

Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Bill 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Bill 2004*.

Policy Objectives of the Legislation

The policy objective of the Legislation is to ensure that statutes administered by the Department of Tourism, Fair Trading and Wine Industry Development (the Department) continue to operate in the manner intended.

Reasons for the Bill

The Department 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.

Amendments are required for the following Acts:

- *Associations Incorporation Act 1981*;
- *Bills of Sale and Other Instruments Act 1955*;
- *Body Corporate and Community Management Act 1997*;
- *Building Act 1975*;
- *Building Units and Group Titles Act 1980*;
- *Business Names Act 1962*;
- *Charitable Funds Act 1958*;

*Tourism, Fair Trading and Wine Industry
Development (Miscellaneous Provisions) Bill 2004*

- *Collections Act 1966;*
- *Commercial and Consumer Tribunal Act 2003;*
- *Cooperatives Act 1997;*
- *Fair Trading Act 1989;*
- *Funeral Benefit Business Act 1982;*
- *Introduction Agents Act 2001;*
- *Land Sales Act 1984;*
- *Liquor Act 1992;*
- *Manufactured Homes (Residential Parks) Act 2003;*
- *Motor Vehicles and Boats Securities Act 1986;*
- *Property Agents and Motor Dealers Act 2000;*
- *Racing Act 2002;*
- *Residential Services (Accreditation) Act 2002;*
- *Retirement Villages Act 1999;*
- *Second-hand Dealers and Pawnbrokers Act 2003;*
- *Security Providers Act 1993;*
- *Tourism Services Act 2003;* and
- *Wine Industry Act 1994.*

Achieving the Objectives

The Bill contains a number of relatively minor and technical amendments to other Acts administered by the Department; one Act administered jointly with the Department of Natural Resources and Mines; one Act administered by the Department of Local Government and Planning; and one Act administered by the Department of Housing, which will ensure that these Acts continue to operate in the manner intended.

Administrative costs

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.

Fundamental Legislative Principles

None of the amendments raise issues relating to Fundamental Legislative Principles.

Consultation

Community

The proposed amendments generally only address deficiencies and therefore do not require industry consultation.

In relation to the *Cooperatives Act 1997*, the national Cooperatives Working Party, comprising the cooperative registry representatives of Queensland, New South Wales, Victoria, South Australia, Western Australia, Tasmania, Northern Territory and Australian Capital Territory was consulted in relation to amendments affecting sections 10(3)(d), 256(1) and section 266(2).

The Motor Trades Association of Queensland and Dealers Network Systems were consulted in relation to amendments to the *Property Agents and Motor Dealers Act 2000* in relation to:

- (a) statutory warranty for motor vehicles; and
- (a) used motor vehicles contract warning statements.

Government

Key government stakeholders involved in consultation include the Queensland Treasury and the Department of State Development (Business Regulation Reform Unit).

The Department of Justice and the Attorney-General was consulted on the proposed amendment to section 4(a) of the *Property Agents and Motor Dealers Act 2000* and the increase in monetary penalty proposed for section 17 *Business Names Act 1962*; the Department of Housing in relation to the proposed amendments to the *Racing Act 2002*; the Department of Local Government and Planning in relation to the *Building Act 1975*; and the Department of Natural Resources and Mines in relation to the *Land Sales Act 1984* and the *Building Units and Group Titles Act 1980*.

No concerns have been raised in relation to the proposed amendments.

Notes on Provisions

Clause 1 sets out the short title by which the Act will be known.

Clause 2 provides that the Schedule amends the Acts mentioned in the Schedule.

Schedule Acts Amended

Associations Incorporation Act 1981

Item 1 amends a reference to a section in the *Corporations Act 2001* (Cwlth) as a result of renumbering of the Commonwealth legislation.

Bills of Sale and Other Instruments Act 1955

Item 1 amends section 18I(8) of the *Bills of Sale and Other Instruments Act 1955* by removing the reference made to subsection (4) and replacing it with a reference to subsection (5). This rectifies a technical numbering error.

Body Corporate and Community Management Act 1997

Items 1 and 2 and 4 address minor drafting or grammatical issues.

Items 3 and 5 address incorrect references to sections.

Building Act 1975

Decisions made under the *Building Act 1975* are reviewable by either a building and development tribunal or the Commercial and Consumer Tribunal.

Item 1 amends section 3(1) by omitting the two definitions of “tribunal” in the section. Item 2 inserts the definitions of “building and development tribunal” and “Commercial and Consumer Tribunal”. This will assist in clarifying which tribunal’s jurisdiction is relevant to other provisions of the Act.

As a consequence, items 3, 4, 5, 6, 8, 9 and 10 contain amendments which complement items 1 and 2 by replacing the word “tribunal” with “building

and development tribunal” or “Commercial and Consumer Tribunal” as appropriate.

Item 7 amends section 30B(2)(d) by inserting the word “building” before the word “certifier” in order to make it consistent with the wording in other subsections and thereby avoid any ambiguity.

Building Units and Group Titles Act 1980

Items 1, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, and 16, replace references to maximum penalties expressed in dollar figures with maximum penalties expressed in penalty units, consistent with current drafting practice.

Item 2 inserts a definition of ‘qualified auditor’. The Act currently requires a person auditing books to be a registered public accountant under the *Public Accountants Registration Act 1946*, which was repealed in 1990. The new definition is in line with similar provisions in other statutes.

Item 3 replaces section 29(2)(h) and item 4 inserts a new section 29(2AA) for clarity.

Items 9 and 25 make amendments to refer to a ‘qualified auditor’ to complement the amendment in item 2.

Items 17 to 24, 26 to 37 are minor technical drafting amendments to reflect current practice and ensure clarity.

Business Names Act 1962

Item 1 amends section 5(2)(a)(iv) to address a minor drafting issue.

Item 2 amends section 13(2) consequent to the amendment in item 3 and to avoid duplication.

Item 3 deletes and replaces section 17 which provides a penalty for making a false statement to the registrar. The operation of the current section is limited as it only applies to ‘statements’. However, people requiring a business name may supply information through supporting documentation. This documentation does not fall within the definition of ‘statement’. The amendment is required to ensure the integrity of all information to be supplied to the registrar.

The maximum penalty for breach of the current Item 17 is 4 penalty units or 3 months imprisonment. The penalty when the Act was passed in 1962 was 100 pounds or three months imprisonment. On decimalization in 1966, this would have translated to \$200. In 1995 this was translated into 4

penalty units, currently totalling \$300. The monetary penalty no longer reflects the seriousness with which this matter was viewed in 1962 and there is therefore a great disparity between the possible fine and the term of imprisonment. The replacement for section 17 raises the maximum monetary penalty for an offence of this nature from 4 penalty units to 100 penalty units. The amendment is within current parameters. For example, the *Property Agents and Motor Dealers Act 2000* has a penalty of 200 penalty units or 2 years imprisonment for providing false information or making a false statement to a departmental official in relation to that Act.

In addition, the court may order the cancellation of the registration of a business name where there is a conviction under the new section 17 regarding false or misleading information provided to the registrar in relation to an application for registration of a business name. To maintain the registration in this situation is not acceptable as holding a registered business name provides a business with some legitimacy for consumers. However, it is considered that the court should make this judgment in the light of all the facts before it and other penalties imposed.

If the court orders that the registration be cancelled, the registrar, immediately before cancellation, must give notice in writing to all those who hold the registration that this has occurred so that any persons not involved in the false or misleading conduct are aware of the cancellation.

Item 4 renumbers the current sections 19A and 19B as 19B and 19C respectively due to the insertion of new section 19A in item 5.

Item 5 inserts a new section 19A which empowers the registrar to cancel the registration of a business name if it is found that prescribed proof of identity was not provided as required by section 7(2). The registrar already has power to cancel registration in other situations under section 19. Under the new section 19A, a notice must be provided to the holder giving them the opportunity to provide the proof of identity and, if this is not complied with, a further notice must be given advising that the business name is cancelled.

The provisions in section 19 permitting a person to whom a business name was registered to apply to the District Court for an order directing the registrar to restore the registration of the business name and associated orders where the registrar has cancelled the business name, are extended to cover cancellations under the new section 19A.

Charitable Funds Act 1958

Item 1 amends a reference to a section in the *Corporations Act 2001* (Cwlth) as a result of renumbering of the Commonwealth legislation.

Collections Act 1966

Item 1 amends a reference to a section in the *Corporations Act 2001* (Cwlth) as a result of renumbering of the Commonwealth legislation.

Commercial and Consumer Tribunal Act 2003

Item 1 resolves a drafting error by amending section 47(6)(c) of the *Commercial and Consumer Tribunal Act 2003* by omitting the term “mediation” and inserting the term “proceeding”, which was the original intention.

Item 2 resolves a minor error by amending the heading of section 73 of the *Tribunal Act* to refer to “div 8” instead of “div 7”.

Item 3 resolves a minor typographical error by correcting the name of the Act referred to.

Item 4 resolves an incorrect reference to section 93 in section 97, referring instead to section 94.

Item 5 removes an unnecessary heading.

Cooperatives Act 1997

Item 1 makes an amendment which, in effect, inserts a new subsection (c) and renumbers the current sections 10(3)(c) and (d).

The *Financial Services Reform Act 2001* (Cwlth) substituted a new Chapter 7 (Financial Services and Markets) for Chapters 7 and 8 of the *Corporations Act 2001* (Cwlth). The *Financial Services Reform (Consequential Amendments) Act 2003* (Qld) amended references or terminology in relevant Queensland Acts, including the *Cooperatives Act 1997*, to ensure that they were consistent with the substituted provisions regulating financial services and markets in the *Corporations Act 2001*. However, continuous disclosure provisions applicable to cooperatives were placed in Chapter 6CA instead of the substituted Chapter 7 *Corporations Act 2001*. Appropriate reference was not made to Chapter 6CA in the *Cooperatives Act*. The amendment in item 1 rectifies this situation.

Item 2 resolves a numbering error.

Item 3 amends section 256(1) for the reasons set out above in relation to item 1.

Item 4 renumbers section 266(3) as section 266(4) as a result of the amendments in item 5.

Item 5 amends section 266(2) to allow a rebate or dividend payable to a member to be applied as a loan to a cooperative, not only where the member consents, but also if the loan is authorised by a cooperative's rules. The Act currently only allows this to happen with the consent of a member.

There are currently 2 cooperatives that operate a members' loan fund under their rules for the application of any dividend or rebate retained by the cooperative. This practice was permitted under the repealed *Cooperative and Other Societies Act 1967*.

Industry has approached the Ministerial Council on Consumer Affairs (MCCA) national Cooperatives Working Party to request that the practice be reinstated in legislation due to potential risks where members take dividends or rebates and the cooperative is not financially able to bear this. The safeguard is that should a cooperative wish to include such provisions in its Rules, this would require a special resolution for the amendment of the Rules which further requires the agreement of a two thirds majority at a general meeting of members. A new cooperative, in relation to the Rules, has to have agreement of two thirds of its proposed members attending the formation meeting. If the Rules do not provide for such loans, any loan could only be with a member's consent.

Item 6 amends section 287(8) to make it clear that the reference to section 746 *Corporations Law* is a reference to the repealed *Corporations Law*.

Item 7 amends section 329(1) to make it clear that the reference to part 5.7A *Corporations Law* is a reference to the repealed *Corporations Law*.

Items 6 and 7 are an interim measure. The *Cooperatives Act 1997* is part of a nationally harmonised scheme and these sections will be referred to the MCCA Cooperatives Working Party for further consideration on the redrafting of the sections in light of the repeal of the *Corporations Law*.

Fair Trading Act 1989

Item 1 inserts a definition of the term 'TPA' which is currently lacking although used extensively throughout the Act.

Item 2 replaces sections 5A(a) and (b) with redrafted sections for greater readability and clarity.

Item 3 amends section 25(1) to allow the Minister to appoint a member to the Consumer Safety Committee for up to 3 years. Section 25(1) currently provides that each member of the Committee shall be appointed for a term of 3 years ending on the same day as every other appointee. However, this is not workable when members do not see out their full term and a person is appointed to fill a casual vacancy.

Item 4 amends section 26(2) of the Act to permit a person who is appointed to fill a casual vacancy to hold that position for the remaining period of the vacancy only.

Item 5 addresses a minor drafting issue.

Item 6 removes reference to section 61 of the *Trade Practices Act 1974* (Cwlth) as section 61 was repealed in amendments passed in 2002.

Items 7, 9 and 10 address grammatical or typographical errors.

Item 8 removes a reference in a heading to a repealed section of the *Trade Practices Act 1974* (Cwlth).

Item 11 redrafts part of section 112(1)(b)(ii) to improve readability.

Item 12 addresses a minor drafting issue.

Funeral Benefit Business Act 1982

Item 1 addresses a minor drafting issue.

Item 2 amends the definition of “registrar” in section 5 to complement the amendment under item 3.

Item 3 replaces section 6 to specify that the chief executive is appointed as the registrar of funeral benefit businesses.

Items 4 to 20 contain a number of amendments to address minor drafting or grammatical issues to ensure accuracy or clarity.

Introduction Agents Act 2001

Item 1 inserts a new section 89A to provide the chief executive with the power to enforce an undertaking through application to the District Court.

Item 1 also inserts a new section 89B to provide for the keeping of a register of undertakings.

These new sections remedy practical deficiencies in the Act. Unless the chief executive can enforce an undertaking, the effectiveness of section 88 (Undertakings about contravention of Act) is seriously reduced. This is to be achieved through the District Court, ensuring procedural fairness. It is also good practice to keep a register of such undertakings. Both of these issues are addressed in a similar manner in other fair trading legislation such as the *Property Agents and Motor Dealers Act 2000*.

Land Sales Act 1984

Item 1 amends section 9(6) to ensure that where a cadastral surveyor stakes a proposed allotment to indicate its boundaries under section 9(3)(e)(i), this is not regarded as a survey mark which would then require the surveyor to lodge plans with the chief executive or Registrar of Titles under section 16(1) *Survey and Mapping Infrastructure Act 2003*.

Item 2 amends section 21(5)(b) to rectify an incorrect reference due to amendments made to the *Body Corporate and Community Management Act 1997* in 2003. The *Land Sales Act 1984* was not amended at the time to reflect this change.

Liquor Act 1992

Item 1 amends section 4 by omitting the definitions of “presiding case manager” and “registrar”.

Item 2 amends section 4 by inserting a definition of “director” to mean the director appointed under the *Commercial and Consumer Tribunal Act 2003*.

Items 3, 4 and 5 omit all references to ‘registrar’ and ‘registrar of the tribunal’ and replace them with references to ‘director’.

These amendments are necessary to ensure that the correct terminology is used in the Act in relation to the Commercial and Consumer Tribunal in light of the passing of the *Commercial and Consumer Tribunal Act 2003* which is relevant to the operation of the Liquor Act.

Item 6 omits section 232A as this provision is a duplicate of a provision in the *Commercial and Consumer Tribunal Act 2003*. Section 232A should have been removed with other sections dealing with tribunal procedure which are now dealt with in the Tribunal Act.

Manufactured Homes (Residential Parks) Act 2003

Item 1 addresses a numbering error.

Items 2 and 3 make amendments to sections 49(5) and (6) to complement the amendment in item 4.

Item 4 replaces section 50. The current section 50 provides that where a home owner wishes to sell his or her home, but the park owner does not agree to the assignment of the home owner's interest in the site to the proposed buyer, then the seller (the home owner) may apply to the Tribunal for a review of the park owner's decision. In deciding the application, the Tribunal may confirm or override the park owner's decision and may require the park owner to consent to the assignment of the home owner's interest.

The Tribunal has two heads of power under which it can hear matters: section 102 of the *Commercial and Consumer Tribunal Act 2003* (the Tribunal Act) which deals with applications for review of a reviewable decision; and section 113 which provides that the Tribunal may hear and decide matters that it may hear and decide under an empowering Act (as defined).

By defining the dispute between the park owner and home owner as a review of the park owner's decision, a strict legal interpretation of section 50 of the *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act) means that it falls under section 102 of the Tribunal Act. However, the policy intention behind section 102 was that it would apply to decisions made by government departments or other official bodies. For example, applications already listed in Schedule 2 of the *Commercial and Consumer Tribunal Regulation 2003* as being under the head of power in section 102 include reviews of some decisions made by the chief executive under the *Property Agents and Motor Dealers Act 2000* and the Architects Board under the *Architects Act 2002*.

The consequences of a matter concerning a disagreement of an assignment under the MHRP Act coming within the head of power under section 102 of the Tribunal Act are clearly unsuited to the circumstances of section 50 of the MHRP Act. For example-

- a park owner may fall within the term "State agency". Although it was not intended to capture entities other than government departments or official bodies, the definition of "State agency" is broad enough for park owners to fall within it; and

- the home owner and the park owner would have to follow a strict procedure which is inappropriate for individuals using the Tribunal in order to obtain access to justice in a relatively inexpensive and timely manner.

The Bill amends section 50 by allowing the Tribunal, on application by the seller whose request for consent to an assignment has been refused, to decide whether the park owner has unreasonably refused to consent to the assignment. If it finds that this is the case, the Tribunal may make an order that the park owner sign the form of assignment, thereby giving consent. The Bill also provides that despite the failure of the park owner to comply with the order and sign the assignment within 7 days, the park owner is deemed to have consented after 7 days so that the home owner may proceed with a sale. To remove all doubt, new section 50(6) confirms that an application is to be dealt with under section 113 of the Tribunal Act. This ensures that all applications involving disputes between home owners and park owners are all dealt with in the same manner.

Item 5 amends section 132(3)(a) removing the reference to the term “head office” as the Department’s head office is not a place open to the public and it is not therefore possible for a person to view a register there. Since public offices will change from time to time and there are offices in regional areas of Queensland, the provision is changed to a flexible one which allows the chief executive to nominate where the register will be available.

Item 6 inserts a new section 155 to address the situation where an application has been lodged in relation to refusal of an assignment, but not finalized, before the Bill is passed. It provides that the matter will progress as if it were an application under the new provision since this will be of greater assistance to the parties.

Motor Vehicles and Boats Securities Act 1986

Item 1 addresses a minor drafting issue.

Property Agents and Motor Dealers Act 2000

Item 1 amends section 4(a) to specifically exempt a Supreme, District or Magistrate Court bailiff acting within that office from the auctioneer’s licensing and regulation provisions in Chapter 7 of the Act.

This amendment allows exemptions in relation to actions of a bailiff in line with other exemptions from the licensing and regulation of auctioneers’

provisions in Chapter 7 where court processes are involved, for example, a sale ordered by the sheriff under any process issued out of a court.

Item 2 inserts a new section 49(6) to remove the three month waiting period to remedy possible injustice in certain corporate licence applications.

Where a corporate applicant is refused a licence, the directors sometimes sell the business, in the form of the corporation, to another person. If the corporation lodges a second application within 3 months, the second application will be refused because section 49(5) prevents applicants from lodging another application for a licence within 3 months of refusal of a licence. In these circumstances refusal of a corporate licence is through no fault of the new owners of the corporation. However, item 2 also provides safeguards to ensure that any sale is genuine and is not a mechanism to avoid the provisions of section 49(5).

Items 3 and 4 amend section 57 by deleting section 57(2)(d)(iv) and inserting a new subsection (4A) so that on renewal of a licence an applicant only has to lodge 2 certified recent colour photographs when required to do so by the chief executive. Industry has advised that the provision of photographs for each application for renewal of a licence is a financial and administrative burden.

Items 5 and 6 similarly amend section 60 with respect to restoration of a licence; items 8 and 9 amend section 94 with respect to renewal of an employee's registration certificate; and items 10 and 11 amend section 97 with respect to restoration of an employee's registration certificate.

Item 7 amends section 80(3)(a) by removing the reference to the term "head office" as the Department's head office is not a place open to the public and it is not therefore possible for a person to view a register there. Since public offices will change from time to time and there are offices in regional areas of Queensland, the provision is changed to a flexible one which allows the chief executive to nominate where the register will be available.

Item 12 amends section 117(4) (restriction on remedy for reward or expense with respect to restricted letting agents) to make it consistent with similar provisions for real estate agents, auctioneers and pastoral house licencees. It allows restricted letting agents only to claim for expenses as agreed in their appointment and actually expended.

Items 13 and 14 amend sections 132(1)(b) and 132(2)(b) to allow a restricted letting agent to be in charge of a real estate agent's other place of

business where that business is only for the letting of lots and collection of rent in a building complex. This is to remove any ambiguity as to whether a real estate agent with more than one place of business may employ a restricted letting agent, rather than a real estate agent, to take charge of the real estate agent's other place of business in these limited circumstances.

Item 15 inserts a new section 132(4) to provide a definition to complement the amendments in items 13 and 14.

Item 16 inserts a new section 133(1) to ensure that it is clear that a real estate agent can only perform an activity for a person after that person appoints the real estate agent in writing in accordance with section 133. Some real estate agents have been interpreting the current section in such a way that allows them to advertise a property when they have not been instructed to do so and hold no written authority.

Item 17 inserts a definition of 'time of taking possession' in section 234 to complement the new section 236 inserted by item 18.

Item 18 omits section 236 and replaces it with a new section 236 to ensure that the warranty period in relation to a used vehicle commences whenever the buyer takes possession of the vehicle, rather than when the property in the vehicle passes.

This amendment addresses the situation where a buyer pays for a motor vehicle by cheque and the auctioneer protects their interests by adding a clause in the standard sale of a motor vehicle contract to the effect that ownership in the vehicle does not pass to the buyer until the amount represented by the cheque has been cleared by the respective financial institution.

Items 19 and 20 amend section 240 to provide consistency of terminology and complement the changes made in items 17 and 18.

Item 21 replaces section 241 to ensure that the warranty notice required under the section must be given immediately after the buyer enters into a contract for the purchase of a used motor vehicle, rather than when property in the vehicle passes, and thereby give effect to the original policy intention of the provision. Item 21 also deletes the provisions which prescribe the information that must appear on the approved form of the warranty notice. The current provisions result in loss of flexibility in relation to the design of the form and reduced effectiveness as a result. In addition, the new item makes reference to 'after the purchase' rather than 'after the sale' to be consistent with wording in other provisions.

Items 22 to 24 are also amended to use the phrase ‘time of taking possession’ to ensure that the terminology is consistent and clear.

Item 25 amends section 300(3)(c) by omitting the words “in the way prescribed under a regulation”.

Section 300 of the Act requires a motor dealer to give a prospective buyer of a used motor vehicle a written statement in the approved form informing the buyer about the buyer’s rights when buying the vehicle. Section 300(3)(c) provides that “the statement must include..... a clear statement, *in the way prescribed under a regulation*, that the prospective buyer may avoid any contract for the purchase of the vehicle from the motor dealer during the cooling-off period”. Section 27 of the *Property Agents and Motor Dealers Regulation 2001* (the Regulation) prescribes a lengthily worded statement relating to the cooling-off period that must appear on the approved form for the purposes of section 300(3)(c) of the Act.

The prescriptive nature of section 300(3)(c) of the Act and section 27 of the Regulation results in very little flexibility when redesigning the approved form and, in particular, a more effective statement relating to cooling-off rights. This flexibility will be provided while still preserving the right of a prospective buyer to be properly and clearly informed about their cooling-off rights by removing the reference in section 300(3)(c) to the form of the statement being “in the way prescribed under a regulation”.

Item 26 deletes section 300(3)(g) to complement the amendment to section 300(3)(c) under item 25.

Item 27 inserts a definition of ‘time of taking possession’ in section 312 to complement the new section 314 inserted by item 29. Item 28 replaces the definition of ‘warrantor’ for the same reason.

Item 29 omits section 314 and replaces it with a new section 314 to ensure that the warranty period in relation to a used vehicle commences whenever the buyer takes possession of the vehicle, rather than when the property in the vehicle passes.

This amendment addresses the situation where a buyer pays for a motor vehicle by cheque and the motor dealer protects their interests by adding a clause in the standard sale of a motor vehicle contract to the effect that ownership in the vehicle does not pass to the buyer until the amount represented by the cheque has been cleared by the respective financial institution.

Item 30 replaces section 317 to ensure that the warranty notice required under the section must be given **before** the buyer enters into a contract for the purchase of a used motor vehicle, rather than when property in the vehicle passes, and thereby give effect to the original policy intention of the provision. Item 30 also deletes the provisions which prescribe the information that must appear on the approved form of the warranty notice. The current provisions result in loss of flexibility in relation to the design of the form and reduced effectiveness as a result. In addition, the new section makes reference to ‘before the purchase’ rather than ‘before the sale’ to be consistent with wording in other provisions.

Items 31 to 33 are also amended to use the phrase ‘time of taking possession’ to ensure that the terminology is consistent and clear.

Item 34 amends a reference to a section in the *Corporations Act 2001* (Cwlth) as a result of renumbering of the Commonwealth legislation.

Item 35 amends section 469 by omitting the reference to section 60 of the repealed *Auctioneers and Agents Act 1971*. This was a drafting error as section 60 (guarantee of title to motor vehicles) has no relevance whatsoever to section 469 (definition of a “*marketeeing contravention*”).

Item 36 inserts a new section 472(5) to ensure that a claimant, who commences proceedings in the Small Claims Tribunal within the relevant time periods for making a claim, may also make a claim under section 472(3).

Section 472(2) currently sets the time periods for making a claim against the Claim Fund in relation to the purchase of a non-investment residential property, other than a claim because of, or arising out of, a marketeeing contravention. If a claimant commences proceedings in a court to recover financial loss within those time periods, section 472(3) of the Act also permits a claimant to make a claim against the Fund within 3 months after proceedings in the court end. A large number of claimants have sought redress in the Small Claims Tribunal. This provision removes the ambiguity of whether the Small Claims Tribunal is a court for the purposes of section 472(3) and ensures that a claimant who commences proceedings in the Small Claims Tribunal within the relevant time periods for making a claim, may also make a claim under section 472(3) against the Fund.

Item 37 amends the heading to section 473 for greater clarity.

Item 38 replaces section 476 of the Act. Under the current section, where a claim against the Claim Fund is not settled within 28 days of the claim having been given to the respondent, the claimant can then apply for the

matter to be dealt with by the chief executive if it is a minor claim (the amount concerned is under \$5,000), or by the Commercial and Consumer Tribunal if it is not a minor claim. This process simply repeats the process the claimant followed when originally lodging a claim form with the Office of Fair Trading and unnecessarily increases the time it takes to resolve a claim. The amendment does not affect a person's rights in having the matter determined. It provides that the claimant simply notify the chief executive in writing if they wish to proceed with their claim.

Item 39 amends sections 478(2) and (3) in order to provide a designated period of 14 days for comments to be provided in relation to an inspector's report where there is a claim with respect to the Claim Fund. This is to address the problem that the Act does not currently set down a time limit, instead allowing the chief executive a discretion in the time to be provided for comment (subject to a minimum of 7 days). The chief executive is often challenged on the time allowed for comment. If a 14 day period is required in the Act, this will avoid unnecessary disputes and provide clarity.

Item 40 inserts a new section 490(4) requiring that a letter of demand be sent by the chief executive to a person from whom reimbursement of monies paid out from the Claim Fund can be claimed before action is commenced to recover the debt.

Where a claim against the Claim Fund is successful, and a person is named as responsible for that loss, the chief executive may recover the amount as a debt. Sections 490 and 491 as contained in the Act when passed by Parliament in 2000 were omitted and replaced by a new section 490 in amendments passed in 2002. The amended section did not retain the requirement that a letter of demand be sent in relation to the debt. However, it has been regarded as good practice to send a letter of demand and it can be cost effective where the debtor pays in response to the letter, thus avoiding the necessity for further court proceedings. The Office of Fair Trading has therefore continued to send a letter but it is appropriate that this be a legislatively mandated part of the process to ensure procedural fairness.

Item 41 consequently amends the Act by removing references to section 491, since that section no longer exists, and replacing them with references to the new section 490(4).

Item 42 amends section 572(3)(a) by removing the reference to the term "head office" as the Department's head office is not a place open to the public and it is not therefore possible for a person to view a register there. Since public offices will change from time to time and there are offices in

regional areas of Queensland, the provision is changed to a flexible one which allows the chief executive to nominate where the register will be available.

Item 43 addresses an incorrect reference due to changes which have been made to the *Body Corporate and Community Management Act 1997*.

Item 44 contains transitional provisions to ensure that there is no confusion as to the situation in relation to statutory warranties existing at the time the amendments in the Bill become effective.

Items 45 and 46 replace the current definition of 'beneficial interest' to complement the amendment to section 49 in item 2. The term as used in new section 49(6) has its usual common law meaning.

Item 46 also provides a definition of 'actually expended' with respect to expenses incurred when acting for a client under sections 117(4), 141(3), 180(3) and 218(3).

This is to ensure that restricted letting agents, real estate agents, auctioneers and pastoral house licencees not only cannot claim for expenses unless they actually paid the monies out, but are also not able to retain any rebates, discounts or other benefits associated with the expenses.

Racing Act 2002

Items 1 to 7 make amendments which reflect the current role of the director of the Commercial and Consumer Tribunal in relation to the registry functions of the Racing Appeals Tribunal.

Whilst the Racing Appeals Tribunal has separate jurisdiction to the Commercial and Consumer Tribunal, since the introduction of the *Commercial and Consumer Tribunal Act 2003*, the registry functions of the Racing Appeals Tribunal have been performed by the Commercial and Consumer Tribunal Registry. The amendments are required to properly reflect the current role of the director of the Commercial and Consumer Tribunal in relation to the registry functions of the Racing Appeals Tribunal and are therefore administrative in nature.

Residential Services (Accreditation) Act 2002

Item 1 addresses a numbering error.

Item 2 deletes section 4(5)(l), replaces it with a new section 4(5)(l) and inserts a new section 4(5)(m) to clarify the circumstances in which residential services are exempt from the Act's operation.

It was recognised prior to enactment of the Accreditation Act that some existing residential service providers would not be able to comply with the requirements of the Act without financial assistance. To this end, ‘one-off’ financial packages were available from the Department of Housing to assist in the upgrading of premises to meet the new requirements.

The Housing Department also provides grants under the *Housing Act 2003* for the delivery of services. Residential service providers who are in receipt of such grants may be exempt from the requirements of the Accreditation Act since the grant process already contains significant accountability mechanisms.

The amendment will ensure that a service provider cannot claim exemption from regulation under the Accreditation Act simply by having been granted a financial package for the purpose of upgrading premises to meet the Act’s requirements.

Item 3 reinstates section 157. Section 156 allows a person to apply to the chief executive for a review of a decision. The *Commercial and Consumer Tribunal Act 2003* omitted section 157 which gave the chief executive the ability to stay a decision pending determination of the review. The Explanatory Notes to the *Commercial and Consumer Bill 2003* state this was because section 157 *will now be covered by a generic provision in this Bill*. It was recently realized that this is not, in fact, the case, and therefore the section has been repealed as the result of a misapprehension.

Retirement Villages Act 1999

Item 1 amends section 35(4)(a) by removing the reference to the term “head office” as the Department’s head office is not a place open to the public and it is not therefore possible for a person to view a register there. Since public offices will change from time to time and there are offices in regional areas of Queensland, the provision is changed to a flexible one which allows the chief executive to nominate where the register will be available.

Item 2 amends references to sections in the *Body Corporate and Community Management Act 1997* to address the renumbering of those sections of that Act.

Second-hand Dealers and Pawnbrokers Act 2003

Item 1 inserts a new section 112A to allow the chief executive to delegate powers under the Act to appropriately qualified officers. This is generally

provided for under statutes but was inadvertently omitted when the Act was passed.

Security Providers Act 1993

Item 1 amends a reference to a section in the *Corporations Act 2001* (Cwlth) as a result of renumbering of the Commonwealth legislation.

Tourism Services Act 2003

Item 1 amends section 28(4)(a) by removing the reference to the term “head office” as the Department’s head office is not a place open to the public and it is not therefore possible for a person to view a register there. Since public offices will change from time to time and there are offices in regional areas of Queensland, the provision is changed to a flexible one which allows the commissioner to nominate where the register will be available.

Items 2 and 3 contain amendments to ensure that successful prosecution is not avoided by a technicality, namely that it is not necessary in relation to a charge of knowingly making a false or misleading statement or providing a document that contains false and misleading information that it is necessary to specify whether it is false or it is misleading.

Wine Industry Act 1994

Item 1 amends section 57 to enable the chief executive to delegate to “an appropriately qualified public service employee” rather than “an officer of the Department”.

Item 2 amends section 60 to provide protection from liability to “a public service employee” rather than “an officer of the Department” as a consequence of the amendment in item 1.

These amendments are required to provide flexibility where a delegation may be needed beyond Departmental employees for particular projects.