

# **TOURISM, RACING AND FAIR TRADING (MISCELLANEOUS PROVISIONS) BILL 2003**

## **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. There is a necessity for minor and technical amendments to be made regularly to various legislative provisions to ensure that the statutes continue to operate in the manner intended.

The Acts to be amended are the:

- *Associations Incorporation Act 1981;*
- *Business Names Act 1962;*
- *Classification of Computer Games and Images Act 1995;*
- *Classification of Films Act 1991;*
- *Classifications of Publications Act 1991;*
- *Collections Act 1966;*
- *Commercial and Consumer Tribunal Act 2003;*
- *Co-operative Schemes (Administrative Actions) Act 2001;*
- *Fair Trading Act 1989;*
- *Introduction Agents Act 2001;*
- *Partnership Act 1891;*
- *Property Agents and Motor Dealers Act 2000;*
- *Racing Act 2002;*
- *Security Providers Act 1993; and*
- *Travel Agents Act 1988.*

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The Bill is a reasonable and appropriate way of achieving the key policy objectives. It adjusts operational difficulties (*Commercial and Consumer Tribunal Act 2003*, *Introduction Agents Act 2002*, and the *Racing Act 2002*) that have been identified since Acts commenced operation. The Bill also achieves its objectives as it contains a number of relatively minor and technical amendments made to other Acts administered by the Department.

### **Administrative Cost**

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

The Regulations under the *Travel Agents Act 1988* and *Security Providers Act 1993* will need to be amended to provide for three year licence terms and fees under that legislation. The three year fee will be the aggregation of the single year fee and will therefore be revenue neutral.

### **Compliance with Fundamental Legislative Principles**

Some of the amendments raise issues relating to fundamental legislative principles (FLP), but it is submitted that the amendments are justified for the reasons set out below.

***Associations Incorporation Act 1981*** - The amendments would allow information to be obtained from financial institutions, and as such, may be perceived as impacting on privacy. However, financial information (in the form of annual returns) must already be provided to the Office of Fair Trading (OFT) under the *Associations Incorporation Act 1981* (AI Act) to ensure financial accountability of associations. The Public Trustee is able to obtain this information after vesting of property, but it is currently not available to the OFT in administering the Act.

The information to be obtained would relate only to associations, and not individuals, and its purpose would be to maintain the integrity of the process proposed below, of vesting assets in the Public Trustee. Additionally, the power to require financial information will only be available after a notice, proposing cancellation of the association, has been served on a relevant officer of the incorporated association under section 93(1). There is a period of one month between a notice informing an association of the intention to cancel it, and actual cancellation. The OFT will need this period to make inquiries about assets in order to vest them as soon as possible after cancellation of the association. The period between

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cancellation and vesting of property presents a period of 'high risk' and exposure to liability if assets are dealt with improperly. It is therefore imperative that the period is kept to a minimum.

The OFT is, in any case, bound by Information Privacy Principles dealing with the collection, storage, use and disclosure of personal information.

Amendment is also made to the process of vesting the property of defunct associations. Section 4(3)(a) of the *Legislative Standards Act 1992* provides that rights of individuals should only be dependent on administrative power if the power is sufficiently defined and reviewable. It is submitted that in the present case, the property in question is not owned by an individual or entity, so that neither the original provision nor the amending one affects individuals' rights.

Furthermore, the intention of the amendment is only to change the process by which property vests, not the consequences of the vesting. Any decision to vest property would be reviewable under the *Judicial Review Act 1991*.

In all cases, Part 10A of the AI Act provides for reinstatement and re-vesting of property where cancellation and vesting have occurred but should not have occurred.

**Censorship Legislation** (*Classification of Films Act 1991, Classifications of Publications Act 1991, Classification of Computer Games and Images Act 1995, Co-operative Schemes (Administrative Actions) Act 2001*) - The powers conferred on State officers include the power to seize publications. As such, there is a potential breach of the FLP set out in section 4(3)(e) of the *Legislative Standards Act 1992*. However, censorship legislation seeks to protect the public interest by requiring the classification of certain material regarding its suitability for publication. It was designed to give effect to the Commonwealth/State scheme which includes conferring a power on the Director of the Commonwealth Classifications Board to require material to be submitted for approval. *R v Hughes* (2000) 171 ALR 155 now raises serious doubts about the legal integrity of the scheme. To remedy the situation, a Queensland officer needs to be given the same power so that it can be conferred to a Commonwealth counterpart. In practice, a Queensland officer would not utilise this power and the scheme would operate as before.

The *Co-operative Schemes (Administrative Actions) Act 2001*, was introduced by the Minister for Justice and the Attorney-General to address the wider impacts of *R v Hughes* on Commonwealth/State regulatory

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arrangements. It has retrospective effect. The *Co-operative Schemes (Administrative Actions) Act 2001* is amended to reference the censorship legislation in order to secure the legal status of existing arrangements for censorship classification. Therefore, they would also have retrospective effect and raise issues under subsection 4(3)(g) of the *Legislative Standards Act 1992*. However, this would not alter the rights and obligations of any party as the amendments are merely curative.

***Collections Act 1966*** - Specific consideration has been given to the principle that delegation and sub delegation of administrative power should only be authorised in appropriate cases. It is clear that it would not be appropriate for the Minister to delegate certain powers under the Act which relate to high level policy issues, and this has been provided for in the relevant delegation instruments. These powers include:

- determining a purpose to be a charitable purpose under section 5 “charitable purpose subsection (e);
- determining a purpose to be a community purpose under section 5 “community purpose” subsection (d); and
- determining whether an association is a charity under section 5.

However, it is considered that there are other powers which should be appropriately delegated to the Chief Executive and then sub-delegated to an appropriately qualified officer. Such powers include, for example, control of door-to-door collections (section 15) and control of street collections (section 16).

***Commercial and Consumer Tribunal Act 2003*** – In transferring the Tribunal’s power contained under the *Property Agents and Motor Dealers Act 2000* (PAMDA) to the *Commercial and Consumer Tribunal Act 2003* (the Tribunal Act), the right to publicly examine an individual in a marketeer proceeding was unintentionally omitted in a drafting oversight. It is proposed to amend the Tribunal Act to restore the status quo. Although requiring an individual to answer any question put to them may be seen as restricting an individual’s rights and liberties, it is submitted that this is justified as it is reserved for the most serious breaches of PAMDA, where the actions of a trader put consumers at high risk of significant financial detriment.

Section 112 (5) of the Tribunal Act states that the use of an answer obtained from public examination is currently prohibited in any proceeding. However, the prohibition does not limit the use of information derived from an answer. Such a prohibition is extremely wide ranging and is currently being considered by the Law Reform Commission. Until the

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outcome of that decision, it is appropriate to leave the relevant prohibition as it currently stands.

***Fair Trading Act 1989*** – The *Trade Practices Act 1974 (Cwth)* is currently in the process of being amended to prevent individuals bringing actions for damages for personal injuries and death under Division 1 of Part V. It is proposed to amend the mirror provisions of the *Fair Trading Act 1989* to prevent actions that would have occurred under the *Trade Practices Act 1974* from falling under the State’s jurisdiction.

This would diminish current rights and recoveries of persons injured by another’s misleading or deceptive conduct. The main justification for these reforms is to create a more stable and certain legal environment and reduce pressure on insurance premiums. Maintaining the status quo would not achieve national consistency on this matter. It could also undermine State and Territory civil liability reform by providing an alternative right of action to claim damages for personal injury or death. Other orders and remedies under the *Fair Trading Act 1989* for conduct in contravention of the amended provisions involving personal injuries or death will continue. Applicants may still have other actions at common law or under statute.

***Introduction Agents Act 2001*** - The amendment to section 58(2) deals with evidentiary problems in proving when a client receives a signed agreement and when an agent receives a signed notice ending an agreement.

An additional section is required providing for the onus of proof if a dispute arises about a client no longer being bound by an agreement after having exercised cooling-off rights. It is intended that the introduction agent should bear the onus of proving that the client is bound by the agreement.

However, this does not reverse the onus of proof. The client already has a specific right under the legislation to rescind an agreement within the cooling-off period and the onus of proof on whether it has been rescinded remains with the party wishing to enforce the agreement. This is consistent with section 365(5) of the *Property Agents and Motor Dealers Act 2000*.

***Partnership Act 1891*** – The amendment to section 13 inserts a presumption against liability where another partner acts as a director of a corporation *outside* of the partnerships business. This presumption against liability may be displaced depending upon the circumstances of the case. The amendment potentially decreases the rights of redress of the parties wishing to take legal action against a partnership. However, it is

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considered that this is justified in situations where the partner in question has been acting in an entirely different role, as director of a corporation.

***Security Providers Act 1993*** - Subsection 4(3) of the *Legislative Standards Act 1992* requires consideration to be given to whether legislation: “(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.” Subsection 4(3) provides that it must be consistent with the principles of natural justice.

The amendment to section 14 allows the deferral of a decision to grant or refuse a license, pending the outcome of any proceedings against the applicant which constitute a “disqualifying offence”. The amendment is consistent with fundamental legislative principles as the Chief Executive would be required to provide a written notice stating: the decision to defer; the reasons for the decision and that the applicant may appeal to the Magistrates Court within 28 days.

***Travel Agents Act 1988*** – Section 44 is amended to give the Chief Executive the ability to delegate his or her power to the Commissioner. The only power the Chief Executive currently has under the Act relates to the approval of forms. It is submitted that it is impractical for the Chief Executive to approve forms and it is therefore appropriate for this power to be delegated to the Commissioner, who, in turn, will have the ability to sub-delegate the power to an appropriately qualified public service officer.

## **Consultation**

Consultation occurred with the following government and non-government agencies and individuals.

## **Community**

***Partnership Act 1891*** - Consultation on the proposed amendment included the Queensland Law Society, Institute of Chartered Accountants, Australian Society of CPA, Royal Australian Institute of Architects, Australian Shareholders Association, Association of Engineers Australia, Institution of Surveyors Australia, Association of Consulting Surveyors Queensland, Australian Dental Association, and Institute of Engineering and Mining Surveyors Australia Inc.,.

***Property Agents and Motor Dealers Act 2000*** – Consultation included the Motor Trades Association of Queensland, a licensed motor dealer, and a consultant to the Fowles Auction Group.

***Security Providers Act 1993 and Travel Agents Act 1988*** – Wide community consultation was undertaken by the Red Tape Reduction Task Force led by the Department of State Development in relation to the original Cabinet decision to increase licence fees.

## **Government**

Consultation was generally undertaken with the following departments: Department of the Premier and Cabinet, Department of State Development; Department of Justice and Attorney-General; Queensland Treasury; Education Queensland; Queensland Health; Environmental Protection Agency; Queensland Transport; Department of Public Works; Department of Primary Industries; Office of Parliamentary Counsel; Office of the Minister for Police and Corrective Services; Queensland Police Service; Department of Corrective Services; Department of Industrial Relations; Department of Families; Department of Main Roads; Department of Emergency Services; Department of Innovation and Information Economy; Sport and Recreation Queensland; Department of Employment and Training; Department of Local Government and Planning, and Department of Housing

Additional consultation was undertaken for the following amendments:

***Partnership Act 1891*** - Consultation on the proposed amendment was undertaken with the Australian Securities and Investments Commission and interstate departments that administer the *Partnership Act*.

***Property Agents and Motor Dealers Act 2000*** - The Commonwealth Department of Transport and Regional Services has been consulted on the proposed amendment to the definition of “used motor vehicle” in the *Property Agents and Motor Dealers Act 2000*.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

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

*Clause 2* provides that Part 7 will commence one month after assent, sections 49 and 52 will commence three months after assent, and sections 85 and 91 will commence on a day to be fixed by proclamation.

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

*Clause 3* states that this part amends the *Associations Incorporation Act 1981*.

*Clause 4* omits section 19 and 20 of the Act.

*Clause 5* inserts a new section 93A into the Act which enables the Chief Executive to obtain information from financial institutions for the purpose of vesting property after cancelling an association. A penalty is provided.

*Clause 6* amends section 94 and essentially changes the process of how property is vested in the Public Trustee when an association is cancelled. It provides that the Chief Executive may vest property upon cancellation of an association by way of Gazette notice.

*Clause 7* omits section 107 and 108 of the Act.

*Clause 8* inserts a new section 121A into the Act which provides a general provision relating to false or misleading information or documents.



### **PART 3—AMENDMENT OF BUSINESS NAMES ACT 1962**

*Clause 9* states that this part amends the *Business Names Act 1962*.

*Clause 10* omits section 4A as the provision for the registrar to enter into arrangements with the Australian Securities and Investments Commission is no longer necessary. It is not utilised and is therefore redundant.

*Clause 11* replaces section 12A(3) with simplified drafting and provides for 1 and 3 year terms for lodging statements for renewals. This brings the section into line with existing sections 10A and 11 which already provide for 1 and 3 year renewal terms.

### **PART 4—AMENDMENT OF CLASSIFICATION OF COMPUTER GAMES AND IMAGES ACT 1995**

*Clause 12* states that this part amends the *Classification of Computer Games and Images Act 1995*.

*Clause 13* amends section 7(1) by clarifying that a computer games classification officer, *by way of written notice*, may ask a person who publishes a computer game to give the officer a copy of the game.

Subsection (2) is amended by providing that the publisher must comply with the notice within 3 business days after receiving it. A penalty is provided.

A new subsection (3) is inserted which states that it is a defence to a prosecution under subsection (2) for the defendant to prove that they did not have a copy of the computer game.

*Clause 14* amends section 8A(2) by inserting that a computer games classification officer, in addition to the director, can call in a computer game for reclassification by the board. Recent case law has cast doubt on the validity of a power conferred by State legislation on a Commonwealth officer unless the State has an identical power. Therefore a computer games classification officer (the State officer) has been inserted into each provision which confers power on the director (the Commonwealth

officer). This amendment is made to provide certainty to the continued operation of the process.

*Clause 15* amends section 8B(2) by providing that a computer games classification officer, in addition to the director, can obtain copies of a computer game for review.

*Clause 16* amends section 8C(1) and (2) by providing that a computer games classification officer, in addition to the director, can give written notice to call in an unclassified computer game for classification, if they believe that it is not exempt and that it may be published.

Subsection 8C(3) is replaced and states that the notice must be published in the Commonwealth Gazette, if the director makes the requirement, or the Queensland Government Gazette, if the computer games classification officer makes the requirement.

*Clause 17* amends the heading of section 13B so it relates to “Power” generally. Section 13B(1) is also amended by inserting that a computer games classification officer, in addition to the director, can require certain advertisements to be submitted for approval.

*Clause 18* amends section 13C by referring to a computer game that a computer game classification officer, in addition to the director, may reasonably believe will be published in Queensland.

## **PART 5—AMENDMENT OF CLASSIFICATION OF FILMS ACT 1991**

*Clause 19* states that this part amends the *Classification of Films Act 1991*.

*Clause 20* amends section 25CA(1) and (2) by providing that a films classification officer, in addition to the director, may call in an unclassified film for classification.

Section 25CA(4) is replaced and states that the notice in subsection (2) must be published in the Commonwealth Gazette, if the director makes the requirement, or the Queensland Government Gazette, if the computer games classification officer makes the requirement.

*Clause 21* amends section 25CB(2) by providing that a films classification officer, in addition to the director, can call in a film for reclassification.

*Clause 22* amends section 25CC(2) by providing that a films classification officer, in addition to the director, can obtain copies of a film for review.

*Clause 23* amends the heading of section 25D so it relates to “Power” generally. Section 25D(1) is also amended by providing that a films classification officer, in addition to the director, can require certain advertisements to be submitted for approval.

*Clause 24* amends section 25E by referring to a film that a films classification officer, in addition to the director, may reasonably believe will be published in Queensland.

## **PART 6—AMENDMENT OF CLASSIFICATION OF PUBLICATIONS ACT 1991**

*Clause 25* states that this part amends the *Classification of Publications Act 1991*.

*Clause 26* amends the heading of section 9A so it relates to “Power” generally. Section 9A(1) is also amended by providing that a publications classification officer, in addition to the director, can require a publisher to submit an application for classification of a publication.

Section 9A(2) is replaced and states that the notice in subsection (1) must be published in the Commonwealth Gazette, if the director makes the requirement, or the Queensland Government Gazette, if the computer games classification officer makes the requirement.

*Clause 27* amends the heading of section 9B so it relates to “Power” generally. Section 9B(1) is also amended by inserting that a publications classification officer, in addition to the director, can require certain advertisements to be submitted for approval.

*Clause 28* amends section 9C by referring to a submittable publication that a publications classification officer, in addition to the director, may reasonably believe will be published in Queensland.

## **PART 7—AMENDMENT OF COLLECTIONS ACT 1966**

*Clause 29* states that this part amends the *Collections Act 1966*.

*Clause 30* amends section 8 by providing that the Minister is able to delegate his or her powers to the Chief Executive, who may in turn, subdelegate the powers to an appropriately qualified public service officer.

*Clause 31* relocates the definition of “appropriately qualified” to section 5 of the Act which sets out the meaning of terms.

## **PART 8—AMENDMENT OF COMMERCIAL AND CONSUMER TRIBUNAL ACT 2003**

*Clause 32* states that this part amends the *Commercial and Consumer Tribunal Act 2003*.

*Clause 33* amends section 52(4) by providing that the Tribunal may not extend time to start a proceeding for a matter to which section 472A of the *Property Agents and Motor Dealers Act 2000* applies. As the *Property Agents and Motor Dealers Act 2000* already contains this limitation, it is inserted into the *Commercial and Consumer Tribunal Act 2003* for certainty.

*Clause 34* amends section 112 by providing that, for a public examination started under the *Property Agents and Motor Dealers Act 2000*, a person must answer any question put to the person. This requirement was originally contained in the *Property Agents and Motor Dealers Act 2000* and is now inserted into the *Commercial and Consumer Tribunal Act 2003* for certainty.

## **PART 9—AMENDMENT OF CO-OPERATIVE SCHEMES (ADMINISTRATIVE ACTIONS) ACT 2001**

*Clause 35* states that this part amends the *Co-operative Schemes (Administrative Actions) Act 2001*.

*Clause 36* amends section 4 by inserting that the *Classification of computer Games and Images Act 1995*, the *Classification of Films Act 1991* and the *Classification of Publications Act 1991* are relevant State Acts to which the co-operatives schemes apply.

The *Co-operative Schemes (Administrative Actions) Act 2001* was enacted to validate administrative actions of Commonwealth officers by giving such actions the effect as if they had been taken by a duly authorised State officer. The amendment to this Act is intended to complement the amendments to the relevant State censorship legislation.

## **PART 10—AMENDMENT OF FAIR TRADING ACT 1989**

*Clause 37* states that this part amends the *Fair Trading Act 1989*.

*Clause 38* amends section 99 by inserting that a person who suffers loss or damage as a result of an act or omission that is a contravention of part 3, division 1 (other than section 39), section 52 or 53 or part 3, division 2A, cannot recover damages under this provision. The provision also states that this is only where the loss or damage is, or results from death or personal injury. These amendments are intended to prevent plaintiffs from circumventing the negligence law reforms to the mirror provisions of the *Trade Practices Act 1974*.

*Clause 39* amends section 100 by inserting that the court may not order compensation and other remedial orders to compensate a person for loss or damage where it would be based on an act or omission that is a contravention of part 3, division 1 (other than section 39), section 52 or 53 or part 3, division 2A. It is also provided that this is only where the loss or damage is, or results from, death or personal injury. These amendments are intended to prevent plaintiffs from circumventing the negligence law reforms to the mirror provisions of the *Trade Practices Act 1974*.

*Clause 40* renumbers a reference to a section amended in clause 39.

*Clause 41* inserts a new Part 8 into the Act which is a transitional provision. The new section 117 states that sections 99 and 100, which were in operation before the commencement of these amendments, will continue to apply to an act or omission that happens before the commencement.

## **PART 11—AMENDMENT OF INTRODUCTION AGENTS ACT 2001**

*Clause 42* states that this part amends the *Introduction Agents Act 2001*.

*Clause 43* omits section 19(2)(d) as the approved form already seeks all of the information required in order for the Chief Executive to consider the application for a licence.

*Clause 44* amends section 22(2) by updating the reference to the *Corporations Act 2001 (Cwlth)* within the definition of “externally-administered body corporate”.

*Clause 45* amends section 24(3)(c) to clarify that the applicant may appeal against the decision to a Magistrates Court within 28 days after the *applicant receives* the notice. This makes the provision consistent with section 83(2) of the Act.

*Clause 46* amends section 25 by replacing subsection (1) and states that a licensee may apply to the Chief Executive for renewal of the licensee’s licence within the period starting 1 month before the licence ends and ending 3 months after the licence ends. This provision allows for a reasonable time to renew a licence. This would obviate much administrative work for the Office of Fair Trading should a licensee be late in applying for renewal of their licence.

Section 25(2)(d) is omitted as the information is contained in the approved form and not the Regulation. The subsection is therefore not required.

*Clause 47* amends section 27(4)(b) to clarify that the licensee may appeal against the Chief Executives decision regarding a renewal or a condition of a licence within 28 days after the *licensee receives* the notice. This makes the provision consistent with section 83(2) of the Act.

*Clause 48* amends section 30 by inserting a new subsection (2) which clarifies that the application for a replacement licence must be accompanied by the fee prescribed under a Regulation.

The clause also amends the renumbered section 30(5)(c) to clarify that the applicant may appeal against a refusal of a replacement licence by appealing against the decision within 28 days after the *applicant receives* the notice of refusal. This makes the provision consistent with section 83(2) of the Act.

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*Clause 49* inserts a new section 32A which provides that a licensee must conspicuously display the licence at each place of business, and the licence number must be displayed on all of the licensee's commercial documentation. A penalty applies to both provisions.

*Clause 50* amends section 33(2)(a) by correcting a drafting error. It inserts the term "where" in the place of "at which".

*Clause 51* amends section 43(2) by omitting the penalty. Failure to comply with subsection (2) is not an offence in its own right and should be prosecuted under section 43(1). The inclusion of a penalty in this section was a mistake.

*Clause 52* amends section 44 (1) to correct a drafting error. It should state "must ensure that" and not "must ensure than".

The clause also inserts new subsections (1)(b)(i), (1)(b)(ii) and (1)(b)(iii).

The new subsection (1)(b)(i) states that the introduction agreement must contain the agent's licence number prominently at the top of the first page of the agreement.

The new subsection (1)(b)(ii) states that at the beginning of the introduction agreement, the words 'Important Notice' in bold type at least 16 point font size must be stated before any other words. It is necessary to make this clear so that the font size of the words 'Important Notice' are at least the same size as the statement which follows those words and which are prescribed under section 5 of the Regulation to be in at least 16 point font size.

The new subsection (1)(b)(iii) states that the introduction agreement must contain the statement prescribed under a Regulation for this subparagraph immediately following the words 'Important Notice' mentioned in subparagraph (ii).

*Clause 53* amends section 45(1) by replacing the term "agreement signed by the agent and the client" with "signed" agreement. A definition of the term "signed" is inserted into the dictionary as explained in clause 59.

*Clause 54* amends section 49(2) by inserting a comma after the words 'demand of'.

*Clause 55* amends section 55(2) by clarifying when the cooling-off period for an introduction agreement ends.

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*Clause 56* amends section 58(2) by stating that an agreement may be terminated at any time before “5 pm on the third clear business day”. This clarifies when the cooling-off period for an introduction agreement ends.

An example of when a client may end an introduction agreement is inserted after section 58(2).

The clause also inserts a new section 58(3) into the Act. It states that the client ends the agreement by giving signed notice to the introduction agent.

*Clause 57* inserts a new section 59A into the Act which states that if a dispute arises about when a client is no longer bound by an introduction agreement, the onus is on the introduction agent to prove that the client is bound by the agreement. This is inserted to clarify where the onus lies in proving that a client is bound by the introduction agreement.

*Clause 58* inserts a new 94A into the Act which states that if a document is sent by fax, it is taken to be received by the person to whom it is sent if the sender’s fax machine indicates that the transmission has been successful, unless the contrary is proved. This assists in clarifying when a document is taken to be received.

*Clause 59* amends the dictionary in Schedule 2 by inserting a definition of “signed”. In relation to an introduction agreement “signed” is taken to mean signed by the client and by or for the introduction agent.

## **PART 12—AMENDMENT OF PARTNERSHIP ACT 1891**

*Clause 60* states that this part amends the *Partnership Act 1981*.

*Clause 61* provides for a presumption against liability in section 13. This would have the effect of excluding partnerships from legal liability as a result of the activities of one partner acting as a director of a corporation under the *Corporations Act 2001*, outside of the ordinary course of business of the partnership. Paragraphs (a) to (c) circumscribe the limits of that presumption.

*Clause 62* inserts a new section 49 into the Act which is a transitional provision for the amendment outlined in clause 61. The transitional provision provides that section 13, which was in operation before the commencement of these amendments, will continue to apply to an act or omission that happens before the commencement.



## **PART 13—AMENDMENT OF PROPERTY AGENTS AND MOTOR DEALERS ACT 2000**

*Clause 63* states that this part amends the *Property Agents and Motor Dealers Act 2000*.

*Clause 64* amends section 13 and omits the term ‘or sale’ from subsection (1) and (2). The provision prohibited an agent or salesperson from having an interest in the property prior to sale. As there is no conflict of interest in these cases, the prohibition is unnecessary.

*Clause 65* amends section 37 and replaces the reference to the repealed ‘*Financial Corporations Act 1974*’ with the ‘*Financial Sector (Collection of Data) Act 2001*’.

*Clause 66* amends section 161 by inserting that a person must not “act as” a real estate salesperson. A definition is inserted that specifies that “act as a real estate salesperson” includes “hold out that the person is a real estate salesperson”. This is a minor change to assist the provision in achieving its purpose.

*Clause 67* amends section 201 by inserting that a person must not “act as” a pastoral house salesperson. A definition is inserted that specifies that “act as a pastoral house salesperson” includes “hold out that the person is a pastoral house salesperson”. This is a minor change to assist the provision in achieving its purpose.

*Clause 68* amends section 257 by inserting that a person must not “act as” a trainee auctioneer. A definition is inserted that specifies that “act as a trainee auctioneer” includes “hold out that the person is a trainee auctioneer”. This is a minor change to assist the provision in achieving its purpose.

*Clause 69* amends section 276 by inserting that a person must not “act as” a property developer salesperson. A definition is inserted that specifies that “act as a property developer salesperson” includes “hold out that the person is a property developer salesperson”. This is a minor change to assist the provision in achieving its purpose.

*Clause 70* amends section 335 by inserting that a person must not “act as” a motor salesperson. A definition is inserted that specifies that “act as a motor salesperson” includes “hold out that the person is a motor salesperson”. This is a minor change to assist the provision in achieving its purpose.

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*Clause 71* amends section 355 by inserting that a person must not “act as” a commercial subagent. A definition is inserted that specifies that “act as a commercial subagent includes “hold out that the person is a commercial subagent”. This is a minor change to assist the provision in achieving its purpose.

*Clause 72* inserts a new section 569A.

The new section states that, without limiting section 569, the Chief Executive may accept an undertaking given by a person for this section about anything for which the Chief Executive or an inspector has a function or power. An example is provided.

This would increase the range of undertakings which can be accepted. For example, undertakings could be made to provide for compensation to be paid, corrective advertising and compliance training to be undertaken. This new provision mirrors what is available in section 87B of the *Trade Practices Act 1974 (Cwth)* and section 91IA of the *Fair Trading Act 1989*.

*Clause 73* amends Schedule 1 (Decisions subject to review) by omitting the entry for section 481(1) (Deciding minor claims). It is unnecessary to specify this section in the Schedule as it is already specified in section 483 and 501 of the Act.

*Clause 74* amends the Schedule 2 Dictionary definition of “used motor vehicle” and inserts a definition of “used imported vehicle”.

At present, all road vehicles entering Australia are required to be covered by a Vehicle Import Approval issued under the provisions of the *Motor Vehicle Standards Act 1989 (Cwth)*. Those definitions and terms included in the *Motor Vehicle Standards Act 1989* and the *Motor Vehicle Standards Regulations 1989* have been adopted to more effectively incorporate used imported vehicles into the definition of a “used motor vehicle” in the *Property Agents and Motor Dealers Act 2000*.

## **PART 14—AMENDMENT OF RACING ACT 2002**

*Clause 75* states that this part amends the *Racing Act 2002*.

*Clause 76* amends section 97 by inserting a new subsection (4) which states that despite subsections (3)(b) and (c), a member of a committee of a licensed club may be a member of an appeal committee.

Due to a drafting oversight, a member of a race club committee was excluded from being a member of an appeal committee. The amendment rectifies this to enable persons who are members of a race club committee, who have the necessary skills and experience, to be appointed as a member of an appeal committee.

*Clause 77* amends an administrative error in section 167(1)(c) and clarifies that there is a right of appeal to the Tribunal for a matter falling under section 167(1)(c).

*Clause 78* amends a typographical error in section 369(2) and removes the full stop that appears mid-sentence.

*Clause 79* amends Schedule 1, section 12G(4) and states that an example of “technology” is teleconferencing. This replaces a drafting error.

*Clause 80* amends Schedule 3 definition of “sporting contingency”, to omit the word “or” from the end of subsection (a). This amends a drafting error, as both subsection (a) and (b) form part of the definition.

## **PART 15—AMENDMENT OF THE SECURITY PROVIDERS ACT 1993**

*Clause 81* states that this part amends the *Security Providers Act 1993*.

*Clause 82* amends the definition of “disqualifying offence” in section 3 by including, as a disqualifying offence, an offence under the *Police Service Administration Act 1990*, section 10.19(b-f).

This means that grounds for disqualifying an applicant for a licence, or a current licensee, would also include any breach of the prohibition against pretending to be a Police officer. Licensees in some areas of the security provider industry wear uniforms which may be mistaken by the public for Police uniforms. This measure would act as a deterrent to the possibility of a licensee exploiting any such confusion and abusing an individual’s rights or liberties.

*Clause 83* amends section 10 by inserting that an application for a licence must be accompanied by the fee prescribed under a Regulation and must state the term of the licence being applied for. This is so the section is brought into line with the amendment to section 19.

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*Clause 84* amends section 14 by inserting a new subsection (2) which states that the Chief Executive, in deciding whether to grant a licence, may defer making the decision until the end of the proceeding, where the applicant has been charged with a disqualifying offence. This would rectify an inconsistency in the Act which already provides for suspension of a licence in such cases.

A new subsection (5) also states that the Chief Executive, if he or she defers the decision, must promptly give a notice stating the decision, reasons for the deferral, and that an appeal is available to the Magistrates Court.

*Clause 85* inserts a new section 19 into the Act which states that a licence may be issued for a 1 year or 3 year term.

*Clause 86* amends section 20(4) by clarifying that the licence renewal term is to be for 1 year or 3 years.

*Clause 87* amends section 21 and inserts two new grounds for suspension, cancellation or refusal to renew a licence.

The first is where the licensee has been convicted of an offence against the *Industrial Relations Act 1999*, section 666 relating to the underpayment of award wages, and the second is where the licensee has contravened an order of the industrial commission or of the Industrial Magistrates Court to pay wages owing.

*Clause 88* amends section 26 to provide a right of appeal to the Court where the Chief Executive has deferred making a decision to grant or refuse a licence application.

## **PART 16—AMENDMENT OF TRAVEL AGENTS ACT 1988**

*Clause 89* states that this part amends the *Travel Agents Act 1988*.

*Clause 90* inserts a definition of “appropriately qualified” into section 6.

*Clause 91* amends section 19 (2) by stating that a licensee must pay either an annual licence fee and lodge an annual report, or a triennial licence fee and lodge a triennial report.

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Subsection (3) is a consequential amendment to keep the provision consistent with the amendment to subsection (2).

*Clause 92* replaces section 44 to allow the Commissioner to delegate the Commissioner's powers under the Act to an appropriately qualified public service officer. The section has been replaced with a simplified delegation power.

A new section 44A is inserted which allows the Chief Executive to delegate his or her power to the Commissioner, who may in turn, subdelegate the power to an appropriately qualified public service officer.

*Clause 93* replaces section 50 with a provision that makes it an offence to provide false or misleading information or documents. A penalty is provided. The original provision was found to be lacking when it was tested in a prosecution.