



Speech by

**Hon. Margaret Keech**

**MEMBER FOR ALBERT**

Hansard Tuesday, 28 September 2004

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## **TOURISM, FAIR TRADING AND WINE INDUSTRY DEVELOPMENT (MISCELLANEOUS PROVISIONS) BILL**

**Hon. M.M. KEECH** (Albert—ALP) (Minister for Tourism, Fair Trading and Wine Industry Development) (2.24 p.m.): I move—

That the bill be now read a second time.

My department is responsible for administering 78 acts. From time to time it is necessary to make minor and technical amendments to various legislative provisions to ensure these statutes continue to operate in the manner intended. Amendments to one piece of legislation may also be required as a result of changes to another piece of legislation.

This miscellaneous provisions bill amends 25 acts. Two of these are administered by other departments—namely, the Department of Public Works and the Department of Local Government, Planning, Sport and Recreation—but these amendments relate to the Commercial and Consumer Tribunal, which falls within my ministerial responsibility.

Amendments to the Associations Incorporation Act 1981, Bills of Sale and Other Instruments Act 1955, Body Corporate and Community Management Act 1997, Building Units and Group Titles Act 1980, Charitable Funds Act 1958, Collections Act 1966, Motor Vehicles and Boats Securities Act 1986, Retirement Villages Act 1999 and Securities Providers Act 1993 only address minor technical, drafting or grammatical issues.

The bill also removes the reference to the term 'head office' for the purpose of inspecting registers in relation to a number of statutes as the department's head office is not a public office. 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 for the nomination of locations where particular registers will be available.

I will not detail the minor technical, drafting or grammatical amendments. These are specifically referred to in the explanatory notes. Other amendments do not adversely affect stakeholders but are required because of minor deficiencies in the operation of the legislation or as a result of changes to other legislation. I will outline the reasons for these.

Decisions made under the Building Act 1975 by the chief executive on the application of the standard building regulation and decisions by local government with respect to fire safety matters for low-budget buildings, swimming pool fences and enforcement orders for buildings or building work can be appealed to a building and development tribunal. The Commercial and Consumer Tribunal hears disciplinary matters with respect to building certifiers. The bill amends the Building Act to clarify which tribunal's jurisdiction is relevant to which provisions of the act.

The bill inserts a new provision into the Business Names Act 1962, empowering the registrar of business names to cancel the registration of a business name if proof of identity was not provided at the time of application and it is not subsequently provided when requested by the registrar within 21 days. It further provides that a person must not knowingly give the registrar a document containing false

information, replacing the current prohibition on giving a false statement. A person requiring a business name may provide information through supporting documentation. The amendment is required to ensure the integrity of all information to be supplied to the registrar.

The bill amends the penalty for breach of the act in this respect. The maximum penalty for breach of the current clause 17 is four penalty units or three months imprisonment. The penalty when the act was passed in 1962 was 100 pounds or three months imprisonment. On decimalisation in 1966, this would have translated to \$200. In 1995 this was translated into four 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 four penalty units to 100 penalty units or \$7,500. The amendment is within current parameters. For example, the Property Agents and Motor Dealers Act 2000 has a penalty of 200 penalty units or two years imprisonment for providing false information or making a false statement to a departmental official in relation to that act.

Registration of a business name provides a business with some legitimacy in the eyes of consumers. It is therefore not appropriate that a business be allowed to use a name which has not been legitimately registered. The bill amends an error in subsection 47(6) (c) of the Commercial and Consumer Tribunal Act 2003 by replacing the term 'mediation' with the term 'proceeding' to effect the original policy intention.

Amendments are made to the Cooperatives Act 1997 to ensure that references to corporations legislation are accurate and up to date. The states and territories have attempted to harmonise their respective cooperatives acts to achieve national consistency. The Queensland act, like the other jurisdictions, adopts a number of aspects of the Commonwealth Corporations Act 2001, such as the provisions to do with accounting and auditing, winding up and takeovers, which are suitable for use in the context of cooperatives. The Corporations Act 2001 is the successor of the Corporations Law, which was a national corporations law scheme whereby each jurisdiction enacted identical legislation. However, the High Court found that this scheme was flawed and, as a result, the states and territories ceded their powers to the Commonwealth and it passed the Corporations Act, which provided national legislation.

Following amendments to the Commonwealth Corporations Act 2001, the bill amends the Cooperatives Act 1997 to ensure that provisions in relation to continuous disclosure which applied under the previous Corporations Law continue to apply. For a cooperative to issue shares it is required to lodge a disclosure statement with the registrar. This is equivalent to a prospectus issued by a corporation. Continuous disclosure requires that if any significant event occurs which may affect the decision making of an interested party a new disclosure statement must be filed. The Cooperatives Act will also be amended to permit dividends or rebates to be used as a loan to a cooperative where such a loan is authorised by a cooperative's rules in addition to the situation where a member consents to such a loan.

Members of the Consumer Safety Committee are appointed under the Fair Trading Act 1989. They serve for a period of three years with all terms ending at the same time. The bill amends the act to allow the minister to appoint a person for less than three years, so that where a member does not see their term out another person may be appointed for the remainder of the term. This amendment assists with the practical operation of the Consumer Safety Committee.

Part 2 of the Funeral Benefit Business Act 1982 is amended to specify that the chief executive is appointed as the registrar of funeral benefit businesses.

The Introduction Agents Act 2001 provides that where the chief executive reasonably believes there has been a breach of the act the chief executive can request the introduction agent to give the chief executive an undertaking that the agent will not continue or repeat an act or omission. The bill inserts a new provision to enable the chief executive to enforce such an undertaking through the District Court where the chief executive reasonably believes there has been a breach of the undertaking. It also provides for the keeping of a register of 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. The effectiveness of an undertaking is reduced if there is no ability to enforce it.

The Land Sales Act 1984 is amended by the bill to clarify that where a cadastral surveyor—that is, a surveyor who undertakes land boundary surveys—is only staking out a proposed allotment to indicate its boundaries under the Land Sales Act, this is not to be regarded as a survey mark which requires plans to be lodged under the Survey and Mapping Infrastructure Act 2003.

The Commercial and Consumer Tribunal is empowered to review decisions of the chief executive with respect to matters under the Liquor Act 1992 and the Racing Act 2002. The bill amends both acts to correctly refer to personnel at the tribunal.

The Manufactured Homes (Residential Parks) Act 2003 also provides for matters to go to the Commercial and Consumer Tribunal where there are disputes between home owners and park owners. For matters to go before the tribunal they must fall within one of two heads of power. The current wording

of section 50, with respect to the consent of the park owner to an assignment of an interest in a site where a home owner is selling a home in a park, means that it is dealt with under a different head of power to all other applications under the manufactured homes act. This was not the original policy intention and, in fact, creates difficulties for the parties in having their matter resolved speedily. The bill replaces section 50 with a new section which addresses this problem.

The Property Agents and Motor Dealers Act 2000, commonly known as PAMDA, is one of the largest acts I administer as it covers seven industry groups. The bill makes a number of minor amendments to PAMDA, including—

- exempting court bailiffs from the auctioneer's licensing and regulation provisions. Some processes are already exempt from the act, such as a sale ordered by a sheriff;
- allowing new owners of a corporate business to reapply for a licence within three months of an application by the former owners being refused. Generally, a business cannot reapply within three months of an application being refused;
- restricting the need to supply certified recent colour photographs of an applicant on renewal or restoration of licences to circumstances when the chief executive requires them to be lodged. Photographs are supplied when licences are initially applied for and do not require updating on every renewal or restoration application;
- where a real estate agent has more than one place of business, allowing a restricted letting agent to be in charge of a place of business where the business of that office only relates to that of being a restricted letting agent. At present the law is unclear on this point;
- clarifying the appointment of a real estate agent by a client;
- preventing a licensee in any way profiting from expenses;
- reform of used motor vehicle contract statements. This is to enable the approved form to be more consumer friendly;
- clarifying the commencement time for warranty periods for a used motor vehicle;
- clarifying when notices must be given in the sale of a used car;
- clarifying that a person who makes a financial claim in the Small Claims Tribunal can make a claim against the Property Agents and Motor Dealers Claim Fund if they take action within the prescribed time frames. This ensures that people taking matters to the Small Claims Tribunal have the same rights as those who take their matter through the general court process;
- removing duplication of processes where a claim against the claim fund is not settled to assist in a quicker resolution of claims;
- setting specific time frames for comments to an inspector's report where there is a claim against the claim fund for clarity and to assist with quicker resolution of claims; and
- providing that a letter of demand must be sent to a trader before the Office of Fair Trading commences to recover monies due as a result of a successful claim against the claim fund as a matter of good practice and procedural fairness.

The bill amends the Residential Services (Accreditation) Act 2002. The act establishes a registration system under which a residential service is registered only if the service provider and associates are suitable and the premises in which the service is conducted are safe and otherwise suitable. It also establishes an accreditation system under which a residential service is accredited to provide a type of service only if that service is provided in a way that meets minimum standards.

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. Having upgraded, these services are to be regulated unless they are in receipt of grants under the Housing Act 2003 in relation to the delivery of services. The Second-hand Dealers and Pawnbrokers Act 2003 is amended to allow the chief executive to delegate powers under the act to appropriately qualified officers. This is required for the efficient operation of the legislation. The bill makes amendments to the Tourism Services Act 2003 to ensure prosecutions for providing false or misleading information are not at risk of failure due to a technicality, namely that for an offence it is sufficient to describe a statement as false or misleading, not specifically one or the other.

Finally, the bill makes amendments to the Wine Industry Act 1994 to provide for the chief executive to delegate to Public Service employees, rather than only to departmental officers. These amendments provide flexibility where a delegation may be needed beyond departmental employees for particular projects.

In summary, the amendments in this bill will adjust operational difficulties which have come to light over time. The bill also strengthens consumer protection as the amendments not only provide more certainty in the interpretation of sections but also provide additional requirements to uphold the purpose of the legislation. I commend the bill to the House.