

FINANCIAL SERVICES REFORM (CONSEQUENTIAL AMENDMENTS) BILL 2002

EXPLANATORY NOTES

General Outline

Short Title

The short title of the Bill is the *Financial Services Reform (Consequential Amendments) Bill 2002*.

Objectives of the Legislation

The purpose of the Financial Services Reform (Consequential Amendments) Bill 2002 (the Bill) is to amend certain Acts as a consequence of the enactment of the *Financial Services Reform Act 2001* of the Commonwealth. That Act substitutes a new Chapter 7, Financial Services and Markets, for Chapters 7 and 8 of the *Corporations Act 2001 (Cth)*, replacing the provisions dealing with securities and the futures industry. It is necessary to amend references in Queensland Acts to terminology or concepts that are no longer consistent with the new provisions regulating financial services and markets. The Bill also makes other amendments to certain Acts, which are minor and technical and which arise as a result of other changes to the Corporations legislation.

Reasons for the objectives and how they will be achieved

The amendments contained in the Bill do not modify the underlying policy or direction of the statutes that are being amended. The Bill effects amendments to various Acts that contain references to provisions, terms, concepts or expressions used in the *Corporations Act 2001 (Cth)* (Corporations Act) that are affected by amendments made to that Act by the *Financial Services Reform Act 2001 (Cth)*. It also makes certain other amendments, which are minor or technical and which update references to

terms, provisions and expressions used in the Corporations Act and the *Australian Securities and Investments Act 2001* (the ASIC Act).

The Bill amends the followings statutes:

- Business Names Act 1962
- Cooperatives Act 1997
- Corporations (Ancillary Provisions) Act 2001
- Industrial Relations Act 1999
- Queensland Law Society Act 1952
- Sugar Industry Act 1999
- Travel Agents Act 1988 and
- Trusts Act 1973.

Alternatives to the Bill

The alternative to the Bill is not to effect the amendments. If the amendments are not made, the Acts to be amended will contain outdated references to legislation or have inoperative provisions. Generally, the legislation will not work as well as it should.

Administrative cost to Government of implementation

The Bill will not impose any additional financial burdens on the Government.

Consistency with Fundamental Legislative Principles

Does the Bill authorise the amendment of an Act only by another Act?

The proposed new section 23A in the *Corporations (Ancillary Provisions) Act 2001* may be in conflict with section 4(4)(c) of the *Legislative Standards Act 1992* (LSA). It enables a regulation to be made providing how references in Queensland Acts to provisions of, terms, concepts or expressions used in the Corporations Act are to be construed. The clause may be seen as a Henry VIII provision.

The provision is however, justified given its limited application and its purpose. The provision recognises that the Commonwealth will continue

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to amend the Corporations Act and the ASIC Act and that such amendments may have an effect on the construction of Queensland's Acts. The provision will enable any necessary consequential amendments to be made by regulation where the Commonwealth makes or proposes to make amendments to provisions, terms, concepts or expression in the Corporations Act or the ASIC Act.

The proposed section will enable affected references in Queensland Acts to be adjusted quickly in circumstances where it has not been possible to amend the references in an Act in the time available. It will ensure that action may be taken to safeguard provisions in Acts from inadvertently being made invalid or inoperative as a consequence of amendment to the ASIC Act or Corporations Act.

In addition, a regulation made under section 23A will expire after one year, which will allow sufficient time for any necessary amendments to be made to the affected State Act. Any regulations made would also be subject to disallowance by Parliament.

Does the legislation adversely impose obligations retrospectively?

The Bill amends section 27(7) of the *Corporations (Ancillary Provisions) Act 2001*. Section 27(7) provides that regulations made under the Act may take effect from 15 July 2001 (the day that the *Corporations Act 2001* commenced operation). The amendment is a positive step as it limits the retrospective operation of regulations made as a consequence of amendments of the Corporations Act or ASIC Act to the time of commencement of those amendments.

The Bill also inserts a new section 29 into the *Corporations (Ancillary Provisions) Act 2001*. The *Financial Services Reform Act 2001 (Cth)* commenced operation on 11 March 2002. The amendments effected by the Bill will commence operation after the commencement of the Commonwealth legislation. Therefore, there will be a period of time when Queensland's Acts are not consistent with the Commonwealth Law. Section 29 will validate certain acts and omissions of persons and bodies done or omitted to be done in the period between the commencement of the *Financial Services Reform Act 2001 (Cth)* but before the commencement of the Bill.

The validation provision is justified as it has a limited operation and it will only extend to those acts or omissions by individuals or organisations

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which would have been valid and lawful if the *Financial Services Reform Act 2001* (Cth) had not commenced or which would have been valid and lawful if this Bill had commenced when the *Financial Services Reform Act 2001* (Cth) commenced.

In addition, the provision will operate positively to protect individuals or organisations that have relied on provisions in the Queensland Acts referred to in the Bill, which are outdated or who have relied on provisions in the *Corporations Act 2001* which are inconsistent with provisions in Queensland legislation. Section 29 will protect acts done or omissions and will not adversely affect the rights or liberties of individuals or organisations.

Other jurisdictions have made similar amendments to the proposed amendments section 27(7), 23A and 29 to the *Corporations (Ancillary Provisions) Legislation 2001* in their equivalent legislation.

CONSULTATION

Government

A consultation draft of the Bill was sent to officers of relevant Departments and agencies. The comments of those consulted have informed the drafting of the Bill.

RESULTS OF CONSULTATION

All Government departments consulted agreed to the content of this Bill so far as it relates to their concerns and issues.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

PART 2—AMENDMENT OF THE BUSINESS NAMES ACT 1962

Clause 2 provides that the *Business Names Act 1962* is amended by this Part.

Clause 3 amends section 3 to delete the definition of ‘Australian Securities Commission’ which is not used in the Act and which is obsolete.

PART 3—AMENDMENT OF THE COOPERATIVES ACT 1997

Clause 4 provides that the *Cooperatives Act 1997* is amended by this Part.

Clause 5 amends section 10(2)(h) to 10(2)(l) and 10(3)(d) of the *Cooperatives Act 1997*. *Clause 5(1)* replaces the reference to the ‘futures industry’ within the meaning of the *Corporations Act 2001* in s10(2)(h) with a reference to ‘derivatives’ within the meaning of the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.

Clause 5(2), (4) and (5) replace references to ‘participants in the securities industry’ and ‘dealers’ with references to ‘financial service licensees’ and ‘regulated principals’ as defined in the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.

Clause 5(3) replaces references to the ‘conduct of a securities business’ with a reference to ‘carrying on a financial services business’ within the meaning of the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.

Clause 5(6) amends s10(3)(d) of the *Cooperatives Act 1997* to replace references to Part 7.11 (conduct in relation to securities) of the *Corporations Act 2001* with Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services) of the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.

Clause 6 amends section 256 of the *Cooperatives Act 1997* to replace the reference to Part 7.11 (conduct in relation to securities) with Part 7.10 of the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.

PART 4—AMENDMENT OF CORPORATIONS (ANCILLARY PROVISIONS) ACT 2001

Clause 7 provides that the *Corporations (Ancillary Provisions) Act 2001* is amended by this Part.

Clause 8 extends section 23(2) of the *Corporations (Ancillary Provisions) Act 2001* enabling regulations to be made under that Act consequentially amending certain regulations without complying with Part 5 of the *Statutory Instruments Act 1992* where the *Corporations Act 2001 (Cth)* or the *Australian Securities and Investments Act 2001 (Cth)* is amended.

Clause 9 inserts a new section 23A into the *Corporations (Ancillary Provisions) Act 2001* which will enable regulations to be made that specify how references in State Acts to provisions of, or terms, concepts or expressions used in the *Corporations Act* or the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) that have been, or are to be amended, by another Act of the Parliament of the Commonwealth are to be construed. Regulations made under this section will expire within 12 months of being made. The purpose of this section is to enable consequential amendments to be made to affected references which will operate for a limited period in circumstances where it has not been possible to amend the reference by Act in the time available.

Clause 10 amends section 27(7) and is consequential on the amendment to section 23(2). Section 27(7) currently provides that regulations made under it may take effect from 15 July 2001, the day that the *Corporations Act 2001* commenced. The amendment provides that any regulations made as a result of amendments to the *Corporations Act 2001* or the ASIC Act can not commence prior to the commencement date of those amending Acts.

Clause 11 inserts a new part 5 and section 29 into the *Corporations (Ancillary Provisions) Act 2001* which will validate certain acts and

omissions of persons and bodies done or omitted to be done on or after the commencement of the *Financial Services Reform Act 2001 (Cth)* but before the commencement of the Bill. The *Financial Services Reform Act 2001 (Cth)* commenced on 11 March 2002 prior to the commencement of this Bill. Since then individuals or bodies may have relied on the repealed or outdated references or provisions in the Acts proposed to be amended this Bill. Such actions or omissions in reliance of those repealed or outdated references or provisions may be invalid. Similarly individuals or bodies may have relied on provisions of the amended *Corporations Act 2001 (Cth)*.

PART 5—AMENDMENT OF THE INDUSTRIAL RELATIONS ACT 1999

Clause 12 provides that the *Industrial Relations Act 1999* is amended by this Part.

Clause 13 replaces the reference in section 635(4) of the *Industrial Relations Act 1999* to part 7.13 (Title to, and transfer of, securities) of the *Corporations Act 2001* with a reference to Part 7.11 (Title and transfer) of the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.

PART 6—AMENDMENT OF THE QUEENSLAND LAW SOCIETY ACT 1952

Clause 14 provides that the *Queensland Law Society Act 1952* is amended by this Part.

Clause 15 replaces the reference to Australian Securities Commission which is obsolete with a reference to Australian Securities and Investments Commission and replaces the reference to section 1084(2) of the Corporations Law which is also obsolete with a reference to section 601QA of the *Corporations Act 2001*.

PART 7—AMENDMENT OF SUGAR INDUSTRY ACT 1999

Clause 16 provides that the *Sugar Industry Act 1999* is to be amended by this Part.

Clause 17 deletes the definition of ‘Australian Stock Exchange’ in section 141(1)(e)(i) of the *Sugar Industry Act 1999* and inserts a definition of ‘prescribed financial market’ as defined in section 9 of the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.

PART 8—AMENDMENT OF THE TRAVEL AGENTS ACT 1988

Clause 18 provides that the *Travel Agents Act 1988* is amended by this Part.

Clause 19 replaces the reference to ‘officer of a body corporate’ in section 6 of the *Travel Agents Act 1988* with a reference to ‘officer of a corporation’ as defined in section 9 of the *Corporations Act 2001*.

Clause 20 replaces the reference to ‘body corporate’ in sections 18(1)(c)(ii) and 18(5)(b) with ‘corporation’.

Clause 21 replaces the reference to ‘body corporate’ in section 19(1)(b) with ‘corporation’. Section 19 currently provides that a licence remains in force until a body corporate is dissolved, as corporations may also be wound up, the amendment provides that a licence also remains in force until a corporation is wound up.

Clause 22 replaces the references to ‘body corporate’ in section 24(4) with ‘corporation’.

Clause 23 replaces the reference to ‘body corporate’ in section 35(1)(d) with ‘corporation’.

Clause 24 replaces the reference to ‘body corporate’ in section 42(4) and (5) with ‘corporation’.

Clause 25 replaces the reference to ‘body corporate’ in section 52 with ‘corporation’.

PART 9—AMENDMENT OF THE TRUSTS ACT 1973

Clause 26 provides that the *Trusts Act 1973* is amended by this Part.

Clause 27 provides that the reference to ‘stockbroker’ in section 54(1) is replaced with a reference to a ‘financial services licensee, licensed to deal in securities and a regulated principal authorised to deal in securities’ as defined in the *Corporations Act 2001* as amended by the *Financial Services Reform Act 2001*.