



Speech by

## Stirling Hinchliffe

MEMBER FOR STAFFORD

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### JUSTICE (FAIR TRADING) LEGISLATION AMENDMENT BILL

**Mr HINCHLIFFE** (Stafford—ALP) (3.13 pm): The Justice (Fair Trading) Legislation Amendment Bill amends a range of fair trading legislation. Those acts have been referred to by other speakers during this debate, so I will not read out that extensive list one more time.

One of the most significant changes arising out of the legislation before the House relates to the CrimTrac system. To ensure that consumers are adequately protected, a range of licences issued by the department of justice require a criminal history search to be undertaken to make sure that only appropriate persons receive those licences. The amendments before the House provide for the reasonable costs associated with obtaining these reports to be recovered by the Office of Fair Trading. I want to address the comments made by the member for Burnett in this context, referring to those issues about providing for reasonable costs to be recovered by the Office of Fair Trading.

The member for Burnett seemed to have some great fear that this was some sort of Trojan Horse for a whole raft of new charges. If the member for Burnett looked closely at the nature of those operations of the Office of Fair Trading at the moment, he would see that the reality is that the costs have already been passed on to applicants under an administrative arrangement set in place by the department since 2005. So there is no increased cost to applicants through the formalisation of this process. I wish to set the minds of some members of the House at ease over that matter.

Applicants for licences are strictly scrutinised to ensure that they are suitable people. As I said, that is the purpose of this process. When they apply for their licence to be renewed, I think it is appropriate that in low-risk cases the applicant who has already gone through that criminal history search process be allowed to apply and state that they have not had a criminal conviction. I think that is an appropriate low-risk management strategy. To ensure adequate protection for consumers, severe penalties apply where a false statement is made. That is an important guarantee for consumers and the general public.

The bill also makes some amendments to the Commercial and Consumer Tribunal Act. The Commercial and Consumer Tribunal is an important tribunal undertaking a range of work relating to a wide variety of jurisdictions. Service of documents is an important part of the functions of the tribunal. It is a complex task to balance the need to inform people of proceedings against them with allowing matters to come before the court if a person is evading service to prevent an action being heard against them.

These amendments provide that, if it is required, substituted service can be effected in the same way as under the uniform civil procedure rules. For instance, there is now a requirement for substituted service of originating process under the Property Agents and Motor Dealers Act, PAMDA. They also allow for substituted service of documents where personal service or other service required under an act proves impractical. The safeguards in these provisions are that an application must be made to the tribunal outlining why service in accordance with the act is impractical. The tribunal may impose such steps as it deems appropriate for bringing the document to the attention of the person other than by service.

There is also an amendment relating to the date on which a decision takes effect in relation to a PAMDA claim fund hearing. At present a difficulty has arisen because, where both parties are not present when a decision of the tribunal is handed down, the section provides that the decision takes effect when

the party not present is served. If service is difficult—as I mentioned earlier, some people try to make it difficult—the decision will not take effect. The practical effect of this is that the time for allowing an appeal, which is 28 days after the decision takes effect, does not start to run if there is no service and that leads to an open-ended appeal process. These amendments provide that the decision takes effect from the time the decision is published, which means that the parties have 28 days from that day to lodge an appeal. So parties who have interest in appealing need to make themselves available for that service.

The PAMDA fund allows for people who have suffered loss as a result of actions of a dealer or agent to claim against the fund. The act as it currently stands allows parties to a matter to register a decision by the tribunal for enforcement purposes. There may be situations where it is appropriate for the chief executive of Fair Trading to be able to register a decision of the tribunal, particularly where the claimant has been paid out of the fund, and an order made against the agent or dealer. The chief executive should have power to enforce the order against the offending party to ensure that the moneys are repaid to the claim fund; otherwise moneys end up being paid out of the public purse.

These amendments allow the chief executive to register a decision by the tribunal for enforcement purposes. They also allow the chief executive to make submissions before the tribunal in relation to claim fund matters. As a claim against the PAMDA fund involves public moneys, it is appropriate for the chief executive to be able to make submissions about who is responsible for a claimant's loss and who should reimburse the fund for moneys paid out to a claimant.

The Office of Fair Trading brings all types of actions against traders who breach the act. Some result in prosecutions; others take a less formal approach and include such actions as enforceable undertakings. This allows the department to take action against a trader who enters such an undertaking and then breaches it. The purpose of these undertakings is to provide protection for consumers—that is the fundamental element of this legislation to which these amendments are being made—and to ensure the widest possible effect of such undertakings. These amendments allow the department to publish the details of enforceable undertakings entered into on the department's web site. Greater access to information will lead to better informed consumers. I commend the department on this initiative. It is an example of the Smart State in action. Members of the public will be able to search the register before entering into an agreement with a trader. It helps with that old byword of caveat emptor, that buyers beware and that they beware with the best possible information. Having this information available on the department's web site is of assistance in that regard.

I note the comments made by the member for Surfers Paradise when he referred to the introduction of provisions with new venture capital incentive schemes that provide certain tax exemptions and capital gains concessions for eligible participants. The vehicle for such arrangements is an early stage venture capital limited partnership. There was no specific provision in our Partnership Act 1891 for such a vehicle—unsurprisingly—to deal with these arrangements. So this amendment before the House today is being made to the definition section to provide that, for the purposes of part 4, the definition of early stage venture capital limited partnership has the same meaning as it does in the Commonwealth's Venture Capital Act 2002, which was created last year in the Commonwealth's new tax law amendments which were passed by the Australian parliament. As I say, the amendments to the Partnership Act will now allow the registration of these entities into a framework for registration of these venture capital limited partnerships.

Finally, I want to turn my attention to the amendments being made to the Churches of Christ, Scientist, Incorporation Act 1964, which provided a legal framework for the establishment of the church. The amendments are important, and we need to understand the historical context of the fact that this act—Churches of Christ, Scientist, Incorporation Act—exists in our statutes. This was legislated for in a time prior to the Associations Incorporation Act. At the time separate pieces of legislation were passed to allow the incorporation of various entities.

As has been mentioned by a number of members in the second reading debate, there is only one remaining member of this Second Church of Christ, Scientist. As a consequence, there are not sufficient members to constitute a quorum to enable winding up of the church. Therefore, we must make arrangements in these amendments for the property of the Second Church of Christ, Scientist to be transferred to the Christian Science Trust in Australia. Also, importantly, to ensure we do not have this problem again in the future, the provisions of the Associations Incorporation Act are being applied as if the church were being wound up by an order of the Supreme Court, and that will be applied to the First Church of Christ, Scientist as well. To ensure that no-one is placed in this position again, amendments are being made to deem that Associations Incorporation Act provisions apply to the remainder of the acts of the church. This will allow for both voluntary winding up and a winding up upon application to the Supreme Court should that become necessary.

I think it is clear that this is a good example of where we need to have appropriate legislation that catches all people. The fact that we now have the Associations Incorporation Act and that that can be more broadly applied and used to capture these sorts of organisations I think is entirely appropriate. This is an important, if piece-by-piece, reform to the provisions that are made for a range of different organisations in our community. On that note, I commend the bill to the House.