

CONSUMER LAW (MISCELLANEOUS PROVISIONS) BILL 1993

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

This proposal seeks to remedy certain defects in a range of statutes, repeal several obsolete statutes and up-date the drafting of those statutes amended by the Act to conform with the current drafting practices of the Office of the Parliamentary Counsel.

Reasons for the Bill

Departmental statutes, and provisions in departmental statutes, may become obsolete or outdated over time and therefore require repeal or amendment.

The use of “omnibus Bills” is an efficient and effective mechanism to enact discrete and self-contained legislative amendments, the bulk of which may be characterised as minor and technical.

Estimated Cost for Government Implementation

There are no significant financial implications.

Consultation

Ministerial Policy Committee

Department of Justice and Attorney-General

Department of Police

Treasury Department

Auctioneers and Agents Committee

Queensland Law Society

Queensland Association of Permanent Building Societies Limited

Credit Link

Retirement Villages Association of Queensland

Radio Rentals

NOTES ON PROVISIONS

Clause 1 Sets out the short title of the Act.

Clause 2 States which provisions of the Act will commence on a date to be fixed by proclamation.

Clause 3 States that the Acts in Schedule 1 are amended as set out in the Schedule.

Clause 4 States that the Acts in Schedule 2 are repealed.

Amendment of *Auctioneers and Agents Act 1971*

Clause 5 States that the *Auctioneers and Agents Act 1971* is amended as set out in this Part.

Clause 6(1) Omits the definitions of “approved bank”, “bank”, “building society” and “credit union”.

Clause 6(2) Inserts a definition of “approved financial institution”.

Clause 7 Amends section 6 to allow the appointment of members of the Auctioneers and Agents Committee by the Governor in Council, rather than by order in council.

Clause 8 Amends section 16 to remove the requirement for the residential addresses of licensees to be recorded on licences.

Clause 9 Amends section 81B to allow the Auctioneers and Agents Committee to exercise disciplinary powers against a licensee or registered individual where an amount has been paid from the Auctioneers and Agents Fidelity Guarantee Fund because that person did, or omitted to do, something that gave rise to the claim against the Fund.

Clause 10 Amends section 81C to allow the Auctioneers and Agents Committee to exercise disciplinary powers against a corporation where an

amount has been paid from the Auctioneers and Agents Fidelity Guarantee Fund because that corporation did, or omitted to do, something that gave rise to the claim against the Fund.

Clause 11(1) Amends section 83(1)(a) by substituting “financial institution” for “bank” to allow auctioneers, real estate agents, commercial agents and motor dealers to operate general trust accounts with approved financial institutions. “Financial institution” is defined in section 36 of the *Acts Interpretation Act 1954*.

Clause 11(2) Amends section 83(1)(b)(iv), (6A) and (8) by substituting “financial institution” for “bank, building society or credit union”.

Clause 11(3) Amends section 83(1)(b)(v) by substituting “financial institution” for “bank, building society or credit society”.

Clause 12(1) Amends the heading of section 96 by substituting “financial institutions” for “banks”.

Clause 12(2) Amends section 96(1) and (4) by substituting “financial institution” for “bank” to allow the Registrar of Auctioneers and Agents to enter into agreements with financial institutions in relation to licensees’ general trust accounts and to allow those financial institutions to pay interest to the Auctioneers and Agents Fidelity Guarantee Fund in accordance with the agreements.

Clause 12(3) Inserts a new section 96(2) to allow the Registrar of Auctioneers and Agents to enter into agreements with financial institutions only if those institutions have been prescribed by regulation to be financial institutions to which the section applies.

Clause 13(1) Amends section 99(2) to provide that a person is not entitled to recover from the Auctioneers and Agents Fidelity Guarantee Fund an amount greater than the balance of the loss suffered by that person after deducting from the total amount of such loss the amount or value of all money or other benefits received or recovered or which in the opinion of the Auctioneers and Agents Committee might, but for the person’s neglect or default, have been received or recovered by the person from any source other than the Fund in reduction of such loss.

Clause 13(2) Inserts a new section 99(2A) to require a person who makes a claim against the Auctioneers and Agents Fidelity Guarantee Fund to give written notice to the Auctioneers and Agents Committee if the person receives an amount or benefit (either before or after the claim is

finalised) from another source for the same loss.

Clause 14 Inserts a new section 103(2) to allow the Auctioneers and Agents Committee to enforce its rights of subrogation in its corporate name.

Amendment of Bills of Sale and Other Instruments Act 1955

Clause 15 States that the *Bills of Sale and Other Instruments Act 1955* is amended as set out in this Part.

Clause 16 Amends section 26 to allow the description of stock in a stock mortgage to be described in the mortgage or in the schedule to the mortgage by the brand, earmark or other mark on them, or in another way that reasonably allows them to be identified.

Amendment of Classification of Publications Act 1991

Clause 17 States that the *Classification of Publications Act 1991* is amended as set out in this Part.

Clause 18 Amends the long title to reflect the fact that the *Classification of Publications Act 1991* will now apply to certain photographs.

Clause 19(1) Amends the heading of section 3 to conform with current drafting practices.

Clause 19(2) Inserts a definition of “child abuse photograph”.

Clause 20 Inserts a new section 6A to allow the publications classification officer’s powers under the Act to be delegated to another officer of the department with the written approval of the chief executive of the department.

Clause 21(1) Amends the heading of section 12 to include “child abuse photograph”.

Clause 21(2) Amends section 12 by prohibiting the advertisement, sale or distribution, or attempted advertisement, sale or distribution, of a child abuse photograph.

Clause 21(3) Inserts a penalty for the advertisement, sale or distribution, or attempted advertisement, sale or distribution, of a child abuse photograph.

Clause 22 Inserts a new section 14 which provides that a person must not knowingly have possession of a child abuse publication or child abuse photograph.

Clause 23(1) Amends the heading of section 15 to include “child abuse photograph”.

Clause 23(2) Amends section 15 by prohibiting the exhibition or display, or attempted exhibition or display, of a child abuse photograph in a public place or in such a way that it is visible to persons in or on a public place.

Clause 23(3) Inserts a penalty for the exhibition or display, or attempted exhibition or display, of a child abuse photograph in a public place or in such a way that it is visible to persons in or on a public place.

Clause 24(1) Amends the heading of section 16 to include “child abuse photograph”.

Clause 24(2) Amends section 16 by prohibiting a person from leaving, or attempting to leave, a child abuse photograph in or on a public place with intent to cause offence to another person or with reckless disregard to the offence that could be caused to another person.

Clause 24(3) Inserts a penalty for the leaving, or attempted leaving, of a child abuse photograph in or on a public place with intent to cause offence to another person or with reckless disregard to the offence that could be caused to another person.

Clause 25(1) Amends the heading of section 18 to include “child abuse photograph”.

Clause 25(2) Amends section 18 by prohibiting the procuring, or attempted procuring, of a minor to be in any way concerned in the making of a child abuse photograph.

Clause 26(1) Amends the heading of section 20 to include “child abuse photograph”.

Clause 26(2) Amends section 20 by prohibiting a person from knowingly or recklessly leaving, or attempting to leave, a child abuse photograph in or on private premises without the occupier’s permission.

Clause 26(3) Inserts a penalty for knowingly or recklessly leaving, or attempting to leave, a child abuse photograph in or on private premises without the occupier’s permission.

Clause 27(1)&(2) Amends section 33(1) by providing that an offence against section 18 (procurement of minor for refused classification publication or child abuse photograph) or against another provision involving a child abuse photograph is punishable on indictment.

Clause 28(1)&(2) Amend section 34(1) by providing that if a person is convicted of an offence relating to a child abuse photograph, the court may, in addition to imposing a penalty, order that the photograph or anything used in connection with the commission of the offence be forfeited.

Clause 28(3) Amends section 34(2) by providing that a photograph or thing that is forfeited under section 34(1) may be destroyed or otherwise dealt with as directed by the Minister.

Clause 29(1) Amends the heading of section 35 to include a “photograph”.

Clause 29(2) Inserts a new section 35(3) which provides that unless otherwise ordered by a court, an inspector who seizes a child abuse photograph must not return it to the person who is entitled to possession of it.

Clause 30(1) Amends section 37(1) to allow the publications classifications officer to exempt a person or body from the Act, or specified provisions of the Act, in relation to specified child abuse photographs.

Clause 30(2) Inserts a new section 37(2) to allow exemptions to be given only for publications or photographs that are of a medical, educational or scientific character, or intended to be used by the person or body for a medical, educational or scientific purpose.

Clause 30(3) Amends section 37(3)(a) to provide that for so long as an exemption remains in force, the Act or the provisions of the Act specified in the exemption do not apply to the person or body and the photographs in relation to which the exemption was given. Amends section 37(3)(b) to provide that the exempted photographs are not indecent or obscene for the purposes of the Criminal Code and the *Vagrants, Gaming and Other Offences Act 1931*.

Amendment of *Hire-Purchase Act 1959*

Clause 31 States that the *Hire-Purchase Act 1959* is amended as set out in this Part.

Clause 32 Amends the definition of “hire-purchase agreement” in section 2(1) to exclude from the ambit of the *Hire-Purchase Act 1959* those contracts for the hiring of goods that are excluded from the effect of section 15 of the *Credit Act 1987*.

Amendment of *Land Sales Act 1984*

Clause 33 States that the *Land Sales Act 1984* is amended as set out in this Part.

Clause 34 Inserts a definition of “agreement” which covers written contracts or instruments and oral contracts that are enforceable because of a memorandum or note satisfying section 59 of the *Property Law Act 1974*.

Clause 35 Inserts a new section 7A(1) which provides that Part II (Sale of Relevant Land) does not apply to the sale or purchase of a subdivisational portion, or proposed subdivisational portion, of relevant land if that sale or purchase is part of a large transaction. “Large transaction” is defined in the new section 7A(2).

Clause 36 Amends section 31 to give effect to changes resulting from the insertion of the definition of “agreement” and the extension of section 8(2) to provide that “agreements” made in contravention of section 8(1) are void.

Amendment of *Mobile Homes Act 1989*

Clause 37 States that the *Mobile Homes Act 1989* is amended as set out in this Part.

Clause 38(1) Inserts a penalty for a breach of section 4(1) and (2).

Clause 38(2) Inserts a new section 4(1A) prohibiting an owner of a site from charging an occupier a fee for the provision of the written statement the owner is obliged by section 4(1) to provide to the occupier.

Clause 39 Inserts a new section 11A(1) making it an offence for an owner of a site not to comply with clause 6(2A) of the implied terms of a relevant agreement mentioned in Part 1 of Schedule 1. The new section 11A(2) provides an owner with a defence in certain circumstances.

Clause 40 Inserts a new clause 6(2) in Part 1 of Schedule 1 which provides that an owner of a site must not unreasonably refuse to approve a

proposed assignee. Inserts a new clause 6(2A) in Part 1 of Schedule 1 which provides that if the occupier gives the owner a written request to approve a proposed assignee, the owner must give the decision in writing within one month and, if refusing the request, give written reasons for that refusal.

Amendment of *Motor Vehicles Securities Act 1986*

Clause 41 States that the *Motor Vehicles Securities Act 1986* is amended as set out in this Part.

Clause 42(1) Amends section 28(1) to provide that holders of security interests in motor vehicles whose security interests have been extinguished by the operation of section 26 may make an application for compensation to the accountable officer.

Clause 42(2) Inserts a new section 28(2) which provides that the accountable officer may make a payment to the applicant under section 106 of the *Financial Administration and Audit Act 1977*. Inserts a new section 28(3) which provides that the accountable officer may only make a payment to the applicant in certain circumstances.

Clause 42(3) Inserts a new section 28(5) which defines “accountable officer” to mean the accountable officer of the department under the *Financial Administration and Audit Act 1977*.

Clause 43(1) Amends section 30(1) to provide that persons who have suffered loss arising from the purchase or putative purchase of motor vehicles where certificates issued in respect of those vehicles have failed to contain particulars of registered instruments over those vehicles that were registered at the time the certificates were issued may make an application for compensation to the accountable person.

Clause 43(2) Inserts a new section 30(2) which provides that the accountable officer may make a payment to the applicant under section 106 of the *Financial Administration and Audit Act 1977*.

Clause 43(3) Amends section 30(3) to prohibit the accountable officer from making a payment to the applicant in certain circumstances.

Clause 43(4) Inserts a new section 30(4) which defines “accountable officer” to mean the accountable officer of the department under the *Financial Administration and Audit Act 1977*.

Clause 44 Inserts a new section 41(1) which validates the exercise or

performance of any power or function of the Registrar (other than the power of delegation) by a Deputy Registrar of Commercial Acts, Brisbane at a time after 30 November 1986 and before 20 November 1992.

Inserts a new section 41(2) which deems documents purporting to have been issued under the Act and which were sealed with the seal of the Registrar of Commercial Acts at a time after 3 December 1992 and before 1 June 1993 to have been sealed with the seal of the Registrar under the Act.

Inserts a new section 41(3) which validates the purported delegations on 7 and 10 September 1992 by the Director-General, Department of Justice of the powers and functions of the Registrar.

Inserts a new section 41(4) which provides that the exercise of a power or the performance of a function of the Registrar to which section 41(1) applies cannot be challenged, appealed against, reviewed, quashed or questioned on the ground that the Deputy Registrar of Commercial Acts, Brisbane did not have the authority to do the thing.

Inserts a new section 41(5) which provides that the validity of anything done or not done in reliance on a document to which section 41(2) applies cannot be challenged, appealed against, reviewed, quashed or questioned on the ground that the document was not sealed with the seal of the Registrar.

Inserts a new section 41(6) which provides that the validity of anything done in reliance on a delegation validated under section 41(3) cannot be challenged, appealed against, reviewed, quashed or questioned on the ground that the delegation was not a valid delegation under the Act.

Inserts a new section 41(7) which provides that section 41 is a law to which section 20A of the *Acts Interpretation Act 1954* applies.

Inserts a new section 41(8) which provides that section 41 expires 1 month after it commences.

Amendment of Retirement Villages Act 1988

Clause 45 States that the *Retirement Villages Act 1988* is amended as set out in this Part.

Clause 46 Amends the definition of “retirement village” in section 6(1) to exclude a site within the meaning of the *Mobile Homes Act 1989* to ensure that there is no overlap between the two Acts.

SCHEDULE 1**CONSEQUENTIAL AND MINOR AMENDMENTS*****Auctioneers and Agents Act 1971***

Amendments 1-12 As licensees will now be able to operate general trust accounts with approved financial institutions and as the Registrar of Auctioneers and Agents will now be able to enter into agreements with approved financial institutions in relation to licensees' general trust accounts, consequential amendments have been made to replace all references to banks with financial institutions.

Bills of Sale and Other Instruments Act 1955

Amendments 1-2 Amends to conform with current drafting practices in relation to evidentiary provisions.

Amendment 3 Cures the omission of those words from the original provision.

Classification of Publications Act 1991

Amendment 1 Allows for the approval of codes of conduct by regulation.

Amendment 2 Re-drafts the regulation making power contained in section 38(1).

Funeral Benefit Business Act 1982

Amendments 1,41 Deletes provisions rendered obsolete by the repeal of the *Friendly Societies Act 1913*.

Amendment 2 Omits the definitions of "Director-General", "the Minister" and "valuer".

Amendments 3,4,8,9,36 Provides for the appointment of a Registrar of Funeral Benefit Businesses, allows the delegation of the Registrar's powers and removes all references to deputy registrars.

Amendments 5 & 6 Inserts new definitions of “valuer” and “authorised accountant” with updated references to Acts.

Amendments 7 Substitutes “prescribed by regulation” for the reference to order in council.

Amendment 10 & 13 Substitutes “the Governor in Council” for “order in council” .

Amendment 11 Removes the requirement for trustees of the Funeral Benefit Trust Fund to prepare annual financial statements for audit by the Auditor General. The present provision conflicts with the *Financial Administration and Audit Act 1977*.

Amendment 12 Inserts a new section 13(1) which requires the trustees of the Funeral Benefit Trust Fund to prepare reports on the operations of the Fund and present them to the Minister each year.

Amendments 14,15,17,18,25,26,28-34

Inserts penalties for breaches of the sections.

Amendments 16,24 Removes obsolete references to the Registrar of Dealings.

Amendments 19,20,27 Updates references to Acts.

Amendments 21,22 & 23 Amends to conform with current drafting practices.

Amendment 35 Inserts new section 74 in relation to proceedings for offences in accordance with current drafting practices.

Amendment 37 Amends to accord with fundamental legislative principles.

Amendment 38 Inserts a new section 78 in accordance with current drafting practices.

Amendment 39 Re-drafts the regulation making power contained in section 80.

Amendment 40 Omits obsolete provision.

Invasion of Privacy Act 1971

Amendment 1 Allows the Governor in Council to exempt a person or class of person from the requirements of the Act by Gazette notice.

Amendment 2 Deletes the obsolete reference to *The Magistrates Courts Act 1921 to 1964*.

Amendment 3 Replaces the obsolete “member of the police force” with “police officer”.

Land Sales Act 1984

Amendments 1-3 Gives effect to changes resulting from the insertion of the definition of “agreement”.

Amendment 4 Ensures that the definition of “chief executive” in section 36 of the *Acts Interpretation Act 1954* will apply.

Mobile Homes Act 1989

Amendments 1-2 Inserts penalties for breaches of the sections.

Amendment 3 Omits the general penalty provision in section 12 which is now superfluous as penalties have been prescribed for specific offences in the Act.

Amendments 4-6 Amends to accord with the fundamental legislative principles.

Amendment 7 Re-drafts the regulation making power contained in section 15.

Retirement Villages Act 1988

Amendment 1 Omits a provision rendered obsolete by the passage of time.

Amendments 2,4-6 Provides for the appointment of a Registrar of Retirement Villages, allows the delegation of the Registrar’s powers and removes all references to deputy registrars.

Amendment 3 Omits obsolete provision.

Amendment 7 Omits a provision rendered obsolete by the passage of time.

Amendment 12,17,18 Updates references to legislation.

Amendments 8-11,13-16,19,20

Inserts penalties for breaches of the sections.

Amendment 21 Omits the general penalty provision in section 55(1) which is now superfluous as penalties have been prescribed for specific offences in the Act.

Amendment 22 Amends to accord with fundamental legislative principles.

Amendment 23 Re-drafts the regulation making power contained in section 60.

Travel Agents Act 1988

Amendment 1 Amends the heading of section 6 to conform with current drafting practices.

Amendment 2 Omits the definitions of “Commissioner” or “Commissioner for Consumer Affairs”, “inspector” and “officer”.

Amendment 3 Inserts new definitions for “Commissioner” or “Commissioner for Consumer Affairs”, “inspector” and “officer” which have updated references to Acts.

Amendment 4 Omits provisions rendered obsolete by sections 32 and 32B of the *Acts Interpretation Act 1954*.

SCHEDULE 2

Schedule 2 contains a list of four Acts which are repealed by this Act. They are:—

- *Business Names Act Amendment Act 1976*—Sections 19 and 20 of the *Acts Interpretation Act 1954* allow for the repeal of this Act;

- *Contractors' Trust Accounts Act 1974* and *Contractors' Trust Accounts Act Amendment Act 1978*- The *Queensland Building Services Authority Act 1991* and Regulation provide appropriate protection in lieu of this statute; and
- *Registration of Deaths on War Service Act 1942*—The last registration of death inserted pursuant to this Act was effected on 9 August 1948. It was not utilised during the Korean and Vietnam wars.