

EQUITY AND FAIR TRADING (MISCELLANEOUS PROVISIONS) BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The proposed Bill contains relatively minor and technical amendments to a number of statutes administered by the Department of Equity and Fair Trading.

The Department of Equity and Fair Trading is responsible for the administration of 78 statutes and, as a result, there is a necessity for a large number of minor or technical amendments to be regularly made to various legislative provisions to ensure that the statutes continue to operate in the manner intended.

To ensure this occurs, departmental Miscellaneous Provisions Bills are prepared so that the minor or technical amendments needed can be effected by means of one statute. This ensures that much needed statutory reform is not delayed and that the time of the Parliament is not unnecessarily expended on regularly dealing with numerous amendment bills each of which would be of a relatively minor nature.

These amendments have several elements in common:

1. They relate solely to statutes administered by the Minister for Fair Trading;
2. They have the purpose of increasing the operational efficiency of the statutes; and
3. They do not modify the major underlying philosophy or direction of the statutes being amended.

Administrative Cost

The amendments should result in some efficiencies and savings in the Department of Equity and Fair Trading.

Fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

Consultation occurred with the following government agencies and non-government associations:

Government agencies:

Department of State Development
Department of Premier and Cabinet
Queensland Treasury
Department of Employment Training and Industrial Relations
Department of Justice
Office of the Queensland Parliamentary Counsel

Non-government associations:

Cooperative Federation of Queensland
Cooperatives Registrars Working Party
Urban Development Institute of Australia
Roman Catholic Church

NOTES ON PROVISIONS

The format of this statute follows the same format as most “Miscellaneous Provisions Acts”; that is:

- there is a long and short title; and
- The Act is divided into Parts with each Part containing all the amendments relevant to a statute for which the Department of Equity and Fair Trading has administrative responsibility.

Part 1—PRELIMINARY

Clause 1 sets out the short title of the amending Act.

Clause 2 provides for the commencement of the amending Act on a date 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 subsection 22(2) by including the correct reference to subsection 22(1)(a).

Clause 5 substitutes a new heading in part 4, division 4 and a new section 43 to change the references to undesirable names to unsuitable names, to reflect current drafting style. The new section will also be amended to provide that unsuitable names for an association may be declared by regulation. This will allow for uniform consideration of unsuitable names under a new computer system being developed for this and other legislation administered by the Department.

Clause 6 amends section 44 (Notice to associations having or proposing to have undesirable name) of the Act to change the reference to undesirable names to unsuitable names, to reflect current drafting style.

Clause 7 amends section 45 (Associations may be allowed to have undesirable names) of the Act to change the reference to undesirable names to unsuitable names, to reflect current drafting style.

Clause 8(1) corrects the syntax in subsection 59(1)(a).

Clause 8(2),(3) and (4) amends subsection 59(1) by making the requirements of subsection 59(1)(b) additional to the requirements of subsection 59(1)(a).

Clause 9 amends subsection 61(5) to renumber it as subsection 61(3) as a result of the deletion of other subsections.

Clause 10 amends section 89 (Voluntary winding up) by omitting subsection 89(3) and (4). This amendment is due to recent amendments to the *Corporations Law* and to ensure that the provisions of the *Associations Incorporation Act 1981*, which adopt certain provisions of the *Corporations Law*, are as far as possible up to date.

Clause 11 amends section 90 (Winding-up by the Supreme Court) by omitting subsections 90(3) and 90(4). These amendments are due to recent amendments to the *Corporations Law* and to ensure that the provisions of the *Associations Incorporation Act 1981*, which adopt certain provisions of the *Corporations Law*, are as far as possible up to date.

Clause 12(1) amends section 91 (Application of Corporations Law to winding-up) by omitting subsection 91(1) and inserting new provisions. These amendments are due to recent amendments to the *Corporations Law* and to ensure that the provisions of the *Associations Incorporation Act 1981*, which adopt certain provisions of the *Corporations Law*, are as far as possible up to date.

New subsection 91(1) provides that the *Corporations Law* applies to the winding-up of an incorporated association under section 89 (Voluntary winding-up) or 90 (Winding-up by the Supreme Court) subject to any changes as are necessary.

New subsection 91(1A) provides that in applying chapter 5A of the *Corporations Law*, section 601AB(3)(c) and (e) in relation to deregistration procedure, does not apply. The new subsection also provides that section 601AB(3) of the *Corporations Law* is taken to require that two months have passed since the last notice required to be given under the provision has been given.

Clause 12(2) amends subsection 91(2)(a) to include a reference to the ASIC.

Clause 12(3) amends subsection 91(2) to insert two new references. In new paragraph (g), a reference to the Court is taken to be a reference to the Supreme Court and in new paragraph (h), a reference to the Commonwealth of Australia Gazette is taken to be a reference to the Queensland Government Gazette.

Clause 13 inserts a new subsection 92(2A) which provides that section 92 applies despite the provisions of the *Corporations Law* adopted under section 91.

Clause 14 inserts a new Part 10A—Reinstatement and new sections 94A-94D.

New section 94A (Definitions for pt 10A) inserts new definitions for “deregistered association”, “deregistration” and “reinstate” for Part 10A.

New section 94B (Reinstatement) provides a procedure whereby the chief executive, on his or her own initiative or on the application of a person, can reinstate the registration of a deregistered association if the chief executive is satisfied the association should not have been deregistered or dissolved or had its incorporation cancelled. The new section also provides that a person aggrieved by the deregistration etc of an association or a former liquidator, can apply to the Supreme Court for an order that the chief executive reinstate the association’s registration.

New section 94C (Chief executive to give notice of reinstatement) provides that the chief executive must give notice of a reinstatement of registration to the secretary of an association. It also provides that if an association’s registration is reinstated under section 94A(1) on the application of a person, the chief executive must also give notice of the reinstatement to that person.

New section 94D (Effect of reinstatement) provides that on the reinstatement of an association's registration, the association is taken to have continued in existence as if it had not been deregistered or dissolved or as if its incorporation had not been cancelled, a member of the management committee of the association immediately before the deregistration, dissolution or cancellation of incorporation again becomes a member of the management committee of the association, any property of the association that is still vested in the chief executive reverts to the association and if the association held property subject to a security or other interest or claim, the association takes the property subject to the security or other interest or claim.

It also provides that the reinstatement of an association does not affect any action taken by the public trustee prior to reinstatement.

Clause 15 amends section 105A(g) to add the words "or deregistered" after the word "dissolved". This amendment is due to recent amendments to the *Corporations Law* and to ensure that the provisions of the *Associations Incorporation Act 1981*, which adopt certain provisions of the *Corporations Law*, are as far as possible up to date.

Clause 16 inserts a new section 138 (Service) which provides that a document may be served upon the association by leaving it with or sending it by post, telex, facsimile transmission or similar facility to the address of the secretary or president or treasurer of the association. This amendment is aimed at ensuring that service of documents may be served on an association.

Part 3—AMENDMENT OF BUSINESS NAMES ACT 1962

Clause 17 provides that Part 3 amends the *Business Names Act 1962*.

Clause 18 inserts a new section 24B (Protection from liability) which provides protection from civil liability for the registrar where he or she acts honestly and without negligence and in the absence of liability attaching to the registrar, it will attach to the State.

Part 4—AMENDMENT OF COOPERATIVES ACT 1997

Clause 19 provides that Part 4 and schedule 1 amend the *Cooperatives Act 1997*.

Clause 20 amends subsection 11(2) to provide that a reference to the Australian Securities and Investments Commission is to be read as a reference to the registrar.

Clause 21 clarifies the definition of “trading cooperative” in section 14 and inserts an additional requirement enabling a regulation to be made which may prescribe a lesser number of members than 5 persons to form a trading cooperative.

Clause 22(1) rephrases the definition of “non-trading cooperative” in subsection 15(1).

Clause 22(2) amends subsection 15(3)(c) by inserting an additional requirement enabling a regulation to be made which may prescribe a lesser number of members than 5 persons to form a non-trading cooperative.

Clause 23(1) amends subsection 17(4) by inserting two further options for the registrar in considering disclosure statements submitted for approval.

Clause 23(2) inserts a new subsection 17(5A) which enables the registrar to approve a disclosure statement with or without conditions.

Clause 24 amends section 71 (Cooperative to give information to person intending to become a member) to include a provision that documents may be inspected, not only at the registered office of the cooperative, but at each other office of the cooperative, whether in or outside Queensland, including outside Australia. It also includes a new provision that the registrar can give consent for information to be given to a person in accordance with subsection 71(2), on conditions.

Clause 25 amends section 76 (Repayment of shares on expulsion) to ensure that when a cooperative repays the amount paid up on shares held by an expelled member, it does not adversely affect the financial position of the cooperative. The amendment also omits subsection 76(4) and renumbers the remaining subsections.

Clause 26 amends section 143 (Disclosure to members) to require a trading cooperative to provide a current disclosure statement under section 17 or that complies with section 143A and has been filed by the cooperative with the registrar, to an intending shareholder prior to the person becoming bound to acquire the shares. The cooperative must either advise the registrar if the disclosure statement is no longer current, or file a current disclosure statement with the registrar. The amendment also inserts new sections 143A and 143B.

New section 143A (Content of disclosure statement to intending shareholders) provides the information that must be contained in the disclosure statement.

New section 143B (Exemptions for disclosure statements) provides that the registrar may provide an exemption from a requirement under section 143 or 143A by gazette notice.

Clause 27 inserts a new section 144A (Adoption of certain Corporations Law provisions about shares) which provides that relevant sections of the *Corporations Law* (sections 1025 to 1027, 1032, 1035, 1036 and 1043) apply to shares in a cooperative and that a prospectus is, for the purposes of the section, taken to include a disclosure statement of any type. The new section also clarifies the definition of “minimum subscription” as used in section 1035 of the *Corporations Law*.

Clause 28 amends section 170 (Purchase and repayment of shares) by inserting a new subsection 170(4A) which provides that a cooperative must not purchase shares or repay amounts paid up on shares if the cooperative is likely to become insolvent as a result of such purchase or repayment or is insolvent.

Clause 29 amends the heading of Part 8.

Clause 30 amends section 173 (Application of part) to clarify the operation of Part 8.

Clause 31 inserts a new section 179A (Effect of disposal of shares on voting rights) which provides that a member who has sold or transferred or disposed of the beneficial interest in the member’s shares is not entitled to vote.

Clause 32 inserts a new division—Division 2A—Resolution by circulated document, and new sections 192A and 192B which will allow a cooperative that has fewer than 50 members to pass an ordinary resolution

required to be passed by a simple majority without the need to convene a general meeting if all the members sign a document containing a statement that they are in favour of the resolution.

Clause 33 amends section 207 (Qualification of directors) to provide that the majority of directors must be member directors. The rules may require that a greater number of directors than a majority must be member directors.

Clause 34 inserts a new subsection (4A) in section 209 (Meeting of the board of directors) to provide that for a quorum of directors, the number of member directors must outnumber independent directors by at least 1 or a greater number, if stated in the rules.

Clause 35 inserts a new division—Division 1A—Secretary and new section 213A dealing with the appointment of a secretary.

Clause 36 amends section 233 (Power of registrar to grant exemptions) to extend the power of the registrar to provide exemptions from a regulation made under Part 9 to a person or firm proposed to be appointed as an auditor. Presently under the Regulation, a person or firm must not consent to be auditor unless they are a registered company auditor or a person who, immediately before 1 September 1997, was the cooperative's auditor and continues to be the auditor. The amendment will allow qualified auditors who are not registered company auditors to apply for an exemption to enable them to consent to be an auditor of a cooperative.

Clause 37 makes a minor amendment to section 242 (Annual report) as well as updating the terminology so that it is consistent with the provisions in the *Corporations Law*.

Clause 38 inserts a new section 248A (Restriction on use of word “cooperative” or similar words) to prohibit the use of the word “cooperative”, the abbreviation “co-op” or words importing a similar meaning by persons other than a cooperative or entities mentioned in subsection 245(6).

Clause 39 inserts a new section 256A (Adoption of certain other Corporations Law provisions) which provides that sections 1025 to 1027 and 1043 of the *Corporations Law* apply to the issue of debentures of a cooperative, to which section 257 applies and to a loan mentioned in section 260 as if it were a debenture. The clause also provides that a prospectus is taken to include a disclosure statement under section 257 or 260.

Clause 40 provides for the amendment of section 266 (Distribution of surplus or reserves to members) to clarify the issue of bonus shares on the basis of business done with the cooperative or on the basis of shares held by the member and the issue of a limited dividend for shares held by the member.

Clause 41 inserts a new section 304A (New body must give copy of new certificate of registration or incorporation to registrar) which requires a new body to give the registrar a copy of its new certificate of registration or incorporation. Currently, there is no obligation to advise the registrar that a cooperative has transferred its incorporation.

Clause 42 inserts a new heading for Part 12, Division 3—Winding-up and deregistration.

Clause 43 inserts a new section 307A (Method of deregistration) which provides that a cooperative may be deregistered in the same circumstances as a company under the *Corporations Law*.

Clause 44 amends section 308 (Application of Corporations Law to winding up) by firstly amending the heading. The clause also provides that Chapter 5A of the *Corporations Law*, in addition to Parts 5.4, 5.4A, 5.4B, 5.5, 5.6 and 5.7, apply to the winding-up and deregistration of a cooperative and to a deregistered cooperative. The clause also makes minor amendments to the section to update references to the *Corporations Law* and to the ASIC, and to renumber the section.

Clause 45 amends section 373 (Requirements before application can be made) to adjust the manner in which a Queensland cooperative and a foreign cooperative may undertake a merger or a transfer of engagements. The Queensland registrar's consent to a merger or transfer of engagements by resolution of the board or by special resolution may be on conditions.

Clause 46 amends section 462 (Cooperative ceasing to exist) to prevent the registrar having to deregister a cooperative twice and substitutes the word "deregistered" for "dissolved" in line with other amendments.

Clause 47 inserts a new section 466A (Exemptions may be on conditions) which provides that an exemption under section 143B, 233, 256(6), 268(3), 282, 290, 294(4), or 374(4) of the Act may be on conditions.

Clause 48 amends section 14 of Schedule 5 (Winding-up) to update references to the provisions of the *Corporations Law* and to update the terminology used.

Clause 49 amends Schedule 8 (Dictionary) by omitting the definition of “accounting records” and inserting references to “deregistration” “financial records” and “secretary”.

Part 5—AMENDMENT OF FAIR TRADING ACT 1989

Clause 50 provides that Part 5 amends the *Fair Trading Act 1989*.

Clause 51 amends section 5 (Definitions) by changing the name of the Office of Consumer Affairs to the Office of Fair Trading and changing the title of the Commissioner for Consumer Affairs to the Commissioner for Fair Trading.

Clause 52 substitutes the heading of Part 2, Division 2 to refer to the Commissioner for Fair Trading and Office of Fair Trading in lieu of the Commissioner for Consumer Affairs and Office of Consumer Affairs.

Clause 53 amends section 19 (Commissioner and other officers) by substituting the words “fair trading” for the words “consumer affairs”.

Clause 54 amends section 20 (Office of Consumer Affairs) by substituting the words “Fair Trading” for the words “Consumer Affairs”.

Clause 55 amends section 48 (Accepting payment without intending or being able to supply as ordered—TPA s 58) by increasing the maximum number of penalty units for a breach of the section from 400 to 540 to bring the penalty into line with other provisions of the Act.

Clause 56 amends section 86 (Offences) by increasing the maximum number of penalty units from 400 to 540 to bring the penalty into line with other provisions of the Act.

Clause 57 amends section 89 (Powers of inspectors) to give persons acting in aid of an inspector powers to search, examine and copy documents in addition to their existing powers of entry. This will assist in situations where there are large volumes of records to be searched in connection with an investigation.

Clause 58 amends section 94 (Proceedings for offences) by increasing the maximum penalty that may be imposed for an offence prosecuted in a summary way from 200 to 270 penalty units.

Clause 59 amends section 110 (Preservation of secrecy) by providing that the Commissioner may communicate information to Ministers or officials of another country in addition to the Commonwealth and other States of Australia.

Clause 60 inserts a new part—Part 7—Transitional Provisions for Equity and Fair Trading (Miscellaneous Provisions) Act 1999 and new sections 115 and 116 which provide that any references in a document or an Act to the Commissioner for Consumer Affairs or the Office of Consumer Affairs are to be taken as references to the Commissioner for Fair Trading and the Office of Fair Trading.

Part 6—AMENDMENT OF FUNERAL BENEFIT BUSINESS ACT 1982

Clause 61 provides that Part 6 amends the *Funeral Benefit Business Act 1982*.

Clause 62 amends section 55 (Acts or things lawfully done in certain cases) to provide that the exemption from the Act for friendly societies under the *Friendly Societies (Queensland) Code* extends to foreign friendly societies.

Part 7—AMENDMENT OF HIRE-PURCHASE ACT 1959

Clause 63 provides that Part 7 amends the *Hire-Purchase Act 1959*.

Clause 64 amends section 2 (Interpretation) by excluding from the definition of “hire-purchase agreement” a transaction that would otherwise

be a hire-purchase agreement if the total market value of the goods exceeds \$40 million at the time the transaction is entered into.

Part 8—AMENDMENT OF INVASION OF PRIVACY ACT 1971

Clause 65 provides that Part 8 amends the *Invasion of Privacy Act 1971*.

Clause 66 amends section 9 (Application for licence or renewal) by deleting paragraph 9(1)(d) and renumbering the section.

Clause 67 amends section 52 (Regulation making power) by providing that a regulation may provide for a maximum penalty of 20 penalty units for a contravention of the regulation.

Part 9—AMENDMENT OF LAND SALES ACT 1984

Clause 68 provides that Part 9 amends the *Land Sales Act 1984*.

Clause 69 amends section 2(d) to update the reference to the *Local Government (Planning and Environment) Act 1990* to the *Integrated Planning Act 1997*.

Clause 70 makes minor amendments to section 6 (Interpretation) by updating the definition of “Planning Act” to mean the *Integrated Planning Act 1997*, by deleting a comma in the definition of “proposed lot”, by updating a reference to a part of the Planning Act in the definition of “subdivision application”, by inserting a heading to subsection 6(2), by correcting a reference to section 6 in subsection 6(3) and by renumbering the section.

Clause 71 amends subsection 9(1)(b) to update the terminology used in the *Integrated Planning Act 1997*. It also amends subsection 9(3)(f) by updating the reference in that subsection from section 10A(1) to section 10A(3).

Clause 72 amends section 10 (Vendor must tell purchaser about significant variations between disclosure plan and later plans) to provide in subsection 10(1)(b)(i) that section 10 will not apply if a purchaser is given possession of a proposed allotment and the purchaser has caused the significant variation. It also amends section 10 to update the reference in subsection 10(1)(b)(ii) from section 10A(1)(b) to section 10A(3)(b).

Clause 73 amends section 10A (Purchaser must give registrable instrument of transfer and other documents) by requiring the vendor to give the purchaser a copy of the “as constructed” plan and a statement by a licensed surveyor only in circumstances where the vendor has not already given the purchaser a copy of the plan of survey for the proposed allotment sealed by the local government. The clause also makes consequential amendments and renumbers the section.

Part 10—AMENDMENT OF ROMAN CATHOLIC CHURCH (INCORPORATION OF CHURCH ENTITIES) ACT 1994

Clause 74 provides that Part 10 and schedule 2 amend the *Roman Catholic Church (Incorporation of Church Entities) Act 1994*.

Clause 75 inserts into section 3 (Definitions) a number of important new definitions which will help to improve the operation of the Act. It also omits from section 3 the definitions of “Code of Canon Law”, “bishop” and “officer”. It amends the definition of “church entity” to embrace religious institutes such as an Institute of Consecrated Life or a Society of Apostolic Life and “a juridic person, or the person’s competent authority”. Finally, it amends the current definition of “incorporated church entity” by expanding on that definition to include that in part 5, an “incorporated church entity” means an AI Act (*Associations Incorporation Act 1981*) corporation, or an RECI Act (*Religious, Educational and Charitable Institutions Act 1861-1977*) corporation that is not established under this Act.

Clause 76 amends the heading of section 4 (Interpretation and application of Code of Canon Law) by omitting unnecessary words and recasts the

language so that the wider concept of “canon law” is referred to, rather than the narrower “Code of Canon Law”.

Clause 77 amends section 9 (Request to incorporate church entity) by inserting a new subsection 9(2A). Essentially, this subsection requires the bishop or Corporation of the Bishops to obtain written consent from the religious institute’s competent authority before asking the chief executive to incorporate a religious institute or an associated entity of a religious institute. This procedure has always accorded with Church protocol but it is considered necessary for clarity and certainty that such a requirement be included in the Act. This amendment also amends subsection 9(3) by inserting new paragraphs (e) and (f).

Clause 78 inserts the following new sections after section 11:

New Section 11A (Vesting of assets). This section states that on the establishment of a church entity as a corporation under part 3, the church entity’s assets vest in the corporation. On the establishment of an associated entity as a corporation under part 3, the assets mentioned in paragraphs (a) and (b) of subsection 11A(2) vest in the corporation.

New Section 11B (Transfer of rights and liabilities). This section provides that on the establishment of a church entity as a corporation under part 3, the rights and liabilities of the entity become the rights and liabilities of the corporation, and a legal proceeding by or against the entity that has not been finished before the establishment may be continued and finished by or against the corporation.

Clause 79 inserts two new subsections in section 16 (Request to establish existing church corporation under this part). Subsection 16(2A) provides that if the existing church corporation is a religious institute or an associated entity of a religious institute, a request for establishment may be made only if the religious institute’s competent authority has given written consent to the making of the request. Subsection 16(2B) states that the consent must be given to the bishop or Corporation of the Bishops proposing to make the request. The amendment also inserts new paragraph (d) in subsection 16(3).

Clause 80 inserts a new subsection in section 21 (Establishment under this part does not affect legal personality etc.). Subsection 21(4) is a savings provision which provides that the assets held by the existing church corporation immediately before its establishment are, on the establishment, taken to be the assets of the corporation established under part 4.

Clause 81 amends existing subsection 33(3) by recasting the current wording to omit unnecessary words, and providing in paragraph (b) of subsection 33(3) that the request may only be made if the religious institute's competent authority has given written consent to the relevant person to the making of the request for dissolution. This amendment also amends subsection 33(4)(e) by omitting unnecessary words as well as inserting a new paragraph (f) in subsection 33(4).

Part 11—AMENDMENT OF SECURITY PROVIDERS ACT 1993

Clause 82 provides that Part 11 amends the *Security Providers Act 1993*.

Clause 83 amends section 20 (Renewal of licence) by inserting a new subsection 20(4) to provide that a licence continues in force after it has expired if the holder of the licence has made an application for renewal and the chief executive has neither approved nor rejected the application.

Clause 84 amends the Schedule of Disqualifying Offences contained in the Act to insert Chapter 22 (Offences against morality) which was mistakenly omitted from the Schedule in the course of recent amendments to the Criminal Code.

Schedule 1

MINOR AMENDMENTS OF *COOPERATIVES ACT* 1997

The Schedule makes a number of minor and technical amendments to the *Cooperatives Act 1997* largely arising out of recent amendments to the *Corporations Law*. Some examples of the amendments follow.

Item 7 amends section 72 to enable a cooperative to set its regular subscription based on patronage.

Item 13 amends section 204 to clarify the time period as to the recording of minutes of each general meeting, board meeting and subcommittee meeting in the appropriate records eg minute book.

Item 15 amends subsection 210(6) to clarify the time period as to the recording of minutes of each general meeting, board meeting and subcommittee meeting in the appropriate records eg minute book.

Item 22 amends section 252 to require a deposit-taking cooperative to continue to have rules to accept money on deposit.

Item 29 amends section 330 to provide that section 588G of the *Corporations Law* in relation to a Director's duty to prevent insolvent trading, should apply to all cooperatives.

Item 30 amends section 367 to insert additional matters which a foreign cooperative must file with the registrar.

Schedule 2

MINOR AMENDMENTS OF *ROMAN CATHOLIC CHURCH (INCORPORATION OF CHURCH ENTITIES) ACT 1994*

Item 1 omits section 2 which provided that the Act commenced on the date of proclamation.

Item 2 amends section 11 (Composition of corporation), section 13 (Person acting for corporation), section 18 (Composition of corporation), section 20 (Person acting for existing church corporation), section 27 (Restriction on powers) and section 28 (Persons having dealings with incorporated church entities etc.) by omitting unnecessary words.