

# **TOURISM, RACING AND FAIR TRADING (NATIONAL COMPETITION POLICY) AMENDMENT BILL 2002**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

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

The Department of Tourism, Racing and Fair Trading is responsible for the administration of over 70 Acts, a number of which have been subject to National Competition Policy assessments. The Bill contains a number of amendments and the repeal of one Act, implementing the recommendations contained in the National Competition Policy assessments of the following legislation:

- *Business Names Act 1962;*
- *Hire-purchase Act 1959;* and
- *Profiteering Prevention Act 1948.*

The Acts to be amended are the:

- *Business Names Act 1962;*
- *Credit (Rural Finance) Act 1996;* and
- *Hire-purchase Act 1959.*

The Act to be repealed is the:

- *Profiteering Prevention Act 1948.*

#### **Administrative Cost**

Any financial impact from the development and implementation of the Bill will be met from the Department's existing budget allocations.

## **Fundamental Legislative Principles**

The Bill does not infringe fundamental legislative principles.

## **Consultation**

Extensive consultation was undertaken during the development of the National Competition Policy assessments which form the basis for the Bill.

## **Community**

During the National Competition Policy assessments the following key stakeholder groups were consulted:

- Australian Finance Conference;
- Queensland Law Society; and
- Queensland Farmers Federation.

## **Government**

During the National Competition Policy assessments the following agencies were consulted:

- Department of the Premier and Cabinet;
- Department of Justice and Attorney-General;
- Queensland Treasury;
- Department of State Development;
- Queensland Transport;
- Queensland Police Service; and
- Department of Primary Industries.

During the drafting of the Bill, a number of consequential amendments were identified in legislation administered by the following departments:

- Department of Justice and Attorney-General;
- Queensland Treasury;
- Queensland Transport;
- Queensland Police Service; and
- Department of Primary Industries.

Each of these agencies were notified of the proposed changes.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

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

*Clause 2(1)* provides for commencement of sections 18, 19 and the schedule (to the extent that it amends the *Fair Trading Act 1989*) on assent.

*Clause 2(2)* provides for commencement of the remaining provisions on a day to be fixed by proclamation.

### **PART 2—AMENDMENT OF BUSINESS NAMES ACT 1962**

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

*Clause 4* deletes section 8 and removes the requirement for the notification of resident agents from the Act in order to implement the recommendations contained in the National Competition Policy assessment of the Act.

*Clause 5(1)* omits section 12(1) and inserts new sections 12(1) and 12(1A) that remove the previous reference to resident agents.

*Clause 5(2)* omits sections 12(4) from paragraph (b) to remove the reference to resident agents and inserts a new section 12(4)(b) which is in the same terms as the omitted section 12(4)(b).

*Clause 5(3)* omits sections 12(5) to 12(7).

*Clause 5(4)* renumbers sections 12(8), (9) and (10) to sections 12(5), (6) and (7) respectively.

*Clause 6* amends section 31 by omitting section 31(1)(c) to remove the reference to resident agents.

### **PART 3—AMENDMENT OF CREDIT (RURAL FINANCE) ACT 1996**

Part 3 of the Bill amends the *Credit (Rural Finance) Act 1996*. The intention of these amendments is to transfer the effect of some protections contained in the *Hire-purchase Act 1959* into the *Credit (Rural Finance) Act 1996*. These amendments should not affect the current situation in relation to the issuing of default notices when financiers wish to repossess farm equipment when farmers are in default of their mortgage and should not place any additional financial or administrative burden on stakeholders. There should be no additional compliance costs for government. The amendments continue the farmers' protections relating to accounting for surplus monies paid to financiers in the event that the farm equipment is repossessed and the farmer has paid monies over and above the net amount payable under the mortgage. Although the new provisions are drafted in a more modern style than the equivalent provisions in the *Hire-purchase Act 1959*, it is not intended that the effect of the new provisions be different to the effect of the provisions under the *Hire-purchase Act 1959*.

*Clause 7* provides that Part 3 amends the *Credit (Rural Finance) Act 1996*.

*Clause 8* amends section 7(2)(b) by omitting the words 'a notice' and inserting the words 'written notice' to ensure that notices are given in writing.

*Clause 9(1)* amends section 8 by removing section 8(1) which requires default notices to be in the approved form.

*Clause 9(2)* renumbers section 8(2)(e) as section 8(2)(f).

*Clause 9(3)* amends section 8(2) by inserting a new section 8(2)(e) to require mortgagees to specify a best price estimate for the farm equipment in default notices in circumstances where the mortgagee reasonably believes the default is capable of being remedied.

*Clause 9(4)* renumbers section 8(3)(d) as section 8(3)(e).

*Tourism, Racing and Fair Trading (National  
Competition Policy) Amendment Bill 2002*

---

*Clause 9(5)* amends section 8(3) by inserting a new section 8(3)(d) to require mortgagees to specify the value of the farm equipment in default notices in circumstances where it is considered by the mortgagee that the default is incapable of being remedied.

*Clause 9(6)* renumbers section 8(2), (3) and (4) as section 8(1), (2) and (3) respectively.

*Clause 10* inserts a new Part 3A—Particular Provisions for Hire-Purchase Agreements where Farm Equipment is repossessed. The new Part 3A extends the ambit of the Act to hire purchase agreements entered into by farmers to finance the purchase of farm equipment where the farm equipment has been repossessed.

The new section 17A limits the application of Part 3A to situations where “the mortgagor under a mortgage that is a hire-purchase agreement has defaulted under the mortgage” and “the mortgagee has exercised or purported to exercise, a right under the mortgage to take possession of farm equipment”.

The new section 17B inserts a definition of “hire-purchase agreement”. The term “farmer” is also defined for the purposes of the section.

The new section 17C enables a mortgagor to give written notice to the mortgagee in possession of farm equipment to either sell the farm equipment to a person nominated by the mortgagor at a price not less than the best price estimate or return the farm equipment to the mortgagor under section 17D.

The new section 17D requires that the mortgagee must return farm equipment to the mortgagor if, within 14 days after the mortgagee receives notice under section 17C, the mortgagor pays or tenders the amount owing under the mortgage, pays the mortgagee’s enforcement expenses, pays any other expenses reasonably incurred to return the equipment and remedies any other breach of the mortgage.

The new section 17E enables the mortgagee to take possession of farm equipment that has been returned under section 17D where the mortgagor does not rectify the mortgage within 14 days (or such period ratified in the notice given under section 17C). It requires the mortgagee to give written notice to the mortgagor stating the breach, how it may be remedied and requiring the mortgagor to remedy the breach within 14 days. If the mortgagor does not remedy the breach within 14 days after notice is given the mortgagee may take possession of the farm equipment .

The new section 17F enables rectified mortgages to operate as if a breach had not occurred.

The new section 17G(1) enables the mortgagor to claim an amount from the mortgagee if the farm equipment is not returned and surplus monies have been paid by the mortgagor under the mortgage. This section applies whether or not the mortgagee gives the mortgagor notice under section 17C.

The new section 17G(2) provides the method of calculating the amount the mortgagor may recover from the mortgagee.

The new section 17H provides the method of calculating the maximum amount a mortgagee may recover in the event that the farm equipment is not returned to the mortgagor and regardless of whether or not the mortgagor has given the mortgagee notice under section 17C.

The new section 17I applies in circumstances where the mortgagee sells the farm equipment to a person other than the person nominated by the mortgagor in a notice under section 17C. In such circumstances the onus of proving that farm equipment was sold for the best price the mortgagee could reasonably obtain rests with the mortgagee.

*Clause 11* amends section 18(1) by omitting words from ‘or’ and inserting 17 or 17D.’ which includes section 17D as a provision which, if not complied with by the mortgagee, allows the mortgagor a right to apply to the court for compensation.

*Clause 12* omits the reference to Approval of Forms in section 22.

*Clause 13* amends the schedule to the Act, which provides a dictionary for the purposes of the Act.

*Clause 13(1)* omits the current definitions of “approved form” “mortgagee” and “mortgagor” from the schedule.

*Clause 13(2)* inserts a number of definitions to assist with the interpretation of the new Part 3A of the Act and includes new definitions for “mortgagee” and “mortgagor”.

## **PART 4—AMENDMENT OF HIRE-PURCHASE ACT 1959**

*Clause 14* states that this part amends the *Hire-purchase Act 1959*. The sunset of the *Hire-purchase Act 1959* ensures that existing hire-purchase agreements continue to be captured by the *Hire-purchase Act 1959* and will completely repeal the Act in June 2010. The repeal of the *Hire-purchase Act 1959* is consistent with other jurisdictions which have either repealed or are in the process of repealing their similar legislation.

*Clause 15(1)* omits the heading “Application of Act” preceding section 1(4).

*Clause 15(2)* omits section 1(4).

*Clause 16* inserts a new section 1A to provide that the Act will not apply to any hire-purchase agreement entered into after the commencement of this section. This implements the recommendation of the National Competition Policy assessment of the Act.

*Clause 17* inserts a new section 47 which provides that the Act will sunset on 30 June 2010. This will ensure that any existing hire-purchase agreements continue to be regulated by the Act until that date.

## **PART 5—REPEALS AND MINOR AMENDMENTS**

*Clause 18* repeals the *Profiteering Prevention Act 1948*.

*Clause 19* provides for consequential amendments to the following Acts:

*Bills of Sale and Other Instruments Act 1955*

*Disposal of Uncollected Goods Act 1967*

*Fair Trading Act 1989*

*Motor Vehicles Securities Act 1986*.