓	✓	✓	Limiting sole and exclusive periods provides positive incentives for agents to act in a manner conducive to consumers.
Total Impact	✓	✓	✓	✓	**Extent of net benefit may be small if unskilled sales people enter the market in greater numbers.**

3.6 Negative Licensing

The negative licensing model used for this PBT is based on a framework for regulation limited to those aspects of the proposed Bill which impact on competition but relate to market conduct only. Therefore, aspects of the proposed Bill that relate to market entry, such as minimum qualifications and work experience, premises requirements and competency assessments are not included in the model, but market conduct restrictions are. Market conduct restrictions included in the negative licensing model are:

- time limits for exclusive agency agreements
- more precise descriptions of job specifications for salespeople
- more flexible methods of screening for character
- a mandatory Code of Conduct
- tighter conditions in relation to beneficial interest
- information disclosure by marketeers
- cooling off periods.

The analysis of the negative licensing model must incorporate the impacts from the removal of market entry barriers and the maintenance or introduction of market conduct restrictions. For example, some barriers currently deliver a net benefit to consumers and to market efficiency, and their removal will generate a cost. The strengthening of market conduct restrictions is aimed at overcoming the higher risks which consumers will face when regulatory barriers to market entry are removed. The margin of improvement over existing controls on conduct also need to be anlaysed.

3.7 Impacts of Negative Licensing

3.7.1 Consumers

In line with earlier findings and discussions, the removal of barriers to entry under negative licensing will produce mixed results.

The negative licensing model will have a negative impact on consumers from the removal of:

- good fame, character and fitness tests on service providers, which were discussed in previous sections as providing a net benefit to consumers through assisting to keep unscrupulous operators out of the market

- work experience and qualification requirements which currently provide consumers with a higher level of service and protect against financial risks.

The removal of these entry requirements presents a net incremental cost over the base state to consumers and does not support the objectives of the legislation.

As discussed in previous sections, removal of the following entry requirements would present no impact, or a net benefit, for consumers:

- minimum age
- Queensland residency
- business premises requirements
- restrictions on letting agents to a single building complex.

The task of weighing up these competing effects is complicated by the fact that little evidence is available to assign precise weights to each barrier to entry. However, based on available data, it is expected that removing regulatory barriers will detract from overall consumer welfare and market efficiency. The principle reason for this is that requirements such as tests, work experience and specific training, appear to have a greater impact on the functioning of the Queensland real estate market than requirements relating to types of premises, restrictions for restricted letting agents and general business training.

As consumer protection would be significantly reduced from the loss of all entry barriers, negative licensing would require conduct provisions with equally significant benefits to consumer protection to be justified as an appropriate reform outcome. The discussion of impacts expected from the proposed Bill in section 3.5 suggests that this is unlikely.

A stricter time limit governing sole or exclusive agency agreements will increase scope for market competition but does little to protect consumers from unscrupulous or unskilled service providers. Protection of this kind might be enhanced through the combined impact of the proposed Bill's provisions covering more precise job specifications for salespeople, a mandatory Code of Conduct and greater flexibility in the way that agents screen the character of their employees. However, a positive contribution from these measures hinges on effective supervision from licensed agents and improved regulatory enforcement by Government, neither of which are guaranteed under the negative licensing option.

Tighter conditions in relation to beneficial interest, information disclosure and cooling off periods rely on the same factors for their success, and may have a limited positive impact due to a lack of Government monitoring and agent supervision. They may also be unworkable if consumers continue to rely on agencies for provision of the information they need. New conditions for information disclosure and cooling-off periods may not be fully effective if the supply of relevant material continues to originate from agencies who may also be in a strong position to influence consumers' approach to that materials' interpretation. Therefore, negative licensing may ultimately rely to a far higher degree than applies currently on consumers taking direct action against agents through the courts, or the licensing authority. Such action is costly and time consuming and is generally considered inferior to regulation that focuses on preventing problems from emerging in the first place.

These points suggest that negative licensing fails to satisfy PBT requirements of meeting the objectives of the legislation. The question of whether it would pass those guidelines if a public education campaign is introduced to complement the model is more difficult to determine. Greater education might enable a consumer to extract a more commercially competitive contract from an agency, but does relatively little to overcome the fundamental problem of how consumers can differentiate between reliable or unreliable sources of information and service providers. Therefore, negative licensing is inferior to the base state as a regulatory option.

3.7.2 Industry

Industry would benefit from negative licensing in the sense of having greater freedom to select its sales staff and by no longer being required to meet the Act's requirements in relation to regulatory barriers to entry. With respect to age and residency, the impacts would be negligible. However the elimination of business premise standards, formal testing and qualification requirements may deliver moderate compliance savings.

The removal of licensing requirements would also enable the entry of service providers who lack the full range of competencies previously required to obtain a license to practice. These persons may deliver inappropriate services to consumers, potentially bringing the industry into disrepute. These persons would also enjoy a competitive advantage in the short run until existing service providers can eliminate any inefficient resource allocations previously required under legislation. These considerations carry a small net cost for industry as a whole.

Due to these conflicting impacts, only a small overall net benefit can be concluded for industry from the introduction of negative licensing.

3.7.3 Government

Government would gain in terms of lower administrative outlays by no longer being required to administer character tests, licensing and registration schemes and conditions for premises. Losses will be incurred to the degree that revenue from license and registration fees will decline and enforcement of a mandatory Code of Conduct is needed. A significant net loss will occur for the Office of Fair Trading given that real estate license and registration revenue of approximately $3 million will be foregone while administrative costs savings of approximately $906,000 will be achieved. Government will also face the impact of increased financial costs from undertaking public education campaigns.

Significant additional costs may also be incurred should negative licensing increase the number of consumers complaints which must be dealt with through the courts or other avenues of adjudication.

3.7.4 Negative licensing conclusion

Negative licensing only strengthens consumer protection and efficient market outcomes to the degree that it reduces the scope for service providers to engage in inappropriate conduct after gaining market entry. As negative licensing carries the same conduct restrictions as the Bill, the findings presented in the previous section still apply.

The fact that it ignores the value of pre-emptive action to protect consumer interests means that its approach must rely on methods for resolving, rather than avoiding, situations in which the market delivers inappropriate outcomes. The available evidence suggests that by removing a number of barriers to entry that now benefit consumers, this alternative will disadvantage consumers.

This arises from a combination of two factors:

- barriers as a whole tend to yield a net social benefit
- strengthened regulations governing market conduct may yield lower than expected results due to enforcement problems.

An NCP Public Benefit Test analysis does not support the removal of all barriers to entry. Small and moderate incremental net costs can be assigned to the removal of licensing fees and other barriers respectively. In conclusion, the overall impact across stakeholders groups is a small incremental net cost and a reduction in support for the objective of the legislation. An impact matrix is provided on the following page to summarise these conclusions.

Table 3.6 Real Estate Impact Matrix – Negative licensing

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Social Benefit	Comments
	Consumers	Industry	Government		
Time limit on sole/exclusive agreements	✓	✗	✓	✓	Increases opportunities for agency competition without diminishing the option of renewing agreements.
Agency staff selection	✓	✓	✓	✓	Delivers a small net benefit to all stakeholder groups.
Mandatory code of conduct	✓	✗	✗✗	✓	Little is known on what the code will contain.
Removing license fee	-	✓	✗✗	✗	Removes financial support for monitoring and enforcement activities.
Removing existing barriers to market entry	✗✗	✓	✗	✗✗	Places a heavy delegation on Government to enforce.
Total Impact	✗✗	✗	✗	✗	**A small overall net cost can be concluded.**

3.8 The Hybrid Model

The analysis of the base state and the various alternative regulatory options in this chapter indicates the overall net social benefit or cost of the various regulatory provisions. Using these results, it has been possible to develop a hybrid form of positive licensing which will deliver the greatest net public benefit. The hybrid model would contain the following provisions:

- relaxation of age requirements
- removal of residency requirements
- maintaining character and fitness tests
- remove business premises requirement
- maintain requirement for license holder to operate at principal office
- a time limit of 60 days being placed on individual or sole exclusive agency arrangements
- removal of the managers license which will be rationalised into the general license
- introduction of competency standards including recognition of prior learning[36]
- bring developers/marketeers within the scope of the legislation
- requirement that agents can act for only one party
- retaining the requirements for salespeople to sit a test by the licensing authority
- removing maximum commissions on sales and rentals subject to monitoring and transition arrangements
- restricted letting agents being allowed to manage contiguous buildings.

Each of the above provisions has been found to deliver a small incremental net benefit across stakeholder groups (with the exception of character and fitness tests which deliver moderate net benefits). Overall a small net benefit, of greater magnitude than the proposed Bill option, can be assigned to the hybrid model.

An impact matrix is provided on the following pages to summarise these conclusions.

[36] License renewals would still require at least one years relevant work experience in the past five, else a full demonstration of competency would be necessary as per the requirements for new applicants.

Table 3.7 Real Estate Impact Matrix – The Hybrid

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit
	Consumers	Industry	Government	
Relax age requirements	✓	✓	✓	✓
Remove residency requirements	✓	✓	✓	✓
Maintain character and fitness tests	✓✓	✓	✓	✓✓
Remove business premises requirement	✓	✓	✓	✓
Maintain requirement for license holder to operate at principal office	✓	✓	-	✓
Restricted letting agents be allowed to manage contiguous buildings	✓	✓	-	✓
Real estate activities of insolvency accountants	✓	✓	✓	✓
Retaining the requirements for salespeople to sit a test by the licensing authority	✓	✓	-	✓
Introduction of competency standards including recognition of prior learning	✓	✓	✓	✓
Bring developers/marketeers within the scope of the legislation	✓	✗	✓	✓
Remove maximum commissions on sales and rentals subject to monitoring and transition arrangements	✓	✗	✓	✓
A time limit of 60 days being placed on individual or sole exclusive agency arrangements	✓	✗	-	✓
Total Impact	✓	✓	✓	✓

3.9 Stakeholder Positions

Consumers

The views of the Queensland and Brisbane Consumers Associations and the Financial Counselling Association of Queensland, which represents consumers, accord with a number of the report's findings. These associations consider that

- regulatory requirements relating to age and residency may not be significant for consumer protection
- requirements for character, qualifications and work experience are fundamental and cost effective measures for improving consumer and community welfare
- negative licensing would see a rise in consumer complaints and have important adverse implications for the operation of the Fidelity Guarantee Fund
- developers/marketeers should be brought under a regulatory umbrella
- more stringent requirements in relation to industry conduct would be highly resource intensive to monitor and investigate. As a result, more stringent conduct provisions contained in a mandatory Code of Conduct may be difficult to enforce. A lack of adequate enforcement is a fundamental problem with the current Act.

These associations also feel that maximum commissions can be clearly justified on cost-benefit grounds, particularly in rural areas where competition between real estate agencies is at its most restricted. They consider that commissions will increase if deregulation of maximum commissions occurs as a result of the anti-competitive structure of the Queensland market. Associations feel that maximum commissions protect both high and low income earners given that even 'sophisticated' consumers may be involved in real estate transactions at infrequent intervals and are vulnerable to deception.

Nevertheless, while these associations considers that maximum commissions should be retained, they recognise distortions to the market can arise as a result. For example, maximum commissions may prevent a vendor from achieving a quick sale by limiting the amount that can be paid to agencies to promote a property, and uniform commissions may give rise to unequal treatment of agencies in certain high-cost geographic locations.[37]

These associations emphasised that entry by untrained salespeople into the market could significantly increase the exposure of consumers to commercial risk and that consumer education campaigns may not be sufficient to address the problem. They also indicated that salespeople should not be involved in contractual matters unless relevant training modules have been completed. However, competition between agencies and solicitors should be retained, possibly through regulation stipulating that suitably qualified agents (and not untrained salespeople) should be the only people within an agency allowed to become involved in contractual matters.

[37] Data taken from an interview with the associations.

Industry

The views of the Real Estate Institute of Queensland accord with the findings of this chapter in so far as the Institute supports positive licensing which encompasses tests or standards for skill and character prior to agents and salespeople entering the market. The Institute believes that qualifications and work experience set down in the Act generate a net social benefit and do not detract significantly from market competition. A shift to competency standards should improve the gains that are generated. Real estate salespeople should be permitted to become involved in legal matters without the necessity for special training. The Institute holds that sole and exclusive agency agreements should be limited to 90 days, rather the 60 days suggested under the proposed Bill. Finally, the Institute supports the notion that if maximum commissions are removed, better exchanges of information between consumers and agencies and a public education campaign should be introduced to assist consumers. However, removing maxima is not dependent on these measures being introduced. Although support is given for the removal of maximum commissions, the rationale given by the REIQ is based on the argument that maximum commissions have resulted in agencies generating revenues that are insufficient to meet their legitimate costs. It questions whether movement in the CPI is an accurate measure of shifts in agency costs particularly in view of recent increases in costs to agencies arising from superannuation obligations, fringe benefit tax, government financial institution fees and awards for real estate salespeople.[38]The REIQ supports the removal of maximum commissions for property sales and rentals.

The position of the REIQ differs with the findings of this report on several important points. The REIQ believes that the Act's current provisions governing the standards for real estate premises are justifiable mainly on the basis that high quality premises improve the general image of the industry. A positive image allows consumers to be confident that whatever agency they choose will be reliable, and therefore reduces consumer search costs

The REIQ does not consider that the removal of existing regulations covering restricted letting agents can be justified. Its justifications for this fall into four main categories:

- specialising in a single complex does not provide an agent with adequate expertise in relation to matters such as trust fund management
- bodies corporate are not well placed to assess whether an agent would be overstretched if allowed to operate in more than one building complex
- developers/marketeers sometimes assign letting rights prior to the formation of bodies corporate whose control over agents is therefore limited
- the existing regulations do not inhibit competition because unit owners are free at any time to have their units let by a licensed real estate agency.

If letting agents are to be allowed to operate in more than one building complex, then some form of training/competency standard must be achieved. It is inequitable that real estate agencies must have a license to let a holiday unit when restricted letting agents are not.

[38] REIQ Submission.

The views of the Queensland Resident Accommodation Managers' Association (QRAMA), which represents the interests of restricted letting agents, are in line with the findings in this report in terms of the Association holding that:

- regulatory barriers to entry have been of significant assistance to consumers
- these barriers have had a minimal adverse effect on competition
- removing the 'one-complex' rule will generate significantly higher efficiencies in terms of economies of scale and scope
- bodies corporate should be left to determine if the restricted letting agent needs to live on site and what kind of office accommodation he or she requires.[39]

The Property Sales Association of Queensland (PSAQ) Union of Employees, which represents the interests of real estate agency staff, has raised in its submission a number of important issues. The views of PSAQ accord with the findings in this report on the following points: qualifications and work experience are significant net positive contributors to the welfare of consumers; the removal of maximum commissions will improve the efficiency of the market but may need to be bolstered by improved exchanges of information between vendors and agencies in order for consumers to be adequately protected; and, developers/marketeers should be brought within a regulatory umbrella.

Several points raised by the Association also support the analysis undertaken in the report. Principal among these is that the difficulties faced by Government in enforcing regulation has reduced the effectiveness of the Act. By extension, this point supports the view taken in the report that measures to strengthen the regulation of market conduct are unlikely to yield a significant social benefit if exiting enforcement procedures persist. PSAQ indicated that removing maximum commissions was likely to raise commissions at the lower end of the market for people least able to afford it. However, in similar vein to the approach taken in this report, it argued that these disadvantages would be more than offset by deregulation improving the quality of service which consumers would receive.

The views of PSAQ differ from those in the report in terms of the revenue which agencies have generated from maximum commissions. The Association holds that maximum commissions have restricted revenues to levels below the costs which agencies would have chosen (to provide a higher quality of service to vendors) due in part to general cost increases arising from agencies having to invest in information technologies and make higher contributions to employee superannuation. It also contends that a 60 day limit on individual sole and exclusive agency agreements is too short to allow agencies to properly implement selling strategies.

The Association notes in its submission that the principal problem facing agencies and consumers stems from untrained salespeople. Coupled with its comments on the difficulties faced by Government in enforcing regulation, particularly for market conduct, the implications are that negative licensing will not benefit consumers even if supplemented by public education, prices surveillance or other measures.[40] Difficulties arising from a lack of training and supervision of salespeople is a matter given considerable importance in the report.

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39 QRAMA Submission.
40 Submission from PSAQ.

A submission by Professor WD Duncan noted that a strong case existed for the removal of maximum commissions. In support of this position the following points were made: there is a culture of not negotiating or not allowing negotiation of commissions and fees for residential sales; real estate agents tend to set the commission for residential sales at the maximum allowable under the regulations and simply intimate to consumers that this is a set fee or charge; and, improved public education would help to ensure against rate rises if maximum commissions are removed. Professor Duncan concluded that "I am at a loss to understand why deregulation of commission for residential real estate has not yet occurred. Just because it is advocated strongly by the real estate industry body (REIQ) does not necessarily mean, in my view, that commission on residential real estate would rise."[41]

The Unit Owners Association of Queensland stated in its submission that it was "…not aware of any single benefit to unit owners that might come about by deregulation [of maximum commissions on rental]…" and that the matter "was of great concern...". Many unit owners were distressed by the practice of letting agents charging for services on a percentage basis when the costs of service provision may lie below the costs which letting agents actually incurred. The Association felt that if deregulation occurred, rates of commission would increase appreciably. It also indicated that agents were unlikely to be allowed by bodies corporate to extend beyond the management of a single building complex if current regulations were relaxed, given that:

> "the nature of the letting business in a building frequented by holiday makers requires an on-site person to conduct business as stays are usually of a short duration."

The Urban Development Institute of Australia noted in its submission that (positive) licensing should be retained as a feature of regulation. It argued that existing entry requirements imposed through regulation do not unduly restrict competition. It supports the deregulation of commissions in all spheres of the real estate sector because vendors and buyers were significantly adversely affected by the current regulated commission rates. Importantly, it felt strongly that deregulation "would inevitably lead to the introduction of lower rates through the operation of market forces". Deregulation of rates of commission would also promote innovation and foster competition between various agencies to provide a better level of service for the rates charged. To assist consumers in adjusting to deregulation, the Institute believes that a public education campaign is needed.

The National Association of Exclusive Buyer Agents, which represents real estate agencies who act for buyers only, noted in its submission that deregulation of regulated maximum commissions had taken place in other States with "little or no adverse consumer disadvantage". Regulation has prevented agencies from delivering a broader and more sophisticated range of services and encourage a system of cross-subsidies whereby vendors with commercially more attractive properties are assisting other vendors. The Association's submission implies that deregulation will result in higher agency commissions. It argues that existing commissions have unduly constrained average agency incomes and profitability.

The Queensland Law Society noted in its submission that "…the continuation of regulation of commissions is inconsistent with other policy and there appears to be no evidence of consumer benefit". It also noted that requiring developers/marketeers who are involved in six transactions per year to be licensed will be difficult to enforce. The Society argues that:

41 Submission from Professor W.D. Duncan.

> "…given the rigorous training in law that solicitors receive in the course of gaining professional qualifications an exemption from the licensing requirements should exist for solicitors because it is inappropriate for solicitors to be required to re-qualify as real estate agents in order to obtain a real estate agent's license."

However, it advocated that this occur subject to the conditions that the solicitor be admitted as a solicitor of the Supreme Court of Queensland, the solicitor have at least five years experience in professional practice and the Queensland Law Society introduce specialist accreditation for Property lawyers so that any educational and practical experience could be met by holding accredited specialist status. The Society's position on solicitor exemption conflicts with the approach taken in this report.

The Institute of Chartered Accountants in Australia argued in its submission that licensing under the Act and the proposed Bill reduced consumer search costs and were not "materially uncompetitive". It considered that the current situation in which only insolvency accountants are able to sell real estate (in the course of relevant duties) is unduly restrictive and requested that accountants be expressly exempted from licensing requirements if acting for clients in the acquisition or sale of businesses. It considered that any requirement for accountants to refer clients to real estate agents is economically inefficient in many circumstances, contrary to the objectives of NCP and inconsistent with the high level of skill held by accountants in relation to "their knowledge of the client's business, the markets in which they operate, opportunities for expansion and so on." The Institute noted that such restrictions do not operate in New South Wales. It recommended that accountants be able to act in the purchase or disposal of businesses but only if accountants were prohibited from advertising for listings and advertising guidelines were clearly defined. Providing non-insolvency accountants with an exemption from regulation conflicts with the approach taken in this report.

In a private submission Mr Michael Iverson, a certified practising valuer and real estate agent, noted four points from his recent research into the market and the way in which it is regulated:

- the Auctioneers and Agents test fails to assess basic competencies
- vendors generally believe that they are disadvantage by regulated maximum commissions
- vendors believe that they can negotiate more effectively without such regulation
- most consumers believe that maximum commissions are set by the REIQ rather than Government.

In its submission, the Investors Club, which represents a number of investors in the real estate market, noted that licensing was not required given that "licensing requirements are not consumer oriented and do not cover the basic supply/demand influences on price, various construction problems, property tax deductions or the need to give full local comparative sales." It argued strongly that regulated maximum commissions should not continue and that a public education campaign was not required. Regulated commissions had stifled innovation within the industry.

The Club considered that investment advisers like accountants were ".. mostly ignorant about the true benefits and costs of property".

Government

The Auctioneers and Agents Committee made a number of points in its submission. These included:

- current regulatory requirements governing market entry do not materially restrict market competition
- the current licensing system constitutes a valuable form of consumer protection
- regulated entry requirements are sufficiently objective, with the exception of premises requirements for real estate
- the Act's current residency requirement should remain in place to allow effective control of the industry by inspectors
- regulating developers/marketeers has the advantage of giving consumers added protection
- sole or exclusive agency agreements should be restricted to 90 days but only for properties valued up to $500,000
- existing standards for premises can be justified on the basis of providing an indication to consumers of whether an agency is reputable and allowing agents to be contacted in the event a consumer complaint arises
- regulated commissions have not generated agency revenues sufficient to cover efficient agency costs
- regulated maximum commissions should be retained but the rates increased to 5 percent for the first $40,000 and 2.5 percent on the balance
- deregulating commissions would give rise to social inequality by disadvantaging lower income earners
- the effectiveness of consumer education campaigns is questionable.

The Committees views differ from those set out in this paper by:

- clearly advocating retention of maximum commissions
- arguing that such commissions may be justified on the grounds of social equity
- indicating that such commissions have provided agencies with inadequate income
- suggesting a net social benefit for the regulation of premises
- advocating a continuation of Queensland residency requirements
- limiting 90 day agreements to properties up to $500,000 in value.

4

Auctioneers

4.1 Market Profile

4.1.1 Market Structure

Auctions facilitate the sale of the following products through a process that encourages competitive bidding by prospective buyers:

- livestock
- real estate
- stock in trade
- furniture
- fittings
- personal effects
- boats
- motor vehicles
- machinery
- farm produce products, wool, tobacco, etc
- other items.

In accordance with the provisions of their license conditions, the auction process may be conducted by general auctioneer, restricted auctioneer, provisional auctioneer or pastoral house auctioneer license holders. The duties and responsibilities of these persons are discussed in this chapter.

The auction process is aimed at facilitating the sale of goods of uncertain quality by compensating buyers with a lower price than standard market rates payable elsewhere.[42] In some instances the quality of goods purchased may be superior, inferior or equivalent to goods purchased through normal retail outlets or in other settings.

Catalogue listings, provided for auctions, deliver no certainty that the description of the goods is true or accurate. Each item is provided with a limited quantity of space in which the goods are described. The key purpose of providing a catalogue is to identify and describe the goods. An opportunity is provided prior to auction for the public to inspect and evaluate the quality of goods.

Auction houses make no representation whatsoever surrounding the quality of goods for auction. To this end, a stipulated term and condition of sale for the majority of auctions conducted is that the state in which the item is sold is suitable for restoration, re-conditioning or wrecking only.[43] The market practice is for the terms and conditions of auctions to be read out loud by the auctioneer at the beginning of the auction, and for a printed version to appear on the reverse side of auction cards. These two mechanisms serve to inform the potential buyer that there is no guarantee of the good's quality.[44]

[42] Compensation is provided for the risk that goods will be of lower quality than they appear and for the loss of normal retail trading protection mechanisms.

[43] Obviously this consideration does not apply to goods such as certified fine art or vacant land.

[44] An historical exception was noted during consultation regarding fine art works, which traditionally may be appraised by an in-house expert at the auction house or an independent third party to certify the validity of goods. Q-fleet vehicles sold at auction by the Public Trustee are an additional exception as a warranty (often balance of original manufacturers warranty) is provided.

Any purchases at auction of unwanted items are not required to be refunded by the auction house or the vendor. While goods sold at auction are covered by the *Sale of Goods Act* and must be of 'merchantable quality' there is no quality assurance beyond this level.[45] Although potential buyers are informed of the price at each bid and are not required to continue bidding, the general uncertainty of this process is a contributing factor to the perceived risks incurred by potential buyers.

The services provided by auctioneers include:

- inspection and cataloguing of items for auction
- arrangement of advertising and other marketing for the event
- development of specific conditions of sale
- setting of reserve prices in consultation with vendors[46]
- arranging goods and making them available for inspection
- conduct of the auction process.

ABS business register figures indicate that there are approximately 963 offices of auction houses in Queensland, 417 (43 percent) of which are located in the Brisbane statistical sub-division.[47] Consultation indicated that 70 to 80 major chattel auction houses[48] would represent a high proportion of the total number of outlets. The general distribution of auction services across other areas in the State is strong with at least one auction house in each statistical sub-division and all but three areas carrying at least five auction houses.[49] This delivers sufficient access to auction services in remote and rural areas, although due to a lack of demand, full time general auctioneers are not required in all locations. In these areas, stock auctioneers and real estate agents are used, depending on the goods placed for sale.

Table 4.1 below shows the auctioneers' licenses held in Queensland.

Table 4.1
Numbers of Auctioneers' Licenses

Year	Auctioneer (including general and restricted)	Provisional Auctioneer	Pastoral House Auctioneer
1995/96	1,694	231	72
1996/97	1,637	202	67
1997/98	1,620	160	51
1998/99	1,555	166	49

Source: Department of Equity and Fair Trading

45 Electrical goods are required to be tagged to indicate whether or not they have already been or should be tested by an electrician.

46 In addition to the expertise required to set appropriate reserve prices, a full range of valuation services are often provided under the same roof as an auction house. This business structure is also reflected in the market by a common professional association, the Auctioneers & Valuers Association of Australia.

47 The ABS data uses ANZSIC code 7869 "Business Services n.e.c". Although the primary activities under this code relate to auction services it also includes some other activities and is therefore only an approximate measure for the industry.

48 Consultation revealed that 15 to 20 of these would be located in Brisbane.

49 Beaudesert Shire (1), South West (3), Central West (1) and North West (2) have less than 5 auction house offices.

Auctioneers and their respective auction houses generally operate within one or a number of fields of specialty defined by the size, quality, and most importantly the style of goods to be sold. Some auctioneers specialise in industrial and commercial goods as a result of commercial links with wholesalers and manufacturers who view auctions as an effective and efficient means to dispose of surplus stock. As much as 50 percent of chattel auction house items may be sourced from the repeat business of receivers, insolvency accountants and mining companies whom often maintain panel provider arrangements. This market structure provides a strong incentive to maintain quality practices.

Stakeholders to the review provided input that it is not uncommon to see a practitioner conduct an auction outside their standard geographical area (if the financial remuneration involved is appropriate). Indeed, on site auctioneers carry the lowest fixed business requirements of any of the occupations under review, and as a result can be considered the most mobile. With regard to the scope of practice, competition is such that operating outside traditional specialty areas is impractical.

Vendors assign considerable importance to the market reputation of auctioneers (particularly in rural areas) which is transmitted by informal word-of-mouth mechanisms. This consideration is an important factor in natural market forces maintaining the integrity of the occupation.

4.1.2 Market Conduct

The processes involved in selling or purchasing goods through a traditional auction sale involve a number of considerations in addition to those prescribed under the legislation.[50]

From a purchaser's perspective, involvement in the process usually requires pre-registration with an auction house (in return for which they receive a bidding card[51]) and potentially the payment of a small fixed refundable deposit (i.e. $100) to avoid successful bidders exiting without collection and payment for goods. The auction house may also register participants and provide facilities to accept bids by phone.

The auction process itself commences with the auctioneer referring bidders to the relevant catalogue item number on their program. The bidding progresses by raising a bid card or making another gesture in recognition of the current price, this continues until the good is sold. If the highest obtainable bid does not exceed the reserve price, then the auctioneer may seek instructions from the vendor. If the vendor will not sell the item below the reserve price, it will be "passed in" without a change of ownership. The highest bidder at auction is afforded the first opportunity to negotiate with the vendor for the purchase of the good at an alternative price.

On-line auctions differ considerably from traditional auctions. Under an Internet auction the process of bidding may continue for many days, weeks or months, and it is normal practice for only the most recent bid to appear without a specific date of lodgement. As a result, potential bidders face limited

[50] Under the Act, sale by auction "implies the sale of any property whether real or personal of any kind or description by outcry, knocking down of hammer, or any other mode under which the highest or any bidder is the purchaser, or under which there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction".

[51] On one side of the bidding card is a registration number to facilitate identification of the bidder. On the reverse side of the card are the terms and conditions by which the auction is being conducted.

information disclosure regarding the size and interest of the market or the expected timing for the process to be finalised. On-line auctions present difficulties in defining their location and therefore the relevant regulatory jurisdiction; this provides a competitive advantage where service providers can avoid licensing requirements.

Auctioneers serve two distinct sets of consumer groups:

- vendors, who place the responsibility for the sale of their goods in the hands of auction houses or sole trader auctioneers. Vendors pay a negotiated percentage commission of the final sale price to the auction house or individual auctioneer; this encourages the auctioneer to achieve the highest possible sale price for the vendor

- buyers, who interact with auctioneers during the goods inspection and bidding process. In some instances a buyers premium is charged to the purchaser of the goods.

4.1.3 Market Performance

As a general indicator of performance outcomes, an examination of complaints and disciplinary action data provides a useful measure of the level of consumer satisfaction with the services provided by practitioners in the industry.

In 1998/99 disciplinary action taken by the Auctioneers and Agents Committee (separate to those received by the Office of Fair Trading) featured one action against a general auctioneer, one action against a provisional auctioneer/real estate salesperson, and one action against a general auctioneer/real estate salesperson. In all three instances the charges were proven, resulting in cancellation of licenses and/or fines for the auctioneers involved. These actions, compared with the total number of auctioneer license holders (of over 1,700) suggest relatively low levels of consumer dissatisfaction.

The Department of Equity and Fair Trading supplied the following statistics on the number of complaints to the Office of Fair Trading regarding auctioneers and agents services.

Table 4.2
Complaints Received by the Office of Fair Trading

Year	Auctioneer & Agent Services Complaints
1997	67
1998	36
1999	23

Source: Department of Equity and Fair Trading

A comparative analysis of the number of these complaints, versus the number of auctioneers' license holders, reveals approximately 0.04 complaints per auctioneer in 1997 and 0.01 complaints per auctioneer for 1999, both relatively low levels. Although complaint numbers may understate the real level of consumer dissatisfaction within the market if consumer concerns are not translated into action, the data suggests that the market currently provides a reasonably high standard of service.

4.2 The Act supporting the Base State

The Act defines an auctioneer as "any person who sells or attempts to sell or offers for sale or resale any property whether the property of the auctioneer or of any other person by way of auction." The legislation requires that "no individual shall act as or carry on the business of an auctioneer, or advertise, notify or state that the individual acts or carries on the business of an auctioneer" unless they are the holder of a general or restricted auctioneers' license.[52]

4.2.1 Restrictions on Market Entry

Applicants for a license face the following requirements:

- residency in Queensland or within 65km of the border
- 21 years of age
- a license application fee
- a good fame and character assessment consisting primarily of personal references
- a fit and proper person assessment consisting primarily of a criminal history check
- two years relevant experience in relation to the classes of goods they wish to be licensed for (including at least four auctions)
- suitable business premises.

In addition, license renewal requires that the person has at least 12 months practical experience in the past five years. Crown exemption is provided from these requirements for the activities of the Public Trustee.

4.2.2 Restrictions on Market Conduct

Scope is provided in the legislation to obtain a provisional auctioneers' license for the purposes of obtaining "practical instruction in the carrying on of the business of an auctioneer". This provision enables applicants for the general or restricted auctioneers' license to meet the requirement for relevant experience. This provisional auctioneer's license can only be used under the "direct supervision and instruction of a person who is the holder of a general auctioneers' license or a restricted auctioneers' license".

A restricted auctioneers license is also issued under the Act which specifies the scope of goods a license holder is permitted to auction. The terms of a restricted license provide details of the classes of goods which licensees are permitted to auction. For example, a restricted auctioneer may be permitted to auction computer equipment only.

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52 Failure to observe this requirement may, after a disciplinary hearing finds that a breach of the provision has occurred, see the Auctioneers and Agents Committee reprimand the person, fine the person an amount not exceeding 20 penalty units, make such other order as it thinks fit for the purposes of ensuring that the person observes the provision of the Act and/or order that the person pay to the registrar, within such time as is specified in the order, such costs of and incidental to the proceedings as the committee thinks fit.

Stakeholders provided input to the review that competition between service providers is strong and delivered on the basis of price (commission structures), advertising/marketing services provided, and market reputation (which acts as a natural barrier to entry).[53]

Table 4.3 sets out the maximum levels of commission which auctioneers may charge. Queensland is the only jurisdiction in Australia that imposes maximum commissions for auctions.

Table 4.3
Regulated maximum commissions

Service	Regulated commission
Livestock	5% for clearing sales of cattle, horses, sheep or pigs
Livestock	5% for stud cattle, rams or pigs
Livestock	6% for bloodstock (stud horses)
Livestock	$20 + 2.5% of gross proceeds > $400 for private sales of cattle or sheep in the paddock
Stock in trade, furniture, fittings, effects, boats, motor vehicles, machinery or movable chattels	12.5% plus costs of advertising and incidental expenses as is authorised in writing by the person to be charged with the expenditure.

Source: *Auctioneers and Agents Regulation 1986*

The emergence of the buyers premium is an initiative introduced by auction houses to spread the burden of existing commissions over vendors and purchasers and to seek higher profits without altering vendor commissions.

There are presently no regulated maximums on buyers premiums. Market practice involves the application of a buyers premium in most instances and the majority of practitioners perceive it to be a lawful commission.

While the standard fee structure for auctions in urban areas is a 12.5 percent vendors commission, plus a buyers premium of five percent to 10 percent, it is common place for vendors to negotiate more competitive rates[54]. Reflecting the tight margins of rural operators, commission structures for livestock sales adhere to the regulated vendor commission levels and generally exclude a buyers premium.

Vendors are made no worse off as a result of a buyers premium if it is implemented in such a way as to change the structure of the auctioneers' total commission without changing its overall magnitude. However if the application of the buyers premium occurs without a corresponding reduction in the vendor's premium, then the increase in the effective price of an item may reach levels which prevent that item being sold at auction, disadvantaging the vendor.

[53] A good level of market competition is a positive indication that legislation is not imposing a high level of entry barriers or market restrictions to service providers and therefore not imposing a significant flow on cost to consumers.

[54] i.e. seven and a half percent vendors commission for on site auctions which do not carry the same overhead costs.

4.3 Impacts of the Base State

4.3.1 Consumers

The requirements imposed on auctioneers under the Act do not appear to create significant barriers to entry and therefore do not restrict consumer choice or access to services. In 1998-99, only 9 applications to be an auctioneer (excluding corporations and pastoral house auctioneers) were rejected out of a total of 1,449 new applications and renewals granted - a rejection rate of less than one percent. Table 4.4 below sets out the relevant data.

Table 4.4

License Applications (1998/99)

License	Applications / Renewals	Granted	Refused
Corporations			
Real Estate & Auctioneers	484 new	453	16
	1,727 renewals	1,614	2
Individual			
General Auctioneers	103 new	90	4
	1,138 renewals	1,055	2
Restricted Auctioneers	12 new	11	1
	48 renewals	42	0
Provisional Auctioneers	102 new	108	1
	46 renewals	38	1
Pastoral House Auctioneers	8 new	8	0
	38 renewals	36	0
Total	**3,706**	**3,455**	**27**

Source : Department of Equity and Fair Trading

Note: Applications/renewals relate to those lodged in 1998/99 and may not equal the sum of processed licenses granted and refused during the period.

The lack of barriers to entry also indicates that the impact of the present legislation on competition is very small, and that price and service levels are not being adversely impacted by the legislation.

Residency requirements

Residency requirements are aimed at providing consumers with an assurance that while operating, auctioneers will remain within the State or 65kms of its border. Conceptually, close proximity may logistically assist consumers in locating auctioneers to discuss issues of concern surrounding a transaction or to serve a summons against an auctioneer, however a consumer in South East Queensland may be closer to an auctioneer in Sydney than an auctioneer in North Queensland

As discussed under section 3.3 in regard to real estate agents, residency requirements appear to provide little protection for consumers and could be removed to deliver a slight increase to competition by allowing interstate operators into the Queensland market. This would not impact on the ability of the legislation to meet its objectives.

Age restrictions

Minimum age requirements theoretically present a barrier that prohibits entry for all persons below 21 years of age. However, stakeholders to the review provided input that vendors, and auction houses when seeking to employ staff, select auctioneers on the basis of their reputation and proven competency in conducting auctions, and that age is rarely a direct consideration in this process. As a result, market practice largely negates the impact of the Act's age restrictions, and this restriction has no real impact on consumers. Despite the absence of a discernable net benefit or cost to consumers, the ineffectual nature of the provision means that it should be removed in line with clause 5(1) of the CPA.

Work experience

Minimum experience requirements for qualifications and renewal of licenses, and the existence of restricted auctioneers licenses, provide a barrier to market entry for non-compliant auctioneers. The aim of the restrictions is to provide for consumer protection by ensuring only competent auctioneers practice in the market.

However, stakeholders to the review provided feedback that it takes at least two years for an auctioneer to become a competent operator that would be employed by an auction house or a vendor. Therefore the market would operate in the same fashion without this legislative requirement.

In conclusion, minimum experience requirements provide few real benefits to consumers and instead carry the possibility of imposing a slight net cost on consumers in relation to choice and access considerations.

Good fame and character, and fit and proper persons tests

Good fame and character tests, and fitness tests, provide a screening function which excludes inappropriate or unscrupulous operators entering the market. Although reputation and competency are required to be gainfully employed as an auctioneer practising in the market, they do not assess the suitability of the applicant who may commit acts that negatively impact on consumers. For this reason, the good fame and character and fit and proper person assessments provide a benefit to consumers through increased consumer protection.

Business premises

The requirement to have business premises provides consumers with an avenue for recourse to discuss issues of concern and perhaps serve summons to an auctioneer. Maintaining business premises is an operational requirement for the business practice of most auctioneers and would be substantially (though not fully) achieved in the absence of the legislation. Because the Act adds only marginally to the cost of premises (which may be incurred by auctioneers anyway in the normal course of business), but adds to consumer protection, a small net benefit is associated with this restriction.

Maximum commissions

The issues of maximum commissions is discussed in detail in section 3.3, the base state assessment for real estate agents. This discussion supports the removal of maximum commissions and is mostly relevant for auctioneers.

Such commissions are normally held to, amongst other things, limit the flexibility of service providers within a market and push service provision towards non-price forms of market competition which consumers are poorly placed to evaluate.

A prime example of price regulation limiting service innovation and non price competition relates to the inability of auctioneers to offer del credere guarantees on the paddock sale of private livestock.[55] An auctioneer acting as a del credere agent accepts the liability to make full settlement of proceeds of a sale to his vendor (client), irrespective of whether the agent receives payment from the purchaser.

Further, price limiting effects of current commission rates have been circumvented by the introduction of buyers premiums. These premiums add to the price which buyers of used goods face at auction. They may result in vendors being denied the sale of their goods from the additional commission pushing the required sale price above the level the purchaser is willing to pay. Both factors undermine the effectiveness of regulating commissions.

Maximum commissions present a net cost to consumers.

4.3.2 Industry

Industry providers currently pay annual license fees of $436 for a general auctioneer, $111 for a provisional auctioneer and $331 for a restricted auctioneer. These fees are not significant and have minimal impact on operators in the industry.

The impact of the base state on auctioneers is limited by the fact that several aspects of the legislation mirror the market's normal business practice. These include requirements relating to residency, business premises, age and experience. Similarly, the ability of auctioneers to introduce a buyers premium has helped to mitigate the effect on auctioneers of maximum rates of commission.

[55] Webster's Revised Unabridged Dictionary defines the del-credere agreement concept as "an agreement by which an agent or factor, in consideration of an additional premium or commission (called a del credere commission), engages, when he sells goods on credit, to insure, warrant, or guarantee to his principal the solvency of the purchaser, the engagement of the factor being to pay the debt himself if it is not punctually discharged by the buyer when it becomes due". Del credere agencies traditional apply to livestock only and not real estate property transactions.

Some potential industry entrants may face a barrier to entry from the experience requirement, if they take less than two years to become competent operators. This is not thought to be a significant issue for industry.

The requirement to maintain and use a trust account in relation to vendor funds places auctioneers at a competitive disadvantage against pastoral house auctioneers when acting in a del credere capacity, as pastoral houses are currently exempt from trust accounting provisions. This restriction creates a small net cost to del credere auctioneers.

4.3.3 Government

The principal impact of the Act on Government has been to require expenditure on processing and assessing license applications and renewals, monitoring compliance with the legislation and undertaking disciplinary actions to investigate parties who may have breached the legislation. Substantial revenue to offset this cost has been generated through licensing and registration fees. Data provided by the Office of Fair Trading (OFT) for 1998-99 indicates real estate license and registration revenue of approximately $3 million from license fees and approximately $906,000 of costs allocated on a pro-rata license basis across all relevant markets.[56] Government receives a net financial benefit from these competing impacts.

Stakeholders to the review provided input that in practice the competitive advantage provided for the Trustee though the exemption is small, given that the Trustee normally contracts out the majority of its auction activities.

Overall, the impacts of the base state environment on Government can be concluded as delivering a moderate net benefit.

4.3.4 Base State Conclusions

Summarising the analysis presented above, a net public benefit is provided by the following elements of the Act, that supports the objectives of the legislation:

- good fame and character tests
- suitable business premises.

Small and moderate benefits, across stakeholder the groups, can be assigned to these provisions respectively.

56 This cost data includes OFT wages for license administration as well as the costs for the Auctioneers and Agents Committee and secretariat. It excludes OFT costs for consumer complaints and investigations.

An NCP Public Benefit Test analysis does not support those provisions of the Act and its regulations dealing with:

- minimum age requirements
- Queensland residency requirements
- the requirements for work experience; market forces require competency to obtain gainful employment, therefore there is no benefit from legislation in this regard
- maximum commissions.

A small net cost can be assigned to each of these provisions, across the stakeholder groups.

Overall, a small net cost can be assigned, across the stakeholder groups, to the regulatory provisions under the base state. An impact matrix is provided on the following pages to summarise these conclusions.

Table 4.5 Auctioneers' Impact Matrix - Base State

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Social Benefit	Comments
	Consumers	Industry	Government		
Licensing Fees	✘	✘	✓✓	-	Transfer of revenue from auctioneers ($111-$436 each) and auction houses ($235-$259 each) to Government ($218,400) resulting in a marginal increase in business cost and prices offset by a corresponding funding benefit to Government.
Residency & 21 Years of Age	-	-	-	-	Ineffectual provisions given equivalent market standards.
Good fame & character, Fit & proper person	✓✓	✓	✓	✓✓	Provides no real cost to compliant individuals, however a small number of non compliant persons are precluded from market entry, which provides greater consumer protection .
Experience Requirements	-	✘	-	-	Requirement adds no benefit as this is current market practice.
Business Premises	✓	-	✓	✓	Requirement is largely commensurate with market practice, except for on-site auctioneers for whom it imposes a moderate cost. Overall the consumer protection gains of a fixed point of recourse deliver an overall benefit.
Maximum commissions	✘	✘	-	✘	Distorts the optimal delivery of price and service mixes.
Trust Accounts for del credere auctioneers	✘	✘	-	✘	Trust accounting requirements for del credere agents increase business costs, marginally inflate prices and reduce access to the service without delivering benefits to consumer protection.
Option Summary	✓	✘	✓	✘	**Net benefits can be achieved by removing a number of restrictions.**

4.4 The Proposed Bill

The table below provides a comparative analysis of the barriers to entry promoted by the licensing requirements under the current legislation and the proposed Bill.

Table 4.6
Comparison of Legislative Requirements

The Act	The Proposed Bill
Age 21	Age 18
Residency requirement	No requirement
Good fame and character	Suitability assessments
Fit & Proper Person	Suitability assessments
Experience requirements	Competency assessment measures as they become available
Maximum commissions	No maximum commissions
Suitable business premises	Registered office of any type
No requirement	Cap on buyers premium

The proposed Bill is expected to have the following impacts on market conduct:

- del credere agents given exemption from trust accounting requirements for livestock transactions
- deregulated commissions
- maximum cap imposed on buyers premium
- compliance with codes of conduct – yet to be developed.

The impact of a mandatory code of conduct under the proposed Bill is not expected to have any impact on competition. It is being modeled on the Trade Practices Guidelines for a Code of Conduct and includes the following five elements (therefore the code of conduct is not included in the analysis):

- respect for the law
- respect for persons
- integrity
- diligence
- economy and efficiency.

If the guidelines for the development of a code of conduct are followed, the outcome is intended to be expressly not anti-competitive as the provisions will largely focus on the relationship between agent and client not trader to trader competitive issues.

4.5 Impacts of the Proposed Bill

4.5.1 Consumers

As discussed under the base state, very few of the legislative requirements to obtain a license provide a real impact on consumers or industry, as most of the legislative requirements would be adopted by industry anyway as good business practice. However, each provision of the proposed Bill, and its impact on consumers, is addressed in this section

Relaxing age requirement

The base state assessment in section 4.3.1 revealed that age requirements provide no real impact on consumers as auctioneers are employed on reputation and competency in the industry and age is not an influencing factor. The decrease in the age requirement may allow persons under 21 years of age to obtain a license, but it is unlikely that persons this age would pass the competency requirements discussed below. Therefore the reduction of the minimum age requirement from 21 years to 18 years will have no real impact on consumers other than the very small potential for increased numbers of service providers. A slight net benefit to consumers, if any, can be concluded.

Removing residency requirements

As discussed under the base state assessment in section 4.3.1 residency requirements do not provide additional protection for consumers and create a barrier to entry for interstate operators who may want to enter the Queensland market. Therefore, the removal of the residency requirement will produce a small net benefit to consumers. This net benefit arises from allowing interstate auctioneers to operate in the market, which will increase competition, leading to better services and access to services, and lower prices, for consumers. The removal of this restriction remains consistent with the objectives of the legislation and will deliver a small overall net benefit.

Suitability assessments

Replacing character and fitness tests with a suitability assessment will provide a slightly more objective and transparent method of assessing very similar requirements. Unfortunately, it is not possible to assess the impact that the different assessment processes will have on the quality of applications approved. However, due to the close similarities between the current and proposed assessment processes, no cost or benefit on consumers is expected.

Competency assessment

The implementation of competency assessment to replace experience requirements will provide a higher level of assurance that license holders are competent, and will allow auctioneers to obtain a license faster if they develop the relevant competencies before they have two years experience. This would be expected to produce a net benefit to consumers through assured competent service delivery and a greater range of auctioneers to choose from if competent auctioneers are entering the market faster. However, the size of this consumer benefit is impacted by the fact that auctioneers in the current market have to competent to be employed, as market reputation is a key driver in the demand for an individual auctioneer. Therefore, the introduction of competency assessments is not expected to have a significant impact on consumers. Nonetheless since a small number of applicants, who may achieve competency before completion of the current specified experience requirements, would otherwise be excluded, an overall small net benefit can be concluded.

Registered office requirement

The base state analysis in section 4.3.1 discussed that the key benefit to consumers from the requirement to maintain business premises is that it provides a known fixed venue for discussions with an auctioneer if problems arise. The key to this consumer protection benefit is having a fixed point of contact for the service provider, regardless of the type of address. Therefore permitting the nomination of a registered office (including residential premises) will not reduce the protection delivered to consumers. This requirement would also be expected to deliver a small net benefit to consumers as auctioneers or auction houses would save on compliance costs regarding business premises and may pass these savings on to consumers through a lower price, or better service. This requirement continues to support the objectives of the legislation and will deliver a small overall net benefit to consumers.

Trust accounting exemption for del credere agents

Removing trust accounting requirements for del credere auctioneers will have no impact on consumer protection due to current market practices which see sale proceeds delivered to vendors in advance of an auction houses' collection of monies. By eliminating the trust accounting requirements on del credere funds, consumers (vendors) would be afforded access to auctioneers whose business costs previously presented them with a barrier to competition against pastoral houses. The net result for consumers is a moderate increase in choice of service provider, leading to increased competition and a small reduction in price, or improvement in service quality. Therefore, a moderate net benefit will arise for consumers (vendors). This requirement is consistent with the objectives of the legislation.

Removing maximum commissions and capping buyers premium

Current maximum commissions would be deregulated under the proposed Bill. This change is expected to stimulate innovative delivery in the market. For example, consumers would be afforded access to auctioneers who were previously unable to offer del credere guarantees on auction of regulated commission goods, due to the limited returns available versus the risks involved.

Queensland is presently the only State with regulated commission structures in the auction industry. Stakeholder input to the review advised that other states, with deregulated commission structures, have experienced no negative impacts regarding consumer protection from this policy position.

As discussed in section 4.3.1, maximum commissions do not operate effectively in the current market due to the use of buyers premiums, and therefore the removal of maximum commissions would not be expected to adversely impact on consumers.

The removal of maximum commissions is expected to generate a moderate net benefit for consumers and is consistent with the objectives of the legislation.

The introduction of a buyers premium is intended to be a component of the proposed Bill. The maximum commission on vendors would no longer apply. This seems unlikely to benefit buyers or vendors. A cap on the buyers premium may do little more than push auctioneers to increase the commission on vendors, to achieve the same revenue target as currently applies. If so, the final price which a buyer faces (consisting of the vendors commission, the buyers premium and the cost of the item purchased) will remain unchanged and the implementation of the premium results in gross transfer effects only and no net impacts.

With this in mind, the only situation in which a maximum buyers premium will yield a net benefit for buyers is if vendors are able to prevent auctioneers from increasing (unregulated) vendor commissions. This would occur if the vendor is offering goods for which the auctioneer has a strong demand, and can therefore negotiate from a position of strength. Stakeholder input to the review suggests that few vendors are in this position.

Thus, a maximum buyers premium introduced through the proposed Bill is not expected to produce a net benefit. The fact that maximum commissions create distortions to the way in which the market operates (as discussed in Chapter 3) suggests that the proposed Bill may yield a net cost in this regard, and have little impact on achieving the objectives of the legislation.

4.5.2 Industry

Age and residency requirements

As discussed in section 4.3.2 and above, in the analysis of impact on consumers from the proposed Bill, the following requirements have no real impact on the current market, and changes to these requirements are not expected to impact on industry:

- age requirement
- residency requirements.

Registered office requirement

Auctioneers will benefit from no longer being required to maintain business premises unrelated to their service delivery. This should produce a direct small benefit for auctioneers in the form of a reduced cost in operating their business.

Suitability assessment

As discussed above in section 4.5.1, suitability requirements are expected to be similar to current good fame and character, and fit and proper person, requirements. The key benefit to the new approach is increased transparency and objectivity. However, this is not expected to have a real impact on industry.

Competency assessment

Replacing current experience requirements with proposed competency measures will reduce barriers to entry for compliant auctioneers who achieve necessary skill levels before being in the industry for two years. However this issue would only be relevant to a very small number of industry entrants and therefore only be a small benefit for this select group of industry operators.

As discussed above in section 4.5.1, an auctioneer's employment depends on their competency and as a consequence very few incompetent auctioneers would be operating in the market. Therefore, no real incremental impact on industry, above the base state, is expected.

Removing maximum commission and trust accounting requirements

Deregulation of vendor's current maximum commissions, and trust accounting exemptions for auctioneers acting as del credere agents, will translate to increased business flexibility, including the ability to offer significantly higher levels of service within the revenue opportunities available.

Both of these provisions will deliver a small overall net benefit to consumers.

Capping buyers premium

The imposition of proposed limits on buyers premiums provides no real impact on industry as auctioneers would be free to negotiate vendor's commissions to a level that would compensate any restrictions they may experience from the cap on a buyers premium.

Overall, the implementation of buyers premium caps would result in increased administrative complexity and a small overall cost to consumers.

4.5.3 Government

Many of the changes proposed by the proposed Bill will have no impact on government as they closely reflect current market practices, or do not change the government's current role in an assessment or enforcement role, these requirements include:

- age requirements
- residency requirements
- competency assessment
- suitability tests.

The Department of Equity and Fair Trading is expected to gain a moderate net benefit from a decreased role in enforcement, or dealing with complaints, in regard to maximum commissions, trust accounts for auctioneers acting as del credere agents, and business premise requirements. This benefit would be slightly reduced by the adoption of a new enforcement role regarding the cap on buyer premiums and the costs of public education information campaigns to educate the community of changes to maximum commissions and other issues. It has been estimated, on a pro rata basis, that the auction industry would be responsible for approximately $21,000 of the costs incurred by Government from the public education campaign.

Overall, Government is anticipated to face a small net benefit over the base state from the implementation of the proposed Bill.

4.5.4 The Proposed Bill Conclusions

The changes over the base state proposed by the proposed Bill that will generate a net benefit, and support the objectives of the legislation, include:

- elimination of residency requirements
- relaxation of age requirements
- substitution of suitability assessment for good fame and character and fit and proper person requirements
- relaxation of business premises requirements to include any registered office
- substitution of competency assessment for experience requirements
- deregulation of regulated maximum commissions (except buyers premiums)
- exemption from trust accounting provisions where auctioneers act as del credere agents.

A small net benefit, across the stakeholder groups, can be assigned to each of these provisions except the deregulation of maximum vendors commissions, to which a moderate net benefit can be assigned.

The only change suggested by the proposed Bill, that will generate a net cost (small) across stakeholder groups, is the introduction of a cap on the buyers premium.

Overall, a moderate net benefit can be assigned across stakeholder groups to the reform option. An impact matrix is provided on the following pages to summarise these conclusions.

Table 4.7 Auctioneers' Impact Matrix – The Proposed Bill

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Relaxing Residency & 21 Years of Age	-	-	-	-	A small increase in the number of service providers may result, slightly increasing competition and consumer access and marginally reducing prices with no loss to consumer protection.
Suitability requirements	-	-	-	-	No impact is expected to result from the implementation of suitability requirements in place of Good fame and character & Fit and proper person requirements.
Competency requirements to replace experience	✓	✓	-	✓	Competency assessments will provide entry for auctioneers otherwise precluded by experience requirements thereby increasing their returns and marginally stimulating competition and reducing prices. It is uncertain how the costs of the assessment would be funded.
Relaxing Business Premises	✓	✓	✓	✓	Relaxing business premises requirements to allow any registered address (including residential) will remove a moderate financial entry barrier and an unnecessary business cost for on-site auctioneers, delivering marginally increased competition and marginally reduced prices without losses to consumer protection.
Relaxing Maximum vendor commissions	✓✓	✓	✓	✓✓	Relaxing maximum vendor commissions will allow an increased level of services from higher potential revenues. Introduction of buyers premium caps will introduce some costs for the same reasons vendor commissions were deregulated.
Buyers premium cap	✗	-	✗	✗	The provision provides an unnecessary restriction, distorting the mix of price and services delivered.
Trust Accounting Exemptions	✓✓	✓	✓	✓	Trust accounting exemptions for del credere auctioneers will reduce business costs and increase consumer access to the service without reducing consumer protection.
Option Summary	✓✓	✓	✓	✓✓	**Most of the reforms deliver an overall net benefit to some degree.**

4.6 Negative Licensing

The negative licensing model evaluated in this review is based on a framework for regulation limited to those aspects of the proposed Bill which impact on competition but relate to market conduct only. Therefore, aspects of the proposed Bill that relate to market entry would not be included in this regulatory model, these include:

- age requirements
- residency requirements
- competency assessments
- suitability assessments
- registered office requirements.

Market conduct restrictions included for consideration/testing in the negative licensing model are:

- removal of maximum commission
- cap on buyers premium
- trust accounting exemptions for auctioneers acting as del credere agents
- introduction of a code of conduct.

4.7 Impacts of Negative Licensing

4.7.1 Consumers

Removing the entry barriers as listed above will have mixed impacts on consumers. As discussed in previous sections of this chapter, the removal of age and residency requirements has no real impact on consumers.

The removal of competency assessment and suitability assessment will expose consumers to more unscrupulous or incompetent operators in the market. Even though market practice means incompetent auctioneers do not usually get employed by vendors or auction houses (as previously discussed in this chapter), the removal of these tests represents a net cost to the consumer (vendors and buyers) and does not support the objectives of the legislation.

Removal of the business premises standards will have a benefit of reduced business costs which may be passed on to consumers through lower prices and a small overall net benefit can be concluded.

The market conduct requirements as listed above would also have mixed impacts on consumers. As previously discussed in this chapter, consumers would benefit from the removal of trust accounting requirements for auctioneers acting as del credere agents and the removal of maximum commissions, but would not benefit from the introduction of a cap on buyers premium.

The level of consumer protection benefits required from a code of conduct would need to be significant to make the negative licensing model a favored option over the base state. Stakeholder input to the review indicated that conduct provisions of any code of conduct, would be unlikely to compensate consumers for the level of protection lost by the removal of all entry requirements. Therefore, negative licensing presents an incremental moderate net cost to consumers over the base state and does not support the legislative objective.

4.7.2 Industry

Industry is expected to benefit from the negative licensing model as all legislative entry requirements are removed and industry would save compliance costs in this regard, in addition to the direct saving of the previously paid license fee. This benefit would only be expected to be small as current market practices make many of these requirements ineffective, as previously discussed in this chapter. In addition, normal business costs to enter the market outweigh the legislative costs to entry.

As discussed in section 4.5.2, industry would also benefit from the removal of the maximum commissions and the exemption of trust accounting; and the cap on buyers premium is expected to have no real impact on industry.

The exact impact of conduct restrictions from a code of conduct on industry cannot be presently measured as the code has not been developed. However the impact of a mandatory code of conduct under the proposed Bill is not expected to have any impact on competition as it is being modeled on the Trade Practices Guidelines for a Code of Conduct discussed earlier.

4.7.3 Government

As discussed with reference to the real estate industry, government will face lower resource requirements under negative licensing due to the removed requirement to administer the license application process. However, The Department of Equity and Fair Trading will also forego $218,400 per annum in revenue in this regard, and only save $111,295 in administration costs.

It has also been estimated, on a pro rata basis, that the auction industry would be responsible for approximately $21,000 of the costs incurred by Government from a public education campaign associated with the introduction of negative licensing.

The impact of enforcement/administration of a code of conduct on government cannot be measured as the code has not been developed, but it can be assumed that government may have alternative enforcement roles associated with the code that would incur a cost to government.

Therefore, the impact upon government with the introduction of negative licensing would be a moderate net cost.

4.7.4 Negative licensing conclusions

The introduction of negative licensing produces a moderate overall net incremental cost over the base state and reduces the level of consumer protection, therefore negative licensing does not support the objectives of the legislation.

Specific to the provisions, the same findings apply for conduct issues as under the proposed Bill option. In terms of market entry barriers, a small net cost, across stakeholder groups, can be assigned to experience requirements and licensing fees. Likewise a net moderate cost, across stakeholder groups, can be assigned to the removal of other entry barriers.

An impact matrix is provided on the following page to summarise these conclusions.

Table 4.8 Auctioneers' Impact Matrix – Negative licensing

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Removal of Residency & 21 Years of Age	-	-	-	-	No real impact expected.
Removal of Good fame & character, Fit & proper person	✗✗	-	✓	✗✗	Removing the screening processes may result in a small inflow of inappropriate auctioneers slightly reducing consumer protection.
Removal of experience requirements	✗	-	-	✗	Small risk of incompetent operators entering the market
Removal of Business Premises standard	✓	✓	✓	✓	Reduced business costs and potential price reductions may result.
Relaxing Maximum commissions	✓✓	✓✓	-	✓✓	Relaxing maximum vendor commissions will allow an increased level of services from higher potential revenues.
Cap on buyers premium	✗	-	✗	✗	Regulating buyers premium will distort efficient market operations
Trust Accounting Exemptions	✓	✓	-	✓	Trust accounting exemptions for del credere auctioneers will reduce business costs and increase consumer access to the service.
Removal of license fee	-	✓	✗✗	✗	A transfer will result from Government back to industry.
Option Summary	✗✗	✓✓	✗✗	✗✗	**Moderate net cost over the base state.**

4.8 The Hybrid Model

The analysis of the base state and the various alternative regulatory options in the sections above have indicated the overall net social benefit or cost of the various regulatory provisions. Using these results, it has been possible to develop a hybrid form of positive licensing which will deliver the greatest net public benefit.

The positive licensing hybrid model assessed to deliver the greatest net public benefit would contain the following elements:

- elimination of residency requirements
- relaxation of age requirements
- substitution of suitability assessment for good fame and character and fit and proper person requirements
- relaxation of business premises requirements to include any registered office
- introduction of competency standards including recognition of prior learning
- deregulation of regulated maximum commissions (except buyers premiums)
- exemption from trust accounting provisions where auctioneers act as del credere agents.
- no maximum cap on buyers premium commissions.

Each of these provisions is anticipated to deliver a small net benefit, across stakeholder groups, with the exception of deregulation of maximum commissions which would deliver a moderate net benefit.

Overall, a moderate net benefit can be assigned to the hybrid model, across all of the stakeholder groups.

An impact matrix is provided on the following pages to summarise these conclusions.

Table 4.9 Auctioneers' Impact Matrix – The Hybrid

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Social Benefit	Comments
	Consumers	Industry	Government		
Relaxing Residency & 21 Years of Age	-	-	-	✓	Removes ineffectual requirements.
Suitability requirements	-	-	-	-	No substantial impact on assessment procedures.
Competency requirements to replace experience	✓	✓	-	✓	Industry standards require competency for employment. No major impact will result unless practitioners achieve competency ahead of required experience durations.
Relaxing Business Premises	✓	✓	✓	✓	Reduces business costs for on site auctioneers without diminishing consumer protection.
Relaxing Maximum commissions	✓✓	✓✓	✓	✓✓	Removes market distortions and provides consumer access to a full range of services including del credere agencies.
No cap on buyers premium	-	-	-	-	As there is currently no cap on buyers premium, there would be no incremental impact over the base state under the hybrid model.
Trust Accounting Exemptions	✓	✓	✓	✓	Achieves a level playing field against pastoral houses without diminishing consumer protection.
Option Summary	✓	✓	✓	✓✓	**Each of the reforms deliver an overall net benefit to some degree.**

4.9 Stakeholder Positions

Consumers

The Queensland and Brisbane Consumers Associations and the Financial Counselling Association of Queensland indicated that allowing a capped buyers premium but removing the restriction on the amount than can be charged to a vendor is inconsistent. Deregulating commissions, for either party, will be particularly problematic in rural areas where they allege there is little competition between auctioneers. The Associations could see no reason why buyers premiums should be legalised.

Consumers expressed the perception that auction processes are explicitly risky and that people who choose to participate follow the credo of ‘buyer beware’ regarding the quality of products purchased. Nonetheless consumer groups supported the notion that protection should be afforded to all persons from potential product or service misrepresentation and the potential for inappropriate handling of trust monies. This consideration was reinforced by the magnitude of the transactions involved that may relate to a consumer’s largest lifetime purchases – home and motor vehicles.

Consumers considered that present licensing arrangements provide a low level of protection, but that any level of consumer protection was beneficial. In addition, the present positive licensing approach was considered to deliver greater benefits than a negative licensing regime.

Basic licensing requirements including a minimum age of 21 years, and Queensland residency, were not viewed as delivering real consumer benefits. Stakeholders see a registered business address as delivering a point for consumer recourse, however it was not considered necessary for the address to be a commercial premise. Competency assessments are seen as a more tailored measure of a service provider’s skills than experience requirements.

While it was accepted by consumers that market forces might be commensurate with the mainstay of licensing requirements, good fame and character and fit and proper person requirements were identified as provisions which would not be provided in the absence of legislation. The good fame and character, and fit and proper person provisions are seen as critical measures for ensuring misrepresentation of products and inappropriate handling of trust monies are less likely to occur. The requirement for trust accounting measures was perceived to provide an auditable record of trust money handling by the service provider.

Industry

As with the other occupations under review, the provision that regulates commissions was criticised by service providers due to the limitation to potential levels of service provision which regulation on commission structures deliver.

Licensing requirements were viewed as only providing a small barrier to entry for potential practitioners. High levels of price and non price competition in the market were claimed to be distorted in their application by the conduct restrictions on commissions and trust accounting requirements for del credere agents. Face to face consultation also revealed an industry preference to retain experience requirements if licensing is required.

Gray Eisdell Martin Auctioneers & Valuers provided a number of comments with respect to the present legislation and the proposed Bill provisions. Their submission featured reference to the present operation of well over 10 internet auction sites in Australia whom do not recognise State, national or international borders and may not need to respond to the laws or regulations of a particular jurisdiction. In this light, it is suggested that deregulation of the auction industry may be appropriate to equalise the competitive disadvantage imposed on traditional operators.

In support of this proposal they note that licensing has had no material affect on new entrants into the industry given that the key requirements for practice are market based experience and competency factors, access to which is regulated by employers and not licensors. Further more, licensing was not considered as providing consumer protection, particularly given the alternative mechanisms provided by Fair Trading legislation.

Business premises attributes are already stipulated by local governments and State legislative provisions were seen as unnecessary.

Although the assurance provided to consumers by trust accounts were seen as beneficial, the costs of numerous audits were considered excessive particularly when general legal provisions apply to the handling of client monies.

The present adoption of prescribed maximum commissions are considered uneconomical and market forces are seen as best able to achieve appropriate levels. With respect to buyers premiums, it was considered that the reduction in direct service costs to vendors provides consumer access benefits through increased quantity and range of the goods placed at auction. However this is due to the imposition of a financial cost on purchasers in return for these access benefits.

Fowles Auction Group provided a written submission canvassing a number of relevant issues. A particular concern voiced was that although they deal only in consignment sales of motor vehicles, they are required to carry a motor dealers license which introduces additional costs regarding issues such as business premises, which are ultimately carried through to consumer service and pricing.

Issues regarding regulatory compliance and the Internet were also noted and voiced as good reason to remove business premises requirements given that on line competitors are not required to maintain them.

A number of auctioneers' indicated in their submissions that deregulation of the auction industry would be desirable. Interstate experience was also highlighted as chattel auction practices have been deregulated in all other states (NSW was the last, some 7 years ago) without negative impacts as consumers now use other areas of the law (i.e. Small Claims Tribunal) to settle complaints.

Beneficial interest disclosure was heavily supported in the submission citing that a large proportion of motor vehicle auction complaints relate to this issue and the practice of "skimming" whereby an auctioneer "silently" knocks down the vehicle to themselves (just above the reserve) and continues taking bids to on sell the vehicle for a higher price.

No comments were provided regarding del credere agents. However general trust accounting measures were supported by industry noting that the prescriptive measures involved may be restricting firm innovation and cost effectiveness in compliance with the general spirit of the provision.

Deregulation of commissions was supported by industry noting the benefits to competition and innovation it will provide. With respect to buyers premiums, the impact on price was uncertain however it was considered a market choice and that minimum information disclosure requirements could offset any potential consumer concerns.

With respect to the application of statutory warranties and cooling off periods on motor vehicles, the Public Trustee considered it inappropriate for an auction setting where *caveat emptor* concepts have traditionally applied, to require such mechanisms.

The REIQ made a small number of statements regarding auctions. On the job assessment of competencies were recommended, del credere trust accounting exemptions were supported and although the logic of buyers premiums was questioned, their application was not objected to.

Government

The Auctioneers and Agents Committee expressed a number of comments contrary to other industry stakeholders. In particular, trust accounting requirements for del credere agents were seen as placing auctioneers at a competitive disadvantage but market mechanisms were not considered as sufficient to deliver full consumer protection in the absence of trust accounts and hence no exemption was supported. Buyers premiums were also objected to due to the conflict potential from the receipt of financial payments from both parties to the transaction.

5

Motor Dealers

5.1 Market Profile

5.1.1 Market Structure

The market for motor dealing in Queensland consists of businesses engaged in selling and buying new and used motor vehicles. Motor dealing involves:

- purchasing vehicles for stock
- displaying vehicles for inspection
- providing prospect buyers with technical information and 'test drives'
- providing after sales service
- preparing vehicles for customer delivery
- assisting buyers where required with access to finance
- providing agency sales of vehicles on consignment.

In 1997-98 there were in excess of 800 dealerships operating in Queensland which generated an estimated turnover of $7.8 billion and employed 11,000 full-time equivalent positions.[57]

The market for the sale of motor vehicles is normally divided into new vehicles and used vehicles. The used car market includes a small number of consignment sales. Consignment sales differ from traditional activities as the motor dealer agrees to sell a vehicle on behalf of the vendor in return for a commission on the final sale price, rather than purchase the vehicle outright for subsequent resale. The practice of consignment selling is limited as the majority of used vehicle sales take place as a 'trade in' on a more expensive vehicle, necessitating the immediate change in ownership.

The new and used vehicle markets can also be further divided into other submarkets of:

- motor cars
- trucks and commercial vehicles
- motor cycles
- caravans
- dismantling (parts).

New vehicle sales account for approximately 65 percent of overall market turnover by value. For the most part, dealerships offering new cars are linked with manufacturers through some form of franchising or financial arrangement. All new car dealers also deal in used vehicles, given the tendency of most consumers to seek a trade-in on their existing vehicle as part of new vehicle negotiations.

Dealerships trading in used cars are more numerous, but account for only 35 percent of overall market turnover by value.

57 Sourced from IBIS Information Service, *G5311-Car Retailing*, p.6. Queensland figures estimated from national averages.

5.1.2 Market Conduct

Motor dealerships compete with each other for business. However, in the used car area of the market, they also compete against vehicle owners, as many owners prefer to sell their vehicle directly to buyers given the relatively low cost of advertising and the prospect of achieving a higher price than might occur if selling to a dealer. Buyers sometimes prefer to buy direct from the owner with the expectation of a lower price (as the price does not need to include dealer commissions), and the fact that direct contact with the owner may provide extra information on the vehicle's condition.

5.1.3 Market Performance

In 1998-99, dealerships with annual turnover of $200 million to $500 million earned average profit margins of 6.5 per cent while dealerships in the $50 million to $199 million bracket earned average profit margins of 7.5 per cent.[58] From PricewaterhouseCoopers' experience in consumer goods industries, these profit margins do not appear high.

Consumer complaints against dealers lodged with the Office of Fair Trading stood at:

- 1,603 complaints in 1997
- 1,689 complaints in 1998
- 1,899 complaints in 1999.

These figures for 1999 average at two complaints per dealership.[59] These complaint figures are high relative to those in the real estate industry and have risen in recent years. It should also be noted that these complaint figures may understate real levels of consumer disquiet because not all consumers are aware of their rights to lodge a complaint or are aware of the processes to be followed. Moreover, some complaints may flow direct to dealers or their industry associations such as the Motor Trades Association of Queensland (MTAQ).

The nature of complaints emerges from a combination of concerns regarding:

- mechanical and structural defects in vehicles
- false warranties
- false representation as to the age of vehicles
- misleading advertising and unfair sales techniques.

Because the condition of new cars is normally known to buyers or can be readily inferred, and new cars are normally covered by comprehensive warranties, this area of the market raises few concerns from a consumer perspective. Franchising agreements with manufacturers, and the fact that a high proportion of new car sales are to fleet owners (who are informed purchasers), contribute to this being an area of relatively few consumer complaints.

By comparison, consumers are more exposed to commercial risk when seeking to sell or buy a used vehicle, particularly a vehicle without warranty. The difficulty faced by consumers is that few

58 *Ibid*.
59 Data provided by Office of Fair Trading.

consumers have sufficient knowledge of mechanics, the opportunity to inspect the structural and mechanical condition of a vehicle, and access to a vehicle's historical patterns of usage, to judge its true condition. While the external condition of a used vehicle such as paintwork, tyres and upholstery can be readily assessed, the internal condition of vehicles can be far more difficult to gauge.

Although the advertised prices of vehicles of similar type and vintage are readily available they often provide an imprecise guide to the price which should be paid for an individual vehicle. Each vehicle has its own characteristics in terms of kilometres travelled, accessories and options, servicing history, and structural and mechanical condition. Consumers might seek to have a vehicle inspected by an independent expert before making a purchase, but not all consumers are aware of their right to do so, or feel sufficiently confident to approach a dealer on the subject.

It is also difficult for dealers to properly gauge the condition of a vehicle they buy and subsequently offer for resale without undertaking an expensive mechanical examination. Therefore, dealers also face commercial risk when purchasing used cars, but they are a more informed purchaser than the average buyer and are better placed to manage this risk.

Factors that increase consumer risk include:

- people sell and buy vehicles on relatively few occasions and therefore do not provide dealers with sufficient custom to warrant special treatment

- the payment of salespeople employed by dealerships is normally by commission which creates an incentive for those salespeople to finalise a transaction as soon as possible, perhaps without due regard to the consumer's needs

- efforts by a dealer to improve the quality of a vehicle for sale often go unrecognised by buyers because the work done is not easily seen or understood. This places a dealer at a competitive disadvantage against rivals who do not go to the same effort

- dealers may not always be held accountable for the reliability or performance of a vehicle after it is sold.

Many of these problems are overcome through dealers offering vehicle warranties. These guarantee that the costs of failure in specified areas of structural integrity and mechanical performance of a vehicle will be met by the dealer should such failure occur within a given time period, or level of vehicle usage. However, consumers are not always able to interpret or understand the extent of the warranty and the obligations of all parties if a warranty agreement is invoked.

5.2 The Act supporting the Base State

5.2.1 Objectives and Rationale

The objective of the Act is to protect buyers and sellers of used vehicles involved in transactions with motor dealers. Consumers are deemed to be at commercial risk in selling to, or buying from, dealers as a result of:

- their inability to assess the quality of the used vehicles being offered for sale

- a lack of familiarity with prices and the processes associated with used vehicle transfers, including legal obligations

- the costs of obtaining and comparing price and quality data from a range of alternative sources.

For most consumers, the purchase of a vehicle is their second largest commercial transaction, next to the purchase of a home. Any problems that arise can therefore have significant financial implications.

The Act regulates motor dealers and their staff through a combination of minimum requirements for market entry and proscribed forms of conduct after entry occurs.

5.2.2 Restrictions on Market Entry

The requirements for dealers to obtain a license, in order to trade, include:

- 21 years of age or more
- residency in Queensland or within 65 kilometres of the border
- good character and a fit and proper person
- at least three years in the past five years as a licensed manager or registered salesperson in the market or employs somebody who has
- business premises which have an enclosed area with office accommodation and a display area facing the road
- passing a short written test set by the Auctioneers and Agents Committee
- payment of a license fee.

In order to renew a license, a dealer must pay the license fee and have held a license for at least one year in the past five years, and been trading actively during that period. No formal training or qualifications are required.

Managers must also be licensed and, under the Act, face similar requirements to those of dealers. Salespeople must be registered but need only satisfy conditions relating to the payment of a fee of $96 per annum and age, residency, character, fitness and Committee testing as listed above. Neither managers nor salespeople are required to undergo formal training.

5.2.3 Restrictions on Market Conduct

In the area of market conduct, the Act does not regulate the commissions which dealers may charge. The only exception is commissions on vehicles sold through consignment where a limit of 10 percent of the vehicle's sales value applies.

The conduct of dealers and their staff is also regulated under the Act through provisions requiring that:

- a Government Registrar be permitted to inspect used vehicles on dealer premises
- dealers keep a register of used cars which they have sold
- buyers gain clear title to the vehicle at the time of sale and receive written particulars of the vehicle
- dealers not engage in bogus advertising or tampering with odometers.

In addition to these measures, the general provisions of the Act designed to safeguard consumer interests govern dealers. Amongst other things, these preclude a dealer from falsely representing the characteristics of a vehicle.

While the measures discussed immediately above may substantially assist consumers they are not considered to be significant determinants of market competition and are therefore excluded from the NCP analysis. The principal reasons for this are that the measures are relatively small contributors to dealer costs, and therefore do not create barriers to entry, and that the conditions apply uniformly to all licensed dealers.[60]

5.3 Impacts of the Base State

5.3.1 Consumers

Age and residency requirements

The rationale behind the Act's age, residency, character, fitness, license renewal, work experience and competency tests set by the Auctioneers and Agents Committee is the same as that applying in the case of real estate agents and has been discussed in Chapter 3 of the report.

Neither age nor residency appear to have a marked effect on the quality of service delivered by dealers to consumers, partly because very few applications for a license or registration are refused on this basis. Overall these provisions deliver slight, if any, net costs on consumers.

Character and fitness tests

Requirements in relation to character and fitness play an important role in protecting consumer interests by helping to ensure that dishonest or unscrupulous operators do not enter the market. Consumers would be exposed if unscrupulous dealers entered the industry, as dealers advise on legal

60 The Act makes provision for a Code of Conduct governing the ethical standards expected of dealers and their staff. However, no such Code has been introduced. We note that the Used Car Division of MTAQ has a voluntary industry Code of Conduct.

issues, conditions of warranty and vehicle condition; and consumers experience information asymmetry on these matters.

The character and fitness tests currently provide a moderate net benefit to consumers and support the objectives of the legislation.

Work experience

The work experience requirements set down in the Act for dealers and managers are reasonably stringent in the sense that three years work experience in the past five may deter significant numbers of people from pursuing a career at the more senior levels of the industry. Dealerships have a relatively high rate of turnover regarding their salespeople. However, there is no information that suggests this level of turnover has resulted in a shortage of suitable applicants for dealer and manager positions. Therefore, the Act does not limit a consumer's range of choice or access to a provider.

Consumers benefit from dealers and their staff possessing work experience. One reason for this is that salespeople do not require formal qualifications and, if not supervised by experienced senior staff at least during their initial period of employment, may deliver to consumers an inadequate standard of service. Access to senior staff with relevant work experience is not a guarantee that salespeople will act honestly and prudently as neither the Act nor the MTAQ's voluntary Code of Conduct prescribe minimum supervisory arrangements. However this access provides an essential condition for effective supervision to emerge.

Therefore the work experience requirements in the Act provide a small benefit to consumers (buyers and sellers) and supports the objectives of the legislation.

Business premise requirements

The Act requires that dealers conduct business only from premises with enclosed office accommodation and an enclosed display area that faces the road. These measures are designed so that buyers will be better able to inspect vehicles for sale if these vehicles are in a sheltered place, and that both buyers and sellers will feel more comfortable when negotiating with dealers in a physical environment protected from the elements. However, there is little evidence to indicate that either of these objectives are being achieved by the restrictions.

There is also little evidence to suggest that premises which do not face a road are necessarily of an inferior standard or that consumers would not naturally be suspicious if lured by a dealer to a remote or unsavory business location.

Market practice see most vehicles displayed in outside areas, even if a dealer possesses an enclosed showroom; and the vast majority of consumers would be expected to take a cautious approach to dealers whose physical premises are sub-standard. These requirements also impede potential benefits of e-commerce transaction over the Internet, especially in relation to new motor vehicles.

Therefore, these requirements present a small net cost to the consumer.

Maximum commissions on consignment sales

As discussed in detail in Chapter 3, maximum commissions tend to create distortions to the efficient operation of the market when they are out of alignment with the efficient costs of the service provider, and limit the flexibility of providers to adjust methods of service delivery to consumer needs.

In the case of motor dealers selling vehicles on consignment, no data has been collected to date on this issue, nor does it appear that many motor dealers offer the selling of vehicles on consignment. Therefore it is difficult to indicate whether the current maximum rate of commission generates revenues above or below the relevant (efficient) costs incurred by dealers.[61] A maximum commission reduces competition between dealers based on price, and increased competition service issues, which the owners of the vehicles are usually poorly placed to evaluate.

Maximum commissions can result in dealers gaining higher than necessary returns on used vehicles with appealing characteristics, and prevent owners of vehicles with less appealing characteristics from being able to offer a dealer enough of a financial incentive to market and sell the vehicle quickly. Further, maximum commissions might actually retard the marketing process given the fact that dealers do not own the vehicles under consignment and therefore receive a limited contribution to their own cash flow if a sale proceeds compared with selling a used vehicle which the dealer owns.

The cost of maximum commissions on sellers may be smaller than expected given that owners have the option of a private sale, and consignment sales make up less than 10 percent of overall trade in the used car market.

Overall, a small net benefit will be achieved by consumers from the removal of regulated maximum commissions on consignment sales.

5.3.2 Industry

Under the current legislation, motor dealers benefit by the Act helping to enhance their professional reputation in the eyes of consumers. An improved reputation encourages buyers to patronise dealers rather than go direct to vehicle owners, and encourages owners to seek out dealers to sell a their vehicle, rather than pursue their own marketing efforts. The character and fitness tests help to promote this image.

Age and residency requirements have no real impact on industry, as very few applications are rejected in this regard and these requirements do not provide significant barriers to entry.

Experience requirements for motor dealers and managers create a cost to industry through a high turnover of sales staff. This issue may impose a small recurrent cost on industry due to the requirement to skill new staff.

Industry incurs a direct cost through the payment of a license fees of $436 per annum for dealers and managers and $96 for salespeople. These fees are not considered a significant cost on industry.

61 Evidence suggested only that the vast majority of dealers price to take full advantage of the 10 percent maximum commission.

The business premise requirements impose a significant compliance cost on industry and creates a barrier to entry for both new market participants and the introduction of innovative service delivery mechanisms. For example, enclosed showrooms in particular demand substantial outlays and properties facing a road often demand sales or rental premiums compared with other locations. This is particularly the case if a dealer is seeking to establish premises in a commercial area which consumers traditionally associate with the motor vehicle trade.

Established dealers who have invested in premises that meet the requirements of the Act, experience a benefit from the barrier to entry these requirements generate for new competitors.

In estimating the cost the Act places on dealers in this regard, it is necessary to examine which of these costs may be incurred as normal business practice if the legislative requirements did not exist. Most dealers would choose a road-side location as normal business practice, as there are significant marketing advantages in having a showroom facing a road due to the advertising exposure it gives to existing stocks of vehicle and the opportunity it provides for the dealer to use special displays. Many dealers also trade in new and used cars, and choose to rent or construct an enclosed display area for both physically protecting new vehicles and giving those vehicles an 'air of exclusivity', as a cost of their normal business practices.

Therefore many dealers may choose to meet the requirements as part of good business practice, and the cost imposed by the Act in this regard would only be small and is likely to impact on smaller firms who specialise in used vehicles only. It should also be noted that the Act restricts innovative delivery such as e-commerce, which may disadvantage some dealers.

Maximum rates of commission on consignment sales provide a small benefit to industry for many of the same reasons maximum commissions on property sales benefit real estate agents. This issue is discussed in detail in Chapter 3.

5.3.3 Government

Government benefits from the Act through requirements in relation to character, fitness tests, requirements for business premises, and work experience requirements, reducing the number of consumer complaints which the Office of Fair Trading and the Auctioneers and Agents Committee must process.

DEFT estimates that approximately $1 million per annum is collected in license fee revenue and costs[62] of $300,000 per annum are incurred in administering licensing and registration schemes, and regulating other requirements.

Overall a net benefit is provided to Government under the base state.

[62] Including approximately $61,000 in costs for a general public education campaign.

5.3.4 Base State Conclusions

Summarising the analysis presented above, a benefit is provided by the following elements of the Act, which also support the objectives of the legislation:

- good fame and character tests
- Auctioneers and Agents Committee test
- experience requirements.

Character and fitness tests have been evaluated as delivering a moderate benefit while the other restrictions can be viewed as delivering small benefits, across all of the stakeholder groups.

The NCP Public Benefit Test analysis does not support those provisions of the Act and its regulations dealing with:

- minimum age requirements
- Queensland residency requirements
- business premises requirements of enclosed office accommodation and an enclosed display area that faces the road
- maximum commissions.

A small net cost has been assigned to these provisions across the stakeholder groups.

Overall, the base state delivers a small benefit across stakeholder groups. An impact matrix is provided on the following pages to summarise these conclusions.

Table 5.3 Motor Dealers' Impact Matrix - Base State

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Licensing Fees	✘	✘	✓✓✓	-	Transfer of revenue from motor dealers to Government resulting in a marginal increase in business cost and prices offset by a corresponding funding benefit to Government.
Residency & 21 Years of Age	-	-	-	✘	No real impact
Good fame & character, Fit & proper person	✓✓	✓	✓✓	✓✓	Provides no real cost to compliant individuals, however a small number of non compliant persons are precluded from market entry, helping to protect consumers against unscrupulous operators
Licensing test	✓	✘	✘	✓	Licensing tests provide a very low barrier to entry and serve only to identify, rather than educate service providers, of legal requirements. The benefits to consumers are small.
Experience Requirements for dealers & managers	✓	✘	✓	✓	Experience requirements for dealers and managers are beneficial to consumers in raising service provider competency, which is particularly important when these persons supervise salespeople.
Business Premises	-	✘	✓	✘	Standards for premises may inhibit market entry by innovative dealers, and impose direct costs on dealers that would be passed on to consumers
Maximum commissions	✘	✘	-	✘	Regulating maximum commissions restricts innovation and levels of service available to consumers
Option Summary	✓	✘	✓	✓	**Greater benefits can be achieved by removing a number of restrictions.**

5.4 The Proposed Bill

The proposed Bill is expected to alter the Act in several respects regarding restrictions to market entry and conduct as detailed in the table below.

Table 5.4
Comparison of Legislative Requirements

The Act	The Proposed Bill
Age 21	Age 18
Resident of Queensland or within 65 kms	No requirement
Good character	Suitability assessments
Fit and proper person	Suitability assessments
Business premises	No requirements
Maximum commissions on consignment	No requirement
No requirement	Statutory warranty on used vehicles

The proposed Bill is expected to alter conduct restrictions in several respects:

- removing the exemption for regulation of the Public Trustee
- introducing a mandatory code of conduct
- prohibiting the acceptance of trade-ins by dealers in connection with vehicles sold on consignment
- restricting dealers from obtaining an option on vehicles which have been placed in their hands for sale by vehicle owners
- introducing statutory warranties and a cooling-off period for used motor vehicle transactions.

5.5 Impacts of the Proposed Bill

5.5.1 Consumers

Each element of the proposed Bill presents 'no real impact' or 'a net benefit impact' for consumers (buyers and sellers) and is discussed below.

- The removal of residency requirements and relaxation of age restrictions is not expected to impose costs on consumers (buyers or sellers) as these restrictions currently have little impact on consumers under the base state.
- As discussed under section 4.5.1 regarding auctioneers, suitability requirements are expected to involve similar processes and tests as the current character and fitness tests. Therefore, suitability tests are not expected to have any real impact (net incremental benefit or cost against the base

state) on sellers or buyers.

- As discussed under the assessment of the base state in section 5.3.1, business premise requirements impose a small cost on consumers and the removal of this requirement would produce a small net benefit for sellers and buyers of used motor vehicles. No real impact is expected on buyers of new vehicles as most new vehicle dealers would meet these requirements as a matter of a good business practice anyway.

- As discussed above under section 5.3.1, a maximum rate of commission on vehicles sold on consignment produces a small cost to consumers and its removal would produce a small net benefit.

Inclusion of a statutory warranty on used vehicles introduces a number of new issues as the Act does not currently provide for statutory (i.e. mandatory) warranties on used vehicles. The statutory warranty to apply under the proposed Bill is two-tiered:

- vehicles that have travelled less than 160,000km or were first registered less than 10 years ago are assigned a warranty of three months or 5,000kms, whichever occurs first

- vehicles that have travelled more than 160,000km or were first registered more than 10 years ago are assigned a warranty of one month or 1,000kms, whichever occurs first.[63]

The benefits of warranties include that they protect consumers in cases where an educated assessment of the merchandisable quality of a vehicle is not possible. Those who benefit to the greatest extent are consumers who:

- are unfamiliar with mechanical issues
- are buying relatively old vehicles
- are poorly placed to negotiate with dealers due to some combination of their limited education, inexperience in the commercial world or insufficient resources to obtain an independent inspection of the vehicle.

The costs associated with introducing warranties are that they are set at uniform levels, and may therefore fail to reflect reliability issues for individual vehicles. Due to the difficulty of determining a risk profile for each vehicle, warranty costs must be estimated for some period into the future and then spread across all or most of the dealer's used car range. As a result, three problems are created:

- consumers using their skill to purchase a relatively reliable car pay a higher price for that vehicle

- dealers themselves have difficulty in estimating their exposure to risk and therefore the size of any price adjustment which is needed to cover their warranty obligations particularly for older vehicles. This may result in higher than necessary premiums being set and all buyers paying higher commissions than required

[63] The warranties will not apply to commercial vehicles, caravans, trailers, tractors that can be registered as farm machinery, motor cycles, an unregistered vehicle, motor vehicles sold to a motor dealer, and vehicles sold on consignment for a client other than a motor dealer.

- warranties can give rise to disputes if the buyer and the dealer have different interpretations of their meaning.

Warranties appear to provide a moderate net benefit for buyers of used cars and support the objectives of the legislation by increasing the protection available to consumers.

Cooling off periods deliver a moderate consumer protection safeguard against high pressure selling tactics. A cooling off period allows consumers sufficient time to assess the implications of their actions in an environment divorced from the influence of salespeople. Consumers may thereby avoid the monetary and personal costs involved in committing themselves to a financial obligation which they may be unable to service. The introduction of anti 'gazumping' provisions (as seen in other States) would be necessary to ensure that salespeople do not utilise the cooling off period as a marketing opportunity to force a higher priced offer from a competitive purchaser.

Overall, cooling off periods appear to provide a moderate net benefit to consumers and support the objectives of the legislation.

From the analysis presented above, it can be concluded that introduction of the proposed Bill would be anticipated to deliver an overall moderate net benefits to consumers.

5.5.2 Industry

Industry may slightly benefit from the proposed Bill to the degree that it provides dealers with greater flexibility in employing people under 21 years of age and non-residents of Queensland, however this impact would be expected to be very small, and not present a noticeable impact on industry.

The removal of maximum commissions on consignments will increase industry's flexibility to operate and negotiate individual commission structures that meet the needs of the seller and the dealer.

The relaxation of business premises standards would have a small benefit for selected used car dealers, but would not be expected to have an impact on new car dealers or larger used car dealers, as these operators would meet the requirements as part of normal business practice.

As discussed under section 5.5.1 above, suitability assessments are expected to be similar to current character and fitness assessments and no incremental impact over the base state is expected on industry in this regard.

Statutory warranties on used vehicles would introduce additional moderate operating costs to industry due to the preparation of documentation and requirements to honor the warranty. Likewise, cooling off periods may reduce the number of sales achieved, decreasing earnings.[64] Overall, these provisions may improve the public image of dealers, however the benefits are not likely to offset the extra costs and revenue forgone by industry and a small net cost can be associated with these provisions.

Overall however, industry would still achieve a moderate net benefit from the proposed Bill.

64 Anti 'gazumping' provisions should also be provided to protect dealers from consumers utilising the cooling off period to bargain more favorable conditions with competing dealers.

5.5.3 Government

Government should experience a small net benefit from the proposed Bill as the introduction of statutory warranties is expected to decrease the number of complaints DEFT and the licensing authority must consider.

The removal or relaxation of restrictions relating to age, residency, premises and maximum commissions on consignment sales will reduce the workload of the Office of Fair Trading in monitoring and enforcing compliance with the Act. However, Government may face additional costs in enforcing statutory warranties, a mandatory code of conduct and other changes introduced through the proposed Bill.

It has also been estimated, on a pro rata basis, that the motor dealing industry would be responsible for approximately $56,000 of the costs incurred by Government from a public education campaign associated with the introduction of reforms.

Overall, a small net social benefit for Government is anticipated.

5.5.4 The Proposed Bill Conclusions

Summarising the analysis presented above, a net public benefit is provided by the following elements of the proposed Bill, which also support the objectives of the legislation:

- relaxation of age requirements
- removal of residency requirements
- suitability assessments
- removal of business premises requirements
- removal of maximum commissions on consignment selling
- introduction of statutory warranties.

The introduction of cooling off periods would deliver a moderate net benefit, across stakeholder groups, over the base state. The remaining provisions deliver small benefits over the base state.

Overall, the reform option would deliver a moderate net benefit, across stakeholder groups, over the base state. An impact matrix is provided on the following pages to summarise these conclusions.

Table 5.5 Motor Dealers' Impact Matrix – The Proposed Bill

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Relaxing Residency & 21 Years of Age	-	-	✓	✓	Age and residency are not significantly relevant to consumer protection and are unjustified.
Suitability requirements	-	-	-	-	No impact is expected to result from the implementation of suitability requirements in place of good fame and character & fit and proper person requirements.
Relaxing Business Premises	✓	✓	✓	✓	Relaxing business premises will remove a moderate financial entry barrier and an unnecessary business cost for wholesalers and on-line dealers, delivering marginally increased competition and marginally reduced prices without losses to consumer protection.
Relaxing Maximum Commissions	✓	✓	✓	✓	Relaxing maximum commissions on consignment sales will allow an increased level of services from higher potential revenues. As consignment sales are limited, benefits to consumer and dealers will be small.
Statutory Warranties	✓	✗	✓	✓	Statutory warranties will promote small increases in dealer costs and final prices and protection for newer used vehicles, which are usually covered by lesser warranties. Provisions for older used vehicles is minimal and will have little impact for dealer or consumer. Government costs will be marginally reduced through slightly lower complaints.
Cooling off periods	✓✓	✗	✓✓	✓✓	Cooling off periods will deliver moderate consumer protection benefits from high pressure selling tactics. Anti-gazumping provisions will minimise costs to service providers. Any losses to dealers will relate to unscrupulous practices. Government investigation costs will be moderately reduced.
Prohibiting trades and options on consignment vehicles	✓	✗	✓	✓	Provisions will reduce conflict of interest and confused financial incentives resulting in small reduction in dealer earnings and small increases in consumer protection. Consignment selling is limited and overall impacts will be small.
Option Summary	✓	✓	✓	✓✓	**An overall net benefit is expected from reducing unnecessary restrictions and increasing consumer protection.**

5.6 Negative licensing

A negative licensing model would introduce relatively few changes to the regulatory model proposed by the proposed Bill.

The barriers to entry created by the Act will be removed. These include:

- license fees
- age and residency requirements
- character and fitness tests
- licensing authority test
- experience requirements
- business premise requirements.

The negative licensing model will include the market conduct requirements as listed under the proposed Bill, including:

- removing the exemption for regulation of the Public Trustee
- introducing a mandatory code of conduct
- prohibiting the acceptance of trade-ins by dealers in relation to vehicles sold on consignment
- restricting dealers from obtaining an option on vehicles which have been placed in their hands for sale by vehicle owners
- introducing a cooling-off period for used motor vehicle transactions
- removing maximum commissions on consignment.

Therefore, many of the impacts of negative licensing will be similar to those expected under the proposed Bill.

5.7 Impacts of Negative Licensing

5.7.1 Consumers

The negative licensing model will present the same net benefit impacts as the proposed Bill for consumers in relation to the following :

- the removal of age and residency requirements
- the removal of business premise requirements
- the removal of maximum commissions.

The removal of character and fitness tests will provide a net cost to consumers as it will no longer ‘screen’ unscrupulous operators from entering the market.

The removal of the licensing authority test and the work experience requirements of dealers are also expected to produce an incremental cost to consumers (buyers and sellers) as these currently provide some assurance of provider competency for consumers. Therefore the negative licensing model does not support the objectives of the legislation in this regard.

The removal of license fees is not expected to flow through to a price reduction for consumers, as these costs are not considered significant to industry.

As the above costs and benefits appear to negate each other, the negative licensing option hinges on the effects of removing maximum commissions on vehicles sold on consignment, and on introducing statutory warranties for used motor vehicles.

The analysis of the competition effects from the proposed Bill, as discussed in section 5.5.1, suggests that removing maximum commissions will produce a net social benefit. However despite this, the introduction of statutory warranties into Queensland might be justified having regard to the experience of other States of Australia which have all introduced statutory warranties in recent years.

On the assumption that statutory warranties have a positive overall beneficial impact on consumers, the changes to market conduct introduced as a result of negative licensing are likely to yield a net benefit compared to the base state. However, negative licensing reduces the protection afforded to consumers through restrictions such as character and fitness tests and work experience, and therefore does not support the objectives of the legislation.

Overall, consumers will obtain a small net benefit from the reform option.

5.7.2 Industry

Motor dealers wishing to enter the market will benefit substantially from negative licensing by no longer facing entry barriers set down in the Act. As a result, already established dealers may face additional competition.

There is a degree to which barriers to entry have protected the image of the industry as a whole. Both new and established dealers may be placed at a disadvantage if new entry gives rise to higher numbers of consumer complaints and a higher proportion of owners preferring to sell their own vehicles. At least part of this effect will be offset to the degree that a mandatory code of conduct, a cooling-off period and other changes to the regulatory framework governing conduct, support the image of dealers in the market. Nevertheless, questions surrounding the degree to which the code can be enforced, suggests that some image concerns will remain.

Overall, Industry will obtain a small net benefit from the proposed reform option.

5.7.3 Government

Government will be advantaged by no longer having to regulate provisions of the Act covering premises and work experience. However, DEFT will forego the $1m per annum in license revenue currently collected and will only save $300,000 in administration costs in this regard.

It has also been estimated, on a pro rata basis, that the motor dealing industry would be responsible for approximately $56,000 of the costs incurred by Government from a public education campaign associated with the introduction of reforms.

Government will also be disadvantaged to the degree that a mandatory Code of Conduct needs to be enforced and Government is in some way required to adjudicate on disputes arising from the introduction of mandatory warranties, cooling-off periods and other changes to the regulation of market conduct. Overall, a small net cost is anticipated to be imposed on Government from the reform option.

5.7.4 Negative licensing Conclusions

Negative licensing applied to motor dealers may be beneficial as it produces a small net benefit for consumers and industry in pricing and operating efficiency considerations. However, this regulatory model decreases the protection provided to consumers and therefore contradicts the objectives of the legislation.

In general, the removal of market entry barriers delivers a small net cost across stakeholder groups. It should be noted however that removing age, residency and business premises requirements will deliver a small net benefit, across the stakeholder groups.

The conduct provisions under the option match those under the proposed Bill option and will deliver small net benefits, across the stakeholder groups, except for cooling off periods which will deliver a moderate net benefit.

Overall, a small net cost can be concluded across the stakeholder groups. An impact matrix is provided on the following pages to summarise these conclusions.

Table 5.6 Motor Dealers' Impact Matrix – Negative licensing

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Elimination of Licensing Fees	-	✓	✗✗✗	-	The transfer affect of licensing revenue from industry to government will cease, but no real impact on consumer price is expected
Eliminating Residency & 21 Years of Age	✓	✓	-	✓	A small increase in the number of service providers may result, slightly increasing competition.
Eliminating Good fame & character, Fit & proper person	✗	✗	✗	✗	Increase exposure of consumers to unscrupulous operators
Elimination of Licensing test	✗	✓	✗	✗	Decreases level of operator competency when dealing with consumers
Experience requirements for motor dealers	✗	✓	✗	✗	Decreases level of operator competency when dealing with consumers
Eliminating Business Premises	✓	✓	-	✓	Impact same as that expected under the proposed Bill
Eliminating maximum Commissions	✓	✓	-	✓	Impact same as that expected under the proposed Bill
Statutory Warranties	✓	✗	✓	✓	Impact same as that expected under the proposed Bill
Cooling off periods	✓	✗	✓	✓✓	Cooling off periods will deliver moderate consumer protection benefits from high pressure selling tactics. Anti-gazumping provisions will minimise costs to service providers. Any losses to dealers will relate to unscrupulous practices. Government investigation costs will be moderately reduced.
Prohibiting trades and options on consignment vehicles	✓	✗	✓	✓	Provisions will reduce conflict of interest and confused financial incentives resulting in small reduction in dealer earnings and small increases in consumer protection. Consignment selling is limited and overall impacts will be small.
Option Summary	✓	✓	✓	✓	**Statutory warranties and cooling off periods may not offset any other losses in consumer protection**

5.8 The Hybrid Model

From the analysis undertaken of the base state and the proposed regulatory alternatives (the proposed Bill and negative licensing), a hybrid model can be developed that incorporates those restrictions that provide a net public benefit, and meet the objectives of the legislation. On this basis, the hybrid regulatory model for motor dealers would incorporate:

- relaxation of age requirements
- removal of Queensland residency requirements
- removal of maximum commissions on vehicles sold on consignment
- removal of business premises requirements
- suitability assessments
- introduction of statutory warranties.

The proposed Bill should include statutory warranties for used motor vehicles as a net benefit can be identified from introducing this additional regulatory requirement.

An impact matrix has not been provided for the hybrid model as it duplicates the matrix for the proposed Bill as shown in section 5.5 of this chapter.

5.9 Stakeholder Positions

Consumers

The Queensland and Brisbane Consumers Associations and the Financial Counselling Association of Queensland indicated that statutory warranties should be introduced for both newer and older used vehicles. They noted that while warranties on older vehicles were somewhat more difficult to justify, they nevertheless served an important function by helping to protect the interests of lower income earners. Three points raised by the Associations in favor of statutory warranties on older vehicles were that:

- the proposed warranties are relatively modest, the warranties will cover large numbers of vehicles
- most vehicles in Queensland are more than seven years old; and to the degree that warranties may raise prices for consumers, these costs would be outweighed by an improvement in vehicle reliability
- the proposed warranty for older vehicles is of limited value and should be raised.

The Associations considered that dealers are strongly placed to determine the overall condition of a vehicle for warranty purposes. They also considered that prescribed premises for dealers under the Act have produced anti-competitive market outcomes although if regulation in this area is removed it may need to be balanced with harsher regulation in other areas to "stop backyard operators." The Associations opposed the removal of a 10 percent maximum commission on used cars sold on consignment, ostensibly on the premise that such commissions prevent excess charging.

The Aboriginal Coordinating Council, which represents the interests of indigenous people, noted in its submission that it is often difficult for people in aboriginal communities to achieve fair and equitable treatment in contact with motor dealers given that these communities are often some distance from markets and the cultural values of indigenous people are frequently at odds with those prevailing in commercial transactions. In this context, the Council considered that the costs of statutory warranties will be far exceeded by the benefits. It noted that such warranties "will inject and heighten the interest in the fundamental issue of ethical dealings among motor dealers and motor auctioneers." Moreover, the introduction of statutory warranties in Queensland will bring the State into alignment with other areas of Australia.

Industry

Very few submissions were received from participants in the motor vehicle trade. The MTAQ, which represents the interests of around 2,500 businesses and 50 percent of dealers in used vehicles across Queensland, was the major industry stakeholder to provide written input.

The MTAQ's views are in accord with those of the report in so far as the Association believes that current provisions of the Act relating to age and residency for dealers and salespeople do little to promote the interests of consumers and might be removed as a form of regulation without giving rise to social costs. In line with the approach taken in the report, the Association holds that current regulations covering character, work experience and a competency test applied by the Auctioneers and Agents Committee each generates a net social benefit and should be retained. It questions whether statutory warranties for older vehicles will deliver a net social gain in their own right and supports the notion of statutory warranties only in so far as it reflects the current practice in NSW which is limited to a single tier for newer vehicles only.

The Association also questions the capacity of Government to effectively enforce existing regulations. By extension, it supports the argument that a mandatory Code of Conduct may lack impact due to problems faced by Government in achieving effective enforcement. The Association supports the removal of maximum commissions on vehicles sold by consignment on the basis that the current maximum rate of 10 percent inhibits efforts by dealers to achieve the highest possible price for owners.

The views of the Association differ from those of the report in that the Association believes regulation of premises provides an important safeguard for consumers and that the introduction of statutory warranties may encourage entry into the market by disreputable dealers. Its submission states that existing "standards for premises should be maintained at a level which reflects the professional nature of a motor dealership and is immediately recognised by consumers as licensed premises." The Association asserts that statutory warranties will allow 'back-yard' dealers to increase profitability relative to more reputable dealers and higher profits will in turn attract higher numbers of disreputable operators into the market.

In its submission the Royal Automobile Club of Queensland (RACQ), which represents the interests of vehicle owners, noted the following points:

- licensing for directors is necessary to ensure that consumer interests are protected
- any removal of requirements for dealers to operate from "specified premises" could be a serious barrier to speedy resolution of disputes
- the introduction of a statutory warranty on used cars is likely to impose higher costs on so-called 'shonky' dealers than on reputable dealers given that "shonks" often do not bother to repair a vehicle and are therefore more exposed to higher costs if a vehicle fails to perform.

Government

The submission by the Auctioneers and Agents Committee noted that the cost establishing prescribed premises is a deterrent for new firms to enter the market although such premises promote enhanced professionalism. The maximum commission of 10 percent on consignment sales was held by the Committee to be too low. It also held that statutory warranties would increase costs which would be passed on to consumers, result in more vehicles being scrapped and increase dealer inventories due to longer repair times. However, the Committee supported the introduction of warranties provided that effective mechanisms were available for assessing complaints and resolving disputes. It emphasised that warranties on older vehicles are difficult to justify.

PRICEWATERHOUSECOOPERS

6

Pastoral Houses

6.1 Market Profile

6.1.1 Market Structure

Pastoral houses (being a particular corporate form of stock and station agents) provide real estate services and auctioning services for people in rural areas. They are engaged mainly in selling real estate outside country areas as well as auctioning a range of rural assets including land, livestock, plant and machinery. The term 'pastoral house' is only applied in Queensland with reference to concessionary licenses granted, to conduct real estate and auction services. The concessions granted in licensing conditions reflect the established rural experience and the access benefits which pastoral houses provide. Through a series of mergers over several decades[65], the number of pastoral houses within Queensland has declined to just two, Wesfarmers Dalgety and Elders Primac.

Wesfarmers Dalgety is the trading name used in Queensland to represent the operations of Wesfarmers, one of Australia's largest public companies. Nationally, its' operations yield a current annual turnover in the order of $3 billion and the organisation employs 8,700 full time and 4,000 part time equivalents.[66]

Elders Primac is the trading name of Futuris Corporation Limited, a publicly listed company with total current annual turnover of $4.2 billion.[67]

Separate figures for the two firms' real estate and auctioneering services are not available. Australian Bureau of Statistics (ABS) data indicates that there are at least three pastoral house offices in all subdivisions of Queensland.

6.1.2 Market Conduct

The market in which both firms operate is unusual in the sense that consumers are often well informed about the performance of the two pastoral houses, based on feedback from satisfied or dissatisfied consumers, and therefore well positioned to choose one.[68]

While rivalry between the two firms is reasonably intense, it does not centre on direct price competition. Rural producers tend to favor one firm as a long term service provider based mainly on non-price considerations. These considerations can include historical family ties with a provider, its reputation for service quality, and tied supply considerations, such as long term borrowings which may bind a consumer to a pastoral house.

6.1.3 Market Performance

There have been relatively few complaints about the behaviour of Wesfarmers Dalgety or Elders Primac to the Office of Fair Trading or the Auctioneers and Agents Committee.[69]

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65 Particularly during the harder economic climate of the 1970s.
66 Wesfarmers 1999 annual report.
67 Futuris Corporation Limited annual report 1999.
68 Unfortunately the required statistical information to evaluate the validity of this conclusion is unavailable.

There are a number of performance issues that are specific to this market. Unlike the broader property market, issues of information asymmetry, fraud, negligence or inappropriate selling tactics are less relevant in a tightly networked rural environment where local consumer knowledge is strong.

By using established business structures, developed from farm product wholesaling, insurance and other rural services, pastoral houses are able to provide consumer access[70] to services in low demand regions where stand alone real estate or auction house agencies would not be financially viable. In this light, concerns regarding the competitive advantage of reduced licensing requirements bestowed upon pastoral houses over private agencies can be largely discarded due to the absence of potential competitors in the core market of pastoral houses. In higher demand regional urban centres, the issue of competitive advantage over real estate agents or auctioneers is often irrelevant as the pastoral houses also conduct real estate and auction services through fully licensed operations.

6.2 The Act supporting the Base State

Applicants for pastoral house licenses under the Act are, in effect, applying for a combination of a real estate agents license and a restricted auctioneers license. However, limits are placed on the activities of license holders to work outside rural areas, and to deal with rural assets specified under the Act including:

- land
- livestock
- wool
- plant machinery
- furniture
- other items located on rural land.

License holders may auction land within rural towns, but only four times in any given year by a particular office.

[69] Insufficient data is available to determine the profit, cost, productivity or quality of service components of pastoral house performance or to benchmark it against efficient comparators as other states do not maintain a separate category of license or statistical records for this style of operator.

[70] In major urban centres, entry barriers may reduce the scope for choice in service providers, however in rural markets issues of choice become issues of access to any service provider and are therefore amplified in importance.

Table 6.1 below sets out the relationship between the types of licenses that apply to pastoral houses, and the operational equivalent for real estate agencies and auctioneers.

Table 6.1
Pastoral House License Equivalents

Pastoral house licenses	**Operational equivalent**
Pastoral house directors' license	Real estate agent license
Pastoral house managers' license	Manager's (real estate agency) license
Pastoral house auctioneers' license	Auctioneer's license
Pastoral house employee	Real estate salesperson

6.2.1 Restrictions on Market Entry

The licensing requirements of the Act are similar to those faced by real estate and auctioneering staff, and require the applicant to:

- be resident in Queensland or within 65kms of the border
- be at least 21 years of age
- be of a good fame and character
- be a fit and proper person
- have been in employment with a pastoral house for one year for a pastoral house auctioneer, two years for a pastoral house manager and three years for a pastoral house director
- have paid a license fee.[71]

Employees of a pastoral house are not required to sit a written test or register with the Auctioneers and Agents Committee in order to function as a real estate sales person, or undertake formal training. These are both requirements of real estate agents. The competitive advantage this bestows on pastoral houses is limited due to the small overlap in relevant geographic service areas for the two occupational groups. In addition, the nature of the rural marketplace is such that consumers are well informed of service providers identity and local market issues, and applying these requirements to pastoral house real estate sales persons is not likely to increase the service provided to the consumer. In accordance with the NCP guidelines, regulatory restrictions should only be increased if there is a distinct public benefit associated with the increased regulation.

71 Fees are set currently at $436.70 for a pastoral house director's license, $331 for a pastoral house auctioneer's license and $196 for a pastoral house manager's license.

6.2.2 Restrictions on Market Conduct

Under the Act, a license issued to a director, manager or employee applies to their employment with either Wesfarmers or Elders and cannot be carried by them to another firm. This occurs through a provision of the legislation that states that:

> "a person who is the holder of a pastoral house … license … shall not exercise any of the functions of a real estate agent or, as the case may be, an auctioneer, except in the course of carrying out the person's duties as a director or employee of a licensed pastoral house, the name of which is endorsed on the person's license …"

This restriction limits the activity of pastoral house license holders to their existing employer and necessitates that a new license be obtained before, or during, a shift to another firm.

The Act regulates the maximum commissions which pastoral houses may charge for their real estate and auctioneering services, which is applied in the same manner as discussed for real estate agent and auctioneer license holders.

6.3 Impacts of the Base State

6.3.1 Consumers

Assessment of the impact on consumers regarding the Act's requirements in relation to:

- license fees
- residency
- age
- maximum commission levels
- character and fitness;

has been addressed in previous chapters relating to real estate agents and auctioneers. Summarising the findings from earlier base state analyses:

- licensing fees provide no net impact but rather provide a transfer from service providers to Government which may result in prices being higher than what would otherwise be the case
- residency requirements provide no real consumer protection due to the vast size of the State, the ability to flee the jurisdiction after acting inappropriately and their limitations on access and competition by excluding non-resident service providers
- age requirements have no real impact on consumers
- maximum commission levels will distort market efficiency. This problem is particularly noticeable in rural areas where the costs of servicing a property may far exceed the potential returns, if the property is not of significant value
- good fame and character, and fit and proper person assessments provide a benefit to consumers as these screening mechanisms assist in keeping unscrupulous operators from entering the market. However, the size of this impact may be small in relation to pastoral houses, due to the duopoly nature of the market. An examination of rejection rates for pastoral house licence applications

reveals that no licenses were refused across the breadth of new applications and renewals for the 1998/99 period. This indicates that screening procedures have created few if any legislative barriers to entry and have had a minimal adverse impact on competition. Table 6.2 below sets out the relevant data.

Table 6.2
License Applications (1998/99)

License	**Applications / Renewals**	**Granted**	**Refused**
Corporations			
Pastoral Houses	no new		
	1 renewals	1	0
Individual			
Pastoral House Auctioneers	8 new	8	0
	38 renewals	36	0
Managers			
Pastoral House Manager	6 new	6	0
	57 renewals	48	0

Source: Department of Equity and Fair Trading

Work experience

The Act requires that pastoral house auctioneers possess at least one year's employed experience with a pastoral house. If the one year of experience represented a persons entire work history, then it would be unlikely that they would hold the necessary competencies and market reputation required by vendors or auction houses to be appointed to conduct an auction. This issue was addressed in the discussion regarding auctioneers in section 4.3.1. Therefore, the requirement is likely to be met in the absence of legislation.

Stakeholders provided input to the review that work history is beneficial to a pastoral house employee gaining the necessary competencies to practice real estate agency services; and to safely and effectively provide services to vendor, buyer or renter. Therefore this restriction provides a small benefit to consumers.

Restrictions to rural activities

The rationale for conduct restrictions which focus pastoral house activities on rural activities, relates to the license eligibility concessions afforded to pastoral house employees in recognition of their exposure to rural issues. By imposing rural focused conduct restrictions on pastoral house license applicants, some level of assurance of licensee knowledge in the practice area is assured, thereby delivering a positive contribution to consumer protection.

Overall, consumers will experience a slight net benefit, if any, from the base state of regulatory provisions.

6.3.2 Industry

As discussed previously in this chapter, pastoral houses have an advantage over operators in similar markets, such as real estate agents or auctioneers. This is due to the license requirements for pastoral houses being less stringent than those required by other operators in the same market. For example, stock and station agents (rural real estate agents) have more stringent entry requirements than pastoral house license holders, regardless of the fact both parties are able to sell real estate in rural areas. Pastoral houses enjoy a benefit in this regard.

Prescribed employment experience requirements provide a low level barrier to entry which, in the case of auctioneering practices, would be exceeded in the absence of the legislation. Pastoral house director and manager licensees practising real estate services, are forced to acquire experience, which consultation participants indicated would not otherwise be achieved in the absence of the legislation. Therefore this requirement can be seen as providing a small cost to industry.

The impact of maximum commissions on residential property sales is likely to prohibit agents from servicing remote or low value properties due to the excessive costs involved versus potential returns from commissions, thereby providing a small reduction in potential service provider earnings.

Overall, a slight net cost is imposed on industry from the base state regulatory provisions.

6.3.3 Government

Conceptually, government resources are required for the license assessment process along with monitoring and disciplining activities for breaches of the legislation. In reality, the real resource commitments for Government are low for the following reasons:

- non-existent rejection rate for license applicants
- the impracticality of monitoring rural activities
- a virtually non-existent level of disciplinary actions for pastoral house licensees.

In financial terms, licensing revenue generates $22,300 per annum for the Department of Equity and Fair Trading, and legislation administration and enforcement costs[72] total approximately $8,115 per annum.

Overall, a slight net benefit is achieved by Government from the base state regulatory measures.

[72] Including approximately $2,000 in costs for a public education campaign.

6.3.4 Base State Conclusions

The above analysis indicates that the following restrictions present a net benefit to stakeholders:

- experience requirements for pastoral house manager and director licensees involved in the provision of real estate services provide assurance of some level of industry exposure and expertise
- by restricting pastoral house license holders to rural land and livestock issues, they are forced to operate within a scope of activities in which some level of competency is assured,
- good fame and character, and fit and proper person' tests.

Character and fitness tests were viewed as delivering a moderate net benefit across stakeholder groups while the other provisions deliver no significant benefit.

The following costs were also identified from the analysis:

- legislated experience requirements for pastoral house auctioneers are less than actual industry standard periods required to be gainfully employed as an auctioneer. As compliance with this restriction would be met in the absence of the legislation, it can be seen as making no contribution to consumer protection
- maximum commissions
- age and residency requirements.

Maximum commissions were found to deliver a small net cost across stakeholder groups. While age, residency and experience requirements (auctioneers) were found to carry no real impact, their ineffectual nature was grounds for their recommended removal.

Overall, legislative considerations play a limited role in the industry and were found to carry no net impact across the stakeholder groups. A summary of these results is presented in an impact matrix on the following page.

Table 6.3 Pastoral Houses Impact Matrix – The Base State

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Licensing Fees	-	✗	✓✓	-	Distribution impact only from individuals ($97-$436 each) and corporations ($259 each) to Government ($22,300).
Residency & 21 years of age	-	-	-	-	Provides no benefit to consumer protection however there is little evidence of impediments to competition.
Good fame & character, Fit & proper person	✓✓	✓	✓	✓✓	Character is an important factor in preventing unscrupulous persons from entering the market.
Experience Requirements	-	-	-	-	Beneficial regarding real estate services, but would operate in the market anyway regarding auctioneer services
Maximum Commissions	✗	✗	✗	✗	Regulated commissions significantly prohibit access to agency services for rural and remote properties and the scope of auction services, providing a significant cost to consumer access and reducing agency earnings.
Practice restriction to rural focus	-	-	-	-	Qualification exemptions in place of experience levels justify restricted focus. Agency services are primarily a service within the scope of other activities and significant urban market entry is unlikely. Where desired, restriction can be circumvented and is ineffectual.
Total Impact	-	✗	✓	-	**Net benefits can be achieved from removing unnecessary restrictions.**

6.4 The Proposed Bill

6.4.1 Restrictions on Market Entry

The proposed Bill intends the following changes to the Act:

- age requirements would be relaxed from 21 to 18 years
- residency requirements would be removed
- competency assessments replace work experience requirements
- good fame and character tests replaced by suitability tests.

6.4.2 Restrictions on Market Conduct

The proposed Bill intends the following changes to market conduct:

- maximum commissions will be removed from rental properties
- a time limit will be imposed on sole or exclusive agency agreements
- salespeople will need to be supervised by a director's license holder
- cooling off periods for residential property sales will be introduced
- beneficial interest provisions relating to livestock will not be restrictive on other livestock agents, due to the small number of participants in rural regions.

6.5 Impacts of the Proposed Bill

6.5.1 Consumers

As discussed in the base state assessment in section 6.3.1, age and residency requirements, and a move to suitability assessments, provide minimal real impact on consumers and their removal, or relaxation, from the legislation is expected to deliver only slight positive impacts on consumers due to the more significant role of traditional rural industry issues than legislative considerations.

Competency assessment procedures will carry no net impacts on consumers as the rural restrictions of pastoral house licensees require an equivalent limited focus of skills to rural issues.

From a conduct perspective, the changes to conduct restrictions relate primarily to issues with an urban product focus. Specifically:

- the rental property market in rural areas is significantly less well developed than in urban centres. The removal of maximum commissions would be expected to have a small benefit, but not as big an impact in rural areas as in urban areas
- sole and exclusive agency agreements are largely irrelevant due to the limited number of service providers available
- high pressure selling tactics are not a feature of the rural market, and cooling off periods are unlikely to deliver significant impacts.

Therefore, overall, only a small net benefit is expected for consumers, if the proposed Bill was to be implemented.

6.5.2 Industry

As discussed, the market practices of pastoral houses and the parochial nature of clients in rural areas, will result in limited impacts on industry from legislative changes such as:

- the relaxation of age requirements
- removal of residency requirements
- change to competency assessment
- cooling off periods
- sole or exclusive agency time limits
- removal of maximum commissions on rental properties.

The key conduct impact on pastoral houses from the proposed Bill relates to the extension of del credere trust accounting exemptions for non pastoral house auctioneers. Extending the exemption will increase the number of agents offering del credere services, stimulating competition, and potentially resulting in marginal reductions in commission levels for pastoral houses. This will deliver a small net cost to pastoral houses.

The introduction of supervisory requirements for sales staff will have a small net cost on industry.

Overall the proposed Bill is expected to have a small net cost on pastoral houses, however the general rural real estate and auction industry will derive an equivalent small gain. Overall no net benefit or cost will result for the broader real estate and auction industries which encompass pastoral houses.

6.5.3 Government

The suggested changes under the proposed Bill relate primarily to age, residency and other minor issues and do not carry significant implications for Government administration. The overall impact on Government of the proposed Bill has been found to be no net incremental cost or benefit.

6.5.4 The Proposed Bill Conclusions

Many aspects of the proposed Bill will have no real impact in the pastoral house market due to the disparate nature of rural versus urban markets, and the parochial nature of rural clients. These factors indicate that established market practices carry more importance for stakeholder outcomes than the regulatory influences of legislation.

The key change to be anticipated under the proposed Bill is the erosion of the competitive advantage held by pastoral houses over auctioneers who will also be granted exemption from trust accounting requirements, which will deliver a small net cost to the specific group.

Across all stakeholder groups, deregulation of maximum commissions will deliver a small net benefit. Agency sole and exclusive agreement maximum time limits and staff supervision provisions will deliver a small net cost, across the stakeholder groups.

Overall, no real incremental impact is expected from the proposed Bill above the base state. The impact matrix on the next page summarises these conclusions.

Table 6.4 Pastoral Houses Impact Matrix – The Proposed Bill

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Benefit	Comments
	Consumers	Industry	Government		
Relaxing Residency & 21 years of age	-	-	-	-	No real impact.
Suitability Requirements	-	-	-	-	No real impact.
Competency Assessment	-	-	-	-	No real impact.
Removing Maximum Commissions	✓	-	✓	✓	Relaxing maximum commissions will allow significantly increased access to services for rural and remote properties and increase the scope of auction services.
Sole or Exclusive agreements time limit	-	✗	-	✗	Pastoral houses will loose a competitive advantage over auctioneers. Competition will be stimulated resulting in reduced commissions and increased access to and scope of services provided.
Supervision of sales staff	-	✗	✗	✗	Imposes a compliance cost on industry and enforcement cost on Government and does not provide an incremental benefit for consumers
Cooling off periods	-	-	-	-	No real impact.
Total Impact	✓	✗	-	-	**No real incremental impact is expected from the proposed Bill above the base state.**

6.6 Negative Licensing

The negative licensing option features the removal of all legislative requirements used to assess applicants, before market entry, but maintains regulations placed on participant market conduct.[73] The barriers to entry eliminated under negative licensing include:

- age and residency requirements
- license fees
- work experience requirements
- removal of good fame and character, and fit and proper person, tests.

Conduct provisions will include:

- commissions on residential property sales
- sole and exclusive agency maximum periods
- a mandatory code of conduct.

6.7 Impacts of Negative Licensing

6.7.1 Consumers

The unique natures of the pastoral house industry, its rural clients and service providers have been previously discussed in detail in this section. Because of the importance of market reputations and the similarity of services provided by the pastoral houses, ethical conduct can be expected regardless of the regulatory environment in place. Accordingly the removal of entry requirements is not expected to deliver any real impacts to consumers.

The removal of character and fitness tests reduces the protection afforded consumers, through allowing unscrupulous operators to enter the market, and presents a net cost to consumers. However, this would expect to produce a small cost to industry as demand for pastoral house services is driven largely by reputation in the market.

From a conduct perspective, retention of fixed maximum commissions on residential properties presents a net cost to consumers as discussed in detail in the base state assessment in section 6.3.1.

Exclusive arrangements are not expected to present any real impact on consumers as discussed under section 6.5.1, and it is too difficult to determine potential impacts from a code of conduct as the content of the code is unknown.

[73] A detailed description of our approach to assessing its anticipated impacts has been discussed in more detail in the real estate section.

6.7.2 Industry

From an industry perspective, established market conventions would continue to provide the main guidance for operating principles and practices, regardless of the removal of entry requirements. The only exception may be the removal of the character and fitness tests may allow more unscrupulous employees to enter the industry and may damage the reputation of the industry.

From a conduct perspective, the majority of issues applying relate more so to urban practice than rural settings. However the continuation of maximum commissions on residential property sales will continue to prohibit the profitability of this service area and presents a net cost to industry.

It is too difficult to determine the impact of a code of conduct on industry as the content of the code is still being developed.

6.7.3 Government

For urban real estate and auctioneering services, the role of Government in enforcing the mandatory code of conduct and identifying persons inappropriate to practice will require additional resources. This resource requirement would be offset by the resource savings Government would experience from not having to enforce entry requirements.

Government would forego the revenue of $22,300 per annum associated with pastoral house licenses and may save $8,115 per annum in this regard.

Therefore a small overall net cost to Government can be concluded.

6.7.4 Negative licensing conclusions

As compared to the traditional mechanisms of urban real estate and auctioneering services, the market structure of pastoral houses and the nature of clients in the rural setting in which pastoral houses operate, provide significant benefits to the maintenance of ethical industry conduct. In this setting, the requirements for legislated regulatory protection of consumers is clearly not as strong for pastoral houses as for other industries. The impact of regulation on the present operating environment is limited with the key exception of maximum commissions on residential property sales which may significantly impede consumer access to services due to insufficient returns on properties which are a high cost to service.

The negative licensing option is expected to deliver similar impacts to those described under the proposed Bill assessment. The loss of character and fitness tests will result in small overall costs. However these issues will be partly offset by deregulated maximum commissions, which are a particular restraint to effectively servicing properties in the pastoral house market.

The overall impact of the negative licensing option, for each of the stakeholder groups, is anticipated to be no net benefit or cost over the base state.

Table 6.5 Pastoral Houses Impact Matrix – Negative licensing

Restriction to Competition	Net Impact by Individual Stakeholder Group			Overall Net Incremental Impact	Comments
	Consumers	Industry	Government		
No license fee	-	✓	✗	-	Distributional impact only.
Relaxing Residency & 21 years of age	-	-	-	-	No real impact.
Removal of character and fitness test	✗	✗	✓	✗	Increase risk of unscrupulous operators entering the market.
Experience Requirements	-	-	✓	✗	Other industry issues are more important for staff selection.
Removing Maximum Commissions	✓	✓	✓	✓	Relaxing maximum commissions will allow increased access to services for rural and remote properties and increase the scope of auction services.
Sole or Exclusive agreements time limit	-	-	✗	-	No real impact on consumers or industry, but raises enforcement costs for Government.
Cooling off periods	-	-	-	-	No real impact.
Total Impact	-	-	-	-	**No incremental cost or benefit is anticipated.**

6.8 The Hybrid Model

From the analysis undertaken of the base state and the proposed regulatory alternatives, a hybrid model can be developed that incorporates those restrictions that provide a net public benefit and meet the objectives of the legislation. On this basis, the hybrid regulatory model for pastoral houses would incorporate:

- relaxation of age requirements
- removal of residency requirements
- good fame and character tests replaced by suitability tests
- removal of work experience requirements.

The impacts of the hybrid model have not been summarised on an impact matrix as the impacts can be seen from the impact matrix addressing the potential impacts of the proposed Bill in impact matrix 6.4. As a whole they would be anticipated to deliver a small net benefit across stakeholder groups.

6.9 Stakeholder Positions

Consumers

Consumer representatives did not express a high level of concern for the operating practices of the pastoral house market. A key factor in this assessment may be a comparatively lower level of exposure to, and knowledge of key rural issues that affect a smaller proportion of the State population than urban consumer issues.

Industry

From an industry standpoint, current regulatory provisions were not considered to deliver excessive barriers or costs to entry. Likewise, the majority of conduct issues relate to urban practice considerations whilst pastoral houses are restricted in their conduct to rural focuses for real estate and auctioneering services. As a result, no particular concerns were raised. Rather, it was noted that the restrictions on rural practice under present regulatory arrangements are circumvented by referral of transactions to co-operative full license holders.

7

Commercial Agents

7.1 Market Profile

7.1.1 Market Structure

The market for commercial agencies in Queensland consists of businesses involved in debt collecting, repossessing and process serving. The services provided by commercial agencies on behalf of the client, for a fee, include:

- collecting or requesting payments of debts
- ascertaining the whereabouts of and/or repossessing any goods or chattels that are subject to hire-purchase agreement, bill of sale or chattel lease agreement
- serving writs, summons or other processes.

The Act requires that, to carry on the above activities, either a commercial agency license, manager's (commercial agency) license, or a certificate of registration for a commercial sub-agent, must be held.

In 1998-99 there were approximately 317 license holders for principal commercial agents, 9 for manager commercial agents, and 347 registered commercial sub-agents in Queensland.[74]

In Brisbane, and other major metropolitan areas in Queensland, commercial agency businesses employ up to 100 staff and specialise in one or a combination of debt collection, repossessions and document serving. In other regional and rural areas, commercial agencies operate in all fields to get the necessary volumes of trade and are often sole traders.

7.1.2 Market Conduct

The industry, although not dominated by a large provider, has a small number of specialised providers.

Due to the specialised nature of the industry, very few consumers, usually organisations, would conduct these services in-house and therefore outsource the services to commercial agents. It could be assumed that as search costs are considered to be quite high for organisations unaccustomed to dealing with such agencies, competitive pressures are potentially reduced, increasing the ability to extract economic rents. However the Institute of Mercantile Agents Ltd. (IMA) provided feedback to the review that price competition in Brisbane is extremely tight. Rural areas differ and are characterised a lower degree of competition and highly similar prices caused by a high proportion of unavoidable costs involved in delivering the service.

[74] A search of ABS data revealed that geographical distribution details for commercial agents are included with other business service provider classifications and can not be individually presented.

7.1.3 Market Performance

Data is unavailable on the economic and financial performance of commercial agents and sub-agents in Queensland, and the number of people employed in the industry as these details are not collected by industry associations and the ABS does not collect information to this degree of specificity.

Complaint figures were not able to be supplied by the Office of Fair Trading, but the Department did indicate that the number of complaints was less than that received for Auctioneers and Agent services which totaled 67 in 1997, 36 in 1998 and 23 in 1999.[75] This implies that on average, the maximum number of complaints per commercial agent (including sub-agents) was only 3.4 percent of the total number of licencees and registrants. This figure compares favorably with the other industries, with auctioneers and agents recording 1.3 percent and motor dealers approximately 46 percent.

These complaint figures may be understated as the majority of persons affected by the services of commercial agents, and sub-agents, are likely to be less capable of meeting financial commitments or in dispute with the other contracting party over legal issues. Given their socio-economic standing, not all affected persons will be aware of their rights under The Act or the point of contact within the industry to voice their concerns or be able to afford legal advice. There is an insufficient amount of data available that indicates the principal nature of complaints but it could be assumed that the process behind the delivery of the service by the commercial agents or sub-agents would be the primary source of concern ie. coercive tactics, harassment and false representation.[76]

Commercial agencies act as a third party in delivering their services, and therefore have to satisfy the requirements of the client in a legal and professional manner. For clients, problems arise in identifying those commercial agencies that have the relevant experience and professional standards to be able to perform services they have been previously unable to fulfill successfully. In addition, the client is unsure whether the commercial agent or sub-agent will carry out those services in a manner that will not jeopardise the completion of the contractual obligations with the customer, through legal ramifications regarding misconduct.

In Queensland, any impropriety by commercial agents and sub-agents is covered by a fidelity fund that has no limit. Queensland is the only State in Australia that maintains a fidelity fund for the industry. Other States employ a similar system via an insurance bond. For example, in New South Wales the agent or sub-agent with a maximum claim of $40,000 pays an applicable insurance bond. Part of the licensing fees in Queensland covers funding required to meet the claims on the fidelity fund, however this results in higher fees being demanded by commercial agents and sub-agents for their services.

Fidelity funds are being dealt with under a separate review and therefore will not be addressed in this report.

75 Office of Fair Trading

76 Anecdotal evidence suggests that consumer concerns are primarily with 'stand over' tactics being used

7.2 The Act supporting the Base State

7.2.1 Objectives and Rationale

The objective of the Act is to protect both the client and the consumer, who are both involved with a commercial agent / commercial sub-agent, from mis-conduct performed by the commercial agency or sub-agent.

The primary distinction between a commercial agent and a commercial sub-agent is that the sub-agent must be in the direct employ, or have an arrangement with the commercial agent, in order to be allowed to carry on the same functions as the commercial agent.

Consumers are deemed to be at risk as a result of:

- inappropriate methods being enforced by commercial agents or sub-agents in fulfilling their service requirements to the client i.e. harassment and/or stand-over tactics

- the perceived lower socio-economic standing in the community of most consumers, which makes them unable to afford legal advice regarding the conduct of commercial agents or sub-agents in most instances.

Clients are deemed to be at risk as a result of:

- non-performance by the commercial agent or sub-agent under the contractual obligations

- commercial agents or sub-agents conducting their services on behalf of the client in an inappropriate manner, thereby hindering the process the client was intending to achieve.

7.2.2 Restrictions on Market Entry

The Act regulates commercial agents and commercial sub-agents through a combination of minimum requirements for market entry and proscribed forms of conduct after entry occurs. Commercial agents must:

- pay a license fee
- be 21 years or over in age
- be a resident in Queensland or be within 65 km of the border
- be of good character; and a fit and proper person
- have a suitable business premises.

The license fee applicable to commercial agents is currently set at $436 per annum. In order to renew a license, a dealer must pay the license renewal fee of $413 and have held a license for at least one year in the past five years and have actively traded during that period.

In Queensland, an exam, similar to the multiple choice question (MCQ) learner's license exam, is administered prior to a license being issued. A commercial agent's application for a license will be rejected if the written examination is not satisfactorily completed.

A manager must also be licensed under the Act and face similar requirements to those of commercial agents. A commercial agents' managers license fee is presently set at $196 per annum with a renewal fee of $183 per annum.

A commercial sub-agent must hold a certificate of registration and face similar requirements for commercial agents. However, a license is not required, no formal examinations or qualifications are applicable and they must have an arrangement or contract to a commercial agency to be able to perform the same functions as a commercial agent. As with commercial agents, the certificate of registration does not confer additional powers and must be produced to the relevant authorities or parties as discussed previously in this section. A certificate of registration currently costs $97 per annum both for new and renewal registrations.

Under the Act, commercial agents must produce trust account receipts to debtors irrespective of the amount for all payments made as a trust account requirement. As part of the trust account requirements, commercial agents are audited three times per annum under the Act including one full audit and two surprise audits.

7.2.3 Restrictions on Market Conduct

For consumer protection, the Act prevents commercial agents or sub-agents from entering any premises without lawful authority when exercising or carrying out their functions[77]. This may be negated where a consumer waives their right under the initial contractual arrangement surrounding the finance of an item.[78]

Commercial agents are also prohibited from misleading or deceptive conduct aimed to induce any person to enter into an agreement or contract in connection with the business. The license conferred on the commercial agency does not imply any additional powers and must be produced on demand to relevant authorities ie. police, the registrar etc, or to any persons who have dealings with the commercial agency when they are performing any of their functions.

Also a commercial agent or sub-agent under the Act may not falsely pretend to a debtor that they are not dealing directly with the creditor; and that the debtor is not charged for the expenses regarding the debt collection process.

[77] This is not restricted to commercial agents but is also covered under civil and criminal legislation.

[78] Under these circumstances it is likely that the debtor has not fully read or understood the terms and conditions of the contractual arrangements which they are entering in to.

7.3 Impacts of the Base State

7.3.1 Consumers

Representatives of consumer organisations[79] conveyed concerns to the review relating to the practice of 'stand over' tactics by persons collecting monies or repossessing items from debtors. Unfortunately these experiences are not generally documented. In addition, Legal Aid Queensland have expressed a view that the level of official complaints gives a false impression of the level of consumer dissatisfaction. They feel that commercial agents deal with the most vulnerable members of the community, and therefore those people are less likely to know their rights or be able to enforce their rights when standover tactics are being employed. Therefore, stakeholders view the consumer protection objective of the legislation as particularly important in this industry.

Residency requirement

The requirement for commercial agents to be a Queensland resident is considered to offer little consumer protection. The benefits of such a restriction could arise through the consumer knowing that in a dispute, the commercial agent was a Queensland resident subject to Queensland law. The costs identified through the imposition of such a restriction was that it may inappropriately prevent commercial agents from obtaining a license in a different jurisdiction, thereby being able to provide a broader service than just in one State. As this industry is a small industry, compared to other industries also covered by the Act, the residency restriction may be limiting consumer choice of service provider. Overall, a small net cost can be concluded.

Age requirement

The requirement for commercial agents to be aged 21 is similarly not viewed as offering much consumer protection. It was submitted during consultation, that given the legal age of the majority was 18, there was no real benefit in having a higher age in order to be able to become a commercial agent. A commercial agent would be selected by a creditor on the basis of their being able to obtain a default payment, not on an age basis. As such, market forces would be expected to operate such that young commercial agents would not obtain enough work in order to operate a commercial business. Therefore, market forces would achieve the same outcome in the absence of legislation, and this restriction has no real impact on consumer choice. Overall, a small net cost can be concluded.

[79] Queensland Consumers Association & Brisbane Consumers Association.

Character and fitness tests

The requirements for a commercial agent to be of good fame and character and be a fit and proper person are specifically aimed at addressing both the public's perception of commercial agents, as well as to prevent those people demonstrably unacceptable to be a commercial agent from entering the market. As discussed in previous chapters, this restriction provides a moderate benefit to consumers in this regard.

Business premises, audit requirements and trust accounting requirements

Restrictions including business premises, audit requirements and trust and accounting requirements achieve small net benefits for consumers.

Establishment of a business premises creates a fixed point of contact for the consumer, should they need to raise performance issues with a commercial agent.

Audit requirements will benefit the client, whilst having no impact on consumers, as they ensure that commercial agents have commercially sound practices.

Trust accounting requirements benefit the consumer by ensuring that vulnerable members of the community are not taken advantage of.

These restrictions support objectives of the legislation by providing a overall moderate net benefit to consumers.

Other issues

In addition to the licensing requirements, the requirements of no unlawful entry, no misrepresentation and no false pretending were considered essential in maintaining control over the conduct of commercial agents and sub-agents and providing consumer protection. However, these issues do not impact competition and are not discussed further in this report.

7.3.2 Industry

The various restrictions imposed on commercial agents contribute to providing protection of the reputation of the industry. Most market entry restrictions attached to license applicants are considered necessary, and at a relatively low cost, to deter unsuitable people from entering the market and damaging the image of the industry. Although business premises may not directly play a role in consumer protection it does portray a professional image for the industry which is a benefit.

The only exceptions are the accounting and audit procedure requirements. In Queensland, commercial agents are audited, at great expense to the business three times a year, compared to other states where they are audited a maximum of once per year. This creates an additional financial burden on commercial agents particularly when considering the high volume of transactions processed by commercial agents relative to other industries. The applicability of the audit function in maintaining an unlimited fidelity function is uncertain.[80]

Industry stakeholders indicated that the maintenance of trust accounts and provision of receipts is disproportionately more expensive for commercial agents as compared to other industries governed by the Act, due to a relatively higher number, yet lower value, of installment payments processed. No quantitative data is collected to evaluate this claim however there is a strong potential that individual payments of monies to commercial agents may be of significantly lower value than low value rental property rent rolls, the next closest equivalent.

7.3.3 Government

The license revenue collected by the Department of Equity and Fair Trading is estimated at $64,850 per annum and more than covers the associated costs of administering the Act in this industry.

7.3.4 Base State Conclusion

A majority of the licensing restrictions imposed by the current legislation appear to be sufficiently upheld on a consumer, industry and government basis according to cost-benefit principles. Specifically, character and fitness tests have been evaluated as delivering a moderate net benefit across stakeholder groups while experience and business premises requirements deliver a small net benefit. Residency and age restrictions, can be considered anti-competitive and provide no real benefits to consumers.

Overall, the base state appears to present a small net benefit overall and the objectives of the legislation appear to be met. An impact matrix is provided on the following page to summarise these conclusions.

80 This issue will not be discussed in this report but will presumably be raised in more detail in a separate review undertaken to analyse the fidelity fund in Queensland.

Table 7.1 Commercial Agents Impact Matrix - Base State

Restriction to Competition	Net Impact by Individual Stakeholder Group			Overall Net Performance	Comments
	Consumers	Industry	Government		
Licensing Fees	✘	✘	✓✓	-	Transfer of revenue from commercial agents and manager ($436 and $196 per annum respectively) and commercial sub-agents ($97 per annum) to Government ($64,850).
Residency requirements	✘	-	✘		No real impact
Requirement to be 21 years of age	-	-	✘	-	Provides no protection benefits to consumers
Good fame & character, Fit & proper person	✓✓	✓	✓	✓✓	Provides customer protection benefits and enhances reputation of industry participants through non-entry of unsuitable persons, therefore Government costs are reduced through lower complaints.
Experience Requirements	✓	✓	✓	✓	Experience requirements provide consumer protection, enhances industry image and reduces the potential costs to Government through lower complaints.
Business Premises	✓	-	-	✓	Cost of establishing a business premise to industry is offset by the professional image it conveys in an industry that has a negative perception from the community Overall the consumer protection gains of a fixed point of recourse deliver an overall benefit.
Audit	✓	✘✘	-	✘	Three audits per annum may be too many as it places an additional cost on industry and one audit may still protect consumers.
Trust Accounts	✓	✘	-	✓	Trust accounting requirements increase business costs, however deliver benefits to consumer protection by ensuring that vulnerable members of the community are not taken advantage of.
Option Summary	✓	✘	✓	✓	**Some net benefits can be achieved by removing a number of restrictions.**

7.4 The Proposed Bill

The proposed Bill is expected to alter the current anti-competitive aspects of the Act in several respects:

- reducing the age limit on licencees from 21 to 18 years
- removing the general residency requirements related to Queensland residency
- introduction of basic competency standards as eligibility requirements to obtain a license.

7.5 Impacts of the Proposed Bill

7.5.1 Consumers

The impact on consumers of removing age, residency and business premises standards is essentially the same analysis as for motor dealers and real estate agents. The legislative restrictions each give rise to small net costs and their removal via the proposed Bill will create a small net benefit.

The introduction of competency standards would be appear to be suitable according to industry representatives. Registration would still need to be a necessary complement and the proposed Bill addresses this by continuing with the requirement for commercial sub-agents to be registered and commercial agents to be licensed. The training component will result in lower costs to the community and to the purchaser of service resulting in a small net benefit.

An additional positive element of the proposed Bill is that agents will only be allowed to act for one party related to a particular transaction. This is not an anti-competitive element of the Act, but will bring benefits for consumers and is discussed below.

Currently the Act does not specifically prohibit agents from acting for more than one party to a transaction, creating possible significant conflicts of interest. It is a problem that has also occurred in other jurisdictions which has resulted in regulation being imposed. Industry representatives support this restriction being enforced through the proposed Bill as it will reduce confusion over loyalties ie. currently a person who is behind on their payments and who has been written to by a collection agency may approach them to act as administrator thereby creating conflict with the creditor. This restriction clarifies the agency relationship in the industry and will result in reduced legal proceedings and associated costs. For consumers, the only cost will be the reduction of businesses that will be able to assist in their financial and/or legal situation; however this is a small cost given the large number of businesses involved in the financial and legal advice industry.

Overall, the proposed Bill presents a small net benefit over the base state, and achieves the objectives of the legislation.

7.5.2 Industry

Industry will benefit slightly from the flexibility in being able to employ people above 18 years of age and non-residents of Queensland.

The move to one general license will mean increased costs for those people who previously held a manager's (commercial agency) license but that is not considered significant given only nine licences of that type existed in 1998/99.[81]

The introduction of competency based standards for license applications will uphold the reputation of the industry and is therefore considered a benefit. By ensuring only those people that meet the competency standards, the level of professionalism and conduct in the industry will increase.

Although the introduction of a restriction will prohibit market providers from acting for more than one party, it will reduce legal proceedings and associated costs and create a more ethical interaction with the initial purchaser of the service.

Overall, a small net benefit will result from the proposed changes under the proposed Bill from an industry perspective. It will also meet the intended objective of the legislation.

7.5.3 Government

Administration costs associated with the removal of age and residency requirements will decrease. Licensing costs will decrease with the rationalisation of the manager's (commercial agency) license. The rationalisation will also result in additional annual revenues with the manager's (commercial agency) license holders having to pay for a full commercial agency license.

The introduction of competency based standards will not impose significant costs to the Government as it will form part of the assessment process for applications that already currently exist. However, it may incur a small additional financial costs from enforcing the prohibition of 'acting for more than one party' provision.

Overall, a very small net benefit is expected to Government from the proposed Bill.

7.5.4 The Proposed Bill Conclusions

All elements of the proposed Bill produce a small net benefit across stakeholders and support the objectives of the legislation. Overall, the reform option as a whole is anticipated as delivering a small net benefit.

An impact matrix is provided on the following page to summarise these conclusions.

[81] Office of Fair Trading.

Table 7.2 Commercial Agents Impact Matrix – The Proposed Bill

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Social Benefit	Comments
	Consumers	Industry	Government		
Relaxing Age, Residency & Business premises standards	✓	✓	-	✓	A small increase in the number of service providers may result, slightly increasing competition and consumer access and marginally reducing prices with no loss to consumer protection.
Rationalisation of manager's (commercial agency) license	-	✗	✓	✓	Cost to industry will marginally increase for a small number of market participants however government will benefit through increased revenue and a decrease in costs associated with administering the manager's (commercial agency) license.
Competency requirements to replace experience	-	✓	-	✓	Competency assessments will provide entry for commercial agents otherwise precluded by experience requirements marginally stimulating competition. It will also uphold the reputation of the industry by allowing only those who meet the professional standards to enter.
Agents prohibited from acting for more than one party	✓	✓	-	✓	Acting for more than one party creates confusion of loyalties and although the restriction will reduce service provision to consumers, it provides an ethos of ethics to the industry which will potentially decrease the possibility of legal proceedings. It will also improve the professional interaction between client and service provider.
Option Summary	✓	✓	✓	✓	**Each of the reforms delivers an overall net benefit to some degree.**

7.6 Negative licensing

The negative licensing model would introduce some significant changes to the barriers of entry currently created by the Act, however it would retain the market conduct features currently featured in the proposed Bill. Its effects would be felt from the complete removal of:

- age requirements
- residency requirements
- training and qualifications requirements
- business premises standards
- character and fitness tests requirements.

7.7 Impacts of Negative Licensing

7.7.1 Consumers

The analysis of the base state and the proposed Bill suggests that consumer protection is the main issue of concern that will be significantly reduced through removal of licensing measures. Although it has been concluded that the removal of age and residency requirements will result in a net social benefit, the removal of the other licensing requirements will result in net social costs. The lack of competency and/or training will result in additional costs to the purchasers of goods and to the general community. This is due to the potential for public injury that could occur with untrained, unsupervised and inexperienced staff unaware of how to treat certain situations with consumers.

Business premises standards incur a social cost by inhibiting entry into the market by innovative firms. However the industry does not generally have a positive reputation in the community and any complaints, especially those that revolve around personal harm, must be able to be traced to the market provider. Even though a cost may be involved in establishing a business premises, the functioning of the complaints mechanism has a larger social benefit.

The removal of character and fitness tests has severe consequences for consumer protection through negative licensing. Even though few complaints have been received, the possibility for personal injury is high through the unlawful use of force by overzealous commercial agents carrying out their functions. Assessments of the base state and the proposed Bill have discussed this issue in some detail.

Some conduct issues may be retained in a code of conduct, however image issues surrounding the industry are still of concern. Clients will benefit from an increase in market providers, however the quality of the service provision may be called into question.

From a consumer perspective, the introduction of negative licensing will result in a moderate net cost, and the regulatory model will not meet the objectives of the legislation.

7.7.2 Industry

Commercial agents wishing to enter the market would benefit substantially from negative licensing by no longer facing restrictions set down in the Act regarding business premises standards, character and fitness tests, training or educational qualifications. They would also be longer required to pay licensing fees. These impacts would create additional competition in the marketplace, however the protection of the image of the industry may come under pressure.

Negative licensing is expected to achieve a small net cost for industry due to risk of reputation and other issues.

7.7.3 Government

Government will be advantaged through not having to administer the regulations under the Act however there is potential for pressure on the complaints mechanism through the possibility of increased inappropriate actions by unsuitable commercial agents.

DEFT would also forego the $64,850 collected in annual fees, but still be required to fund investigation and compliance activities relating to conduct.

Government would experience a small net cost from negative licensing, and the objectives of the legislation will not be met.

7.7.4 Negative licensing Conclusions

The introduction of negative licensing would result in benefits to industry from the removal of requirements to pay licensing fees. The benefits to this group are however purely a transfer effect from Government and carry no overall net impact.

Negative licensing would provide some net benefits, across stakeholder groups, from removing age, residency and business premises standards that did not contribute to consumer protection. However theses benefits would be outweighed substantially by the moderate costs associated with a reduction in consumer protection through the removal of other provisions including character and fitness tests and experience requirements. Therefore the introduction of negative licensing would not result in the objectives of the legislation being met and presents an overall moderate net cost to stakeholders.

An impact matrix is provided on the following page to summarise these conclusions.

Table 7.3 Commercial Agents Impact Matrix – Negative licensing

Restriction to Competition	Net Impact by Individual Stakeholder Group			Net Social Benefit	Comments
	Consumers	Industry	Government		
Removal of Age, Residency & Business premises standards	✓	✓	-	✓	A small increase in the number of service providers may result, slightly increasing competition.
Removal of Good fame & character, Fit & proper person	✗✗	✗	✗	✗✗	Removing the screening processes may result in an inflow of inappropriate commercial agents reducing consumer protection, increasing complaints to Government and therefore damage the industry's reputation.
Removal of experience requirements	✗✗	✗	✗	✗✗	Removing experience requirements will encounter the same impacts as removing the good fame & character and fit & proper person restriction above.
Option Summary	✗✗	✗	✗✗	✗✗	**Each of the reforms will deliver an overall net cost to a high degree except for the removal of residency and age restrictions that will achieve a small net social benefit.**

7.8 Conclusion

From the analysis undertaken of the base state and the proposed regulatory alternatives, the proposed Bill presents the greatest net benefit and supports the objectives of the legislation. The proposed Bill, includes elements of:

- relaxation of age restrictions
- removal of Queensland residency requirements
- removal of business premises standards
- removal of the managers (commercial agency) license which will be rationalised into the general generic commercial agency license
- introduction of competency standards including recognition of prior learning
- requirement that agents can act for only one party to a transaction.

7.9 Stakeholder Positions

Consumers

Consumer group organisations voiced their concerns regarding the use of stand-over tactics and the likely impact of unsuitable persons taking advantage of lowering the entry barriers into the industry. There is a general perception by consumer groups that the commercial agents industry needs to be tightly regulated as there is a high possibility of personal injury to members of the community by overzealous commercial agents whilst carrying out their functions.

Industry

The IMA has differing views to that expressed by other stakeholders for other industries under review. In terms of licensing, it is the IMA's view that the residency clause be retained as removing it means reduced licensing authority control over a licensee who resides outside of Queensland. Investigating complaints would become an issue as all the records would be held outside of Queensland. Although a person who is bankrupt cannot obtain a license, the legislation is unclear in the situation where a license holder becomes bankrupt. The IMA believes that as an additional ground for cancellation of licenses, bankruptcy should be included.

They also have the view that legislation should clearly define who should be registered as sub-agents. Those that are internal office workers who are employed on debt collection matters should be exempt from registration and be under the direction of the licensed commercial agent. All external staff would still need to be registered as is the case with the current legislation. At least 12 months experience as a sub-agent or demonstration of competency would be required before being allowed to hold a full commercial agents license.

In terms of the age requirement, the IMA believes that it should be retained as it allows practitioners to develop experience. Training is also desirable to ensure persons are educated of their rights and responsibilities. Under a negative licensing regime, the industry views a lack of training or competency as resulting in costs to the purchasers of services and the general community. An accreditation system may be suitable but it should be competency based and registration would need to be a necessary complement.

The IMA holds the view that Queensland auditing requirements for commercial agents are excessive compared to other States. The IMA also indicated that the auditing costs involved for commercial agents are disproportionately higher than other industries covered by the legislation as volume of transactions are a factor in determining audit fees and commercial agents receive a higher volume and lower value of payments compared to the sums received by real estate and motor dealing industries.

The IMA also put forward a similar argument relating to the business cost of posting trust account receipts. They indicated that since almost all payments are made by cheque, credit card or money order they can be easily traced. This system would not however provide the same degree of assurance as an actual trust account receipt.

It is the IMA's view that legislative requirements have been particularly drafted with the real estate agents and motor dealers in mind. As the commercial agents industry is smaller in size, in terms of the number of licensees, its needs have been overlooked. Therefore, the IMA insist that separate licensing for commercial agents be introduced in Queensland in line with all other jurisdictions in Australia which do have separate licensing for commercial agents. A good example of the legislation required is the Commercial Agents and Private Inquiry Act of New South Wales or the Private Agents Act of Victoria. The IMA stresses that the adoption of a licensing act for the industry would enable agents to conduct business more effectively by removing some of the administrative limitations, which by necessity, are required by the other two license categories.

8

Conclusions

8.1 Base State Assessments

An assessment of the base state for each of the occupational groups revealed that implementation of the present regulatory arrangements has made a positive overall contribution towards meeting the objectives of the legislation, that is, consumer protection. In particular, a moderate net benefit was assigned across each of the occupations for character and fitness tests of service providers. It was also revealed that current experience and market specific formal training and qualifications deliver a small to moderate net benefit across stakeholder groups and support the objectives of the legislation.

From the reverse perspective, it was concluded for each industry group, that legislative provisions relating to a minimum age of 21 years, Queensland residency requirements and business premises standards for service providers, do not contribute to consumer protection and that an overall small to moderate net cost can be assigned across stakeholders.

The issue of maximum commissions is a highly emotive consideration, particularly with respect to real property transactions. It was found that the present system of regulated maximum commissions carries a number of inherent disadvantages which distort the operation of the market. Perhaps the most disappointing outcome of the present system of regulated maximum commissions relates to the widespread process whereby real estate industry practitioners, ignorantly or otherwise, market the perception that maximum commission caps are actually fixed rates which are endorsed by Government and are not open to negotiation. This specific outcome alone carries a large net cost to consumer protection.

With respect to the real estate market, small net costs across stakeholder groups were associated with requirements for general (as distinct from market specific) business training and requirements that restricted letting agents operate in one building only. While the involvement of real estate agents in completing legal contracts was found to include a risk of potential error, it was concluded that this risk was offset by cost and timing savings for consumers which provided an overall net benefit.

A key auction specific consideration identified under the base state was the competitive disadvantage that service providers experience relative to pastoral houses with respect to trust accounting requirements. Pastoral houses are presently exempt from trust accounting requirements. It was found that where auctioneers act in a del credere[82] capacity on the sale of livestock, trust accounts deliver no benefit to consumer protection but do impose a business and pricing cost. Overall a small net cost was concluded.

Audit requirements for commercial agents are higher than those required in other States and the costs imposed across stakeholder groups resulted in a small overall net cost conclusion.

8.2 Impacts of the Proposed Bill

The proposed Bill was anticipated to result in small to moderate net benefits, across the stakeholder groups, for each of the industries reviewed, from the removal of a number of the unnecessary market

[82] Accept liability to pay vendors regardless of purchasers payment.

restrictions imposed under the base state in relation to age, residency, business premises standards and maximum commissions.

For the real estate industry, a small net benefit can be associated with provisions enabling restricted letting agents to operate in multiple contiguous buildings, thereby allowing them to achieve economies of scale and delivering benefits across all stakeholder groups. The inclusion of property developers and their marketers was seen as potentially curbing problems associated with property marketeering an delivering an overall net benefit across stakeholder groups in a manner directly consistent with the legislative objectives. The introduction of time limits on sole and exclusive agency periods would enhance competition and consumer protection resulting in small net benefits across the stakeholder groups. Overall, implementation of the proposed Bill was anticipated to deliver a small net benefit incremental to the base state.

The proposed Bill would provide a trust accounting exemption for auctioneers acting in a del credere capacity and thereby deliver small increases in competition and consumer choice resulting in small decreases in prices for consumers, without reducing consumer protection. Overall a net benefit was concluded across stakeholder groups. Benefits associated with the removal of vendor commissions under the proposed Bill would be partly offset by the introduction of a cap on buyers premiums. Market pricing controls for this industry are not supported and would impose a small net cost across stakeholder groups. Overall, implementation of the proposed Bill was anticipated to deliver a moderate net benefit incremental to the base state.

The introduction of cooling off periods and statutory warranties for motor vehicle sales strongly support the consumer protection objectives of the legislation and would deliver moderate and small net benefits across the stakeholder groups respectively. Overall, implementation of the proposed Bill was anticipated to deliver a moderate net benefit incremental to the base state.

The impact of regulatory provisions on the commercial agency and pastoral house industries are not as pronounced. For commercial agencies, a small overall net benefit is anticipated incremental to the base state. Pastoral houses by contrast carry such significant importance on traditional rural market issues that the proposed Bill is anticipated to deliver no real net benefit or cost over the base state.

8.3 Impacts of Negative Licensing

The negative licensing model evaluated featured the removal of all entry barriers and the introduction of the conduct provisions entailed under the proposed Bill. The model was anticipated to result in small to moderate net benefits across the stakeholder groups for each of the industries reviewed, with respect to the removal of a number of the unnecessary market restrictions imposed under the base state in relation to age, residency, business premises standards and maximum commissions.

However, it will also result in small to moderate net costs across stakeholder groups from the elimination of character and fitness tests, experience requirements and market specific training or qualifications, where currently applicable.

For real estate, auction, motor dealing and commercial agency, implementation of the negative licensing model was anticipated to deliver a small net cost incremental to the base state. For pastoral houses, no net benefit or cost is anticipated over the base state.

8.4 The Hybrid Model

The PBT guidelines require that the examination of regulatory options be assessed against:

- the objective of the legislation
- the overall net benefit from each option
- the principle that restrictions to competition should only occur where the objectives of the legislation can not be met by less restrictive approaches.

The option expected to achieve the greatest net public benefit and best supports the consumer protection objection of the legislation is a hybrid model developed from the beneficial elements of the various options reviewed. This 'hybrid' model differs for each occupation and is outlined on the table overleaf.

Table 8.1
Models for each occupational group that is expected to generate the highest net public benefit.

Real Estate Agents	Auctioneers	Motor Dealers	Pastoral Houses	Commercial Agents
A hybrid model, including elements of: • relaxation of age requirements • removal of residency requirements • substitution of suitability assessment for character and fitness tests • relaxation of business premises standards to include any registered office • maintenance of requirement for a license holder to operate at principal office • introduction of a 60 day time limit on individual or sole exclusive agency arrangements • removal of the managers license which will be rationalised into the general license • introduction of competency standards including recognition of prior learning • inclusion of developers/marketeers within the scope of the legislation • introduction of a requirement that agents can act for only one party • retention of the requirements for salespeople to sit a test approved by the licensing authority • removal of maximum commissions subject to monitoring and transitional arrangements including disclosure, information and education campaigns • allowing restricted letting agents to manage contiguous buildings.	A hybrid model, including elements of: • relaxation of age requirements • removal of residency requirements • substitution of suitability assessment for character and fitness tests • relaxation of business premises standards to include any registered office • introduction of competency standards including recognition of prior learning • removal of maximum commissions subject to monitoring and transitional arrangements including disclosure, information and education campaigns • exemption from trust accounting provisions where auctioneers act as del credere agents • no maximum cap on buyers premium commissions.	A hybrid model, including elements of: • relaxation of age requirements • removal of residency requirements • removal of maximum commissions for vehicles sold on consignment subject to monitoring and transitional arrangements including disclosure, information and education campaigns relaxation of business premises standards to include any registered office • substitution of suitability assessment for character and fitness tests • introduction of competency standards including recognition of prior learning • rationalisation of motor dealer managers license • cooling off periods and statutory warranties on used vehicles.	A hybrid model, including elements of: • relaxation of age requirements • removal of residency requirements • substitution of suitability assessment for character and fitness tests • removal of work experience requirements • introduction of a requirement that agents can act for only one party (except livestock auctions) • removal of maximum commissions subject to monitoring and transitional arrangements including disclosure, information and education campaigns • relaxation of business premises standards to include any registered office.	A hybrid model, including elements of: • relaxation of age requirements • removal of residency requirements • removal of the managers (commercial agency) license which will be rationalised into the general generic commercial agency license • introduction of competency standards including recognition of prior learning • introduction of a requirement that agents can act for only one party to a transaction • relaxation of business premises standards to include any registered office.

Note: 1. The removal of maximum commissions should be co-ordinated with the introduction of a public education campaign.
2. Current license renewal experience requirements would still apply. If these can not be met then full competency demonstration would be necessary, as per requirements for new applicants.
3. The administrative rationalisation of licenses into a single base form with various occupational classes and the option for three year as well as annually renewable licenses are supported.

Appendix A

Terms of Reference & Proposed Bill Policies

Terms of Reference

1. In accordance with Commonwealth, State and Territory Governments' obligations for the implementation of National Competition Policy, this review will examine the case for reform of legislative and regulatory restrictions to competition made under, or in relation to legislation and regulation which control or regulate the activities of real estate agents, motor dealers, auctioneers, commercial agents and the employees of these occupations.

   The guiding principle is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

2. Without limiting the scope of the review, the Review Committee will: -

   (a) Clarify the objectives of the legislation and identify any issues of market failure which need to be addressed.

   (b) Identify the nature of restriction on competition.

   (c) Analyse the likely effect of the restriction on competition and on the economy generally.

   (d) Assess and balance the costs and benefits of the restrictions identified by conducting a Public Benefit Test.

   (e) Consider other means for achieving the same results including alternative legislative or non-legislative approaches.

3. The review should give consideration to Clause (1) (3) of the Competition Principles Agreement being without limiting the matters that may be taken into account, where this Agreement calls for:

   (a) The benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or

   (b) The merits or appropriateness of a particular policy or course of action to be determined; or

   (c) An assessment of the most effective means of achieving a policy objective;

   The following matters shall, where relevant, be taken into account:

   (a) The Government's seven Priority Outcomes;

   (b) Government legislation and policies relating to ecologically sustainable development;

(c) Social welfare and equity considerations, including community service obligations;

(d) Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(e) Economic and regional development, including employment and investment growth;

(f) The interests of consumers generally or of a class of consumers;

(g) The competitiveness of Australian businesses; and

(h) The effective allocation of resources.

4. During the course of the review, the Review Committee should consider:

- Alternative options for the application of consumer protection objectives in real estate agency, real property marketing, motor dealing, auctioneering and commercial agency. In particular, the Review Committee shall examine whether the current or proposed level of regulation is appropriate.

- Regulatory developments in each other jurisdiction,

- Previous review work done on the *Auctioneers and Agents Act 1971*; and

- The Queensland Treasury's Public Benefit Test Guidelines for conducting NCP legislation reviews.

5. The Review Committee shall consult with and seek submissions from industry peak associations, practitioners, consumers, all other State and Territory regulatory authorities, and other interested parties. To assist in the consultation process, the Review Committee shall develop and publish an issues paper focussing on restrictions contained in the legislation and the alternative options providing consumer protection in relation to real estate, motor dealing, auctioneering and commercial agency services.

6. The Review Committee may engage consultants and establish working groups to assist it in carrying out its Terms of Reference.

7. On completion of the review, the Review Committee is to submit a report on the outcome of the review to the Office of Fair Trading with recommendations on reform action if relevant. The report will be forwarded by Office of Fair Trading to the Economic Performance Branch of Treasury for scrutiny.

8. Legislation to be reviewed

The proposed Property Agents and Motor Dealers Bill will be derived from the *Auctioneers and Agents Act 1971, Auctioneers and Agents Regulations 1986*, the Agents and Motor Dealers Bill 1997 and proposed policy alterations or additions attached to the PBT Plan. The issues of licence reduction and extension of term of licences are to be addressed during the review process.

9. Review Arrangements

The review will be carried out by a Review Committee drawn from a panel of persons representing a broad cross section of the community. However, persons specifically engaged in these occupations or representing key stakeholders will be excluded to maintain independence in the review process. A separate expert Reference Committee may be established to assist the Review Committee with advice and technical or support services.

The Review is expected to be completed and the Public Benefit Test Report and Competition Impact Statement prepared for consideration by 3 March 2000.

Proposed Bill Policies - Restrictions on Competition

Licensing

The Act restricts entry into the industries it regulates through an occupational licensing system. The Act has a number of classes of licences viz:

- auctioneers (general, provisional or restricted)
- real estate agents
- commercial agents
- motor dealers
- managers (real estate agency, commercial agency and motor dealing)
- pastoral house
- Corporations (the authorised type of business carried on depends on the type of licences held by working directors).

The Act requires licensees to be residents of Queensland, 21 years of age, of good fame and character, to have business premises and to be a fit and proper person to hold a license. It also requires applicants, in most instances, to have had relevant experience over a number of years in the industry as a salesperson and in certain circumstances undertaken a particular course as prescribed by regulation.

The proposed Bill intends to provide for a single agent and dealers license with the following categories:

- real estate
- restricted letting agent
- pastoral houses
- pastoral house director
- pastoral house manager
- pastoral house auctioneer
- auctioneer
- trainee auctioneer
- motor dealer (dealers in used vehicles)
- commercial agent
- corporation licences
- Developer (marketeer).

The generic eligibility requirements for individual licences that may place restrictions on competition include:

- an individual to be 18 years of age
- educational or other qualifications as prescribed by regulation
- in the case of restricted letting agents, a person is to reside in the relevant building complex, hold relevant body corporate approval and have an office in the building complex.

Similar requirements apply to corporation licences, where in most cases a director of the corporation must hold the relevant individual license and meet the residency requirements (in the case of restricted letting agents) as outlined above in order for a corporation to be eligible to hold a license.

Pastoral house license requirements include those outlined above in addition to the following.

In the case of pastoral house licences, a license can only be obtained by a corporation which is a corporation within the meaning of the Corporations Law; is the holder of an exemption granted under the *Banking Act 1959* (Cwlth); is registered as a finance corporation under the *Banking Act 1959* (Cwlth); and is an excluded corporation for the Corporations Law.

In order to be eligible to obtain a pastoral house director's, manager's and auctioneer's license a person must also be employed by a pastoral house for a period prescribed under regulation.

Suitability requirements will also apply to persons wishing to obtain the individual licences outlined above. Pastoral House licences were introduced to overcome problems experienced by Pastoral Houses in recruiting suitably qualified real estate managers.

A person is not considered suitable to hold a license if the person is:

- bankrupt
- has been convicted of a disqualifying offence.

A corporation is not considered suitable if an executive officer of the corporation falls within one of the above categories.

The chief executive may also decide that a person or corporation is unsuitable to hold a license based on the following matters:

- a persons character
- objections made to a persons license
- previous license suspensions or cancellations
- previous disqualifications from holding a license
- a persons criminal history
- a persons state of mental fitness
- previous convictions under legislation specifically regulating the activities of these occupational groups
- a persons previous history relevant to bankruptcy laws

- a corporations previous history with respect to receivership or liquidation.

The Act also requires the positive registration of:

- real estate salespeople
- motor salespeople
- commercial subagents.

The proposed Bill intends to continue to provide for a positive registration scheme for these groups and proposes to include marketing employees of real property developers/marketers and trainee auctioneers will be changed from a license to registration.

Eligibility requirements will apply under the registration scheme. The scheme will also require licensees to ensure that only eligible persons are employed and to take responsibility for the conduct of employees.

A person is not eligible to be employed as a salesperson or employee if the person is:

- under 18 years of age
- has been convicted of certain offences
- is subject to a court order declaring the person ineligible
- is on the register of ineligible persons
- is a corporation.

Sole and exclusive agency

Under an exclusive agency a selling agency is entitled on the sale of particular property during the exclusive agency period and in accordance with the terms of an agreement with the vendor of the property to receive an agreed remuneration regardless of who effects the sale, including the vendor.

Under a sole agency the selling agent is not entitled to the remuneration if the vendor were the effective cause of the sale, but is in all other cases.

In both instances, the Act requires a warning to be given to principals disclosing the sole or exclusive agents right to commission in these circumstances. However this provision does not stipulate any time period that these sole or exclusive agency agreements can run.

The proposed Bill intends a limitation on the duration of sole and exclusive agencies.

It is intended that the proposed Bill will provide that sole and exclusive agencies may be for a period of up to 60 days. A sole or exclusive agency can be renewed at the expiration of the current agreement. The renewal may only be for a further 60 days however there is no limit to the number of renewals. This restriction only applies in respect of residential real property not commercial real property. This is intended to allow the vendor to consider whether additional periods of sole or exclusive agency are warranted.

Commissions

The Act also has price restrictions that relate to maximum prescribed fees and charges for real estate agents, motor dealers and auctioneers. These maximum fees have in reality become the set fees, with limited, if any negotiation.

The proposed Bill intends deregulation of commissions and fees, except for residential real property sales and capping buyers' premiums for auctioneers.

Restricted letting agents only allowed to manage building complexes that are adjoining or contiguous with each other

Currently restricted real estate agents license entitles the holder to manage the letting rights of the one building they reside within.

The proposed Bill intends to allow a restricted letting agent to hold a license in relation to any building complexes, where the complexes are on land contiguous to each other, (land with a common boundary not separated by a public road) and that the restricted real estate agent resides within one of the managed building complexes.

Non Competition Issues

Prohibited Practices

The proposed Bill intends to carry forward the existing provision in the Act and prohibits persons from supplying, or advertising that they will supply, any person addresses of houses that are to let or houses, land or estates that are for sale, unless they are a real estate agent or pastoral house who has been duly appointed. This is an adjunct to the issue of licensing and carrying on business under a license.

A similar restriction applies to the display of photographs of real property for sale.

Statutory Warranties

The current Act does not provide for a statutory warranty. To date every Mainland State, except Queensland, has legislated for statutory warranties for used motor vehicles.

The proposed Bill intends to introduce a statutory warranty scheme for used motor vehicles. The two-tiered warranty will apply to: -

- vehicles that have travelled less than 160,000km or were first registered less than 10 years ago – warranty period 3 months or 5,000km whichever occurs first.

- vehicles that have travelled more than 160,000km or were first registered more than 10 years ago – warranty period 1 month or 1,000km whichever occurs first.

However the warranty will not apply to:

- commercial vehicles
- caravans and trailers
- a tractor, registrable farm machinery
- motor cycles
- an unregistered vehicle that is not capable of being registered in Queensland
- an unregistered vehicle if it is sold for wrecking or dismantling
- motor vehicles sold to a motor dealer
- vehicles sold on consignment for a client (other than a motor dealer).

The warranty will cover defects to all major components.

This could be seen as a restriction on the conduct of business however as consumers tend to lack knowledge in this marketplace the provision of a statutory warranty provides basic consumer protection to enable the market to operate in a more effective manner.

Cooling Off Periods – Motor Dealing Transactions

The proposed Bill intends to introduce a cooling off period for the sale of used motor vehicles by a motor dealer. The cooling off period will be from the time of signing a sales agreement until the end of the next business day.

Prohibition for motor dealers to obtain an option to buy motor vehicles

The proposed Bill intends to restrict motor dealers from obtaining an option on vehicles that have been placed in their hands for sale by vehicle owners. This links to beneficial interest and the potential for conflict in the dealer's obligation to the client to deal with property entrusted to the dealer's care. A similar provision already exists for real estate transactions.

Trust Accounts

The trust account provisions proposed in the proposed Bill are essentially the same as in the current Auctioneers and Agents Act. The provisions continue to require licensees to place monies received in a transaction into a trust account maintained with an approved financial institution. Those monies are to be retained in the trust account until they are properly accounted for to the person entitled to receive them.

This may be seen as a restriction on the conduct of a business as a result of the additional costs that may be incurred. However, this is an attempt to minimise the opportunity for misappropriation of consumers' monies that have been placed in trust.

New provisions to allow a wider means of dealing with trust moneys – i.e.: Electronic Fund Transfers for payment of money from a trust account is proposed to be introduced.

Limit on Out-of-Pocket Expenses

The proposed Bill intends to carry forward the existing provision and provide that the Governor in Council may make regulations imposing limits on out-of-pocket expenses incurred in the performance of functions under a license. This could be perceived as a form of price control. However, as this is linked regulated commissions, any proposal to introduce price controls would be included in a public benefit test.

Beneficial Interest/Options

Because of his/her fiduciary duty, an agent is required to act fairly and honestly and to disclose all relevant matters concerning any interest the agent may have in property to the principal. This means the agent should not have a direct or indirect concern or beneficial interest in the purchase of any property placed in the agents hands for sale unless the prior written consent of the principal is obtained. This includes an interest obtained by or on behalf of a prescribed relative of the agent. This principle also includes the direct interests of employees of the agent.

Furthermore an auctioneer or real estate agent is prohibited from having interest in an option to purchase property in which they are beneficially interested.
Under the proposed Bill, it is proposed that an agent may only engage in dealings in which he/she is beneficially interested where:

- there is consent
- the client's written acknowledgment that the client is aware that the agent, salesperson or agent's associate is interested in purchasing the property has been obtained
- no commission is accepted and the client is in substantially as good a position as if a non-interested person had bought the property
- the agent acted fairly in the transaction
- the principal is in as good a position as if the beneficial interest had not occurred. (capacity for the agent to establish that the vendor received fair market value for the property).

In broad terms a licensee or employee is said to have a beneficial interest in property where the sale or purchase of the property, or option to purchase such property, is directly or indirectly linked to the licensee, or associate or directly linked to an employee.

In relation to livestock sales under the proposed Bill, the beneficial interest prohibition on receiving commission will not apply. However, the disclosure provisions will still apply. The rationale for this reduced restriction relates to the nature of the industry i.e. a small number of participants in sparsely populated areas.

The proposed Bill also proposes that agents and motor dealers, their associates and their salespersons be prohibited from obtaining options to purchase property (motor vehicles in the case of motor dealers) in which they have a beneficial interest.

These provisions are designed to ensure that agents act in the best interest of their client rather than the interest of the agent or someone associated with the agent. (An agent's fiduciary duty).

While this is quite clearly a restriction on business conduct, it is considered that the absence of these beneficial interest (or conflict of interest) provisions may in fact reduce fair competition in the market and result in a significant degree of market failure.

Agents not to Act for more than One Party

The Act does not specifically prohibit agents from acting for more than one party. However due to significant conflict of interest problems occurring both here and overseas it became apparent that regulation is necessary. The issue of duel agency is emerging in some overseas jurisdictions, for example; some USA real estate regulatory authorities provide for duel agency transactions.

The proposed Bill intends to provide that agents are prohibited from acting for more than one party to a transaction.

These provisions are designed to ensure that an agent avoids a conflict of duty during transactions.

This provision will not apply to the auctioneering of livestock or chattels. Agents in the livestock industry will often provide a service to buyers at a fee to locate cattle with certain specifications. Alternatively a service of dipping, transporting of stock etc may be provided at auction specifically for the buyer.

In the case of chattel auctioneers there is an established industry practice, Australia wide, of charging a buyer's premium to the purchaser of stock at an auction.

Exemption for Financial Institutions, Life Assurance Companies etc

The proposed Bill intends to carry forward the existing provision in the Auctioneers and Agents Act 1971 which exempts financial institutions, life assurance companies, trustee companies and friendly societies from the operation of the provisions relating to real estate agents, motor dealing or commercial agents.

This could be considered to confer a benefit on one sector of the market relative to others participants. However, the activities exempted are not core business issues for these institutions.

Consignment selling - no trade-ins

The current Act does not regulate the use of trade-ins in consignment selling and this has subsequently led to significant confusion in the industry with practices developing of over allowances and under allowances. The industry requested clarification.

The proposed Bill intends to provide a prohibition on the acceptance of trade-ins by motor dealers in relation to consignment sales. (Consignment selling means the delivering of the motor vehicle by a person into the possession of a motor dealer and the appointing of the motor dealer as an agent to sell the vehicle for the vehicles owner).

This will not prevent a motor dealer from purchasing the motor vehicle as a separate transaction.

PRICEWATERHOUSECOOPERS

Appendix B

Consultation Participants

Face to Face Consultation Participants

Organisation	Persons Consulted
Auctioneers and Agents Committee	Ms Sandra Deane
Queensland & Brisbane Consumers Associations	Cr Cherie Dalley, Mr Simon Cleary, Ms Lola Mashado, Ms Robyn Kerr
Real Estate Institute of Queensland (REIQ)	Mr Don McKenzie & Ms Jean Hammer
Urban Development Institute of Australia (UDIA)	Mr Gary Bugden
Property Sales Association	Mr Barry Gannon
Auctioneers & Valuers Association	Mr Ian Kent
Motor Traders Association of Queensland (MTAQ)	Mr Bill Gollan
Royal Automobile Club of Queensland (RACQ)	Mr Gary Fites, Ms Ruth Loyd
Institute of Mercantile Agents	Mr Peter Laurens
Property & Livestock Agents Association	Mr Don Steele
Institute of Chartered Accountants	Mr Andrew Brodie
Public Trustee	Mr Mark Scanlon, Mr Glen Dickson, Mr David Mills
Q-Fleet	Mr Paul Devero
Network Australia	Ms Fiona Guthrie
O'Dwyer Bradley Solicitors	Mr Tim O'Dwyer
Gray Eisdell Martin Auctioneers & Valuers	Mr Chris Martin
Australian Property College	Mr Micheal Iveson
Queensland Shelta	Ms Roksana Kahn
Queensland Law Society	Mr Tony McMahon
Office of Fair Trading	Mr Gary Ernst, Mr Paul Medwin, Mr Joe Camelleri

Appendix C

Interstate Regulation

Table C1 – Real Estate Agency

State	*Key Legislation*	Qualifications	Experience Requirements	Character Test	Maximum commission	Full Licensing Fees
New South Wales	*Property, Stock and Business Agents Act 1941*	Yes – Diploma level		Yes	No	$240
Victoria	*Real Estate Agents Act 1980*	Yes – Certificate IV level	1 year in past 3 years		No - not since 1995	$125
Queensland	*Agents & Auctioneers Act 1971*	Yes	Yes	Yes	Yes	$436
South Australia	*Land Agents Act*	Yes – Bachelor, Grad Diploma etc		Yes	No	$195
Western Australia	*Real Estate and Business Agents Act 1978*	Yes – TAFE or REIWA accreditation		Yes	No - not since 1998	$538
Tasmania	*Auctioneers and Real Estate Agent's Act 1991*	Yes – Diploma from REIT or TAFE	Yes – 2 yrs experience in past 5 yrs for manager	Yes	No	$140
Australian Capital Territory	*Agents Act 1968*			Yes	No	$65
Northern Territory	*Agents Licensing Act*		Yes		No	up to $450

Table C2 – Motor Dealing

State	*Key Legislation*	Qualifications	Experience Requirements	Character Test	Statutory Warranties	Full Licensing Fees
New South Wales	*Motor Dealers Act and Regulations*	License test		Yes	Yes – vehicles less than 10 years old	up to $835
Victoria	*Motor Car Traders Act 1986*			Yes – including test of finances	Yes – vehicles above $3,000 only	$866
Queensland	*Auctioneers & Agents Act 1971*	No	Yes	Yes	No	$436
South Australia	*Second-hand Vehicle Dealers Act 1995*			Yes	Yes – vehicles above $3,000 only	$236
Western Australia	*Motor Vehicle Dealers Act 1973*	MTAWA course	No	Yes – including test of finances	Yes – vehicles above $3,000 only	
Tasmania	*Fair Trading Act 1990*			Yes – including test of finances	Yes – vehicles less than 7 years old	$362
Australian Capital Territory	*Sale of Motor Vehicles Act 1973*			Yes – including test of finances		$362
Northern Territory	*Motor Vehicle Dealers Regulations*		Yes	Yes – including test of finances	Yes – vehicles less than 10 years old or 160,000kms	up to $450

Table C3 – Commercial Agency

State	Key Legislation	Positive Licensing	Qualifications	Character Test	Criminal record assessed	Full Licensing Fees
New South Wales	*Commercial Agents and Private Inquiry Agents Act*	Yes	Membership of a trade association			$55
Victoria	*Private Agents Act*	Yes		Yes	Yes	$120
Queensland	*Auctioneers & Agents Act 1971*	Yes		Yes	Yes – part of fit & proper person test	$436
South Australia	*Security and Investigation Agents Act 1995*	Yes	TAFE certificate or investigation training course	Yes – including financial test	Yes	$108
Western Australia	*Debt Collection Licensing Act*	Yes		Yes		
Tasmania	*Commercial and Inquiry Agents Act 1974*	Yes		Yes – suitability determined by Magistrate	Yes – offences of dishonesty or harassment	$72 + lodgement of $20,000 fidelity bond
Australian Capital Territory	*no direct legislation*	No				
Northern Territory	*Commercial and Private Agents Licensing Act*	Yes		Yes		$75 + private bailiff license requires $1000 bond lodgement

Table C4 – Auctioneering

State	*Key Legislation*	Positive Licensing	Character Test	Full Licensing Fees
New South Wales	*Property, Stock & Business Agents Act 1941*	Yes	Yes	$240
Victoria	*indirect coverage*		Yes	$100
Queensland	*Auctioneers & Agents Act 1971*	Yes	Yes	$436
South Australia	indirect coverage – Land agent license	Auction of real estate only		
Western Australia	*Auction Sales Act 1973*	Yes	Yes	$233
Tasmania	*Auctioneers and Real Estate Agents Act 1991*	Yes – including written test		$140 + lodgement of $20,000 fidelity bond
Australian Capital Territory	*Auctioneers Act 1959*	Yes	Yes	$76
Northern Territory	*Auctioneers Act 1959*	Yes – Real Estate Agents License or Agent's Representative License is required to auction property		$20