

MARKET COURT BILL

EXPLANATORY NOTES

The purpose of this Bill is to provide for the establishment of a Market Court which is to consider and deal with applications made by the Director of Consumer Affairs for orders in respect of traders who repeatedly engage in unfair conduct.

Clause 1 contains the short title, commencement provision and details of the division of the Bill into Parts and Divisions.

Clause 2 contains interpretations, including interpretations of "consumer" and "trader".

Clause 3 provides that this Act is not to apply to the provision of services by traders subject to certain statutory licensing schemes.

Clause 4 establishes the Market Court and provides that it is to be constituted by a president and two advisory members. The president shall be a County Court judge and the advisory members shall be selected by the president from panels of trader and consumer representatives.

Clause 5 provides for the appointment of panels of trader and consumer representatives.

Clause 6 sets out the circumstances in which the president or any panel member may be removed from office.

Clause 7 deals with the functions of the president. Sub-clause (1) provides that the president alone shall decide all questions of law and fact. Sub-clause (2) empowers the president to refer questions of law to the Supreme Court for its opinion.

Clause 8 provides that the function of the advisory members is to assist the president and advise him on any matter other than a question of law.

Clause 9 enables parties to appear before the Court personally or by a lawyer or, with leave of the Court, by any other approved person.

Clause 10 provides that the Court may summon any person to appear before it to give evidence and produce documents.

Clause 11 provides for the manner in which evidence may be given to the Court.

Clause 12 prohibits the Court from awarding costs.

Clause 13 provides that, subject to this Act, the Court can determine its own procedure.

Clause 14 provides for the appointment of a registrar and other staff.

Clause 15 enables the Director to apply to the Court for an order or orders in respect of a trader who has repeatedly engaged in unfair conduct. Sub-clause (2) describes the conduct which is deemed to be unfair to consumers.

Clause 16 empowers the Court to make orders prohibiting a trader from engaging in unfair conduct or requiring contracts entered into by a trader to be in a specified form or to comply with specified terms and conditions.

Clause 17 empowers the Court to make orders prohibiting directors etc. from consenting to or conniving at the engaging in unfair conduct by bodies corporates.

Clause 18 provides that contracts shall not be void by reason only that they contravene or do not comply with Court orders but enables any party to such a contract to apply to the Court for an order declaring that contract void.

Clause 19 enables the Court to impose conditions on orders.

Clause 20 allows the Director to apply to the Court at any time for the discharge or variation of a Court order.

Clause 21 sets out the duties of the registrar on receipt of an application.

Clause 22 enables an applicant to the Court to withdraw an application.

Clause 23 empowers the Court to amend at any time an application.

Clause 24 provides for the adjournment of the hearing of an application at any time by the Court.

Clause 25 provides that the Court is to be constituted by the same members throughout a hearing. Sub-clause (2) provides that if a hearing is interrupted by the death etc. of a member the hearing is to be re-commenced before a newly-constituted Court unless the president otherwise orders.

Clause 26 provides that the Supreme Court is to give its opinion on a question of law referred to it by the president and enables a party to proceedings before the Market Court to appeal to the Full Court against the determination of any question of law by the Market Court.

Clause 27 provides that, subject to sections 20 and 26, determinations and orders of the Court are final and without appeal.

Clause 28 requires the registrar to cause to be published in the *Government Gazette* particulars of certain orders of the Court and enables the Court to order the publication of particulars of such orders in a newspaper or other publication.

Clause 29 makes it an offence to fail to comply with an order of the Court.

Clause 30 empowers the Director to attempt to obtain from traders deeds of assurance as to their future conduct.

Clause 31 provides that deeds of assurance are to be filed and registered by the registrar. Sub-clause (4) establishes a *prima facie* presumption that a registered deed of assurance has been executed by the trader by whom it was purportedly given.

Clause 32 makes it an offence to fail to comply with a deed of assurance.

Clause 33 enables the Director to apply to the Court for orders in respect of a trader who has failed to comply with a deed of assurance given by him.

Clause 34 sets out the duties of the registrar on receipt of an application under section 33.

Clause 35 has the effect that a trader may only be prosecuted for failure to comply with a deed of assurance if the Court is satisfied that that trader has repeatedly engaged in unfair conduct.

Clause 36 empowers the president to deal with any person who is in contempt of Court.

Clause 37 contains a number of provisions designed to facilitate proof in proceedings before the Court.

Clause 38 deems conduct engaged in by a servant, agent or director of a trader at the direction of or with the consent knowledge acquiescence or agreement of the trader to have been engaged in by the trader.

Clause 39 deems a contract not to comply with a Court order if it contains any term or condition inconsistent with a term or condition required by the Court to be included in such contract.

Clause 40 provides that this Act shall apply to contracts which are to be wholly or partly performed in Victoria notwithstanding any provision in any such contract to the effect that that contract is to be governed by the law of any place outside Victoria.

Clause 41 provides that where a body corporate is charged with an offence against this Act any person involved in the management thereof may be charged with and convicted of a like offence unless he proves that the offence was committed without his knowledge or consent.

Clause 42 provides for judicial notice to be taken of certain matters.

Clause 43 specifies the manner in which notices under the Act may be given.

Clause 44 requires members of the Court, the registrar and members of the other staff assisting the Court to observe confidentiality.

Clause 45 gives immunity against action to persons in respect of anything done under the authority of, or *bona fide* purportedly under the authority of, this Act.

Clause 46 enables the necessary regulations to be made.