



Queensland

Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005

Act No. 14 of 2005



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Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005

Act No. 14 of 2005

**An Act to amend legislation administered by the Minister for
Tourism, Fair Trading and Wine Industry Development, and for
other purposes**

[Assented to 22 April 2005]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005*.

2 Acts amended in schedule

The schedule amends the Acts mentioned in it.

Schedule Acts amended

section 2

Associations Incorporation Act 1981

**1 Section 59(1)(b)(iii), ‘section 1280(2)(a)(ii) of the
Corporations Act’—**

omit, insert—

‘the Corporations Act, section 1280(2A)(a)¹’.

Bills of Sale and Other Instruments Act 1955

1 Section 18I(8), ‘subsection (4)’—

omit, insert—

‘subsection (5)’.

Body Corporate and Community Management Act 1997

1 Section 28, ‘Land Title Act 1997’—

omit, insert—

‘Land Title Act’.

2 Section 126(5)(a), ‘act in’—

omit, insert—

‘act’.

¹ Corporations Act, section 1280 (Registration of auditors)

Schedule (continued)

- 3 Section 355(1), ‘section 243(5)’—**
omit, insert—
‘the repealed section 194(5)²’.
- 4 Section 355(2), ‘section’—**
omit, insert—
‘part’.
- 5 Schedule 6, definition *body corporate information certificate*, ‘205(3)’—**
omit, insert—
‘205(4)’.

Building Act 1975

- 1 Section 3(1), definition *tribunal* (both definitions)—**
omit.
- 2 Section 3(1)—**
insert—
‘*building and development tribunal* means a building and development tribunal established under the *Integrated Planning Act 1997*, section 4.2.1.
Commercial and Consumer Tribunal means the Commercial and Consumer Tribunal under the Tribunal Act.’.

² Section 194 (Notice of application to be given)

Schedule (continued)

- 3 Section 3(1), definitions *former building certifier*, paragraph (b)(ii) and *professional misconduct*, paragraph (c), ‘tribunal’—**
omit, insert—
‘Commercial and Consumer Tribunal’.
- 4 Sections 8(1), 12I(5)(b), 12J(3)(b), 12K(2), 16D(2)(b), 20(1), 24(1) and 47(5), ‘tribunal’—**
omit, insert—
‘building and development tribunal’.
- 5 Section 12L(a), ‘the tribunal’—**
omit, insert—
‘a building and development tribunal’.
- 6 Sections 30B(2)(d), 40(6) and (7)(b), 41(2), 41A(1), 41B(2)(b), 42(1), 44(3), 45A(1), 45C(b), 63(2) and 65(1), ‘tribunal’—**
omit, insert—
‘Commercial and Consumer Tribunal’.
- 7 Section 30B(2)(d), before ‘certifier’—**
insert—
‘building’.
- 8 Section 42, heading, ‘Tribunal’—**
omit, insert—
‘Commercial and Consumer Tribunal’.

Schedule (continued)

- 9 Sections 45(1), 45B and 62(1), ‘tribunal’, first mention—**
omit, insert—
‘Commercial and Consumer Tribunal’.
- 10 Section 45B, heading, ‘tribunal’s’—**
omit, insert—
‘Commercial and Consumer Tribunal’s’.

Building Units and Group Titles Act 1980

- 1 Section 5(7E), penalty—**
omit, insert—
‘Maximum penalty— $13\frac{1}{3}$ penalty units.’
- 2 Section 7(1)—**
insert—
‘*qualified auditor* means—
- (a) a person registered as an auditor under the Corporations Act; or
 - (b) a member of CPA Australia or the Institute of Chartered Accountants in Australia; or
 - (c) a member of the National Institute of Accountants, other than an associate, who has satisfactorily completed an auditing component of a course of study in accountancy of at least 3 years duration at a tertiary level conducted by a prescribed university or other prescribed institution under the Corporations Act, section 1280(2A)(a).³’.

³ Corporations Act, section 1280 (Registration of auditors)

Schedule (continued)

3 Section 29(2)(h)—

omit, insert—

‘(h) to decide whether to appoint a person to audit the books and accounts of the body corporate.’.

4 Section 29, after subsection (2)—

insert—

‘(2AA) For subsection (2)(h), only a qualified auditor may be appointed to audit the books and accounts of the body corporate.’.

5 Section 36(2), penalty—

omit, insert—

‘Maximum penalty— $2\frac{2}{3}$ penalty units.’.

6 Section 44(2) and (5), penalty—

omit, insert—

‘Maximum penalty— $6\frac{2}{3}$ penalty units.’.

7 Section 71(2), penalty—

omit, insert—

‘Maximum penalty— $6\frac{2}{3}$ penalty units.’.

8 Section 76(7), penalty—

omit, insert—

‘Maximum penalty for subsection (7)— $6\frac{2}{3}$ penalty units.’.

Schedule (continued)

- 9 Section 94B, from ‘person’ to ‘1946’—**
omit, insert—
‘qualified auditor’.
- 10 Section 103(3), penalty, paragraph (a), ‘\$1 000’—**
omit, insert—
‘ $13\frac{1}{3}$ penalty units’.
- 11 Section 103(3), penalty, paragraph (b), ‘\$500’—**
omit, insert—
‘ $6\frac{2}{3}$ penalty units’.
- 12 Section 104(2), penalty, ‘\$500’—**
omit, insert—
‘ $6\frac{2}{3}$ penalty units’.
- 13 Section 105(1), penalty, ‘\$500’—**
omit, insert—
‘ $6\frac{2}{3}$ penalty units’.
- 14 Section 129(3), penalty—**
omit, insert—
‘Maximum penalty— $2\frac{2}{3}$ penalty units.’.
- 15 Section 133(1), ‘\$500’—**
omit, insert—
‘ $6\frac{2}{3}$ penalty units’.

Schedule (continued)

- 16 Section 134(2), '\$200'—**
omit, insert—
 '2²/₃ penalty units'.
- 17 Schedule 2, part 1, section 1, definition *business*,
 'section 29(2)'—**
omit, insert—
 'section 29(2)⁴ of this Act'.
- 18 Schedule 2, part 1, section 3(1)(a), after 'section 29(2)'
 and 'section 29(2A)'—**
insert—
 'of this Act'.
- 19 Schedule 2, part 1, section 3(1)(b)(i), 'section 131'—**
omit, insert—
 'section 131⁵ of this Act'.
- 20 Schedule 2, part 1, section 3(2), 'the Act'—**
omit, insert—
 'this Act'.
- 21 Schedule 2, part 1, section 5(1) and (2), after
 'section 131'—**
insert—
 'of this Act'.

4 Section 29 (First annual general meeting of body corporate)

5 Section 131 (Voting rights of first mortgagees)

Schedule (continued)

- 22** **Schedule 2, part 1, section 5(3), ‘section 53(11)’—**
omit, insert—
‘section 53(11)⁶ of this Act’.
- 23** **Schedule 2, part 1, section 5(7), after ‘section 53(11)
and (12)’—**
insert—
‘of this Act’.
- 24** **Schedule 2, part 2, section 1(5)(a), ‘section 38D(1)(c)’—**
omit, insert—
‘section 38D(1)(c)⁷ of this Act’.
- 25** **Schedule 2, part 2, section 1(5)(ba), from ‘person’ to
‘1946’—**
omit, insert—
‘qualified auditor’.
- 26** **Schedule 2, part 2, section 1(6)(a)(ii), ‘section 43(4)’—**
omit, insert—
‘section 43(4)⁸ of this Act’.

6 Section 53 (Notices to be given by proprietors and mortgagees)

7 Section 38D (Duty of body corporate as to keeping records, convening meetings etc.)

8 Section 43 (Vacation of office of member of committee)

Schedule (continued)

- 27** **Schedule 2, part 2, section 1(6)(c)(i), ‘section 131’—**
omit, insert—
‘section 131⁹ of this Act’.
- 28** **Schedule 2, part 2, section 2(1), after ‘section 131’—**
insert—
‘of this Act’.
- 29** **Schedule 2, part 2, section 2(3), after ‘section 53(11)’—**
insert—
‘of this Act’.
- 30** **Schedule 2, part 2, section 2(7), after ‘section 53(11)**
and (12)’—
insert—
‘of this Act’.
- 31** **Schedule 3, section 2, ‘section 30(7)’—**
omit, insert—
‘section 30(7)¹⁰ of this Act’.
- 32** **Schedule 4, section 1, ‘50’—**
omit, insert—
‘50¹¹ of this Act’.

9 Section 131 (Voting rights of first mortgagees)

10 Section 30 (By-laws)

11 Sections 46 (Committee’s decisions to be decisions of body corporate),
48 (Restrictions imposed on committee by body corporate) and 50 (Body corporate
manager)

Schedule (continued)

- 33** **Schedule 4, section 7, ‘section 45(3)’—**
omit, insert—
‘section 45(3)¹² of this Act’.
- 34** **Schedule 4, section 10(d), ‘section 40(1)(a) and (b)’—**
omit, insert—
‘section 40(1)(a) and (b)¹³ of this Act’.
- 35** **Schedule 4, section 10(g), ‘43(3) of the Act’—**
omit, insert—
‘43(3)¹⁴ of this Act’.
- 36** **Schedule 4, section 11(c), after ‘section 40(1)(c)’—**
insert—
‘of this Act’.
- 37** **Schedule 4, section 11(d), after ‘section 38D(1)(b)’ and
‘section 38D(1)(c)’—**
insert—
‘of this Act’.

12 Section 45 (Meetings of committees)

13 Section 40 (Supply of information, certificates and copies by body corporate)

14 Sections 5 (Savings and transitional), 29 (First annual general meeting of body corporate) and 43 (Vacation of office of member of committee)

Schedule (continued)

Business Names Act 1962**1 Section 5(2)(a)(iv), at the end—**

insert—

‘or’.

2 Section 13(2), from ‘and shall not furnish’—

omit.

3 Section 17—

omit, insert—

‘17 False or misleading documents

‘(1) A person must not give a document to the registrar containing information that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 3 months imprisonment.

‘(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) tells the registrar, to the best of the person’s ability, how the document is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the registrar.

‘(3) It is enough for a complaint for an offence against subsection (1) to state that the document given was ‘false or misleading’ to the person’s knowledge, without specifying which.

‘(4) Subsection (5) applies if—

(a) a person is convicted of an offence against subsection (1); and

Schedule (continued)

- (b) the document was given to the registrar in relation to an application for registration of a business name; and
 - (c) the person is the sole person or 1 of the persons in relation to whom the business name is registered.
- ‘(5) The court convicting the person may make an order directing the registrar to cancel the registration of the business name.
- ‘(6) If the registrar cancels the registration of the business name under subsection (5), the registrar must give each person in relation to whom the business name was registered, immediately before the cancellation, written notice that the registration has been cancelled under the order.’.

4 Sections 19A and 19B—

renumber as sections 19B and 19C.

5 Insertion of new s 19A

After section 19—

insert—

‘19A Cancellation of registration if proof of applicant’s identity was not provided

- ‘(1) This section applies if a business name was registered in error because section 7(2) was not complied with.
- ‘(2) The registrar may give the person in relation to whom the business name is registered written notice—
 - (a) detailing the same proof of identity that has been prescribed under a regulation for section 7(2); and
 - (b) requiring the person to give the registrar that proof of the person’s identity within 21 days after the notice is given; and
 - (c) stating that the registrar must immediately cancel the registration of the business name if the notice is not complied with.

Schedule (continued)

- ‘(3) If the person fails to comply with the notice, the registrar must—
- (a) immediately cancel the registration of the business name; and
 - (b) give the person written notice that—
 - (i) the registration is cancelled because the notice was not complied with; and
 - (ii) the person may apply to the District Court for an order directing the registrar to restore the registration of the business name.
- ‘(4) Section 19(3) to (5) applies to the cancellation as if it were a cancellation under section 19.’.

Charitable Funds Act 1958

1 Section 24(2)(c)(iii), ‘section 1280(2)(a)(ii) of the Corporations Act’—

omit, insert—

‘the Corporations Act, section 1280(2A)(a)¹⁵’.

Collections Act 1966

1 Section 31(1)(f)(iii), ‘section 1280(2)(a)(ii) of the Corporations Act’—

omit, insert—

‘the Corporations Act, section 1280(2A)(a)¹⁶’.

15 Corporations Act, section 1280 (Registration of auditors)

16 Corporations Act, section 1280 (Registration of auditors)

Schedule (continued)

Commercial and Consumer Tribunal Act 2003

- 1 **Section 47(6), definition *remote conferencing*, paragraph (c), ‘mediation’—**
omit, insert—
‘proceeding’.
- 2 **Section 73, heading, ‘div 7’—**
omit, insert—
‘div 8’.
- 3 **Section 76(2)(a), ‘*Queensland Building Services Act 1991*’—**
omit, insert—
‘*Queensland Building Services Authority Act 1991*’.
- 4 **Section 97, ‘section 93, 95 or 96’—**
omit, insert—
‘section 94, 95 or 96¹⁷’.
- 5 **Part 10, heading, ‘and consequential amendments’—**
omit.

17 Section 94 (Correcting mistakes), 95 (Reopening an order if party does not appear) or 96 (Reopening an order if problems with interpretation or implementation)

Schedule (continued)

Cooperatives Act 1997

1 Section 10(3)(c) and (d)—

omit, insert—

(c) chapter 6CA;

(d) chapter 6D;

(e) part 7.10.¹⁸.

2 Section 192B(1) to (6)—

renumber as section 192B(1) to (7).

3 Section 256(1), ‘chapter 2L, chapter 6D and part 7.10,’ and footnote—

omit, insert—

‘chapters 2L, 6CA and 6D and part 7.10.¹⁹’.

4 Section 266(3)—

renumber as section 266(4).

5 Section 266(2)—

omit, insert—

‘(2) The amount of a rebate payable to a member under subsection (1)(a) may be applied—

18 Corporations Act, part 1.2A (Disclosing entities), chapters 2L (Debentures), 6CA (Continuous disclosure), 6D (Fundraising) and part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services)

19 Corporations Act, part 1.2A (Disclosing entities), chapters 2L (Debentures), 6CA (Continuous disclosure), 6D (Fundraising) and part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services)

Schedule (continued)

- (a) in payment for the issue to the member of bonus shares, with the consent of the member; or
 - (b) as a loan to the cooperative—
 - (i) with the consent of the member; or
 - (ii) if the rules of the cooperative authorise the amount of a rebate payable to a member under subsection (1)(a) to be applied as a loan to the cooperative.
- ‘(3) The amount of a dividend payable to a member under subsection (1)(c) may be applied—
- (a) in payment for the issue to the member of bonus shares, with the consent of the member; or
 - (b) as a loan to the cooperative—
 - (i) with the consent of the member; or
 - (ii) if the rules of the cooperative authorise the amount of a dividend payable to a member under subsection (1)(c) to be applied as a loan to the cooperative.’.

6 Section 287(8), before ‘Corporations Law’—

insert—

‘repealed’.

7 Section 329(1)—

omit, insert—

- ‘(1) The provisions of the repealed Corporations Law, part 5.7A²⁰ as in force on 30 June 2001 are adopted by this section and apply to a cooperative in the same way as they applied to a company.’.

20 Corporations Law, part 5.7A (Reciprocity with other jurisdictions)

Schedule (continued)

Fair Trading Act 1989

1 Section 5—

insert—

‘TPA means the Trade Practices Act 1974 (Cwlth).’.

2 Section 5A(a) and (b)—

omit, insert—

‘(a) a reference to engaging in conduct is a reference to doing or refusing to do an act, including—

- (i) the making of, or the giving effect to a provision of, a contract or arrangement; and
- (ii) the arriving at, or the giving effect to a provision of, an understanding; and

(b) a reference to conduct, when used as a noun other than in a reference to engaging in conduct, is a reference to doing or refusing to do an act, including—

- (i) the making of, or the giving effect to a provision of, a contract or arrangement; and
- (ii) the arriving at, or the giving effect to a provision of, an understanding; and’.

3 Section 25(1), after ‘term of’—

insert—

‘up to’.

4 Section 26(2), from ‘or until’ to ‘date’—

omit.

Schedule (continued)

- 5 **Section 55(4), definition *obscene material*, paragraph (a), ‘; or’—**
omit, insert—
‘; and’.
- 6 **Sections 55B, 55C and 55D, heading, ‘—TPA s 61’**
omit.
- 7 **Section 71A(1), ‘exemption for’—**
omit, insert—
‘exemption from’.
- 8 **Section 98, heading—**
omit, insert—
- ‘98 **Injunctions—TPA ss 79(4) and 80’.**
- 9 **Section 103(1), ‘or the Supreme Court, a District Court or Supreme Court judge’—**
omit, insert—
‘the Supreme Court, a District Court judge or a Supreme Court judge’.
- 10 **Section 108, after ‘because’—**
insert—
‘of’.

Schedule (continued)

11 Amendment of s 112 (Evidence)

Section 112(1)(b)(ii), ‘that at any time before the representation was made that the’—

omit, insert—

‘that, at any time before the representation was made, the’.

12 Schedule 1, heading, ‘Schedule 1’—

omit, insert—

‘Schedule’.

Funeral Benefit Business Act 1982

1 Section 5, definition *authorised accountant*, paragraph (a), at the end—

insert—

‘or’.

2 Section 5, definition *registrar*—

omit, insert—

‘*registrar* means the registrar of funeral benefit businesses under section 6.’.

3 Section 6—

omit, insert—

‘6 Registrar

‘The chief executive is the registrar of funeral benefit businesses.’.

Schedule (continued)

- 4 Section 14(2)(a) and (b), at the end—**
insert—
‘and’.
- 5 Section 14(3)(a), at the end—**
insert—
‘or’.
- 6 Section 15(1), ‘section 17(e)’—**
omit, insert—
‘section 17(1)(e)’.
- 7 Section 40(1)(c), at the end—**
insert—
‘or’.
- 8 Section 41(6A)(i) and (ii)—**
renumber as section 41(6A)(a) and (b).
- 9 Section 41(6A)(a), as renumbered, at the end—**
insert—
‘or’.
- 10 Section 44, after ‘corporation’, second mention—**
insert—
‘to do either or both of the following’.

Schedule (continued)

- 11 Section 50(5)(a) to (c), at the end—**
insert—
‘and’.
- 12 Section 51(3)(a)(i), at the end—**
insert—
‘or’.
- 13 Section 51(3)(a)(ii) and (b), at the end—**
insert—
‘and’.
- 14 Section 52(4)(a) and (6)(a), at the end—**
insert—
‘or’.
- 15 Section 67(1)(a), at the end—**
insert—
‘and’.
- 16 Section 68(1)(a) to (c), at the end—**
insert—
‘and’.
- 17 Section 71(a), at the end—**
insert—
‘or’.

Schedule (continued)

18 Section 81(1), after ‘An inspector may’—

insert—

‘do any of the following’.

19 Section 81(1)(a)(i) and (b)(i), at the end—

insert—

‘or’.

20 Section 85(a) to (d), at the end—

insert—

‘and’.

Introduction Agents Act 2001

1 Part 8, division 1, after section 89—

insert—

‘89A Enforcement of undertakings

- ‘(1) If the chief executive believes, on reasonable grounds, a person has contravened a term of an undertaking given under section 88, the chief executive may apply to the District Court for an order under this section.
- ‘(2) If the court is satisfied that the person has contravened the term, the court may make 1 or more of the following orders—
- (a) an order directing the person to comply with the term;
 - (b) an order directing the person to pay to the State an amount not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the contravention;
 - (c) an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;

Schedule (continued)

- (d) an order directing the person to give a security bond to the State for a stated period;
 - (e) another order the court considers appropriate.
- ‘(3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—
- (a) the chief executive applies to the court for the order; and
 - (b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

‘89B Register of undertakings

- ‘(1) The chief executive must keep a register of each undertaking given under section 88.
- ‘(2) The register must contain a copy of the undertaking.
- ‘(3) The register may be kept in any way that the chief executive considers appropriate.
- ‘(4) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the register—
 - (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.
- ‘(5) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.’

Land Sales Act 1984

1 Section 9(6)—

omit, insert—

Schedule (continued)

‘(6) A stake placed by a cadastral surveyor under subsection 3(e)(i) is not a survey mark for the purposes of the *Survey and Mapping Infrastructure Act 2003*.’.

2 Section 21(5)(b), ‘section 170’—

omit, insert—

‘section 213²¹’.

Liquor Act 1992

1 Section 4, definitions *presiding case manager* and *registrar*—

omit.

2 Section 4—

insert—

‘*director* means the director of the Commercial and Consumer Tribunal Registry established under the tribunal Act.’.

3 Sections 32(a), 34(3), 210(3)(b) and (4) and 211(1), ‘registrar’—

omit, insert—

‘director’.

4 Section 33(2), ‘registrar’, second mention—

omit, insert—

‘director’.

21 *Body Corporate and Community Management Act, 1997*, section 213 (Statement to be given by seller to buyer)

Schedule (continued)

5 Sections 33, 34(2), 120(2) and 210(3)(a), ‘registrar of the tribunal’—

omit, insert—

‘director’.

6 Section 232A—

omit.

Manufactured Homes (Residential Parks) Act 2003**1 Section 34(5), ‘(b)’, first mention—**

omit, insert—

‘(a)’.

2 Section 49(5), ‘decides not’—

omit, insert—

‘refuses’.

3 Section 49(6), ‘decided not’—

omit, insert—

‘refused’.

4 Section 50—

omit, insert—

Schedule (continued)

‘50 Application to tribunal for order that park owner consent to assignment

- ‘(1) This section applies if the park owner refuses, or is taken to have refused, to consent to the assignment of the seller’s interest.²²
- ‘(2) The seller may apply to the tribunal for an order that the park owner consent to the assignment of the seller’s interests.
- ‘(3) The tribunal may make the order if it decides that the park owner unreasonably refused to consent to the assignment.
- ‘(4) If the tribunal makes the order, the park owner must, within 7 days after the order is made, sign both copies of the form of assignment and return them to the seller.
- Maximum penalty—20 penalty units.
- ‘(5) If the park owner fails to comply with subsection (4), the park owner is taken to consent, at the end of the 7 days, to the assignment.
- ‘(6) To remove any doubt, it is declared that the tribunal’s jurisdiction under this section is not jurisdiction to review, but is jurisdiction with which the *Commercial and Consumer Tribunal Act 2003*, section 113²³ deals.’.

5 Section 132(3)(a)—

omit, insert—

- ‘(a) at a place or places decided by the chief executive; or’.

6 Part 21, after section 154—

insert—

22 See also section 155 (Unfinalised application for review of refusal to consent to assignment of seller’s interest in site agreement).

23 *Commercial and Consumer Tribunal Act 2003*, section 113 (Other matters)

Schedule (continued)

‘155 Unfinalised application for review of refusal to consent to assignment of seller’s interest in site agreement

- ‘(1) This section applies if an application under section 50²⁴ as in force immediately before the commencement of this section (the *former application*) has not been finalised before the commencement of this section.
- ‘(2) The application is taken to be an application for an order under section 50²⁵ (the *new application*).
- ‘(3) The former application and any pending proceeding under it is to be continued as if everything done under the former application had been done, with necessary changes, under the new application.

Example—

Evidence given in the pending proceeding is evidence in the new proceeding.’.

Motor Vehicles and Boats Securities Act 1986

1 Section 2, definition *security interest*, paragraph (a), at the end—

insert—

‘and’.

Property Agents and Motor Dealers Act 2000

1 Section 4(a), after ‘sheriff’—

insert—

‘, or a bailiff of the Supreme Court, the District Court or a Magistrates Court,’.

24 Section 50 (Review of refusal to consent)

25 Section 50 (Application to tribunal for order that park owner consent to assignment)

Schedule (continued)

2 Section 49—

insert—

- ‘(6) Subsection (5) does not apply if—
- (a) the applicant is a corporation; and
 - (b) the applicant satisfies the chief executive that, because of a genuine sale—
 - (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the applicant corporation; and
 - (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the applicant corporation.

Note—

Section 13 (Meaning of *beneficial interest*) does not define *beneficial interest* for this paragraph (b)(i).’.

3 Section 57(2)(d)(iv)—

omit.

4 Section 57—

insert—

- ‘(4A) If requested by the chief executive, the application must, for a licensee who is an individual, also be accompanied by 2 recent colour photographs of the licensee that are—
- (a) of a size prescribed under a regulation; and
 - (b) certified as photographs of the licensee in the way prescribed under a regulation.’.

Schedule (continued)

5 Section 60(2)(e)(v)—

omit.

6 Section 60—

insert—

‘(4A) If requested by the chief executive, the application must, for a licensee who is an individual, also be accompanied by 2 recent colour photographs of the licensee that are—

- (a) of a size prescribed under a regulation; and
- (b) certified as photographs of the licensee in the way prescribed under a regulation.’.

7 Section 80(3)(a)—

omit, insert—

‘(a) at a place or places decided by the chief executive; or’.

8 Section 94(2)(d)(iii)—

omit.

9 Section 94—

insert—

‘(3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the applicant that are—

- (a) of a size prescribed under a regulation; and
- (b) certified as photographs of the applicant in the way prescribed under a regulation.’.

10 Section 97(2)(e)(iv)—

omit.

Schedule (continued)

11 Section 97—

insert—

- ‘(3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the applicant that are—
- (a) of a size prescribed under a regulation; and
 - (b) certified as photographs of the applicant in the way prescribed under a regulation.’.

12 Section 117(4), after ‘section 114’—

insert—

‘and actually expended’.

13 Section 132(1)(b)—

omit, insert—

- ‘(b) if the real estate agent has more than 1 place of business, ensure that at each other place of business—
- (i) that is a restricted letting agency—a real estate agent, or restricted letting agent, who is an individual, is in charge of the real estate agent’s business at the place of business; or
 - (ii) that is not a restricted letting agency—a real estate agent who is an individual is in charge of the real estate agent’s business at the place of business.’.

14 Section 132(2)(b)—

omit, insert—

- ‘(b) if the corporate agent has more than 1 place of business, ensure that at each other place of business—
- (i) that is a restricted letting agency—a real estate agent, or restricted letting agent, who is an

Schedule (continued)

individual is in charge of the corporate agent's business at the place of business; or

- (ii) that is not a restricted letting agency—a real estate agent who is an individual is in charge of the corporate agent's business at the place of business.'.

15 Section 132—

insert—

- '(4) In this section—

restricted letting agency means a place of business at which the only business carried on as a real estate agent is the business of a restricted letting agent.'.

16 Section 133(1)—

omit, insert—

- '(1) A real estate agent must not act as a real estate agent for a person (the *client*) to perform an activity (*service*) for the person unless the person first appoints the real estate agent in writing under this section.

Maximum penalty—200 penalty units.'.

17 Section 234—

insert—

'*time of taking possession*, in relation to a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase.'.

18 Section 236—

omit, insert—

Schedule (continued)

'236 Meaning of *warranty period*

- '(1) Subject to subsection (3), the *warranty period* of a class A warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—
- (a) the vehicle travels 5 000 km since the time of taking possession;
 - (b) 5 p.m. on—
 - (i) the day 3 months after the time of taking possession if that day—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor's place of business is open for business; or
 - (ii) the first day, after the day 3 months after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor's place of business is open for business.
- '(2) Subject to subsection (3), the *warranty period* of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—
- (a) the vehicle travels 1 000 km since the time of taking possession;
 - (b) 5 p.m. on—
 - (i) the day 1 month after the time of taking possession if that day—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor's place of business is open for business; or
 - (ii) the first day, after the day 1 month after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and

Schedule (continued)

(B) the warrantor's place of business is open for business.

'(3) The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—

- (a) the buyer has complied with section 244(1);²⁶ and
- (b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.'

19 Section 240(1), 'it is sold'—

omit, insert—

'the time of taking possession'.

20 Section 240(2)—

omit.

21 Section 241—

omit, insert—

'241 Auctioneer to give buyer notice about statutory warranty

'(1) An auctioneer who sells a warranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle a notice in the approved form.

Maximum penalty—100 penalty units.

'(2) An auctioneer who sells an unwarranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle notice in the approved form that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

²⁶ Section 244 (Buyer's obligations under statutory warranty)

Schedule (continued)

‘(3) The buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.’.

22 Section 242(1)(a), from ‘sale’—

omit, insert—

‘taking possession and for the warranty period;²⁷ and’.

23 Section 243(b), ‘buyer took delivery’—

omit, insert—

‘time of taking possession’.

24 Section 243(c), ‘buyer takes delivery’—

omit, insert—

‘time of taking possession’.

25 Section 300(3)(c), ‘, in the way prescribed under a regulation,’—

omit.

26 Section 300(3)(g)—

omit.

27 Section 312—

insert—

‘time of taking possession, in relation to a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase from the motor dealer.’.

²⁷ See also section 636 (Transitional provision about statutory warranty under former section 242 or 318).

Schedule (continued)

28 Section 312, definition *warrantor*—

omit, insert—

‘*warrantor*, of a warranted vehicle,²⁸ means the motor dealer who owns the vehicle immediately before the time of taking possession.’.

29 Section 314—

omit, insert—

‘314 Meaning of *warranty period*

‘(1) Subject to subsection (3), the *warranty period* of a class A warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—

(a) the vehicle travels 5 000 km since the time of taking possession;

(b) 5 p.m. on—

(i) the day 3 months after the time of taking possession if that day—

(A) is not a Sunday or public holiday; and

(B) the motor dealer’s place of business is open for business; or

(ii) the first day, after the day 3 months after the time of taking possession, that—

(A) is not a Sunday or public holiday; and

(B) the motor dealer’s place of business is open for business.

‘(2) Subject to subsection (3), the *warranty period* of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—

(a) the vehicle travels 1 000 km since the time of taking possession;

28 *Warranted vehicle* and *unwarranted vehicle* are defined in schedule 2 (Dictionary).

Schedule (continued)

- (b) 5 p.m. on—
 - (i) the day 1 month after the time of taking possession if that day—
 - (A) is not a Sunday or public holiday; and
 - (B) the motor dealer’s place of business is open for business; or
 - (ii) the first day, after the day 1 month after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and
 - (B) the motor dealer’s place of business is open for business.

- ‘(3) The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—
 - (a) the buyer has complied with section 320(1);²⁹ and
 - (b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.’.

30 Section 317—

omit, insert—

‘317 Motor dealer to give proposed buyer notice about statutory warranty

- ‘(1) A motor dealer must, before a contract for the purchase of a warranted vehicle from the motor dealer is entered into, give the proposed buyer of the vehicle a notice in the approved form.
Maximum penalty—100 penalty units.
- ‘(2) A motor dealer must, before a contract for the purchase of a unwarranted vehicle from the motor dealer is entered into,

²⁹ Section 320 (Buyer’s obligations under statutory warranty)

Schedule (continued)

give the proposed buyer of the vehicle notice in the approved form that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

‘(3) The proposed buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.’.

31 Section 318(1)(a), from ‘sale’—

omit, insert—

‘taking possession and for the warranty period;³⁰ and’.

32 Section 319(b), ‘buyer took delivery’—

omit, insert—

‘time of taking possession’.

33 Section 319(c), ‘buyer takes delivery’—

omit, insert—

‘time of taking possession’.

34 Section 391, definition *qualified auditor*, paragraph (c), ‘section 1280(2)(a)(ii)’—

omit, insert—

‘section 1280(2A)(a)³¹’.

35 Section 469, definition *marketeeing contravention*, paragraph (b), ‘60,’—

omit.

30 See also section 636 (Transitional provision about statutory warranty under former section 242 or 318).

31 Corporations Act, section 1280 (Registration of auditors)

Schedule (continued)

36 Section 472—

insert—

‘(5) In this section—

court includes a small claims tribunal under the *Small Claims Tribunals Act 1973*.’

37 Section 473, heading—

omit, insert—

**‘473 Making claims other than particular claims relating to
marketeeing contraventions and non-investment
residential property’.**

38 Section 476—

omit, insert—

‘476 Dealing with claims that have not settled

‘(1) If the claim has not settled within 28 days after the claim notice is given to the respondent, the claimant may give the chief executive written notice that the claimant wants to proceed with the claim.

‘(2) If a notice under subsection (1) relates to a minor claim, the chief executive is to decide the minor claim.

‘(3) If a notice under subsection (1) relates to a claim other than a minor claim, the tribunal is to decide the claim.

**39 Section 478(2) and (3), ‘the time, not less than 7 days,
stated in the notice’—**

omit, insert—

‘14 days after giving the notice’.

40 Section 490—

insert—

Schedule (continued)

‘(4) Before taking action to recover the amount of the debt, the chief executive must give a letter of demand to the debtor requiring the debtor to pay the amount to the chief executive within 28 days after receiving the letter.’.

41 Section 527(2)(c) and 528(1)(c)(v), ‘section 491’—

omit, insert—

‘section 490(4)’.

42 Section 572(3)(a)—

omit, insert—

‘(a) at a place or places decided by the chief executive; or’.

**43 Section 632(5), definition *information sheet*,
‘section 170(5).’—**

omit, insert—

‘section 213(5).³²’.

44 Chapter 19, after section 635—

insert—

³² *Body Corporate and Community Management Act 1997*, section 213 (Statement to be given by seller to buyer)

Schedule (continued)

former chapter 7, part 4 means chapter 7, part 4 as in force immediately before the commencement of this section.

former chapter 9, part 5 means chapter 9, part 5 as in force immediately before the commencement of this section.’.

45 Schedule 2, definition *beneficial interest*—

omit.

46 Schedule 2—

insert—

‘*actually expended*, in relation to expenses, means the amount actually incurred after deducting—

- (a) the amount of any benefit, received or receivable, directly or indirectly, in connection with the expenses by the person seeking to sue for, recover or retain the expenses; or
- (b) if the benefit has no fixed amount—the market value of the benefit.

beneficial interest, other than for section 49(6)(b)(i), see section 13.’.

Racing Act 2002

1 Section 162—

omit, insert—

‘162 Tribunal chairperson and the director to work cooperatively

‘The tribunal chairperson and the director must work cooperatively to promote the effective and efficient operation of the tribunal.’.

Schedule (continued)

- 2 Sections 163(2), 168(1)(a), 169(1), 170(1), 171(1), 177(1) and 185(4)(a), ‘secretary to the tribunal’—**
omit, insert—
‘director’.
- 3 Sections 168(1)(b) and (3), ‘secretary’—**
omit, insert—
‘director’.
- 4 Section 188, heading, ‘Secretary’—**
omit, insert—
‘**Director**’.
- 5 Section 188, ‘its secretary’—**
omit, insert—
‘the director’.
- 6 Schedule 3, definition *secretary*—**
omit.
- 7 Schedule 3—**
insert—
‘***director*** means the director of the Commercial and Consumer Tribunal Registry established under the *Commercial and Consumer Tribunal Act 2003*.’.

Schedule (continued)

Residential Services (Accreditation) Act 2002

1 Section 4(5)(m)—

renumber as section 4(5)(n).

2 Section 4(5)(l)—

omit, insert—

‘(l) a service conducted by the housing department;

(m) a funded service under the *Housing Act 2003*;’.

3 After section 156—

insert—

‘157 Stay of operation of original decision

‘(1) An application under section 156 for review of a decision does not stay the decision.

‘(2) However, before the decision takes effect, the chief executive may give the interested person a notice staying the operation of the decision for a stated period.

‘(3) The stay may be granted on conditions the chief executive considers appropriate.

‘(4) Also, whether or not the applicant has asked the chief executive to stay the operation of the decision, the applicant may apply to the Commercial and Consumer Tribunal for a stay of the decision.

‘(5) The tribunal may stay the decision to secure the effectiveness of the review and any later appeal to the tribunal.

‘(6) The stay may be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.

‘(7) The period of the stay must not extend past the time when the chief executive makes the review decision and any later period

Schedule (continued)

the tribunal allows to enable the applicant to appeal against the review decision.’.

Retirement Villages Act 1999

1 Section 35(4)(a)—

omit, insert—

‘(a) inspect the register at a place or places decided by the chief executive; or’.

2 Section 89(2)(c), ‘section 168 or 176.’—

omit, insert—

‘section 211 or 219.³⁷’.

Second-hand Dealers and Pawnbrokers Act 2003

1 After section 112—

insert—

‘112A Delegation by chief executive

‘(1) The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified public service employee.

‘(2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

A person’s classification level in the public service.’.

³⁷ *Body Corporate and Community Management Act 1997*, section 211 (Restriction on powers of attorney in favour of original owner) or 219 (Restriction on powers of attorney in favour of seller)

Schedule (continued)

Security Providers Act 1993

**1 Section 3, definition *accountant*, paragraph (c),
'section 1280(2)(a)(ii) of the Corporations Act'—**

omit, insert—

'the Corporations Act, section 1280(2A)(a)³⁸'.

Tourism Services Act 2003

1 Section 28(4), from 'the register—'—

omit, insert—

'the register at a place or places decided by the commissioner.'

2 Section 65—

insert—

'(2) It is enough for a complaint for an offence against subsection (1) to state that the statement made was 'false or misleading' to the person's knowledge, without specifying which.'

3 Section 66—

insert—

'(3) It is enough for a complaint for an offence against subsection (1) to state that the document given was 'false or misleading' to the person's knowledge, without specifying which.'

38 Corporations Act, section 1280 (Registration of auditors)

Schedule (continued)

Wine Industry Act 1994**1 Section 57—**

omit, insert—

‘57 Delegation by chief executive

‘(1) The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified public service employee.

‘(2) In this section—

appropriately qualified includes having the qualifications experience or standing appropriate to exercise the power.

Example of standing—

A person’s classification level in the public service.’.

2 Section 60(1), ‘an officer or employee of the department’—

omit, insert—

‘a public service employee’.