

# **EQUITY AND FAIR TRADING (MISCELLANEOUS PROVISIONS) BILL 2000**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the legislation**

The Bill amends 10 Acts administered by the Department of Equity and Fair Trading.

Included in the Bill is an urgent amendment of the *Auctioneers and Agents Act 1971* to account for the impact of the introduction of the GST law on regulated rates of commission.

Other urgent amendments are required to repeal exempting provisions in the *Auctioneers and Agents Act 1971* and the *Collections Act 1966* that offend against fundamental legislative provisions under the *Legislative Standards Act 1992*.

#### **Administrative Costs**

The changes will not alter existing administrative costs.

#### **Fundamental Legislative Principles**

Section 7 of the *Auctioneers and Agents Act 1971* and section 47(3)(zp) of the *Collections Act 1966* provide that a regulation may be made to exempt a person from the Act or a provision of the Act. These sections are in breach of fundamental legislative principles in that they permit exemptions to be granted by the executive from compliance with the law as made by Parliament. Such provisions are commonly referred to as “Henry VIII” clauses. The Bill will repeal these sections.

**Consultation**

Consultation has taken place with the Real Estate Institute of Queensland, Queensland Treasury, the Office of Parliamentary Counsel, the Business Regulation Reform Unit in the Department of State Development, the Crown Solicitor, the Office of Rural Communities and the Department of Employment Training and Industrial Relations.

**NOTES ON PROVISIONS****PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act

**PART 2—AMENDMENT OF ASSOCIATIONS  
INCORPORATION ACT 1981**

*Clause 2* states that part 2 of the Act amends the *Associations Incorporation Act 1981*.

*Clause 3* replaces section 18 with a new section to provide that:—

- a person may inspect the register and obtain copies of details in the register at the department’s Brisbane office when the office is open to the public or by the use of a computer; and
- a person may access the register on payment of the prescribed fee or by paying the fee in advance or in arrears under an arrangement approved by the chief executive.

*Clause 4* amends section 48 to place beyond doubt that an amendment of an association’s rules is not effective until it has been registered by the chief executive.

*Clause 5* amends section 59 to provide a new definition of the term “auditor”.

*Clause 6* amends section 61A to include bankruptcy as a ground of disqualification from the eligibility of a person to be elected to a management committee.

### **PART 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1971**

*Clause 7* states that part 3 of the Act amends the *Auctioneers and Agents Act 1971*.

*Clause 8* repeals section 7 which provided that a regulation may be made to exempt a person from the Act or a provision of the Act.

*Clause 9* amends section 19 to remove the requirement for a director of a corporation to be resident in Queensland, and to change the definition of “working director” to remove the requirement for residence in Queensland or within 65 km of the boundary of Queensland.

*Clause 10* amends section 22 to change the age qualification from 21 to 18 and to repeal the requirement that a person must be resident in Queensland or within 65km of the boundary of Queensland in order to qualify for a licence as a manager or licensee of a place of business.

*Clause 11* amends section 39 to change the age qualification from 21 to 18 and to repeal the requirement that a person must be resident in Queensland or within 65km of the boundary of Queensland in order to qualify for a licence as a general auctioneer.

*Clause 12* amends section 41 to change the age qualification from 21 to 18 and to repeal the requirement that a person must be resident in Queensland or within 65km of the boundary of Queensland in order to qualify for a licence as a restricted auctioneer.

*Clause 13* amends section 45 to change the age qualification from 21 to 18 and to repeal the requirement that a person must be resident in Queensland or within 65km of the boundary of Queensland in order to qualify for a licence as a real estate agent.

*Clause 14* amends section 49 to change the age qualification from 21 to 18 and to repeal the requirement that a person must be resident in Queensland or within 65km of the boundary of Queensland in order to qualify for a licence as a commercial agent.

*Clause 15* amends section 57 to change the age qualification from 21 to 18 and to repeal the requirement that a person must be resident in Queensland or within 65km of the boundary of Queensland in order to qualify for a licence as a motor dealer.

*Clause 16* amends section 62 as a consequence of the renumbering of section 57(1).

*Clause 17* amends section 78 of the Act to place beyond doubt that a licensee is not guilty of an offence if an additional amount is added to the chargeable amount of regulated fees, charges, commission, reward or other remuneration to cover GST liability under Commonwealth legislation.

*Clause 18* amends section 119 of the Act to include provision for small claims against the Auctioneers and Agents Fidelity Guarantee Fund up to an amount of \$7500, lodged outside the time limit specified in the Act, to be referred to the Auctioneers and Agents Committee. The Committee is granted jurisdiction under the amendment to decide whether such small claims may be considered.

*Clause 19* amends section 153 to change the age qualification from 21 to 18 and to repeal the requirement that a person must be resident in Queensland or within 65km of the boundary of Queensland in order to qualify for a licence as a pastoral house director, manager or auctioneer.

*Clause 20* inserts a new section 175 to provide transitional provisions for the operation of the *Auctioneers and Agents (Exemptions) Regulation 1995* following the repeal of section 7.

## **PART 4—AMENDMENT OF *BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955***

*Clause 21* states that part 4 of the Act amends the *Bills of Sale and Other Instruments Act 1955*.

*Clause 22* inserts section 56 into the *Bills of Sale and Other Instruments Act 1955* to declare that anything done between 23 April 1999 and 7 May 1999 to implement the changes to the law made by the *Bills of Sale and Other Securities Act 1999*, part 2 and the schedule, is as valid and effectual as if that Act had commenced on 23 April 1999.

Section 56 will expire 1 year after it commences.

## **PART 5—AMENDMENT OF *BUSINESS NAMES ACT 1962***

*Clause 23* states that part 5 of the Act amends the *Business Names Act 1962*.

*Clause 24* amends section 22 to allow a person to pay the fee for access to records in advance or in arrears under an arrangement approved by the chief executive.

*Clause 25* amends section 22B to allow a person to pay the fee for an extract of records in advance or in arrears under an arrangement approved by the chief executive.

*Clause 26* amends section 23 to allow a person to pay the fee for a certificate of registration or non-registration in advance or in arrears under an arrangement approved by the chief executive.

*Clause 27* amends section 24A to allow a person to pay the fee for provision of information in advance or in arrears under an arrangement approved by the chief executive.

## **PART 6—AMENDMENT OF *CHARITABLE FUNDS ACT 1958***

*Clause 28* states that part 6 of the Act amends the *Charitable Funds Act 1958*.

*Clause 29* amends the definition of the term “auditor” in section 24 (2).

## **PART 7—AMENDMENT OF *COLLECTIONS ACT 1996***

*Clause 30* states that part 7 of the Act amends the *Collections Act 1966*.

*Clause 31* amends section 29 to enable a broader range of charitable bodies to become registered. All paragraphs of the provision have been

omitted and section 29 has been re-drafted to require that the constitution of a registered charity, or each association whose objects are a community purpose that is sanctioned under the Act, must provide that its income and property must be applied in promotion of its objects and must not be paid to or distributed to its members, unless the charity is one that is listed in the schedule to the Act.

*Clause 32* amends the definition of “auditor” in section 31 of the Act.

*Clause 33* repeals section 47(3)(zp) of the Act.

*Clause 34* inserts a schedule of registered charities for the purposes of section 29(5) of the Act.

## **PART 8—AMENDMENT OF *COOPERATIVES ACT* 1997**

*Clause 35* states that part 8 of the Act amends the *Cooperatives Act 1997*.

*Clause 36* amends section 440 to provide that:—

- a person may inspect the register and obtain copies of details in the register at a department’s office when the office is open to the public or by the use of a computer;
- a person may obtain a certified copy at the department’s Brisbane office; and
- a person may access the register on payment of the prescribed fee or by paying the fee in advance or in arrears under an arrangement approved by the chief executive.

## **PART 9—AMENDMENT OF *LIENS ON CROPS OF* *SUGAR CANE ACT 1931***

*Clause 37* states that part 9 of the Act amends the *Liens of Crops of Sugar Cane Act 1931*.

*Clause 38* inserts section 24 into the *Liens on Crops of Sugar Cane Act 1931* to declare that anything done between 23 April 1999 and 7 May 1999

to implement the changes to the law made by the *Bills of Sale and Other Securities Amendment Act 1999*, part 3 and schedule, is as valid and effectual as if that Act had commenced on 23 April 1999.

Section 24 will expire 1 year after the Act commences.

### **PART 10—AMENDMENT OF RETURNED & SERVICES LEAGUE OF AUSTRALIA (QUEENSLAND BRANCH) ACT 1956**

*Clause 39* states that part 10 of the Act amends the *Returned and Services League of Australia (Queensland Branch) Act 1956*.

*Clause 40* inserts section 3A, 3B and 3C to provide for circumstances where a sub-branch or a district branch becomes incorporated under the *Associations Incorporation Act 1981* or the *Corporations Law*. In such cases, it is provided that the body is to continue to hold its property upon the same trusts and for the same purposes that applied under the Act before incorporation. Conditions defined in the rules and by-laws of the State Branch which applied to the trusts and their purposes before incorporation are to continue to apply after incorporation.

### **PART 11—AMENDMENT OF SECURITY PROVIDERS ACT 1993**

*Clause 41* states that part 11 of the Act amends the *Security Providers Act 1993*.

*Clause 42* is amended to change the definition of “accountant”.