



Queensland

Fair Trading and Other Legislation Amendment Bill 2011

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Consultation Draft

2011

A Bill

for

An Act to amend the Associations Incorporation Act 1981, the Collections Act 1966, the Credit (Commonwealth Powers) Act 2010, the Land Sales Act 1984, the Liquor Act 1992, the Residential Services (Accreditation) Act 2002 and the Retirement Villages Act 1999 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Fair Trading and Other Legislation Amendment Act 2011*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Associations Incorporation Act 1981

3 Act amended

This part amends the *Associations Incorporation Act 1981*.

4 Amendment of s 64 (Tenure of members of management committee)

Section 64(2)(d) and (e)—
renumber as section 64(2)(c) and (d).

5 Amendment of s 91 (Declaration of applied Corporations legislation)

Section 91(3)(f) and (i), 'registrar'—

omit, insert—
'chief executive'.

6 Insertion of new pt 11A

After section 106—

insert—

'Part 11A Voluntary transfer of incorporation

'Division 1 Incorporated associations

'106A Application for authority to transfer incorporation

'An incorporated association may apply to the chief executive for authority to transfer the association's incorporation to—

- (a) a company limited by guarantee under the Corporations Act, part 5B.1 (*CLG corporation*); or
- (b) an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), part 2-3 (*CATSI Act corporation*).

Note—

See the Corporations Act, section 601BC(8)(d) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 22-5(1)(h)(i).

'106B Requirements for application

- '(1) The application must—
 - (a) be in the approved form; and
 - (b) be signed by 3 members of the association's management committee, 1 of whom must be the

[s 6]

president, authorised to make the application (the *authorised members*); and

- (c) be accompanied by the following—
 - (i) either—
 - (A) the association’s certificate of incorporation under this Act; or
 - (B) if the certificate has been lost, stolen or destroyed—a statutory declaration by a person authorised by the association to make the declaration for the association, stating it has been lost, stolen or destroyed;
 - (ii) a copy of a special resolution of the association stating—
 - (A) that the application under this division is approved; and
 - (B) that the authorised members have authority to sign the application form; and
 - (C) the proposed name under which the association is to be registered under the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth);
 - (iii) a statutory declaration by the association’s president that—
 - (A) the matters stated in the application form are true; and
 - (B) this Act and the association’s rules have been complied with in relation to the calling and holding of the general meeting for the special resolution and the passing of the special resolution at the meeting; and
 - (C) any consent required under the association’s rules to be obtained before passing the special resolution has been obtained.

- (2) If the application is withdrawn or the chief executive refuses to grant the application, the chief executive must return the association's certificate of incorporation to the association.

'106C Further information or documents for application

'The chief executive may require the applicant to give the chief executive, within a stated reasonable period of at least 28 days, any further information or documents the chief executive reasonably requires to decide the application.

'106D Refusal to grant application

'The chief executive may refuse to grant the application if the chief executive is not satisfied the applicant has complied with—

- (a) section 106B; or
- (b) a requirement under section 106C.

'106E Chief executive to give notice of authority to transfer incorporation

'If the chief executive decides to authorise the transfer of incorporation, the chief executive must give the applicant written notice that the proposed transfer of the association's incorporation is authorised.

'106F Effect of a transfer of incorporation authorised under this division

'On the transfer of the incorporation of an incorporated association, as authorised under this division—

- (a) the association stops being an incorporated association; and
- (b) the association's name is taken to be removed from the register from the day of the transfer.

[s 6]

‘106G New body to give chief executive copy of new certificate of registration

- ‘(1) This section applies if an incorporated association becomes registered as a CLG corporation, or CATSI Act corporation, as authorised under this division.
 - ‘(2) The CLG corporation or CATSI Act corporation must within 28 days of the registration give a copy of its new certificate of registration as a CLG corporation, or CATSI Act corporation, to the chief executive.
- Maximum penalty—10 penalty units.

‘Division 2 RECI Act corporations

‘106H Application for authority to transfer incorporation

‘A RECI Act corporation may apply to the Minister for authority to transfer the RECI Act corporation’s incorporation to—

- (a) a CLG corporation; or
- (b) a CATSI Act corporation.

Note—

See the Corporations Act, section 601BC(8)(d) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth), section 22-5(1)(h)(i).

‘106I Requirements for application

- ‘(1) The application must—
 - (a) be in the approved form; and
 - (b) be signed by a member of the governing body of the RECI Act corporation authorised to make the application (the *authorised member*); and
 - (c) be accompanied by the following—
 - (i) either—

-
- (A) the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861*; or
 - (B) if the letters patent have been lost, stolen or destroyed—a statutory declaration by a person authorised by the RECI Act corporation to make the declaration for the RECI Act corporation, stating they have been lost, stolen or destroyed;
- (ii) a copy of a special resolution of the RECI Act corporation, in relation to which the required notice has been given, stating—
 - (A) that the application under this division is approved; and
 - (B) that the authorised member has authority to sign the application form; and
 - (C) the proposed name under which the RECI Act corporation is to be registered under the *Corporations Act* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth);
 - (iii) a statutory declaration by the authorised member that—
 - (A) the matters stated in the application form are true; and
 - (B) this Act and the RECI Act corporation’s constitution have been complied with in relation to the calling and holding of the general meeting for the special resolution and the passing of the special resolution at the meeting; and
 - (C) any consent required under the RECI Act corporation’s constitution to be obtained before passing the special resolution has been obtained.

[s 6]

‘(2) If the application is withdrawn or the Minister refuses to grant the application, the Minister must return the letters patent to the RECI Act corporation.

‘(3) In this section—

required notice means written notice of the proposed special resolution, and of the time and place of the general meeting at which it is proposed to move the resolution, given before the general meeting to each member of the RECI Act corporation who has a right to vote on the resolution.

special resolution, of the RECI Act corporation, means a resolution passed at a general meeting of the RECI Act corporation by the votes of $\frac{3}{4}$ of its members who are present and entitled to vote on the resolution.

‘106J Further information or documents for application

‘The Minister may require the applicant to give the Minister, within a stated reasonable period of at least 28 days, any further information or documents the Minister reasonably requires to decide the application.

‘106K Refusal to grant application

‘(1) The Minister may refuse to grant the application if the Minister is not satisfied the applicant has complied with—

- (a) section 106I; or
- (b) a requirement under section 106J.

‘(2) If the Minister decides to refuse to grant the application—

- (a) the Minister must give the RECI Act corporation a QCAT information notice for the decision; and
- (b) the RECI Act corporation may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

‘(3) In this section—

QCAT information notice means a written notice complying with the QCAT Act, section 157(2).

‘106L Minister to give notice of authority to transfer incorporation

‘If the Minister decides to authorise the transfer of incorporation, the Minister must give the applicant written notice that the proposed transfer of the RECI Act corporation’s incorporation is authorised.

‘106M Effect of a transfer of incorporation authorised under this division

‘On the transfer of the incorporation of a RECI Act corporation, as authorised under this division—

- (a) the RECI Act corporation stops being incorporated as a RECI Act corporation; and
- (b) the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861* are taken to be cancelled from the day of the transfer.

‘106N New body to give Minister copy of new certificate of registration

‘(1) This section applies if a RECI Act corporation becomes registered as a CLG corporation, or CATSI Act corporation, as authorised under this division.

‘(2) The CLG corporation or CATSI Act corporation must within 28 days of the registration give a copy of its new certificate of registration as a CLG corporation, or CATSI Act corporation, to the Minister.

Maximum penalty—10 penalty units.

‘(3) On receipt of the copy of the new certificate of registration, the Minister must give notice by gazette notice—

- (a) that the letters patent issued to the RECI Act corporation under the repealed *Religious Educational and Charitable Institutions Act 1861* are taken to be

[s 7]

cancelled, under section 106M(b), from the day of the transfer; and

(b) of the day of the transfer.’.

7 Amendment of s 109 (Affected person may apply for review)

Section 109(1), after ‘Act’—

insert—

‘, other than under section 106K’.

8 Amendment of schedule (Dictionary)

Schedule—

insert—

‘*CATSI Act corporation* see section 106A.

CLG corporation see section 106A.

RECI Act corporation means a corporation incorporated under the repealed *Religious Educational and Charitable Institutions Act 1861*.’.

Part 3 Amendment of Collections Act 1966

9 Act amended

This part amends the *Collections Act 1966*.

10 Amendment of s 5 (Meaning of terms)

(1) Section 5(1)—

insert—

‘appointed members see section 35A(4).’.

- (2) Section 5(1), definition *inspector*, from ‘a person’ to ‘under this Act’—

omit, insert—

‘an inspector within the meaning of the *Fair Trading Act 1989*, section 5’.

11 Amendment of s 35A (Disaster appeals trust fund and committee)

Section 35A(4), (7), (10) and (11), ‘Governor in Council’—

omit, insert—

‘chief executive’.

12 Insertion of new s 49

After section 48—

insert—

‘49 Transitional provisions for Fair Trading and Other Legislation Amendment Act 2011

‘(1) On the commencement of this section—

- (a) if the chief executive was an appointed member of the disaster appeals trust fund committee immediately before the commencement of this section—the chief executive stops being a member of the committee; and
- (b) if the chief executive was the chairperson of the committee immediately before the commencement of this section—the chief executive stops being the chairperson; and
- (c) if the chief executive was the deputy chairperson of the committee immediately before the commencement of this section—the chief executive stops being the deputy chairperson.

[s 13]

- ‘(2) A person, other than the chief executive, who was an appointed member of the committee immediately before the commencement of this section continues to be an appointed member as if the person was appointed by the chief executive.
- ‘(3) A person, other than the chief executive, who was the chairperson of the committee immediately before the commencement of this section continues to be the chairperson as if the person was designated to be the chairperson by the chief executive.’.

**Part 4 Amendment of Credit
 (Commonwealth Powers) Act
 2010**

13 Act amended

This part amends the *Credit (Commonwealth Powers) Act 2010*.

14 Insertion of new pt 7

After section 34—
insert—

**‘Part 7 Provision relating to register of
 conduct deeds**

**‘35 Publication of information contained in register of
 conduct deeds**

‘The chief executive may publish on the department’s website the information contained in the register of conduct deeds kept under section 20 of the repealed *Consumer Credit (Queensland) Act 1994* as applied by section 33(2).

Editor's note—

The address of the department's website is <www.deedi.qld.gov.au>.

Part 5 **Amendment of Land Sales Act 1984**

15 Act amended

This part amends the *Land Sales Act 1984*.

16 Replacement of ss 27 and 28

Sections 27 and 28—

omit, insert—

'27 Purchaser's rights if not given a registrable instrument of transfer within a particular period

'(1) This section applies if—

- (a) a purchaser entered upon the purchase of a proposed lot under an instrument relating to the sale of the proposed lot (the *instrument of purchase*); and
- (b) the vendor has not given the purchaser a registrable instrument of transfer for the lot—
 - (i) within the period specified in the instrument of purchase for giving the purchaser a registrable instrument of transfer for the lot; or
 - (ii) if no period is specified in the instrument of purchase for giving the purchaser a registrable instrument of transfer for the lot—within 3½ years after the day the instrument of purchase was made.

'(2) The purchaser may avoid the instrument of purchase by written notice given to the vendor before the vendor gives the purchaser a registrable instrument of transfer for the lot.'

[s 17]

17 Insertion of new pt 5

After section 36—

insert—

‘Part 5 Transitional provision for Fair Trading and Other Legislation Amendment Act 2011

‘37 Existing extension of period for giving registrable instrument

‘(1) This section applies if—

- (a) a regulation prescribed, for a proposed lot, a period (the *prescribed period*) of more than 3½ years but not more than 5½ years under former section 28(1); and
- (b) the prescribed period has not ended; and
- (c) before the commencement, the vendor of the proposed lot or the vendor’s agent has not given the purchaser a notice, under former section 28(3), of the prescribed period.

‘(2) The vendor or vendor’s agent may give the purchaser a notice, under former section 28(3), of the prescribed period as if former section 28(3) were still in force.

‘(3) In this section—

former section 28(1) means section 28(1) as in force before the commencement of this section.

former section 28(3) means section 28(3) as in force before the commencement of this section.’

Part 6 Amendment of Liquor Act 1992

18 Act amended

This part amends the *Liquor Act 1992*.

19 Amendment of s 12 (Exemptions)

(1) Section 12(2)—

insert—

- ‘(n) a sale of liquor in a nursing home, other than a nursing home in a relevant restricted area, to an adult person who is a resident of the nursing home, or an adult guest of a resident of the nursing home, if the quantity of liquor sold to the person is not more than 2 standard drinks in a day;
- (o) a sale of liquor in a hospital, other than a hospital in a relevant restricted area, to an adult person who is an inpatient of the hospital if the quantity of liquor sold to the person is not more than 2 standard drinks in a day.’.

(2) Section 12(4)—

insert—

‘hospital means—

- (a) a hospital operated by the State; or
- (b) a private hospital under the *Private Health Facilities Act 1999*.

nursing home means a facility in which residential care is provided in relation to an allocated place under the *Aged Care Act 1997* (Cwlth).

relevant restricted area means a restricted area to which section 168B applies because of a declaration under section 173H.’.

24 Amendment of sch 1 (Reviewable decisions for this Act)

Schedule 1, entry for service provider for a residential service, after fourth dot point—

insert—

- to impose conditions on a renewal of accreditation of the service (s 50(6)).

Part 8 Amendment of Retirement Villages Act 1999

25 Act amended

This part amends the *Retirement Villages Act 1999*.

26 Amendment of s 15 (What is an exit fee)

- (1) Section 15(3) and (4)—
renumber as section 15(4) and (5).
- (2) Section 15—
insert—
- ‘(3) The residence contract may provide—
 - (a) that the exit fee must be calculated on a proportional basis (however described) having regard to the period of the resident’s residence in the accommodation unit; and
 - (b) the method for calculating the exit fee on that basis.’.
- (3) Section 15(5), as renumbered, example, ‘for subsection (4)’—
omit.

[s 27]

27 Amendment of s 28 (Registration of retirement village scheme)

- (1) Section 28(4) to (6)—
renumber as section 28(5) to (7).
- (2) Section 28—
insert—
- ‘(4) However, the chief executive must not register a retirement village scheme if the chief executive reasonably considers the scheme is contrary to the regulatory framework under this Act.

Example—

It is contrary to that regulatory framework for the scheme operator to directly or indirectly require the retirement village’s residents to be responsible for things the Act makes the scheme operator responsible for.’

28 Amendment of s 45 (Content of residence contract)

- (1) Section 45(1)(b) and (c)—
omit, insert—
 ‘(b) the date the cooling-off period ends;’.
- (2) Section 45(1)(d) to (p)—
renumber as section 45(1)(c) to (o).

29 Omission of s 45A (Scheme operator to give notice of end of cooling-off period in particular circumstances)

Section 45A—
omit.

30 Amendment of s 56 (Interpretation for div 5)

Section 56(1), definition *termination date*, paragraph (b)—
omit, insert—

- (b) if a relative of the resident has a right under section 70B(5) to enter into a residence contract for the accommodation unit—the date the relative advised the scheme operator, under section 70B(5)(d), that the relative wants to enter into a residence contract for the accommodation unit; or
- (c) if a relative of the resident has a right under section 70B(2) to reside in the accommodation unit but does not have a right under section 70B(5) to enter into a residence contract for the accommodation unit—the date the relative vacates the accommodation unit.’.

31 Amendment of s 70B (Relative’s right to reside after death or vacation)

Section 70B(5)(d), ‘14 days’—

omit, insert—

‘42 days’.

32 Amendment of s 91 (Capital replacement fund)

Section 91(5)(a), after ‘repairs’—

insert—

‘, other than repairs that are reinstatement work the cost of which must be paid out of the fund under section 62(4)’.

33 Amendment of s 105 (General services charges for unsold right to reside in accommodation units)

Section 105(2), from ‘an’ to ‘subsection (1)’—

omit, insert—

‘any part of an amount payable under subsection (1) that is a maintenance reserve fund contribution’.

[s 34]

34 Amendment of s 106 (Increasing charges for general services)

Section 106(2), definition *CPI percentage increase*, paragraphs (a) and (b), ‘for the quarter ending immediately’—
omit, insert—
 ‘most recently’.

35 Insertion of new pt 15, div 3

Part 15—
insert—

‘Division 3 Transitional provisions for Fair Trading and Other Legislation Amendment Act 2011

‘237H Definitions for div 3

‘In this division—

amending Act means the *Fair Trading and Other Legislation Amendment Act 2011*.

former, of a provision mentioned in this division, means the provision to which the reference relates is a provision of the pre-amended Act.

pre-amended Act means this Act as in force immediately before the commencement of this section.

‘237I When retirement village scheme must not be registered

‘Section 28(4) applies to an application to register a retirement village scheme under section 27(1), whether the application was made before or after the commencement of this section.

‘237J Continuing application of former s 45A and former definition *cooling-off period* in schedule

‘Former section 45A and the former definition *cooling-off period* in the schedule continue to apply to a residence contract entered into before the commencement of this section as if the amending Act had not been enacted.

‘237K Continuing application of former s 70B(5)(d)

- ‘(1) This section applies if, immediately before the commencement of this section, a relative of a resident had a right, under section 70B(2), to reside in an accommodation unit.
- ‘(2) Former section 70B(5)(d) continues to apply to the relative as if the amending Act had not been enacted.’.

36 Amendment of schedule (Dictionary)

- (1) Schedule, definition *cooling-off period*—
omit, insert—
 ‘*cooling-off period*, for a residence contract, means a 14-day period starting on the day when the contract is signed.’.
- (2) Schedule, definition *decision notice*—
omit.