

FAIR TRADING AND ANOTHER ACT AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The major objective of the Fair Trading and Another Act Amendment Bill 2002 is to implement certain National Competition Policy reforms by amending the Fair Trading Act 1989. The other objective is to implement recommendations made by a Red Tape Reduction Task Force Committee review of the business name registration process under the Business Names Act 1962. The amendments to both Acts will provide further protections for business and consumers alike.

Administrative Cost

Any expenditure associated with implementation of the recommendations contained in the Bill will be met through existing appropriations. No additional budgetary expenditure is anticipated.

Fundamental Legislative Principles

The Bill does not infringe any Fundamental Legislative Principles.

Consultation

Significant consultation on the proposed changes to the Fair Trading Act 1989 and Regulation 2001 occurred as part of the National Competition Policy review process.

Extensive consultation was conducted on the amendments to the Business Names Act 1962, as part of a wider government review of the Act. Community and industry stakeholders have been supportive of the proposals.

Community

During the National Competition Policy review process the following key industry associations were consulted: Real Estate Institute of Queensland, National Council of Women in Queensland, the Australian Direct Marketing Association, the Direct Selling Association of Australia, Legal Aid Queensland, Optus, A Better Chance Pty Ltd and the Office of Fair Trading Product Safety Branch.

As part of the Policy Review on the amendments to the Business Names Act 1962 the following key industry associations were consulted: Australian Consumers' Association, Australian Industry Group, Commerce Queensland, Queensland Law Society, Institute of Chartered Accountants, National Institute of Accountants, Australian Insurance Institute, Australian Institute of Banking and Finance, Australian Finance Conference, Queensland Association of Permanent Building Societies, Financial Planning Association of Australia, Queensland Retail Traders and Shopkeepers Association, Retailers Association of Queensland, Real Estate Institute of Queensland, Motor Trades Association of Queensland, Master Plumbers Association of Queensland, Queensland Master Builders Association, Queensland Hotels Association, Queensland Newsagents Federation and Queensland Tourism Industry Corporation.

Government

Key government stakeholders involved in consultation with the draft Bill include the Department of the Premier and Cabinet, Department of Justice and Attorney-General, Queensland Treasury, Queensland Transport, Department of Main Roads, Queensland Police Service, Department of Employment and Training, Department of Primary Industries (Office of Rural Communities), Department of Housing and the Building Services Authority.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for commencement of the Act (other than clause 4 which will commence on assent) on a day to be fixed by proclamation.

PART 2—AMENDMENT OF BUSINESS NAMES ACT 1962

Clause 3 provides that Part 2 of the Bill amends the Business Names Act 1962.

Clause 4 amends the penalty for failing to register a business name under the Business Names Act 1962. The penalty has been increased from 4 penalty units to 40 penalty units (from \$300 to \$3,000).

Clause 5 amends the registration process for a business name by inserting the requirement, where an applicant is an individual (a natural person), to provide proof of identity when submitting an application for registration of a business name. The form of identification will be prescribed by regulation.

Clause 6 provides that an application for a business name is not made until both the prescribed fee and proof of the applicant's identity has been provided. This only applies to applicants that are individuals (that is: natural persons).

Clause 7 amends section 12 of the Business Names Act 1962, so that where a business name is registered under that Act, and a change occurs in relation to the proprietorship of the business, all new proprietors, who are individuals, must provide proof of identification.

PART 3—AMENDMENT OF FAIR TRADING ACT 1989

Clause 8 provides that Part 3 of the Bill amends the Fair Trading Act 1989.

Clause 9 amends section 58A to require contracts relating to emergency repairs as a result of major incidents such as natural disasters to be made subject to some of the door-to-door provisions of the Fair Trading Act 1989.

These contracts were originally exempted to ensure emergency repairs were not delayed at a time when they are most needed; however consumers in such situations miss out on any of the protections provided by the door-to-door provisions.

The specific aim of the amendment is to make door-to-door contracts for emergency repairs subject to the door-to-door provisions of the Act, with the exception of the requirements for:

- a 10 day cooling off period;
- payment of consideration during the cooling off period;
- no attendance at consumers' homes except during specified hours; and
- other minor related amendments arising as a result of the amendment of section 58A.

Therefore, subject to these exceptions, emergency repairers will be bound by the door-to-door provisions of the Act, in particular the requirements to:

- provide written contracts in the prescribed form;
- provide identification; and
- not engage in harassing or coercive behaviour towards the householder.

This is to provide consumer protection without subjecting dealers to provisions that are too onerous or might dissuade them from offering emergency repairs.

The amendment will only apply to contracts not already regulated by the Domestic Building Contracts Act 2000.

Clause 10 amends subsection 60(4) by increasing the threshold at which the door-to-door provisions apply to contracts from \$50 to \$75. The

threshold has not been altered since the Act was introduced in 1987. It is considered that \$75 will more accurately reflect the price of goods that are being offered by door-to-door traders and will ensure that many services such as lawn mowing and household cleaning will not be subject to the door-to-door provisions.