

TOURISM, RACING AND FAIR TRADING (MISCELLANEOUS PROVISIONS) BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The Department of Tourism, Racing and Fair Trading is responsible for the administration of over 70 Acts. The Bill contains a number of amendments to adjust operational difficulties of the *Property Agents and Motor Dealers Act 2000* that have been identified since that Act commenced operation. A number of relatively minor and technical amendments are also made to other Acts administered by the Department. Consequential amendments are made to the *Body Corporate and Community Management Act 1997*, the *Police Powers and Responsibilities Act 2001* and the *Transport Operations (Road Use Management) Act 1995*.

A number of amendments and repeals, implementing the recommendations contained in the following National Competition Policy Reviews, are also included in the Bill:

- *Review Committee Report on the Hawkers Act 1984 and the Hawkers Regulation 1994;*
- *Review of the Invasion of Privacy Act 1971 and Invasion of Privacy Regulation 1988;*
- *Review of the Loan Fund Companies Act 1982 Public Benefit Test Report;* and
- *Public Benefit Test Report on the Partnership Act 1988 and Partnership (Limited Liability) Act 1988.*

The Acts to be amended are the:

- *Associations Incorporation Act 1981;*
- *Bills of Sale and Other Instruments Act 1955;*
- *Body Corporate and Community Management Act 1997;*
- *Business Names Act 1962;*
- *Classification of Computer Games and Images Act 1995;*

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

- *Classification of Films Act 1991;*
- *Classification of Publications Act 1991;*
- *Collections Act 1966;*
- *Cooperatives Act 1997;*
- *Fair Trading Act 1989;*
- *Funeral Benefit Business Act 1982;*
- *Invasion of Privacy Act 1971;*
- *Land Sales Act 1984;*
- *Liens on Crops of Sugar Cane Act 1931;*
- *Liquor Act 1992;*
- *Motor Vehicles Securities Act 1986;*
- *Motor Vehicles Securities and Other Acts Amendment Act 2001;*
- *Partnership (Limited Liability) Act 1988;*
- *Police Powers and Responsibilities Act 2000;*
- *Property Agents and Motor Dealers Act 2000;*
- *Queensland Building Tribunal Act 2000;*
- *Racing and Betting Amendment Act 2000;*
- *Retirement Villages Act 1999;*
- *Security Providers Act 1993; and*
- *Transport Operations (Road Use Management) Act 1995.*

The Acts to be repealed are the:

- *Hawkers Act 1984; and*
- *Loan Fund Companies Act 1982.*

Administrative Cost

Any financial impact from the development and implementation of activities or initiatives in the Bill will be met from the Department's existing budget allocations, except in regard to the amendments to the *Business Names Act 1962*.

In relation to this Act, revenues generated by registration applications and renewals under the Act are Administered Revenues paid to the Consolidated Fund. A proposed fee structure for triennial renewals under the *Business Names Act 1962* is still being examined and developed. In the event that a proposed triennial fee structure has implications for budget neutrality, the Department will submit a formal proposal for Cabinet Budget Review Committee consideration, prior to implementation of the fee structure.

On repeal of Part 3 of the *Invasion of Privacy Act 1971*, administrative transitional arrangements will be put in place to ensure that all current licence holders receive pro-rata refund of licence fees. As licences under the Act are issued on a twelve month basis, under the proposed administrative arrangements licence holders will receive a refund cheque calculated on the basis of the number of months that the licence has been held since issue. Along with their refund cheques, licensees will receive information advising of their ongoing obligations under the *Privacy Act 1988* (Cth). Where applications, renewals, restorations or replacements are received prior to the repeal of Part 3 of the Act, the chief executive officer will issue the licence and will provide a pro-rata refund once the Act is repealed.

All information currently held by the chief executive officer in relation to licensees will be retained on Departmental files and will be disposed of in accordance with section 58(1) of the *Libraries and Archives Act 1988*.

On repeal of the *Hawkers Act 1984* administrative transitional arrangements will be put in place to ensure that all current licensed hawkers receive a pro-rata refund of licence fees. As licences under the Act are issued on a twelve month basis, under the proposed administrative arrangements licence holders will receive a refund cheque calculated on the basis of the number of months that the licence has been held since issue. Along with their refund cheques, licensees will receive information advising of their ongoing obligations under the *Fair Trading Act 1989*, particularly with reference to the door-to-door trading provisions. Where applications, renewals, restorations or replacements are received prior to the repeal of the *Hawkers Act 1984*, the chief executive officer will issue the licence and will provide a pro-rata refund once the Act is repealed. All information currently held by the chief executive officer in relation to licensees will be retained on Departmental files and will be disposed of in accordance with section 58(1) of the *Libraries and Archives Act 1988*.

Fundamental Legislative Principles

Some of the provisions of the Bill arguably infringe fundamental legislative principles.

The Bill increases inspectors' powers under the *Property Agents and Motor Dealers Act 2000* (PAMDA) to give inspectors the power to enter the place of business of a licensee or a marketeer without consent and without a warrant. The Bill also expands inspectors' powers to allow them

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

to have the same powers to require documents from marketeers as they currently have to require documents from licensees.

These provisions arguably conflict with the fundamental legislative principle that legislation have sufficient regard to rights and liberties of individuals. The legislation confers the power to enter premises which should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate.

These powers are needed to meet the consumer protection objectives of the PAMDA. Without these powers, inspectors cannot make on the spot inspections to collect evidence, avoiding the possibility of evidence being destroyed, to enforce the Act.

These are similar powers of entry contained in other Queensland legislation, including section 30H of the *Motor Vehicles Securities and Other Acts Amendment Act 2001*, section 65 of the *Introduction Agents Act 2001* and section 31 of the *Consumer Credit (Queensland) Act 1994*.

The Bill amends the *Fair Trading Act 1989* to protect the Minister from liability arising from disclosures and the publication of information concerning fair trading matters. This amendment arguably breaches the fundamental legislative principle that legislation have sufficient regard to the rights and liberty of individuals. Such action by the Minister may not be consistent with the principles of natural justice.

This amendment is needed to enable the Minister to issue warnings to consumers about inappropriate business practices and to deter individuals and businesses from acting in an inappropriate manner towards consumers in the future. It is consistent with the protection already afforded the Commissioner for Fair Trading. In some circumstances it is likely that warnings from the Minister will attract greater media attention and have greater positive impact on consumer protection and on deterring inappropriate behaviour than similar warnings issued by the Commissioner for Fair Trading.

Ministers are protected from liability in similar circumstances under other consumer protection legislation such as section 594 of the *Property Agents and Motor Dealers Act 2000*.

In New South Wales, the Minister for Fair Trading is provided with protection from liability in relation to statements in the course of the administration or execution of the *Fair Trading Act 1987* (NSW).

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

The Minister will establish protocols for ensuring that disclosures and publication of information will only be made in the appropriate circumstances.

The Bill makes retrospective amendments to the *Collections Act 1966*, the *Body Corporate and Community Management Act 1997* and the *Property Agents and Motor Dealers Act 2000*. These amendments conflict with the fundamental legislative principle that legislation should not adversely affect rights and liberties of individuals, by imposing obligations retrospectively.

The amendment to the *Collections Act 1966* will not decrease the rights of any person and will not impose liabilities on any person.

The *Collections Act 1966* was amended by the *Equity and Fair Trading (Miscellaneous Provisions) Act 2000*, which commenced on 27 June 2000, to allow “Earth Share Australia Limited” (“the Trustee company”) to be registered as a charity under the Act. However, “Earth Share Australia Foundation” (“the Trust”) is the correct entity which should be registered as a charity under the Act and not the Trustee company.

Since the Trustee company has been operating on the basis that the correct entity was listed in the Act from 27 June 2000, this amendment will not affect any rights of the Trust or Trustee company and will not impose any additional liabilities on the Trust or Trustee company.

The Bill makes retrospective amendments to the *Body Corporate and Community Management Act 1997* and the *Property Agents and Motor Dealers Act 2000*.

The *Property Agents and Motor Dealers Act 2000* amended the *Body Corporate and Community Management Act 1997* to allow the information sheet required by that Act to be affixed to the contract as the first or top sheet, to be placed immediately beneath the warning statement required under the *Property Agents and Motor Dealers Act 2000*, for sales of existing lots. However, a similar amendment was not made to section 170 of the *Body Corporate and Community Management Act 1997*, which deals with sales of proposed lots.

Currently, the provisions of the *Property Agents and Motor Dealers Act 2000* and the *Body Corporate and Community Management Act 1997* regarding the placement of the Body Corporate information sheet and the Property Agents’ warning statement conflict. Contracts can be terminated because of a conflict between different legislative requirements. It is inappropriate that contracts can be terminated solely because of a failure to

comply with one of these requirements due to an oversight when the *Property Agents and Motor Dealers Act 2000* was originally drafted.

The Bill amends the *Retirement Villages Act 1999* to enable criminal checks to be made of people operating, promoting, selling and managing a retirement village scheme. This is potentially a breach of the principle that legislation must have sufficient regard to the rights and liberties of individuals. The amendment is necessary to protect the interests of vulnerable residents or potential residents, who are older people making a significant investment in their future. Limitations are imposed on the disclosure of any information obtained.

Consultation

Consultation occurred with the following government and non-government agencies and individuals.

Community

Queensland Law Society
 Professor Bill Duncan, Queensland University of Technology
 Real Estate Institute of Queensland
 Urban Development Institute of Australia
 Motor Trades Association of Queensland
 Queensland Livestock Agents' Association
 The Queensland Consumers' Association
 Licensed hawkers
 Licensed credit reporting agents

Government

| | |
|--|--|
| Department of State Development: | Christine Beraldo, Business Regulation Reform Unit |
| Queensland Treasury: | Robert Fleming |
| Department of the Premier and Cabinet: | Philip Green |
| Justice and Attorney General: | Terry Ryan |
| Department of Primary Industry: | Simon Dejoux |
| Department of Employment and Training: | Keith Kerslake |

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the provisions of the Act. Section 33 is taken to have commenced on 27 June 2000. Part 18 is taken to have commenced on 23 June 2000. Parts 3, 6 to 8, 10, 12 and 15 and sections 16 to 18, 20, 74 to 78, 81 to 85, 87 to 91, 97, 99, schedule, amendments to the *Police Powers and Responsibilities Act 2000*, the *Security Providers Act 1993* and the *Transport Operations (Road Use Management) Act 1995* are to commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF ASSOCIATIONS INCORPORATION ACT 1981

Clause 3 provides that Part 2 amends the *Associations Incorporation Act 1981*.

Clause 4 amends section 3 by omitting the words “personally or by post as required under the association’s rules”. This provides associations with greater flexibility in giving notices to their members of proposed special resolutions.

Clause 5 amends section 93 to provide the chief executive with greater flexibility in serving notices relating to the cancellation of associations. Service can be made on the secretary or another officer of the incorporated association or, if the incorporated association has ceased to exist, on a person appearing to have been the last known secretary or other officer of the incorporated association.

PART 3—AMENDMENT OF BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

Clause 6 provides that Part 3 amends the *Bills of Sale and Other Instruments Act 1955*.

Clause 7 amends section 6C(2) by omitting the reference to “subsection (4)” and inserting “subsection (1)”. This is to correct an error.

Clause 8 omits section 13 and inserts a new section 13.

The new section 13(1) maintains the existing legislative framework but inserts a new provision at paragraph 13(1)(b) to permit, with the approval of the chief executive, on-line access to the electronic database.

The new sections 13(2) and (3) carry forward the existing legislative framework, but in a more modern drafting style.

The new section 13(4) introduces a definition of “computer”.

Clause 9 amends section 18J by replacing subparagraph 18J(e). This amendment makes the section consistent with the new section 13.

Clause 10 inserts a new section 45A after section 45.

The new section 45A(1) allows the chief executive to approve payment of fees under an arrangement, such as payment in advance or in arrears.

The new section 45A(2) makes provision for the manner in which the application for approval of a fee arrangement to the chief executive must be made.

The new section 45A(3) sanctions the payment of fees by a person in accordance with an arrangement approved by the chief executive.

PART 4—AMENDMENT OF BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

Clause 11 provides that Part 4 amends the *Body Corporate and Community Management Act 1997*.

Clause 12 amends section 170.

Clause 12(1) replaces section 170(5).

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

The new subsection (5) requires the information sheet in the approved form to be attached as the first or top sheet of the contract unless the sale relates to residential property. If the sale relates to residential property the information sheet is to be placed immediately under the warning statement which must be attached as the top sheet of the contract.

Clause 12(2) inserts a new section 170(8) which defines “residential property” as having the same meaning as in section 17 of the *Property Agents and Motor Dealers Act 2000*.

Clause 13 inserts a new part 2 of chapter 8—*Transitional Provision for Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002* - and a new section 294.

The new section 294(1) provides that section 294 applies to contracts that have not settled or been lawfully terminated, entered into from 1 July 2001 (the commencement of the *Property Agents and Motor Dealers Act 2000*) to and including the day before commencement of the section.

The new section 294(2) provides that, for such contracts, no buyer is entitled to cancel a contract if the information sheet is attached to the contract immediately beneath a warning statement that was attached as the first or top sheet of the contract.

The new section 294(3) defines “warning statement” as having the same meaning as in section 366 of the *Property Agents and Motor Dealers Act 2000*.

PART 5—AMENDMENT OF BUSINESS NAMES ACT 1962

Clause 14 provides that Part 5 amends the *Business Names Act 1962*.

Clause 15 inserts new sections 3C and 3D after section 3B.

The new section 3C provides that, when a fee is payable, the payment may be made in any way approved by the chief executive.

The new section 3D provides for the lodgment of documents required to be lodged under the Act in any way approved by the chief executive.

Clause 16 amends section 7.

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

Clause 16(1) inserts a new subparagraph (1)(ea) which will enable applications for registration of a business name to specify whether they are for a term of 1 year or 3 years.

Clause 16(2) renumbers subparagraphs (1)(ca) to (f).

Clause 16(3) amends section 7(3) to make it consistent with subparagraph (1)(ea).

Clause 16(4) inserts a new section 7(3A).

Section 7(3A) prevents the term of the registration of a business name being changed after the business name is registered.

Clause 17 inserts a new section 10A after section 10.

The new section 10A provides that the registration of a business name will continue in force for a term of either 1 year or 3 years as registered by the registrar under section 7(3).

Clause 18 amends section 11.

Clause 18(1) replaces section 11(1) with new sections 11(1) and 11(1A). These sections carry forward the existing legislative framework for the renewal of business names but cater for registration of business names for periods of 1 or 3 years, and for alternative means of paying the prescribed fee.

The new section 11(1) provides for renewal of the registration of a business name in a way approved by the chief executive. This will facilitate alternative means of renewal, such as renewal by telephone.

The new section 11(1A) provides that an application for renewal of the registration of a business name must specify whether it is for a term of 1 year or 3 years and must be accompanied by the prescribed fee.

Clause 18(2) amends section 11(2) by omitting the present 1 year renewal of registration period and replacing it with optional periods of either 1 year or 3 years.

Clause 18(3) inserts a new section 11(2A).

The new section 11(2A) prevents the term of the renewal of a business name being changed after registration is renewed.

Clause 19 replaces section 19A(1).

The new section 19A(1) maintains the existing legislative framework concerning a dishonoured cheque and introduces a provision permitting the registrar to cancel the registration of a business name where a payment was

made in a way that was not effective, such as where a cheque for payment was not honoured on presentation or where authorisation for payment by credit card was rejected by the relevant financial institution.

Clause 20 inserts a new section 19B.

The new section 19B provides that a person cannot obtain any refund of the prescribed fee paid for the application for registration or renewal of the registration of a business name if the registrar cancels the registration of the business name other than under section 10.

PART 6—AMENDMENT OF CLASSIFICATION OF COMPUTER GAMES AND IMAGES ACT 1995

Clause 21 provides that Part 6 amends the *Classification of Computer Games and Images Act 1995*.

Clause 22 inserts new sections 8A, 8B and 8C.

The new section 8A provides that the director of the Commonwealth Classifications Board may require the publisher of a computer game to submit a copy of the computer game to the Board for reclassification. The section makes it an offence to fail to comply with such a requirement.

The new section 8B provides that, where an application is made to the Commonwealth Classifications Board to review a classification decision about a computer game, the director of the Board may require the publisher of the computer game to make a copy of it available for review. The section makes it an offence to fail to comply with such a requirement.

The new section 8C provides that the director of the Commonwealth Classifications Board may require the publisher of an unclassified computer game to submit a copy of the computer game to the Board for classification. The section makes it an offence to fail to comply with such a requirement.

Clause 23 inserts a new section 10B. The section makes it an offence to have a computer game available for playing on a pay and play basis unless the device used for playing the computer game bears the relevant classification markings and any applicable consumer advice.

Clause 24 amends schedule 2 by omitting the existing definition for “advertisement” and by inserting new definitions of “advertisement”,

“exempt computer game” and “review board” and by amending the definition of “computer game”.

Clause 24(1) amends schedule 2 by deleting the definition for “advertisement”.

Clause 24(2) inserts a new definition for “advertisement” in schedule 2. The new definition excludes advertising in an imported film, publication, or computer game for a computer game that has not been published in Australia.

Clause 24(2) further amends schedule 2 by inserting new definitions for “exempt computer game” and “review board”.

Clause 24(3) amends schedule 2 by amending the existing definition of “computer game” to simplify what computer games are exempted from the definition.

PART 7—AMENDMENT OF CLASSIFICATION OF FILMS ACT 1991

Clause 25 provides that Part 7 amends the *Classification of Films Act 1991*.

Clause 26 amends section 3 of the Act by replacing the definition of “advertisement” and by inserting a number of new definitions.

Clause 26(1) amends section 3 by omitting the existing definition for “advertisement”.

Clause 26(2) amends section 3 by inserting a new definition for “advertisement”. The new definition excludes advertising in an imported film or publication for a film that has not been published in Australia.

Clause 26(2) further amends schedule 2 by inserting new definitions for “exempt film”, “international flight”, “international voyage”, and “review board”.

Clauses 26(3)—26(6) amend section 3 by amending the existing definitions for “film”, “place” and “premises”. The amendments to the definition for “film” extend the definition to include the soundtrack of the film, and simplify what films are exempted from the definition. The amendments to the definitions for “place” and “premises” exclude vessels

on international voyages and aircraft on international flights from the definitions.

Clause 27 inserts new sections 25CA, 25CB, and 25CC.

The new section 25CA provides that the director of the Commonwealth Classifications Board may require the publisher of an unclassified film to submit a copy of the film to the Board for classification. The section makes it an offence to fail to comply with such a requirement.

The new section 25CB provides that the director of the Commonwealth Classifications Board may require the publisher of a film to submit a copy of the film to the Board for reclassification. The section makes it an offence to fail to comply with such a requirement.

The new section 25CC provides that, where an application is made to the Commonwealth Classifications Board to review a classification decision about a film, the director of the Board may require the publisher of the film to make a copy of it available for review. The section makes it an offence to fail to comply with such a requirement.

PART 8—AMENDMENT OF CLASSIFICATION OF PUBLICATIONS ACT 1991

Clause 28 provides that Part 8 amends the *Classification of Publications Act 1991*.

Clause 29 amends section 3 by omitting the existing definition for “submittable publication” and inserting a new definition that simplifies what is considered a “submittable publication”.

Clause 30 inserts new sections 20D and 20E.

The new section 20D applies to a publication that has been classified “unrestricted” but subject to a condition, and makes it an offence to sell such a publication other than in accordance with that condition.

The new section 20E applies to a publication that has been classified “unrestricted” but for which the Commonwealth Classifications Board has determined consumer advice, and makes it an offence to sell such a publication where the consumer advice is not displayed on the packaging of the publication.

PART 9—AMENDMENT OF COLLECTIONS ACT 1966

Clause 31 provides that Part 9 amends the *Collections Act 1966*.

Clause 32 amends section 8 by inserting a new section 8A which allows the chief executive to delegate the chief executive's powers to an appropriately qualified public service officer.

Clause 33 amends the schedule by omitting “Limited (ACN 078 168 297)” from “Earth Share Australia Limited (ACN 078 168 297)” and inserting “Foundation”. This change is required as the Foundation is the entity that is making appeals for support.

PART 10—AMENDMENT OF FAIR TRADING ACT 1989

Clause 34 provides that Part 10 amends the *Fair Trading Act 1989*.

Clause 35 amends the heading to section 39 by replacing the reference to section 52A with section 51AB.

Clause 36 inserts a new Division 2B into Part 3 of the Act.

The new Division 2B continues the prohibition on the operation of loan fund schemes in the *Loan Fund Companies Act 1982*. That Act is repealed by clause 123.

The new section 55E inserts definitions of “loan fund scheme” and “operate” for the purposes of the new Division 2B.

The new section 55F inserts a prohibition against the operation or promotion of a loan fund scheme or the invitation to contribute to, subscribe to, or participate in a loan fund scheme.

The new section 55G creates an offence to use words or references in the name or description of a business to represent or imply that the person is operating a loan fund scheme or to display information that would represent or imply that a person is operating a loan fund scheme.

Clause 37 inserts a new section 91IA. The new section 91IA allows the Commissioner for Fair Trading to accept an undertaking by a person on any matter in relation to which the Office of Fair Trading or an inspector has a power. This will increase the range of undertakings which can be accepted.

Clause 38 amends section 91J by omitting “under section 91H or 91I” and by inserting the words “under this division”.

Clause 39 amends section 94(6) by replacing paragraph (a) and amending paragraph (b).

The new paragraph 94(6)(a) allows an inspector or another person with the consent of the Commissioner for Fair Trading to commence proceedings for an offence under the Act.

The amended paragraph 94(6)(b) is consistent with the wording of paragraph 94(6)(a).

Clause 40 amends section 109(1) by replacing paragraph (b).

The new paragraph 109(1)(b) maintains the existing legislative framework concerning the protection from liability for disclosure or publication and extends the protection to cover disclosures or publications made in good faith by the Minister, the Commissioner for Fair Trading or someone on the Commissioner’s behalf. The protection only applies if the Minister or Commissioner for Fair Trading is satisfied that it is in the public interest to disclose or publish.

PART 11—AMENDMENT OF FUNERAL BENEFIT BUSINESS ACT 1982

Clause 41 provides that Part 11 amends the *Funeral Benefit Business Act 1982*.

Clause 42 amends the definition of “corporation” in section 5 by excluding an exempt body. The deletion of the exclusion of the term “exempt bodies” from the definition of “corporation” in the *Corporations Act 1989* (Cth) resulted in the possibility that cooperatives and incorporated associations would be eligible to be registered to carry on funeral benefit businesses. This was not the intention of the *Funeral Benefit Business Act 1982*.

PART 12—AMENDMENT OF INVASION OF PRIVACY ACT 1971

Clause 43 provides that Part 12 amends the *Invasion of Privacy Act 1971*.

Clause 44 amends section 4 by omitting the definition of “consumer”, “credit report”, “credit reporting agent”, “credit reporting agent’s licence”, “licence”, “licensed credit reporting agent”, “register” and “registered address”.

Clause 45 omits Part 3 (Credit Reporting Agents) from the Act. The omission of Part 3 is to implement the recommendations of a National Competition Policy Review of the Act.

Clause 46 omits the reference to section 23 from section 51.

Clause 47 omits section 52(2) and renumbers section 52(3) as section 52(2).

PART 13—AMENDMENT OF LIENS ON CROPS OF SUGAR CANE ACT 1931

Clause 48 provides that Part 13 amends the *Liens on Crops of Sugar Cane Act 1931*.

Clause 49 replaces section 7C.

The new section 7C(1) maintains the existing legislative framework but inserts a new provision at paragraph 7C(1)(b) to permit, with the approval of the chief executive, on-line access to the register.

The new sections 7C(2) and (3) carry forward the existing legislative framework, but in a more modern drafting style.

The new section 7C(4) introduces a definition of “computer”.

Clause 50 amends section 7P by replacing subparagraph 7P(e). This amendment makes the section consistent with the new section 7C.

Clause 51 inserts a new section 23E.

The new section 23E(1) allows a person to apply to the chief executive for approval for the payment of fees under an arrangement such as payment in advance or in arrears.

The new section 23E(2) makes provision for the manner in which the application for approval of a fee arrangement to the chief executive must be made.

The new section 23E(3) sanctions the payment of fees by a person in accordance with an arrangement approved by the chief executive.

PART 14—AMENDMENT OF LIQUOR ACT 1992

Clause 52 provides that Part 14 amends the *Liquor Act 1992*.

Clause 53 amends section 12 by exempting from the requirement to obtain a licence to sell liquor under the Act, proprietors of a duty free shop authorised under the *Customs Act 1901* (Cth) who are permitted to make sales to travellers from the approved premises. The exemption applies to inwards duty free stores and outwards duty free stores.

Clause 54 amends section 113A by clarifying that the holder of a permit for and on behalf of an unincorporated association must apply to transfer the permit within 3 months of the unincorporated association becoming incorporated. The permit is to be transferred to the newly incorporated association.

Clause 55 amends section 133 to allow an appropriate person in lawful possession of the licensed premises to make application to surrender the licence. An “appropriate person” is defined.

PART 15—AMENDMENT OF MOTOR VEHICLES SECURITIES ACT 1986

Clause 56 provides that Part 15 amends the *Motor Vehicles Securities Act 1986*.

Clause 57 inserts a new section 23A. The purpose of the new section 23A is to replace the similar section 11(b) of the *Motor Vehicles Securities Regulation 1995* and to clarify the type of applications which may be inspected.

PART 16—AMENDMENT OF PARTNERSHIP (LIMITED LIABILITY) ACT 1988

Clause 58 provides that Part 16 amends the *Partnership (Limited Liability) Act 1988*.

Clause 59 renumbers sections 16(1A), (2) and (3) as sections 16(2), (4) and (5) and inserts a new section 16(3).

The new section 16(3) inserts an inclusive list of activities that will not be regarded as taking part in the management of the business of a limited partnership. This inclusive list seeks to clarify the range of activities that limited partners can undertake without breaching the prohibition on participation in the management of the business of a limited partnership. On enactment of the new section 16(3) information will be sent to all registered limited partnerships to advise of the amendment.

PART 17—AMENDMENT OF PROPERTY AGENTS AND MOTOR DEALERS ACT 2000

Clause 60 provides that Part 17 amends the *Property Agents and Motor Dealers Act 2000*.

Clause 61 replaces section 5(1).

The new section 5(1) includes enforcement officers and other staff (“SPER Officers”) employed under the *State Penalties Enforcement Act 1999* as persons exempt from the provisions of section 354. This provision is to allow SPER Officers to collect debts under the *State Penalties Enforcement Act 1999* without the requirement of being licensed as commercial agents.

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

Clause 62 inserts a new section 31A to deem the Defence Housing Authority to be a suitable person to hold a licence.

Clause 63 inserts a new section 48A to deem the Defence Housing Authority to be eligible to obtain the licences listed.

Clause 64 amends section 50 to clarify that a licence issued to the Public Trustee authorises employees of the Public Trustee to perform those activities authorised by the Public Trustee which the Public Trustee can perform under the licence. In those circumstances employees will not need to be licensed or registered under the Act.

Clause 65 amends section 51 to clarify that a licence issued to the chief executive of a department authorises employees of the department to perform those activities authorised by the chief executive which the chief executive can perform under the licence. In those circumstances employees will not need to be licensed or registered under the Act.

Clause 66 amends section 52 to clarify that a licence issued to the Queensland Housing Commission will authorise an employee of the Commission to perform any activity authorised by the Commission that the Commission may perform under the licence. In those circumstances employees will not need to be licensed or registered under the Act to perform those activities.

Clause 67 inserts a new section 52A to enable the chief executive to issue a licence to the Defence Housing Authority. A licence issued to the Defence Housing Authority will authorise an employee of the Authority to perform any activity authorised by the Authority that the Authority may perform under the licence. In those circumstances employees will not need to be licensed or registered under the Act to perform those activities.

Clause 68 amends section 74 to clarify that suspension of an employee's licence relates to an irregularity or deficiency in a licensee's trust account and not to receivership action. Receivership action under the Act is not applicable to licensed employees.

Clause 69 amends section 85 to remove bankruptcy as an automatic ground for determining the suitability of a person to hold or obtain a registration certificate.

Clause 70 amends section 86 to provide that, in determining a person's suitability to obtain a registration certificate, the chief executive must give consideration to the circumstances of a person affected by bankruptcy, including whether the person took all reasonable steps to avoid the circumstances resulting in bankruptcy action. The chief executive must

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

also determine whether the person is in a position to influence the management of a licensee's business. This may be a relevant consideration in the case where a licensee who becomes bankrupt seeks a registration certificate as an employee of the same business or company, in circumstances where they continue to exercise managerial control over the activities of the business.

Clause 71 amends section 92(1) by inserting an example of where a condition may be imposed on the issue of a registration certificate.

Clause 72 replaces section 105.

The new section 105 maintains the existing framework concerning grounds for immediate cancellation of a registration certificate but does not include bankruptcy as a ground for immediate cancellation of a registration certificate. This is consistent with the purpose of the amendment of section 85.

Clause 73 amends section 133.

Clause 73(1) inserts a "note" in section 133(3)(f) referring to additional requirements in the Act for an appointment for a sole or exclusive agency.

Clause 73(2) amends section 133(4)(b) to clarify that continuing appointments relating to the sale of land or interests in land are not subject to the notice period referred to in that subparagraph.

Clause 74 inserts a new section 134A which requires a real estate agent to specifically bring to the client's notice information in the approved form about the effect of the three different forms of agency as well as the difference between sole and exclusive agency.

Clause 75 amends section 135.

Clause 75(1) replaces section 135(1).

The new section 135(1) maintains the existing framework concerning appointments of real estate agents for sole and exclusive agencies but provides that before such appointments are signed, the agent is to discuss with the client whether the appointment is to be for a sole or exclusive agency and to specifically bring the client's notice to relevant information in the form of appointment.

Clause 75(2) replaces section 135(3).

The new section 135(3) exempts agents from having to bring certain information to the client's notice when the appointment is for the sale of 3 or more residential properties.

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

Clause 76 amends section 136 by omitting section 136(2) and inserting a new section 136(2) and 136(3). The new section 136(2) provides that the restriction on reappointment of an agent for a sole or exclusive agency does not apply if the reappointment is for the sale of 3 or more residential properties. The new section 136(3) restates the existing section 136(2).

Clause 77 inserts a new section 136A.

The new section 136A provides that the form of reappointment of a real estate agent must be in the approved form and that a reappointment that does not comply with the section is ineffective from the time it is made.

Clause 78 replaces section 137.

The new section 137 maintains the existing framework concerning the avoidance of an appointment for a sole or exclusive agency but provides that the appointment of a real estate agent for a sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the term of the appointment is for more than 60 days, unless it is an appointment for the sale of 3 or more residential properties. The appointment of an agent for the sale of residential land is ineffective from the time it is made if the agent contravenes section 134A or section 135(1). A reappointment of an agent for a further term of sole or exclusive agency for the sale of residential property is also ineffective from the time it is made if the agent contravenes section 136(3).

Clause 79 amends section 138 by referring to “benefit” instead of “consideration, whether monetary or otherwise”.

Clause 80 amends section 173(4)(b) to clarify that continuing appointments of pastoral houses relating to the sale of land or interests in land are not subject to the notice period referred to in that subparagraph.

Clause 81 inserts a new section 174A which requires a pastoral house to specifically bring to the client’s notice information in the approved form about the effect of the three different forms of agency as well as the difference between sole and exclusive agency.

Clause 82 amends section 175.

Clause 82(1) replaces section 175(1). The new section 175(1) maintains the existing framework concerning appointments of pastoral houses for sole and exclusive agencies but provides that before such appointments are signed, the pastoral house is to discuss with the client whether the appointment is to be for a sole or exclusive agency and to specifically bring the client’s notice to relevant information in the form of appointment.

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

Clause 82(2) replaces section 175(3). The new section 175(3) exempts pastoral houses from having to bring certain information to the client's notice when the appointment is for the sale of 3 or more residential properties.

Clause 83 replaces 176(2) with a new section 176(2) and 176(3).

The new section 176(2) provides that the restriction on reappointment of a pastoral house for a sole or exclusive agency does not apply if the reappointment is for the sale of 3 or more residential properties. The new section 176(3) restates the existing section 176(2).

Clause 84 inserts a new section 176A

The new section 176A provides that the form of reappointment of a pastoral house must be in the approved form and that a reappointment that does not comply with the section is ineffective from the time it is made.

Clause 85 replaces section 177.

The new section 177 maintains the existing framework concerning the avoidance of appointments for sole or exclusive agencies but provides that the appointment of a pastoral house for a sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the term of the appointment is for more than 60 days, unless it is an appointment for the sale of 3 or more residential properties. The appointment of a pastoral house for the sale of residential land is ineffective from the time it is made if the pastoral house commits an offence against section 174A or section 175(1). A reappointment of a pastoral house for a further term of sole or exclusive agency for the sale of residential property is also ineffective from the time it is made if the pastoral house commits an offence against section 176(3).

Clause 86 amends section 210.

Clause 86(1) amends section 210(4)(b) to clarify that continuing appointments relating to the sale of land or interests in land are not subject to the notice period referred to in that subparagraph.

Clause 86(2) inserts a new section 210(8) which provides that the section does not apply if the service to be performed by the auctioneer is for the sale of livestock. This is consistent with similar existing provisions for appointment of real estate agents (section 133(10)) and pastoral houses (section 173(9)) for the sale of livestock.

Clause 87 inserts a new section 211A which requires an auctioneer to specifically bring to the client's notice information in the approved form

about the effect of the three different forms of agency as well as the difference between sole and exclusive agency.

Clause 88 amends section 212.

Clause 88(1) replaces section 212(1).

The new section 212(1) maintains the existing framework concerning appointments of auctioneers for sole and exclusive agencies but provides that before such appointments are signed, the auctioneer is to discuss with the client whether the appointment is to be for a sole or exclusive agency and to specifically bring the client's notice to relevant information in the form of appointment.

Clause 88(2) inserts a new section 212(3). The new section 212(3) exempts auctioneers from having to bring certain information to the client's notice when the appointment is for the sale of 3 or more residential properties.

Clause 89 replaces section 213(2) with new sections 213(2) and 213(3). The new section 213(2) provides that the restriction on reappointment of an auctioneer for a sole or exclusive agency does not apply if the reappointment is for the sale of 3 or more residential properties. The new section 213(3) restates the existing section 213(2).

Clause 90 inserts a new section 213A.

The new section 213A provides that the form of reappointment of an auctioneer must be in the approved form and that a reappointment that does not comply with the section is ineffective from the time it is made.

Clause 91 replaces section 214.

The new section 214 maintains the existing framework concerning the avoidance of appointments for sole or exclusive agencies but provides that the appointment of an auctioneer for a sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the term of the appointment is for more than 60 days, unless it is an appointment for the sale of 3 or more residential properties. The appointment of an auctioneer for the sale of residential land is ineffective from the time it is made if the auctioneer commits an offence against section 211A or section 212(1). A reappointment of an auctioneer for a further term of sole or exclusive agency for the sale of residential property is also ineffective from the time it is made if the pastoral house commits an offence against section 213(3).

Clause 92 amends section 237(2) to ensure that sections 238 (Particular vehicles without statutory warranty to be identified when offered for sale)

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

and 239 (Announcements before auction) apply to the sale of a motor vehicle by the auctioneer to another auctioneer or motor dealer, or on consignment for a person who is not an auctioneer or motor dealer.

Clause 93 amends section 239 by replacing section 239(2).

The new section 239(2) provides that when two or more vehicles which do not have a statutory warranty are to be auctioned in consecutive lots, a single announcement prior to the auction sale of the first vehicle, identifying the vehicles and indicating that they do not have statutory warranties, is sufficient compliance with the section. The requirement to make an announcement relating to a cooling off period is removed.

Clause 94 amends section 261 by replacing section 261(2)(a).

The new section 261(2)(a) clarifies that a person is taken to have completed a residential property sale if the person appoints a real estate agent, pastoral house or auctioneer (“agent”) to sell the residential property and the agent is the effective cause of sale of the property.

Clause 95 amends section 262 by inserting a new section 262(4).

The new section 262(4) provides that a property developer may be in charge of the business of a property developer that is a corporation. This provides an alternative to having a licensed property developer director in charge of a business.

Clause 96 amends section 267.

Clause 96(1) amends section 267(2)(a) to enable a licensed property developer to be in charge of a property development corporation’s business at its registered office.

Clause 96(2) amends section 267(2)(b) to enable a property developer who is an individual, in addition to a property developer director or property developer salesperson, to be in charge of a corporate developer’s business if the corporate developer has more than one place of business.

Clause 97 replaces section 268.

The new section 268 imposes disclosure requirements on residential property developers, property developer salespersons and people acting as a property developer salesperson in contravention of section 276.

Clause 98 replaces section 365.

The new section 365 establishes when the buyer and seller under a relevant contract are bound. The buyer and the seller will be bound for all purposes when the buyer or the buyer’s agent receives a copy of the

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

contract signed by both the buyer and seller. This determines when the cooling-off period commences. The section clarifies that a copy of the contract may be received by fax.

The buyer may withdraw the offer made in the contract form at any time before being bound by the contract under this provision by providing a written notice to the seller or the seller's agent.

If a dispute arises about when the parties are bound, the onus is on the seller to prove that the parties were bound by the contract.

Clause 99 amends section 366 by removing the requirement for the buyer's signature to be witnessed on the warning statement.

Clause 100 amends section 367.

Clause 100(1) renumbers the subsections of the provision to accommodate the insertion of new section 367(5).

Clause 100(2) inserts a new section 367(5) which requires a licensee to immediately refund a deposit to the buyer when the contract has been terminated during a cooling-off period by the buyer and if the seller instructed the licensee to refund the deposit in accordance with section 367(4).

Clause 101 amends section 376 to enable licensees to use terms other than "general trust account" for the name of their general trust accounts, so long as the name includes the words "trust account".

Clause 102 amends section 506 to provide that the tribunal, for a public examination proceeding as well as a marketeering proceeding, is to be constituted by the chairperson or another member who is a lawyer sitting alone.

Clause 103 amends section 547.

Clause 103(1) inserts a new provision to allow an inspector to enter a licensee's or marketeer's place of business without consent or a warrant when the licensee's or marketeer's place of business is open for business or otherwise open for entry.

Clause 103(2) limits the inspector's power of entry to exclude entry to a part of the place where a person resides.

Clause 104 creates a new division to separate procedures for entry from general inspection powers.

Clause 105 amends the heading to section 556 to include the word "licensees" after the word "produced".

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Bill 2002

Clause 106 inserts a new section 556A to provide inspectors with powers to require the production of documents relating to a sale, promotion of a sale or provision of a service in connection with the sale of residential property in which a marketer has an interest or of documents relating to the engagement or employment by the marketer of persons in the sale, promotion of a sale or provision of a service in connection with the sale of residential property. Section 556A also provides inspectors with the power to inspect, audit, copy and seize documents in certain circumstances.

Clause 107 amends section 589 to refer to indictable offences that incur a penalty of more than 2 years imprisonment.

Clause 108 creates a new part in order to distinguish between transitional provisions relating to the repealed *Auctioneers and Agents Act 1971* and those transitional provisions required because of amendment to the *Property Agents and Motor Dealers Act 2000*.

Clause 109 inserts “pt 1” in the chapter heading.

Clause 110 amends section 614 to provide that an exclusive agency engagement, appointment or agreement ends either on the day it was to end according to its terms or 60 days after the commencement of the amendment, whichever came first.

Clause 111 inserts a new Part 2 to Chapter 19 for transitional provisions for the *Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002*. The new part includes two new sections.

The new section 631 applies to a relevant contract referred to in the repealed section 365 where, on the commencement of section 631: the buyer has the contract, or a copy of the contract, signed by both parties; the seller has given the buyer the notice in the approved form declaring the date on which the contract was signed by the seller; and the buyer has not given to the seller or the seller’s agent a copy of the signed contract and the notice and the contract has not been settled or lawfully terminated. In those circumstances the buyer will be deemed to be bound by the contract on the earlier of the day the buyer would be bound under the contract as if the repealed section 365 were still in force or the end of the seventh day after the commencement of the section.

The new section 632 applies to contracts entered from 1 July 2001 (the commencement of the *Property Agents and Motor Dealers Act 2000*) to and including the day before commencement of the section. For these contracts no contravention of section 366(2) occurs if the warning statement is attached to the contract if immediately beneath the information sheet if the information sheet was attached as the first or top sheet of the

contract. If the contract has not been lawfully terminated or settled the buyer cannot terminate the contract because of non-compliance with section 366(1) only because a warning statement was attached to the contract immediately beneath an information sheet if that sheet was attached as the first, or top sheet. Information sheet is defined by reference to section 170(5) of the *Body Corporate and Community Management Act 1997*.

PART 18—AMENDMENT OF RACING AND BETTING AMENDMENT ACT 2000

Clause 112 provides that Part 18 amends the *Racing and Betting Amendment Act 2000*.

Clause 113 amends section 45 to substitute 1980 for 1998. This corrects a mistake in the original drafting of section 45.

PART 19—AMENDMENT OF RETIREMENT VILLAGES ACT 1999

Clause 114 provides that Part 19 amends the *Retirement Villages Act 1999*.

Clause 115 amends section 45(1) by renumbering paragraphs (h) to (m) as paragraphs (i) to (n) and inserting a new paragraph (h). This is to ensure that the conditions precedent to the right to reside in the unit are specified in the residence contract.

Clause 116 amends section 46 by adding a new paragraph (c) to section 46(3) and a new paragraph (4A). This is to ensure that, in the case of a new unit, a resident's money is to be held in trust until the unit is suitable for habitation.

Clause 117 amends section 87 by including the definitions "criminal history" and "spent conviction" and by omitting the words "conviction for" in the definition of "relevant conviction" and substituting the words "conviction, other than a spent conviction, for". These amendments are to

allow the provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986* to apply.

Clause 118 inserts new sections 88A and 88B.

Section 88A will allow the chief executive to carry out police searches of the criminal history of a person to provide extra protection to current or potential residents of retirement villages who may be influenced by the person. This provision acknowledges the vulnerabilities of residents and potential residents of retirement villages to the conduct of some people selling, marketing or managing villages.

Under section 88B the chief executive will only be able to disclose the information obtained from the search to someone else to the extent necessary to perform a function under or in relation to the Act.

Clauses 119 and *120* amend sections 94(1) and 100(1) respectively by omitting the words “The following amounts must be” and inserting the words “The scheme operator must ensure that the following amounts are”. These words are to make it clear who is responsible for payments into the capital replacement fund and the maintenance reserve fund respectively.

Clause 121 amends section 110 by replacing section 110(2). The new section 110(2) places the onus on the scheme operator to ensure that the insurance policy meets the criteria set out in the section.

Clause 122 amends section 112(2) by omitting the word “The” and inserting the words “For subsection (1), the”. This amendment is to make it clear that the statement referred to in the section is the quarterly financial statement referred to in section 112(1).

PART 20—REPEALS AND MINOR AMENDMENTS

Clause 123 repeals the *Hawkers Act 1984*, *Loan Fund Companies Act 1982* and the *Invasion of Privacy Regulation 1988 SL No. 154*. These repeals are to implement the recommendations of National Competition Policy Reviews of the *Hawkers and Loan Fund Companies Acts*.

Clause 124 provides that the schedule amends the Acts mentioned in it.

SCHEDULE 1

MINOR AMENDMENTS

The schedule to the Act sets out a number of minor or technical amendments to the following Acts including consequential amendments arising out of the National Competition Policy amendments:

Business Names Act 1962

Collections Act 1966

Cooperatives Act 1997

Land Sales Act 1984

Motor Vehicles Securities Act and Other Acts Amendment Act 2001

Police Powers and Responsibilities Act 2000

Property Agents and Motor Dealers Act 2000

Queensland Building Tribunal Act 2000

Retirement Villages Act 1999

Security Providers Act 1993

Transport Operations (Road Use Management) Act 1995.