



Australian Capital Territory

# **Fair Trading (Australian Consumer Law) Act 1992**

**A1992-72**

**Republication No 39**

**Effective: 1 July 2022**

Republication date: 1 July 2022

Last amendment made by [A2022-8](#)

## About this republication

### The republished law

This is a republication of the *Fair Trading (Australian Consumer Law) Act 1992* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2022. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2022.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Fair Trading (Australian Consumer Law) Act 1992

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Australian Capital Territory

# Fair Trading (Australian Consumer Law) Act 1992

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An Act about fair trading and consumer protection, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Fair Trading (Australian Consumer Law) Act 1992*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*consumer*—see the [Australian Consumer Law \(ACT\)](#), section 2 (1).’ means that the term ‘consumer’ is defined in that law and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1), except the following offences:

- s 37 (4)
- s 43 (2)
- s 45 (6)
- s 52 (2).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2                      The Australian Consumer Law

### Division 2.1              Definitions

#### 5                      Definitions—pt 2

(1) In this part:

*application law* means—

- (a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications.

*Australian Consumer Law* means (according to the context)—

- (a) the Australian Consumer Law text; or
- (b) the Australian Consumer Law text, applying as a law of a participating jurisdiction, either with or without modifications.

*Australian Consumer Law text* means the text described in section 6.

*instrument* means any document, including the following:

- (a) an Act or an instrument made under an Act;
- (b) a law of this jurisdiction or an instrument made under that law;
- (c) an award or other industrial determination or order, or an industrial agreement;
- (d) any other order (whether executive, judicial or otherwise);
- (e) a notice, certificate or licence;
- (f) an agreement;

- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose;
- (h) an indictment, presentment, summons or writ;
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding.

***Intergovernmental Agreement*** means the Intergovernmental Agreement for the Australian Consumer Law made on 2 July 2009 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

***jurisdiction*** means a State or the Commonwealth.

***law***, in relation to a Territory, means a law of, or in force in, that Territory.

***modifications*** includes additions, omissions and substitutions.

***month*** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no corresponding day, ending at the expiration of the next month.

***participating jurisdiction*** means a jurisdiction that is a party to the Intergovernmental Agreement and applies the Australian Consumer Law as a law of the jurisdiction, either with or without modifications.

***State*** includes a Territory.

***Territory*** means the Australian Capital Territory or the Northern Territory.

***this jurisdiction*** means the Australian Capital Territory.

- (2) Terms used in this part and also in the [Australian Consumer Law \(ACT\)](#) have the same meanings in this part as they have in that law.

- (3) For this part—
- (a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and
  - (b) that corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

## **Division 2.2 Application of Australian Consumer Law**

### **6 The Australian Consumer Law text**

The Australian Consumer Law text consists of—

- (a) the *Competition and Consumer Act 2010* (Cwlth), schedule 2; and
- (b) the regulations under that Act, section 139G.

*Note* The Australian Consumer Law text is accessible at [www.legislation.gov.au](http://www.legislation.gov.au).

### **7 Application of Australian Consumer Law**

- (1) The Australian Consumer Law text, as in force from time to time—
  - (a) applies as a law of this jurisdiction; and
  - (b) as so applying may be referred to as the *Australian Consumer Law (ACT)*; and
  - (c) as so applying is a part of this Act.
- (2) This section has effect subject to section 8, section 9 and section 10.

## 8 Future modifications of Australian Consumer Law text

- (1) A modification made by a Commonwealth law to the Australian Consumer Law text after the commencement of this section does not apply under section 7, if the modification is declared by regulation under this Act to be excluded from the operation of that section.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation under subsection (1) has effect only if it is notified not later than 3 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further regulation under this Act so provides.
- (4) For this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is registered under the [Legislative Instruments Act 2003](#) (Cwlth).

## 9 Meaning of generic terms in Australian Consumer Law for purposes of this jurisdiction

In the [Australian Consumer Law \(ACT\)](#):

*court* includes the ACAT.

*regulator* means the commissioner for fair trading.

## 10 Interpretation of Australian Consumer Law

- (1) The [Acts Interpretation Act 1901](#) (Cwlth) applies as a law of this jurisdiction to the [Australian Consumer Law \(ACT\)](#).
- (2) For subsection (1), the Commonwealth Act mentioned in that subsection applies as if—
  - (a) the statutory provisions in the [Australian Consumer Law \(ACT\)](#) were a Commonwealth Act; and

- (b) the regulations in the *Australian Consumer Law (ACT)* or instruments under that law were regulations or instruments under a Commonwealth Act.
- (3) The *Legislation Act* does not apply to—
  - (a) the *Australian Consumer Law (ACT)*; or
  - (b) any instrument under that law.

## 11 Application of Australian Consumer Law

- (1) The *Australian Consumer Law (ACT)* applies to and in relation to—
  - (a) people carrying on business within this jurisdiction; or
  - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
  - (c) people ordinarily resident in this jurisdiction; or
  - (d) people otherwise connected with this jurisdiction.
- (2) Subject to subsection (1), the *Australian Consumer Law (ACT)* extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

## Division 2.3 References to Australian Consumer Law

### 12 References to Australian Consumer Law

- (1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.
- (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.



**13 References to Australian Consumer Law of other jurisdictions**

- (1) This section has effect for an Act, a law of this jurisdiction or an instrument under an Act or such a law.
- (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.

**Division 2.4 Application of Australian Consumer Law to jurisdictions**

**14 Division does not apply to Commonwealth**

In this division, *participating jurisdiction* or *other jurisdiction* does not include the Commonwealth.

**15 Application law of this jurisdiction**

The application law of this jurisdiction binds (so far as the legislative power of the Legislative Assembly allows) each participating jurisdiction, so far as the jurisdiction carries on a business, either directly or by an authority of the jurisdiction concerned.

**16 Application law of other jurisdictions**

- (1) The application law of each participating jurisdiction other than this jurisdiction binds this jurisdiction, so far as this jurisdiction carries on a business, either directly or by an authority of this jurisdiction.
- (2) If, because of this part, a provision of the law of another participating jurisdiction binds this jurisdiction, this jurisdiction is subject to that provision despite any prerogative right or privilege.

## **17 Activities that are not business**

- (1) For section 15 and section 16, the following do not amount to carrying on a business:
  - (a) imposing or collecting—
    - (i) taxes; or
    - (ii) levies; or
    - (iii) fees for authorisations;
  - (b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions);
  - (c) a transaction involving—
    - (i) only people who are all acting for the same jurisdiction (and none of whom is an authority of a State); or
    - (ii) only people who are all acting for the same authority of a State; or
    - (iii) only a State and 1 or more non-commercial authorities of that State; or
    - (iv) only non-commercial authorities of the same State;
  - (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because—
    - (i) the body chooses to acquire the products; or
    - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for section 15 and section 16.

(3) In this section:

*acquisition of primary products by a government body under legislation* includes vesting of ownership of primary products in a government body by legislation.

*authorisation* means a licence, permit, certificate or other authorisation that allows the holder of the authorisation to supply goods or services.

*government body* means a State or an authority of a State.

*primary products* means—

- (a) agricultural or horticultural produce; or
- (b) crops, whether on or attached to the land or not; or
- (c) animals (whether dead or alive); or
- (d) the bodily produce (including natural increase) of animals.

(4) For this section, an authority of a State is *non-commercial* if—

- (a) it is constituted by only one person; and
- (b) it is neither a trading corporation nor a financial corporation.

## **18 Jurisdictions not liable to pecuniary penalty or prosecution**

- (1) Nothing in the application law of this jurisdiction makes any jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.
- (2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

## Division 2.5                      Miscellaneous

### 19                      Conferral of functions and powers on certain bodies

- (1) The authorities and officers of the Commonwealth mentioned in the *Australian Consumer Law (ACT)* have the functions and powers conferred or expressed to be conferred on them under the *Australian Consumer Law (ACT)*.
- (2) In addition to the powers mentioned in subsection (1), the authorities and officers mentioned in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers mentioned in that subsection.

### 20                      No doubling-up of liabilities

- (1) If—
  - (a) an act or omission is an offence against the *Australian Consumer Law (ACT)* and is also an offence against an application law of another participating jurisdiction; and
  - (b) the offender has been punished for the offence under the application law of the other jurisdiction;the offender is not liable to be punished for the offence against the *Australian Consumer Law (ACT)*.
- (2) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the *Australian Consumer Law (ACT)* in relation to the same conduct.

## Part 3 Codes of practice

### 21 Definitions for pt 3

In this part:

*approved code* means a code of practice approved under section 23.

*undertaking* means an undertaking given in response to a request for an undertaking made under section 24.

### 22 Preparation of draft codes of practice

- (1) The commissioner may, with the approval of the Minister, and must, if the Minister directs, prepare for consideration by the Minister a draft code of practice for fair dealing—
  - (a) between a particular class of suppliers and consumers; or
  - (b) by a particular class of people in relation to consumers.
- (2) A draft code of practice may do 1 or more of the following:
  - (a) require an entity to be licensed or registered and prescribe conditions on licences or registration;
  - (b) provide for fees to be imposed or collected in relation to a licensing or registration system established under the code;
  - (c) impose educational and competency requirements on entities licensed or registered, or applying to be licensed or registered, under the code;
  - (d) establish alternative dispute resolution committees and prescribe the functions the committees may exercise.

*Note* **Entity**—see [Legislation Act](#), dict, pt 1.
- (3) Subsection (2) does not limit what a draft code of practice may do.

- (4) For the purpose of preparing a draft code of practice, the commissioner must arrange for consultation with, and invite submissions from, the people and organisations that, in the opinion of the commissioner, would have an interest in the terms of the proposed draft code of practice.
- (5) If the commissioner is satisfied that associated people in a field of trade or commerce have, in consultation with organisations representing consumers and other interested people, agreed to abide by a particular code of practice in their dealings with or in relation to consumers, the commissioner may submit the code to the Minister for consideration together with any recommendations by the commissioner in relation to amendments to the code.

## **23 Approval of codes of practice**

- (1) The Minister may approve a code of practice submitted to the Minister under section 22.

*Note* Under the [Legislation Act](#), s 46 a power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see s 46 (2)).

- (2) A code of practice submitted to the Minister under section 22 may be approved with or without amendments.
- (3) An approved code of practice is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) The Minister may approve an amendment of an approved code of practice if the commissioner has certified in writing that the amendment is of a minor or inconsequential nature and that compliance with section 22 is not required.

**24 Undertakings following contravention of approved code**

- (1) If the commissioner believes on reasonable grounds that a person in carrying on a business has not complied with an approved code, the commissioner may request the person to give within a stated time a written undertaking about 1 or more of the following:
  - (a) stopping the conduct;
  - (b) future compliance with the code;
  - (c) the action the person will take to rectify any consequence of the non-compliance.
- (2) In considering whether to require a person to give an undertaking under subsection (1), the commissioner must have regard to any dispute resolution process stated in the approved code.

**25 Enforcement of undertakings**

- (1) If a person fails to comply with a request by the commissioner to give an undertaking under section 24, the commissioner may apply to the Magistrates Court for an order under subsection (2).
- (2) If the court is satisfied that there were grounds for requesting the undertaking, the court may make 1 or more of the following orders:
  - (a) an order directing the person to do something that would have been required to be done under the undertaking if the undertaking had been given;
  - (b) any other order that the court considers appropriate.
- (3) If the commissioner considers that a person has breached an undertaking, the commissioner may apply to the Magistrates Court for an order under subsection (4).
- (4) If the court is satisfied that the person has breached the undertaking, the court may make 1 or more of the following orders:
  - (a) an order directing the person to comply with the undertaking;

(b) any other order that the court considers appropriate.

- (5) A person commits an offence if the person fails to comply with an order under this section.

Maximum penalty: 50 penalty units.

## **26 Variation or discharge of restraining order**

The Magistrates Court may, on the application of the commissioner, vary or discharge an order made under section 25.

## **27 Register of undertakings**

- (1) The commissioner must keep a register of undertakings.
- (2) The register may include any other information the commissioner considers appropriate.
- (3) The register may be kept in any form, including electronically, that the commissioner decides.
- (4) The commissioner may correct any mistake, error or omission in the register.
- (5) The commissioner may change a detail included in the register to keep the register up-to-date.
- (6) The register must be available for public inspection, free of charge, during normal business hours on any business day.



## Part 4                      Advisory committees

### 28                      Establishment of advisory committees

- (1) The Minister may establish advisory committees to provide advice to the Minister or the commissioner about fair trading and consumer protection.
- (2) An instrument establishing a committee is a notifiable instrument.  
*Note*     A notifiable instrument must be notified under the [Legislation Act](#).
- (3) An advisory committee must provide advice as required by the Minister or the commissioner and may provide advice on its own initiative.
- (4) In exercising its functions, an advisory committee may consult with members of the public and with other entities interested in fair trading and consumer protection matters.

### 29                      Advisory committee membership

An advisory committee is made up of—

- (a) the commissioner; and
- (b) other members appointed by the Minister who the Minister considers have the experience or expertise in relation to fair trading and consumer protection matters to qualify the person to exercise the functions of a committee member.

### 30                      Advisory committee—general procedure

- (1) Meetings of an advisory committee are to be held when and where it decides.
- (2) An advisory committee may conduct its proceedings (including its meetings) as it considers appropriate.

**31 Reimbursement of expenses for advisory committee members**

- (1) A member of an advisory committee is not entitled to be paid for the exercise of the member's functions.
- (2) However, a member may apply to the commissioner for reimbursement of expenses reasonably incurred by the member for the purpose of attending a meeting of a committee.

## **Part 5**                      **Commissioner for fair trading**

### **Division 5.1**              **Administration**

#### **32**                      **Commissioner for fair trading**

The director-general must appoint a public servant as the Commissioner for Fair Trading.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

#### **33**                      **Functions of commissioner**

- (1) The commissioner may—
  - (a) receive complaints about fraudulent conduct or unfair practices in relation to the supply of goods or services or the acquisition of interests in land; and
  - (b) deal with the complaints in a way the commissioner considers appropriate, including by investigating them or referring them to the entity the commissioner considers to be best able to take appropriate action; and
  - (c) investigate compliance with fair trading legislation; and
  - (d) conduct other investigations and research into consumer and fair trading issues and practices; and
  - (e) inspect records and accounts that must be kept under fair trading legislation; and
  - (f) make information available to, and provide guidance to, the public about consumer and fair trading issues and practices and about related laws; and

- (g) exercise any other function given to the commissioner under a territory law; and
- (h) be responsible for any other function given to the commissioner by the Minister or director-general.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

- (2) In exercising the commissioner's functions, the commissioner may collaborate or consult with advisory committees, members of the public, and other entities.
- (3) A complaint mentioned in subsection (1) (a) may, but need not, relate to conduct or a practice to which fair trading legislation applies.

### 34 Delegation by commissioner

- (1) The commissioner may delegate the commissioner's functions under the consumer and trader legislation or another territory law to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) In this section:

*consumer and trader legislation* means the following:

- (a) the fair trading legislation;
- (b) the [Classification \(Publications, Films and Computer Games\) \(Enforcement\) Act 1995](#);
- (c) the [Pawnbrokers Act 1902](#);
- (d) the [Sex Work Act 1992](#);
- (e) the [Sale of Motor Vehicles Act 1977](#);
- (f) the [Second-hand Dealers Act 1906](#);
- (g) the [Tobacco and Other Smoking Products Act 1927](#);

(h) the *Traders (Licensing) Act 2016*.

## Division 5.1A Conciliation of consumer complaints

### Subdivision 5.1A.1 Preliminary

#### 34A Application—div 5.1A

This division applies in relation to a consumer complaint made by a consumer to the commissioner if the value of the remedy sought in relation to the complaint is not more than \$5 000.

#### 34B Definitions—div 5.1A

In this division:

*acquire*—see the *Australian Consumer Law (ACT)*, section 2 (1).

*business* means a person in trade or commerce, a supplier, a manufacturer or another person to whom the consumer legislation applies.

*compulsory conciliation notice*—see section 34G.

*consumer*—

- (a) in relation to the *Australian Consumer Law (ACT)*—see the *Australian Consumer Law (ACT)*, section 2 (1); or
- (b) in relation to any other consumer legislation—means a person who acquires goods or services from a business for personal, domestic or household use or consumption.

*consumer complaint*—

- (a) means a complaint by a consumer about a civil dispute with a business in relation to consumer or fair trading issues and practices; and
- (b) includes a complaint by a consumer about a contravention of the consumer legislation by the business.

*consumer legislation* means any of the following:

- (a) the *Agents Act 2003*;
- (b) the *Australian Consumer Law (ACT)*;
- (c) the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- (d) the *Pawnbrokers Act 1902*;
- (e) the *Sale of Motor Vehicles Act 1977*;
- (f) the *Second-hand Dealers Act 1906*.

*party*, to a conciliation of a consumer complaint, means a person mentioned in section 34E in relation to the complaint.

### **34C Meaning of *conciliation*—div 5.1A**

- (1) In this division, *conciliation* of a consumer complaint involves the commissioner acting as an impartial third party to help the parties to the conciliation to endeavour to resolve the matters raised by the complaint by agreement.
- (2) The parties to the conciliation decide the outcome of the conciliation, usually with advice from the commissioner.

### **Subdivision 5.1A.2 Conciliation**

#### **34D Conciliation**

The commissioner may conciliate a consumer complaint, or part of a consumer complaint, if—

- (a) the commissioner is satisfied that the matters raised by the complaint, or part of the complaint, are appropriate for conciliation; and

**Example**

A consumer complaint is not appropriate for conciliation if it is before the ACAT or if the conduct complained about may constitute a criminal offence.

- (b) the consumer who made the complaint agrees.

**34E Parties to conciliation**

The parties to a conciliation of a consumer complaint are the consumer who made the complaint and the business that is the subject of the complaint.

**34F Attendance at conciliation**

- (1) A consumer who makes a consumer complaint must attend a conciliation of the complaint unless—
- (a) the consumer is a child or a person with disability, and another person attends on behalf of the consumer; or
  - (b) the commissioner consents to another person attending the conciliation on behalf of the consumer.
- (2) The commissioner may agree to a person accompanying the consumer at the conciliation.
- (3) If a business receives a compulsory conciliation notice, the business must attend the conciliation at the time and place mentioned in the notice.

*Note* A business that contravenes s (3) is liable to a civil penalty of not more than \$5 000 (see sdiv 5.1A.3).

- (4) Subsection (3) does not apply to a business if it has a reasonable excuse for not attending the conciliation at the time or place mentioned in the notice.

*Note* A business has an evidential burden in relation to the matters mentioned in s (4) (see s 34T).

- (5) A party to a conciliation must not be represented by a lawyer unless—
- (a) another party to the conciliation is a lawyer; or
  - (b) each party to the conciliation agrees; or

- (c) the commissioner is satisfied that the party would be unfairly disadvantaged if not represented by a lawyer.
- (6) If the commissioner agrees, a person may attend a conciliation by telephone or other electronic means.

### **34G Compulsory conciliation notice**

- (1) The commissioner may, by written notice (a *compulsory conciliation notice*), require a business to attend a conciliation in relation to a consumer complaint if—
  - (a) the business is the subject of the complaint; and
  - (b) the consumer who made the complaint agrees.
- (2) The compulsory conciliation notice must state the time and place that the business is required to attend the conciliation.

### **34H Conduct of conciliation**

Conciliation is to be conducted in the way the commissioner decides.

#### **Examples**

- 1 the commissioner may decide that a consumer complaint is to be split and the parts are to be conciliated separately
- 2 the commissioner may decide to conciliate a consumer complaint by holding a conference with the parties

### **34I Conciliated agreements**

- (1) If a consumer complaint is resolved by agreement at conciliation, the commissioner must help the parties to make a written record of the agreement they have reached (the *conciliation agreement*).
- (2) A conciliation agreement must be signed by each party to the conciliation.



- (3) The commissioner must give each party a copy of the conciliation agreement.

*Note* The ACAT may make an order in accordance with a conciliation agreement for a consumer complaint (see *ACT Civil and Administrative Tribunal Act 2008*, s 55B).

### **34J End of conciliation**

- (1) Conciliation of a consumer complaint ends when—
- (a) agreement is reached on the matters raised by the complaint and the parties end the conciliation; or
  - (b) the parties agree to end the conciliation; or
  - (c) the consumer withdraws from the conciliation; or
  - (d) the commissioner is satisfied that the conciliation is unlikely to be successful.
- (2) When the conciliation ends, the commissioner must, as soon as practicable, tell each party to the conciliation that it has ended and why it has ended.

### **34K Admissibility of evidence**

- (1) This section applies to—
- (a) a communication made between people attending a conciliation (including the commissioner); and
  - (b) a document (whether delivered or not) that has been prepared in relation to the conciliation.
- (2) The *Evidence Act 2011*, section 131 (Exclusion of evidence of settlement negotiations) applies to a communication or document to which this section applies as if the communication or document were a communication or document mentioned in that [Act](#), section 131 (1).

### **Subdivision 5.1A.3 Civil penalties—business failing to attend conciliation**

#### **34L Definitions—sdiv 5.1A.3**

In this subdivision:

*civil penalty order* means an order made by the Magistrates Court under section 34M (3).

*civil penalty provision* means section 34F (3).

#### **34M Civil penalty orders**

- (1) The commissioner may apply to the Magistrates Court for an order that a business alleged to have contravened the civil penalty provision pay the Territory a pecuniary penalty of not more than \$5 000.
- (2) The commissioner must make the application within 6 years after the alleged contravention.
- (3) If the Magistrates Court is satisfied that the business has contravened the civil penalty provision, the court may order the business to pay to the Territory a pecuniary penalty of an amount the court determines to be appropriate for the contravention.
- (4) In determining an amount under subsection (3), the court must take into account the following:
  - (a) the nature and circumstances that led to the contravention;
  - (b) the nature and extent of any loss suffered by the commissioner because of the contravention;
  - (c) the size of the business;

- (d) whether the business has previously contravened the civil penalty provision and the circumstances of the previous contravention;

**Examples—circumstances of previous contravention**

- 1 the number of previous contraventions by the business in relation to the dispute being conciliated
- 2 the number of previous contraventions by the business in relation to conciliations for other disputes
- 3 whether the circumstances of a previous contravention is similar to the circumstances of the current contravention

- (e) any other matter the court considers relevant.

**34N Civil enforcement of penalty**

A pecuniary penalty under a civil penalty order is a debt owing to the Territory by the business in relation to whom the order is made.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

**34O Multiple contraventions of civil penalty provision**

- (1) The Magistrates Court may make a single civil penalty order against a business for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each contravention.

**34P Proceedings may be heard together**

The Magistrates Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**34Q Civil evidence and procedure rules for civil penalty orders**

The Magistrates Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**34R Civil penalty provisions—no fault element**

In proceedings for a civil penalty order against a business for a contravention of a civil penalty provision, it is not necessary to prove any fault element in relation to the contravention.

**Examples—fault element**

- 1 intention
- 2 knowledge
- 3 negligence
- 4 recklessness

**34S Civil penalty provisions—contravention by corporation representative**

- (1) If a civil penalty provision is contravened by a representative of a corporation acting within the actual or apparent scope of the representative's employment, or within the representative's actual or apparent authority, the contravention must also be attributed to the corporation.

- (2) In this section:

*representative*, of a corporation, means an employee, agent or officer of the corporation.

**34T Reasonable excuse—burden of proof**

If a business wishes to rely on section 34F (4) in a proceeding for a civil penalty order, the business has an evidential burden in relation to the matter.

## Division 5.2                      Investigations

### 35                      Definitions for div 5.2

In this division:

*business premises* means premises where a business, trade, profession or calling is carried on, other than a part used for residential purposes.

*connected*—a thing is *connected* with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

### 36                      Investigators

- (1) The commissioner may appoint a person as an investigator for this Act, section 33 (1) (b), (c), (d) or (e) (Functions of commissioner).

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) An investigator may also exercise any other function given to the investigator under a territory law.

### **37 Identity cards**

- (1) The commissioner must issue an identity card to each investigator under this Act.
- (2) The identity card must state that the person is an investigator.
- (3) The identity card must also—
- (a) include a recent photograph of the person; and
  - (b) state—
    - (i) the person's name; and
    - (ii) the Acts for which the person is an investigator; and
    - (iii) the date of issue of the card; and
    - (iv) a date of expiry for the card; and
  - (c) include anything else prescribed by regulation.
- (4) A person who ceases to be an investigator must return the person's identity card to the commissioner as soon as practicable, but within 21 days, after ceasing to be an investigator.

Maximum penalty (subsection (4)): 1 penalty unit.

### **38 Power not to be exercised before identity card shown**

An investigator may exercise a power under a territory law in relation to a person only if the investigator first shows the person the investigator's identity card.

### **39 General power to enter premises**

- (1) For an investigation, an investigator may—
  - (a) enter any premises at any time with the occupier's consent; or
  - (b) enter premises when open to the public; or
  - (c) enter business premises during business hours at the premises; or
  - (d) enter premises in accordance with a warrant under this division.
- (2) An investigator may, without the occupier's consent or a warrant, enter the land around premises to ask for consent to enter the premises.

### **40 Consent to entry**

- (1) When asking for the occupier's consent to enter premises under this division, an investigator must—
  - (a) show the investigator's identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this division may be used in evidence in court; and
    - (iii) that consent may be refused.
- (2) If the occupier consents, the investigator must ask the occupier to sign a written acknowledgment—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this division may be used in evidence in court; and
    - (iii) that consent may be refused; and

- (b) that the occupier consented to the entry; and
  - (c) stating the time, and day, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the investigator must immediately give a copy to the occupier.
- (4) A court must assume that an occupier of premises did not consent to an entry to the premises by an investigator under this division if—
- (a) the question whether the occupier consented to the entry arises in proceedings in the court; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry; and
  - (c) it is not proved that the occupier consented to the entry.

#### **41 Warrants**

- (1) An investigator may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity connected with an offence against the fair trading legislation; and
  - (b) the thing or activity is at or happening at the premises, or may be at or happening at the premises within the next 14 days.



- (5) The warrant must state—
- (a) that an investigator may, with necessary help and force, enter the premises and exercise the investigator's powers under this division; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.

#### **42 Warrants—application made other than in person**

- (1) An investigator may apply for a warrant by phone, fax, email, radio or other form of communication if the investigator considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the investigator must prepare an application stating the grounds on which the warrant is sought.
- (3) The investigator may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately provide a written copy to the investigator if it is practicable to do so.
- (5) The written copy of the warrant authorises the entry and the exercise of the investigator's powers under this division.
- (6) The investigator must, at the first reasonable opportunity, send to the magistrate the sworn application.
- (7) On receiving the sworn application, the magistrate must attach it to the warrant.

- (8) A court must assume that a power exercised by an investigator was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

#### **43 General powers on entry to premises**

- (1) An investigator who enters premises under this division may, for the fair trading legislation, do any of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
  - (b) copy a document;
  - (c) take measurements or conduct tests;
  - (d) take samples of or from anything on the premises;
  - (e) take photographs, films, or audio, video or other recordings;
  - (f) subject to section 45 (Power to seize evidence), seize a thing;
  - (g) take into the premises any people, equipment or material the investigator reasonably needs for exercising a power under this division;
  - (h) require the occupier, or a person on the premises, to give the investigator reasonable help to exercise a power under this division.
- (2) A person must not, without reasonable excuse, contravene a requirement under subsection (1) (h).

Maximum penalty (subsection (2)): 50 penalty units.

#### **44 Inspection of records of agents**

- (1) For this section, the following is a *relevant circumstance* in relation to a person:
  - (a) the person is a licensed agent who cannot be found;
  - (b) the person is a licensed agent who has left the ACT apparently permanently or for an extended period;
  - (c) the person has ceased to be a licensed agent;
  - (d) the person is a licensed property agent who has contravened, or appears to have contravened, the *Agents Act 2003*, part 7 (Trust accounts—licensed property agents).
- (2) This section applies if an investigator is satisfied that—
  - (a) a relevant circumstance has happened in relation to a person; and
  - (b) the person has deposited money in an account with an authorised deposit-taking institution; and
  - (c) it is necessary to inspect the records relating to the person kept by the institution.
- (3) The investigator may give to the authorised deposit-taking institution a written notice—
  - (a) setting out the relevant circumstance; and
  - (b) requiring the institution to produce for the investigator's inspection the records of the institution relating to the person.
- (4) An authorised deposit-taking institution must comply with the notice.
- (5) In this section:

*account*—

  - (a) means a trust account or another account, whether related to a person's business activities or not; and
  - (b) includes an account kept jointly with someone else.

*licensed agent*—see the *Agents Act 2003*, dictionary.

*licensed property agent*—see the *Agents Act 2003*, section 7A.

*trust account*—see the *Agents Act 2003*, dictionary.

#### **45 Power to seize evidence**

- (1) An investigator who enters premises under a warrant under this division may seize the things for which the warrant was issued.
- (2) An investigator who enters premises under this division with the occupier's consent may seize a thing on the premises if—
  - (a) the investigator is satisfied on reasonable grounds that the thing is connected with an offence against the fair trading legislation; and
  - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.
- (3) An investigator may also seize anything on premises entered under this division if the investigator is satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against the fair trading legislation; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) In addition, an investigator may seize goods on premises entered under this division if—
  - (a) the investigator is satisfied on reasonable grounds that the goods have been supplied in contravention of the fair trading legislation; and

- (b) seizure of the goods is necessary to decide whether the contravention has happened, or to be used as evidence in proceedings under the fair trading legislation about the contravention.
- (5) Having seized a thing, an investigator may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (6) A person must not, without the commissioner's approval, interfere with a thing to which access has been restricted under subsection (5).

Maximum penalty (subsection (6)): 50 penalty units, imprisonment for 6 months or both.

#### **46 Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an investigator under this division, the investigator must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the investigator must leave the receipt, secured conspicuously at the place of seizure.

#### **47 Access to things seized**

A person who would, apart from the seizure, be entitled to a thing seized under this division may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

#### **48 Return of things seized**

- (1) A thing seized under this division must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
  - (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or
  - (b) the court does not find the offence proved in a prosecution for an offence against the fair trading legislation relating to the thing.
- (2) A thing seized under this division is forfeited to the Territory if a court—
  - (a) finds an offence against the fair trading legislation relating to the thing to be proved; and
  - (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but a court does not order forfeiture of the thing seized, the commissioner must return the thing to its owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.

#### **49 Self-incrimination etc**

- (1) A person is not excused from providing information or producing a document when required to do so under this division on the ground that the information or document may tend to incriminate the person.
- (2) However—
  - (a) providing the information or producing the document; or

- (b) any other information, document or thing obtained as a direct or indirect consequence of providing the information or producing the document;

is not admissible in evidence against the person in a criminal proceeding.

- (3) Subsection (2) does not apply to a proceeding for—
  - (a) an offence against the [Criminal Code](#), part 3.4 (False or misleading statements, information and documents); or
  - (b) any other offence in relation to the falsity or misleading nature of the information or document.

*Note 1* A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see [Legislation Act 2001](#), s 189).

*Note 2* The [Legislation Act 2001](#), s 171 deals with the application of client legal privilege.

## **50 Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this division, an investigator must take all reasonable steps to ensure that the investigator, and any person assisting the investigator, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an investigator, or a person assisting an investigator, damages anything in the exercise or purported exercise of a function under this division, the investigator must give written notice of the particulars of the damage to the person whom the investigator believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens on premises entered under this division in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

## **51 Compensation**

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this division by an investigator or a person assisting an investigator.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against the fair trading legislation brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## **52 Investigator may require giving of information and producing of documents**

- (1) An investigator making an investigation—
  - (a) on giving a person other than a corporation a warning, orally or in writing, of the person's obligation to comply with a requirement under this section, may, by written notice, require that person—
    - (i) to give to the investigator, by writing signed by that person, information stated in the notice; or
    - (ii) to give to the investigator, orally, information stated in the notice; or
    - (iii) to produce to the investigator a document stated in the notice;



- (b) may, on giving a corporation a written warning of its obligation to comply with a requirement under this section, by written notice, require the executive officer of the corporation—
- (i) to give to the investigator, by writing signed by the officer, information stated in the notice; and
  - (ii) to give to the investigator, orally, information stated in the notice; and
  - (iii) to produce to the investigator a document stated in the notice; and
- (c) may require an entity mentioned in paragraph (a) or (b) to give the information or produce the document—
- (i) at a place stated in the notice; and
  - (ii) at or within a time stated in the notice.
- (2) A person who, without reasonable excuse, fails to comply with a requirement under this section commits an offence.
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) A reference in this section to information or a document stated in a notice under this section is a reference to information or a document, as the case may be, reasonably required for this Act.
- (4) An investigator who enters premises under section 39 is not authorised to remain on the premises if the investigator does not produce the investigator's identity card for inspection if asked to do so by the occupier or a person apparently in charge of the premises.
- (5) In this section:
- executive officer*** means a person (however described and whether or not the person is a director of the corporation) who is concerned with, or takes part in, the corporation's management.

### **53 Copying of documents produced under s 52**

- (1) A prescribed person may—
  - (a) make copies of a document produced in accordance with a notice under section 52; and
  - (b) retain possession of the document for as long as is necessary to make those copies.
- (2) A prescribed person who for subsection (1) is in the possession of a document must comply with a request made by the person who produced the document, or by a person authorised by that person, to be afforded a reasonable opportunity to inspect and make copies of the document.
- (3) In this section:

*prescribed person* means—

  - (a) the commissioner; or
  - (b) a person authorised by the commissioner by signed writing for this section.

### **54 Secrecy**

- (1) A person to whom this section applies commits an offence if—
  - (a) the person—
    - (i) makes a record of protected information about someone else; and
    - (ii) is reckless about whether the information is protected information about someone else; or
  - (b) the person—
    - (i) does something that divulges protected information about someone else; and

- (ii) is reckless about whether—
  - (A) the information is protected information about someone else; and
  - (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if the record is made, or the information is divulged—
  - (a) under this Act or another law applying in the Territory; or
  - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another law applying in the Territory.

*Note* The defendant has an evidential burden in relation to the matters mentioned in ss (2) and (3) (see [Criminal Code](#), s 58).

- (3) Subsection (1) does not apply to the divulging of protected information about someone with the person's consent.
- (4) A person to whom this section applies commits an offence if, in a criminal proceeding against a defendant, the person divulges protected information to a court, or produces a document to a court, that was given or produced by the defendant in accordance with a requirement under section 52 (1) unless—
  - (a) the proceeding is for an offence against section 52 (2); or
  - (b) the proceeding is in respect of the falsity of the information or of a statement in the document.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the Territory.

(6) In this section:

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

*divulge* includes communicate.

*person to whom this section applies* means a person —

- (a) who is or has been—
  - (i) the commissioner; or
  - (ii) a member of the staff of the commissioner; or
- (b) mentioned in section 33 (2); or
- (c) who exercises, or has exercised, a function under this Act.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

**55 Commissioner may begin or defend legal proceeding on behalf of consumer**

- (1) This section applies if a complaint or other matter involving a consumer is made or referred to the commissioner.
- (2) The commissioner may, on behalf of the consumer and either alone or jointly, begin a legal proceeding against another person or defend a proceeding brought against the consumer for the purpose of enforcing or protecting the rights of the consumer in relation to an infringement, or suspected infringement, by that other person of—
  - (a) those rights; or
  - (b) a law in force in the Territory relating to the interests of consumers.
- (3) The commissioner must not begin or defend a proceeding under subsection (2) unless the commissioner is satisfied that—
  - (a) the consumer has a cause of action or a good defence to the proceeding; or
  - (b) it is otherwise in the public interest to do so.

**56 Commissioner must obtain consent in relation to proceeding**

- (1) The commissioner must not begin or defend a proceeding under section 55 unless the commissioner has—
  - (a) the written consent of the consumer; and
  - (b) the written consent of the Minister.
- (2) Nothing in subsection (1) requires the commissioner to obtain the consent of the consumer or the Minister in relation to the defence of a counterclaim, set-off or cross-action.
- (3) A consent given under subsection (1) (a) is irrevocable except with the consent of the commissioner.

- (4) A consent given under subsection (1) (b) is subject to the conditions the Minister considers appropriate.

### **57 Conduct of proceeding by commissioner**

- (1) Subject to section 56 (1), the commissioner may, without consulting or seeking the consent of the consumer, conduct a proceeding under section 55 (2) in the name of the consumer and in the way the commissioner considers appropriate.
- (2) For the purpose of conducting a proceeding under section 55 (2), the commissioner has the same rights as the consumer would have had in the conduct of the proceeding, including the right—
- (a) to sign documents in connection with the proceeding on behalf of the consumer; and
  - (b) to settle an action or part of an action; and
  - (c) to give an undertaking in relation to costs.

### **58 Court's powers**

In a proceeding under section 55 (2), a court has the same powers as it would have had if the proceeding had been begun by the consumer.

### **59 Recovery of money other than costs**

Money (other than costs) recovered by the commissioner as a result of a proceeding under section 55 (2) must be paid to the consumer without deduction.

### **60 Costs**

- (1) If an order for costs is made against the consumer in relation to a proceeding under section 55 (2)—
- (a) the costs must be paid by the commissioner; and
  - (b) the order may be enforced against the commissioner as if the commissioner were the consumer; and

- (c) the order must not be enforced against the consumer.
- (2) If an order for costs is made in favour of the consumer—
  - (a) the costs are payable to the commissioner; and
  - (b) the order may be enforced by the commissioner.

**61 Commissioner not personally liable**

The commissioner is not personally liable as a result of a proceeding under section 55 (2) but any amount that the commissioner becomes liable to pay under section 60 (1) must be paid by the Territory.

## Part 6 Maximum annual percentage rate and disclosure

### 62 Definitions—pt 6

In this part:

*annual percentage rate*—see the code, section 204 (1).

*code* means the National Credit Code.

*contract document*—see the code, section 204 (1).

*credit*—see the code, section 204 (1).

*credit contract*—see the code, section 204 (1).

*credit fees and charges*—see the code, section 204 (1).

### 63 Maximum annual percentage rate

- (1) A regulation may prescribe a maximum annual percentage rate for a credit contract to which the code applies.
- (2) A regulation may require interest charges, and all credit fees and charges, under a credit contract to be included in working out the maximum annual percentage rate under the contract.
- (3) The code, part 2, division 3 applies in relation to a prescribed maximum annual percentage rate as if the rate had been prescribed by the code.

*Note* The effect of s (3) is that a contract is void to the extent that it imposes a monetary liability prohibited under s (1) and that any amount paid under the contract may be recovered. In addition, the credit provider commits an offence for entering into the contract.



- (4) This section does not affect the exercise of any powers under the code, part 4, division 3 in relation to a credit contract that is not void because of this section.

*Note* The code, pt 4, div 3 allows (among other things) the reopening of unjust transactions.

- (5) This section applies to a credit contract whether the credit contract was established before, or is established after, the commencement of this section.

#### **64 Disclosure of cost of credit**

- (1) For the code, section 17 (4) (Annual percentage rate or rates), the contract document must state an annual percentage rate worked out on the basis of charges under the credit contract that are interest charges (whether or not they are described in the credit contract as interest charges).
- (2) For the code, section 17 (6) (Total amount of interest charges payable), the total amount of interest charges payable under the contract includes an amount that is an interest charge (whether or not it is described in the contract as an interest charge).
- (3) For the code, section 16 (Precontractual disclosure), the precontractual statement must also set out the matters mentioned in subsections (1) and (2).
- (4) The requirements under this section are additional to any other requirements under the code, section 16 or section 17.

## Part 7 Miscellaneous

### 65 Certificate evidence

- (1) A certificate that appears to be signed by the commissioner, and states any of the following matters, is evidence of the matter:
  - (a) that a stated investigation made, or being made, by the commissioner or another stated person was made, or is being made, under part 5;
  - (b) that on a stated date, or during a stated period, a stated person was an investigator.
- (2) A court must accept a certificate under this section as proof of the matters stated in it if there is no evidence to the contrary.

### 66 Protection of officials from liability

- (1) In this section:  
*official* means—
  - (a) the commissioner; or
  - (b) a person who is exercising, or has exercised, a function under this Act; or
  - (c) a person who is, or has been, engaged in the administration of this Act.
- (2) An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

- (3) Any liability that would, apart from this section, attach to an official attaches instead to the Territory.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

## **67 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- director-general (see s 163)
- document
- interest
- land
- lawyer
- Magistrates Court
- Minister (see s 162)
- National Credit Code
- prescribed.

***acquire***, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

***advisory committee*** means a committee established under section 28.

***annual percentage rate***, for part 6 (Maximum annual percentage rate and disclosure)—see section 62.

***application law***, for part 2 (The Australian Consumer Law)—see section 5 (1).

***approved code***, for part 3 (Codes of practice)—see section 21.

***Australian Consumer Law***, for part 2 (The Australian Consumer Law)—see section 5 (1).

***Australian Consumer Law (ACT)*** means the provisions applying in this jurisdiction because of section 7.

***Australian Consumer Law text***, for part 2 (The Australian Consumer Law)—see section 5 (1).

**business**—

- (a) for this Act, other than division 5.1A—see the [Australian Consumer Law \(ACT\)](#), section 2 (1); and
- (b) for division 5.1A (Conciliation of consumer complaints)—see section 34B.

**business premises**, for division 5.2 (Investigations)—see section 35.

**civil penalty order**, for subdivision 5.1A.3 (Civil penalties—business failing to attend conciliation)—see section 34L.

**civil penalty provision**, for division 5.1A.3 (Civil penalties—business failing to attend conciliation)—see section 34L.

**code**, for part 6 (Maximum annual percentage rate and disclosure)—see section 62.

**commissioner** means the Commissioner for Fair Trading appointed under section 32.

**compulsory conciliation notice**, for division 5.1A (Conciliation of consumer complaints)—see section 34G.

**conciliation**, for division 5.1A (Conciliation of consumer complaints)—see section 34C.

**connected**, for division 5.2 (Investigations)—see section 35.

**consumer**—

- (a) for this Act, other than division 5.1A—see the [Australian Consumer Law \(ACT\)](#), section 2 (1); and
- (b) for division 5.1A (Conciliation of consumer complaints)—see section 34B.

**consumer complaint**, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

**consumer legislation**, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

**contract document**, for part 6 (Maximum annual percentage rate and disclosure)—see section 62.

**court** includes any tribunal or person having authority under a law, or by consent of parties, to receive evidence.

**credit**, for part 6 (Maximum annual percentage rate and disclosure)—see section 62.

**credit contract**, for part 6 (Maximum annual percentage rate and disclosure)—see section 62.

**credit fees and charges**, for part 6 (Maximum annual percentage rate and disclosure)—see section 62.

**fair trading legislation** means—

- (a) the *Agents Act 2003*; or
- (b) the *Australian Consumer Law (ACT)*; or
- (c) the *Eggs (Labelling and Sale) Act 2001*; or
- (d) the *Fair Trading (Australian Consumer Law) Act 1992*; or
- (e) the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*; or
- (f) the *Liquor Act 2010*; or
- (g) the *Plastic Shopping Bags Ban Act 2010*; or
- (h) the *Retirement Villages Act 2012*; or
- (i) the *Security Industry Act 2003*; or
- (j) the *Traders (Licensing) Act 2016*; or
- (k) the *Working with Vulnerable People (Background Checking) Act 2011*.

**goods**—see the *Australian Consumer Law (ACT)*, section 2 (1).

**identity card** means an identity card issued to an investigator under section 37.

**instrument**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**Intergovernmental Agreement**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**investigation** means an investigation under part 5.

**investigator** means the commissioner or a person appointed under section 36.

**jurisdiction**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**law**, in relation to a Territory, for part 2 (The Australian Consumer Law)—see section 5 (1).

**modifications**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**month**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**occupier**, of premises, for division 5.2 (Investigations)—see section 35.

**offence**, for division 5.2 (Investigations)—see section 35.

**other jurisdiction**, for division 2.4 (Application of Australian Consumer Law to jurisdictions)—see section 14.

**participating jurisdiction**—

(a) for part 2 (The Australian Consumer Law)—see section 5 (1);  
and

(b) for division 2.4 (Application of Australian Consumer Law to jurisdictions)—see section 14.

**party**, for division 5.1A (Conciliation of consumer complaints)—see section 34B.

**services**—see the [Australian Consumer Law \(ACT\)](#), section 2 (1).

**State**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**supplier**—see the *Australian Consumer Law (ACT)*, section 2 (1).

**supply**—see the *Australian Consumer Law (ACT)*, section 2 (1).

**Territory**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**this jurisdiction**, for part 2 (The Australian Consumer Law)—see section 5 (1).

**undertaking**, for part 3 (Codes of practice)—see section 21.



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

The *Fair Trading (Australian Consumer Law) Act 1992* was originally the *Fair Trading Act 1992*. It was renamed by the *Fair Trading (Australian Consumer Law) Amendment Act 2010* A2010-54 (see amdt 1.2).

#### **Fair Trading (Australian Consumer Law) Act 1992 A1992-72**

notified 8 December 1992 (Gaz 1992 No S218)  
s 1, s 2 commenced 8 December 1992 (s 2 (1))  
remainder commenced 1 January 1993 (s 2 (2) and Gaz 1992 No S245)

as amended by

#### **Acts Revision (Position of Crown) Act 1993 A1993-44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)  
commenced 27 August 1993 (s 2)

#### **Statute Law Revision Act 1994 A1994-26 sch**

notified 31 May 1994 (Gaz 1994 No S93)  
commenced 31 May 1994 (s 2)

#### **Fair Trading (Amendment) Act 1996 A1996-9**

notified 10 April 1996 (Gaz 1996 No S59)  
ss 1-3 commenced 10 April 1996 (s 2 (1))  
remainder commenced 10 May 1996 (s 2 (2) and Gaz 1996 No S85)

#### **Legal Practitioners (Consequential Amendments) Act 1997 A1997-96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

#### **Statute Law Revision (Penalties) Act 1998 A1998-54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### **Law Reform (Miscellaneous Provisions) Act 1999 A1999-66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 (No 3) A2000-17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

**Utilities (Consequential Provisions) Act 2000 A2000-66 sch 1 pt 6**

notified 20 December 2000 (Gaz 2000 No S68)  
s 1, s 2 commenced 20 December 2000 (IA s 10B)  
sch 1 pt 6 commenced 1 January 2001 (Gaz 2000 No S69)

**Legislation (Consequential Amendments) Act 2001 A2001-44 pt 137**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 137 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Fair Trading Legislation Amendment Act 2001 A2001-77 pt 2**

notified LR 14 September 2001  
s 1, s 2 commenced 14 September 2001 (LA s 75)  
pt 2 commenced 14 March 2002 (LA s 79)

**Fair Trading Amendment Act 2002 A2002-31**

notified LR 9 September 2002  
s 1, s 2 commenced 9 September 2002 (LA s 75)  
remainder commenced 25 November 2002 (s 2)

**Justice and Community Safety Legislation Amendment Act 2003 A2003-2 pt 4**

notified LR 3 March 2003  
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))  
pt 4 commenced 31 March 2003 (s 2 (2))

**Agents Act 2003 A2003-20 s 204**

notified LR 19 May 2003  
s 1, s 2 commenced 19 May 2003 (LA s 75 (1))  
s 204 commenced 1 November 2003 (s 2 and [CN2003-12](#))

**Civil Law (Sale of Residential Property) Act 2003 A2003-40 sch 1 pt 1.2**

notified LR 8 September 2003  
s 1, s 2 commenced 8 September 2003 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 July 2004 (s 2)

**Justice and Community Safety Legislation Amendment Act 2003  
(No 2) A2003-47 pt 5**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
pt 5 commenced 1 November 2003 (s 2)

**Justice and Community Safety Legislation Amendment Act 2004  
A2004-18 pt 8**

notified LR 6 April 2004  
s 1, s 2 commenced 6 April 2004 (LA s 75 (1))  
pt 8 commenced 20 April 2004 (s 2)

**Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.21**

notified LR 12 May 2005  
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))  
sch 3 pt 3.21 commenced 2 June 2005 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2005  
(No 4) A2005-60 sch 1 pt 1.16**

notified LR 1 December 2005  
s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))  
sch 1 pt 1.16 commenced 22 December 2005 (s 2 (4))

**Statute Law Amendment Act 2007 (No 3) A2007-39 sch 3 pt 3.17**

notified LR 6 December 2007  
s 1, s 2 commenced 6 December 2007 (LA s 75 (1))  
sch 3 pt 3.17 commenced 27 December 2007 (s 2)

**Justice and Community Safety Legislation Amendment Act 2008  
A2008-7 sch 1 pt 1.8**

notified LR 16 April 2008  
s 1, s 2 commenced 16 April 2008 (LA s 75 (1))  
sch 1 pt 1.8 commenced 7 May 2008 (s 2)

**Firearms Amendment Act 2008 A2008-25 sch 2 pt 2.4**

notified LR 15 July 2008  
s 1, s 2 commenced 15 July 2008 (LA s 75 (1))  
sch 2 pt 2.4 commenced 15 January 2009 (s 2 (1) and LA s 79)

**Justice and Community Safety Legislation Amendment Act 2009  
(No 3) A2009-44 sch 1 pt 1.9**

notified LR 24 November 2009  
s 1, s 2 commenced 24 November 2009 (LA s 75 (1))  
sch 1 pt 1.9 commenced 22 December 2009 (s 2 (3))

**Justice and Community Safety Legislation Amendment Act 2010  
(No 3) A2010-40 sch 1 pt 1.4**

notified LR 5 October 2010  
s 1, s 2 commenced 5 October 2010 (LA s 75 (1))  
s 3, sch 1 pt 1.4 commenced 6 October 2010 (s 2 (1))

**Fair Trading (Australian Consumer Law) Amendment Act 2010  
A2010-54 sch 1**

notified LR 16 December 2010  
s 1, s 2 commenced 16 December 2010 (LA s 75 (1))  
amdt 1.42 commenced 1 July 2011 (s 2 (2) (a) and see [Plastic Shopping Bags Ban Act 2010](#) A2010-49, s 2 (1))  
sch 1 remainder commenced 1 January 2011 (s 2 (1))

as modified by

**Fair Trading (Australian Consumer Law) (Transitional Provisions)  
Regulation 2011 SL2011-4 s 3**

notified LR 17 February 2011  
s 1, s 2 commenced 17 February 2011 (LA s 75 (1))  
s 3 commenced 18 February 2011 (s 2)

as amended by

**Justice and Community Safety Legislation Amendment Act 2011  
A2011-16 sch 1 pt 1.5**

notified LR 17 May 2011  
s 1, s 2 commenced 17 May 2011 (LA s 75 (a))  
sch 1 pt 1.5 commenced 17 November 2011 (s 2 and LA s 79)

**Administrative (One ACT Public Service Miscellaneous Amendments)  
Act 2011 A2011-22 sch 1 pt 1.65**

notified LR 30 June 2011  
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))  
sch 1 pt 1.65 commenced 1 July 2011 (s 2 (1))

## Endnotes

3 Legislation history

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**Working with Vulnerable People (Background Checking) Act 2011  
A2011-44 s 72**

notified LR 8 November 2011  
s 1, s 2 commenced 8 November 2011 (LA s 75 (1))  
s 72 commenced 8 November 2012 (s 2 (2))

**Justice and Community Safety Legislation Amendment Act 2011  
(No 3) A2011-49 sch 1 pt 1.3**

notified LR 22 November 2011  
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))  
sch 1 pt 1.3 commenced 23 November 2011 (s 2 (1))

**Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.19**

notified LR 22 May 2012  
s 1, s 2 commenced 22 May 2012 (LA s 75 (1))  
sch 3 pt 3.19 commenced 5 June 2012 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2013  
A2013-7 sch 1 pt 1.4**

notified LR 1 March 2013  
s 1, s 2 commenced 1 March 2013 (LA s 75 (1))  
sch 1 pt 1.4 commenced 4 March 2013 (s 2 and see [Retirement Villages Act 2012](#) A2012-38, s 2 and LA s 79)

**Statute Law Amendment Act 2013 A2013-19 sch 3 pt 3.20**

notified LR 24 May 2013  
s 1, s 2 commenced 24 May 2013 (LA s 75 (1))  
sch 3 pt 3.20 commenced 14 June 2013 (s 2)

**Smoke-Free Legislation Amendment Act 2016 A2016-20 sch 1 pt 1.2**

notified LR 13 April 2016  
s 1, s 2 commenced 13 April 2016 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 August 2016 (s 2 and [CN2016-13](#))

**Traders (Licensing) Act 2016 A2016-46 sch 2 pt 2.1**

notified LR 22 August 2016  
s 1, s 2 commenced 22 August 2016 (LA s 75 (1))  
sch 2 pt 2.1 commenced 22 August 2017 (s 2)

**Prostitution Amendment Act 2018 A2018-25 sch 1 pt 1.3**

notified LR 8 August 2018  
s 1, s 2 commenced 8 August 2018 (LA s 75 (1))  
sch 1 pt 1.3 commenced 9 August 2018 (s 2)

**Red Tape Reduction Legislation Amendment Act 2018 A2018-33  
sch 1 pt 1.13**

notified LR 25 September 2018  
s 1, s 2 commenced 25 September 2018 (LA s 75 (1))  
sch 1 pt 1.13 commenced 23 October 2018 (s 2 (4))

**Justice Legislation Amendment Act 2020 A2020-42 pt 15**

notified LR 27 August 2020  
s 1, s 2 commenced 27 August 2020 (LA s 75 (1))  
pt 15 commenced 27 August 2021 (s 2 (7))

**Fair Trading and Other Justice Legislation Amendment Act 2022  
A2022-8 sch 1 pt 1.3**

notified LR 11 May 2022  
s 1, s 2 commenced 11 May 2022 (LA s 75 (1))  
sch 1 pt 1.3 commenced 1 July 2022 (s 2 (2))

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Long title

long title sub [A2010-54](#) amdt 1.1

#### Name of Act

s 1 sub [A2010-54](#) amdt 1.2

#### Dictionary

s 2 om R4 LRA  
ins [A2005-60](#) amdt 1.83  
am [A2010-54](#) amdt 1.3

#### Notes

s 3 om R4 LRA  
ins [A2005-60](#) amdt 1.83

#### Offences against Act—application of Criminal Code etc

s 4 om [A1993-44](#) sch 2  
ins [A2010-54](#) amdt 1.4

#### The Australian Consumer Law

pt 2 hdg sub [A2010-54](#) amdt 1.6

#### Definitions

div 2.1 hdg ins [A2003-2](#) s 33  
sub [A2010-54](#) amdt 1.6

#### Definitions-pt 2

s 5 hdg sub [A2005-60](#) amdt 1.89  
s 5 defs reloc to dict [A2005-60](#) amdt 1.87  
am [A2005-60](#) amdt 1.88, amdt 1.89  
om [A2010-54](#) amdt 1.5  
ins [A2010-54](#) amdt 1.6  
def **application law** ins [A2010-54](#) amdt 1.6  
def **Australian Consumer Law** ins [A2010-54](#) amdt 1.6  
def **Australian Consumer Law text** ins [A2010-54](#) amdt 1.6  
def **authority of the Territory** om [A1994-26](#) sch  
def **court** om [A2005-60](#) amdt 1.84  
def **director** sub [A1999-66](#) sch 3  
om [A2000-17](#) sch 1  
def **document** om [A2005-60](#) amdt 1.84  
def **instrument** ins [A2010-54](#) amdt 1.6  
def **interest** om [A2005-60](#) amdt 1.84  
def **Intergovernmental Agreement** ins [A2010-54](#) amdt 1.6  
def **jurisdiction** ins [A2010-54](#) amdt 1.6  
def **law** ins [A2010-54](#) amdt 1.6  
def **modifications** ins [A2010-54](#) amdt 1.6  
def **month** ins [A2010-54](#) amdt 1.6  
def **participating jurisdiction** ins [A2010-54](#) amdt 1.6



def **State** ins [A2010-54](#) amdt 1.6  
def **Territory** ins [A2010-54](#) amdt 1.6  
def **this jurisdiction** ins [A2010-54](#) amdt 1.6

**Application of Australian Consumer Law**

div 2.2 hdg ins [A2003-2](#) s 34  
sub [A2010-54](#) amdt 1.6

**The Australian Consumer Law text**

s 6 om [A2010-54](#) amdt 1.5  
ins [A2010-54](#) amdt 1.6

**Application of Australian Consumer Law**

s 7 sub [A2007-39](#) amdt 3.54  
om [A2010-54](#) amdt 1.5  
ins [A2010-54](#) amdt 1.6

**Future modifications of Australian Consumer Law text**

s 8 om [A2010-54](#) amdt 1.5  
ins [A2010-54](#) amdt 1.6

**Meaning of generic terms in Australian Consumer Law for purposes of this jurisdiction**

s 9 om [A2010-54](#) amdt 1.5  
ins [A2010-54](#) amdt 1.6

**Interpretation of Australian Consumer Law**

s 10 om [A2010-54](#) amdt 1.5  
ins [A2010-54](#) amdt 1.6

**Application of Australian Consumer Law**

s 11 sub [A2010-54](#) amdt 1.6

**References to Australian Consumer Law**

div 2.3 hdg ins [A2003-2](#) s 34  
sub [A2010-54](#) amdt 1.6

**References to Australian Consumer Law**

s 12 sub [A2010-54](#) amdt 1.6

**References to Australian Consumer Law of other jurisdictions**

s 13 sub [A2010-54](#) amdt 1.6

**Application of Australian Consumer Law to jurisdictions**

div 2.4 hdg ins [A2010-54](#) amdt 1.6

**Division does not apply to Commonwealth**

s 14 am [A2001-77](#) s 4, s 5  
sub [A2010-54](#) amdt 1.6

**Application law of this jurisdiction**

s 15 sub [A2010-54](#) amdt 1.6

## Endnotes

### 4 Amendment history

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#### **Bids by seller**

s 15A                    reloc from [Auctioneers Act 1959](#) s 16 by [A2003-20](#) s 204  
om [A2003-40](#) amdt 1.2

#### **Application law of other jurisdictions**

s 16                    sub [A2010-54](#) amdt 1.6

#### **Activities that are not business**

s 17                    sub [A2010-54](#) amdt 1.6

#### **Jurisdictions not liable to pecuniary penalty or prosecution**

s 18                    sub [A2010-54](#) amdt 1.6

#### **Miscellaneous**

div 2.5 hdg            ins [A2010-54](#) amdt 1.6

#### **Conferral of functions and powers on certain bodies**

s 19                    sub [A2010-54](#) amdt 1.6

#### **No doubling-up of liabilities**

s 20                    sub [A2010-54](#) amdt 1.6

#### **Definitions for pt 3**

s 21                    **orig s 21**  
om [A2010-54](#) amdt 1.6  
**pres s 21**  
(prev s 32)  
renum as s 21 [A2010-54](#) amdt 1.15  
def **approved code** ins [A2005-60](#) amdt 1.90  
def **code** om [A2005-60](#) amdt 1.90

#### **Preparation of draft codes of practice**

s 22                    **orig s 22**  
om [A2010-54](#) amdt 1.6  
**pres s 22**  
(prev s 33) am [A2000-17](#) sch 1; [A2003-47](#) s 16; ss renum R9  
LA (see [A2003-47](#) s 17); [A2010-54](#) amdt 1.7, amdt 1.8  
renum as s 22 [A2010-54](#) amdt 1.15

#### **Approval of codes of practice**

s 23                    **orig s 23**  
om [A2010-54](#) amdt 1.6  
**pres s 23**  
(prev s 34) am [A2003-47](#) s 18, s 19  
(2), (3) exp 1 November 2005 (s 34 (3))  
sub [A2005-60](#) amdt 1.92  
(6)-(8) exp 22 December 2006 (s 34 (8))  
am [A2010-54](#) amdt 1.9  
renum as s 23 [A2010-54](#) amdt 1.15

**Undertakings following contravention of approved code**

s 24 hdg (prev s 36 hdg) sub [A2005-60](#) amdt 1.96  
s 24 **orig s 24**  
om [A2010-54](#) amdt 1.6  
**pres s 24**  
(prev s 36) am [A2000-17](#) sch 1; [A2001-77](#) s 10; [A2005-60](#)  
amds 1.97-1.99; [A2010-54](#) amdt 1.11, amdt 1.12  
renum as s 24 [A2010-54](#) amdt 1.15

**Enforcement of undertakings**

s 25 **orig s 25**  
om [A2010-54](#) amdt 1.6  
**pres s 25**  
(prev s 37) am [A1998-54](#) sch; [A2000-17](#) sch 1; [A2005-60](#)  
amdt 1.100  
sub [A2010-54](#) amdt 1.13  
renum as s 25 [A2010-54](#) amdt 1.15

**Definitions—div 2.2**

s 25A ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6  
def **new participant** ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6  
def **participant** ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6  
def **participate** ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6  
def **participation payment** ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6  
def **payment** ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6  
def **pyramid selling scheme** ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6  
def **recruitment payment** ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6

**Pyramid selling schemes—participation prohibited**

s 25B ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6

**What is a pyramid selling scheme**

s 25C ins [A2003-2](#) s 34  
am [A2007-39](#) amdt 3.55  
om [A2010-54](#) amdt 1.6

## Endnotes

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### **Marketing schemes—are they pyramid selling schemes?**

s 25D ins [A2003-2](#) s 34  
om [A2010-54](#) amdt 1.6

### **Variation or discharge of restraining order**

s 26 **orig s 26**  
am [A1997-96](#) sch 1; [A2007-39](#) amdt 3.56; [A2008-25](#) amdt 2.8,  
amdt 2.9  
om [A2010-54](#) amdt 1.6  
**pres s 26**  
(prev s 38) am [A2000-17](#) sch 1  
renum as s 26 [A2010-54](#) amdt 1.15

### **Register of undertakings**

s 27 **orig s 27**  
om [A2003-2](#) s 35  
**pres s 27**  
(prev s 39) am [A2000-17](#) sch 1  
sub [A2010-54](#) amdt 1.14  
renum as s 27 [A2010-54](#) amdt 1.15

### **Advisory committees**

pt 4 hdg sub [A2010-54](#) amdt 1.16

### **Establishment of advisory committees**

s 28 am [A2007-39](#) amdt 3.57  
om [A2010-54](#) amdt 1.6  
ins [A2010-54](#) amdt 1.16

### **Credit card contracts and increases in credit card limits**

s 28A ins [A2002-31](#) s 5  
am [A2010-40](#) amdt 1.5  
om [A2010-54](#) amdt 1.6

### **Cash card use disclosure**

s 28B (prev s 28A) ins [A1996-9](#) s 4  
renum [A2002-31](#) s 4  
om [A2010-54](#) amdt 1.6

### **Advisory committee membership**

s 29 am [A2007-39](#) amdt 3.58; [A2008-7](#) amdt 1.48  
om [A2010-54](#) amdt 1.6  
ins [A2010-54](#) amdt 1.16

### **Advisory committee—general procedure**

s 30 am [A2007-39](#) amdt 3.59  
om [A2010-54](#) amdt 1.6  
ins [A2010-54](#) amdt 1.16

**Reimbursement of expenses for advisory committee members**

s 31 am [A2007-39](#) amdts 3.60-3.62  
om [A2010-54](#) amdt 1.6  
ins [A2010-54](#) amdt 1.16

**Maximum annual percentage rate and disclosure**

pt 4A hdg renum as pt 6 hdg

**Commissioner for fair trading**

pt 5 hdg **orig pt 5 hdg**  
om [A2010-54](#) amdt 1.20  
**pres pt 5 hdg**  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) pt 3 hdg  
by [A2010-54](#) amdt 2.26

**Administration**

div 5.1 hdg reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#)  
div 3.1 hdg by [A2010-54](#) amdt 2.26

**Commissioner for fair trading**

s 32 **orig s 32**  
renum as s 21  
**pres s 32**  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 6 by  
[A2010-54](#) amdt 2.26  
am [A2011-22](#) amdt 1.203

**Prescribed provisions**

s 32A ins [A2001-77](#) s 6  
om [A2005-60](#) amdt 1.91

**Functions of commissioner**

s 33 **orig s 33**  
renum as s 22  
**pres s 33**  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 7 by  
[A2010-54](#) amdt 2.26  
am [A2011-22](#) amdt 1.204; [A2011-49](#) amdt 1.6; pars renum  
R26 LA

**Delegation by commissioner**

s 34 **orig s 34**  
renum as s 23  
**pres s 34**  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 8 by  
[A2010-54](#) amdt 2.26  
am [A2011-16](#) amdt 1.14; [A2013-19](#) amdt 3.155; [A2016-20](#)  
amdt 1.2; [A2016-46](#) amdt 2.1; [A2018-25](#) amdt 1.3

**Conciliation of consumer complaints**

div 5.1A hdg ins [A2020-42](#) s 71

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### **Preliminary**

sdiv 5.1A.1 hdg ins [A2020-42](#) s 71

### **Application—div 5.1A**

s 34A ins [A2020-42](#) s 71

### **Definitions—div 5.1A**

s 34B ins [A2020-42](#) s 71  
def **acquire** ins [A2020-42](#) s 71  
def **business** ins [A2020-42](#) s 71  
def **compulsory conciliation notice** ins [A2020-42](#) s 71  
def **consumer** ins [A2020-42](#) s 71  
def **consumer complaint** ins [A2020-42](#) s 71  
def **consumer legislation** ins [A2020-42](#) s 71  
def **party** ins [A2020-42](#) s 71

### **Meaning of conciliation—div 5.1A**

s 34C ins [A2020-42](#) s 71

### **Conciliation**

sdiv 5.1A.2 hdg ins [A2020-42](#) s 71

### **Conciliation**

s 34D ins [A2020-42](#) s 71

### **Parties to conciliation**

s 34E ins [A2020-42](#) s 71

### **Attendance at conciliation**

s 34F ins [A2020-42](#) s 71

### **Compulsory conciliation notice**

s 34G ins [A2020-42](#) s 71

### **Conduct of conciliation**

s 34H ins [A2020-42](#) s 71

### **Conciliated agreements**

s 34I ins [A2020-42](#) s 71

### **End of conciliation**

s 34J ins [A2020-42](#) s 71

### **Admissibility of evidence**

s 34K ins [A2020-42](#) s 71

### **Civil penalties—business failing to attend conciliation**

sdiv 5.1A.3 hdg ins [A2020-42](#) s 71

### **Definitions—sdiv 5.1A.3**

s 34L ins [A2020-42](#) s 71  
def **civil penalty order** ins [A2020-42](#) s 71  
def **civil penalty provision** ins [A2020-42](#) s 71

**Civil penalty orders**s 34M ins [A2020-42](#) s 71**Civil enforcement of penalty**s 34N ins [A2020-42](#) s 71**Multiple contraventions of civil penalty provision**s 34O ins [A2020-42](#) s 71**Proceedings may be heard together**s 34P ins [A2020-42](#) s 71**Civil evidence and procedure rules for civil penalty orders**s 34Q ins [A2020-42](#) s 71**Civil penalty provisions—no fault element**s 34R ins [A2020-42](#) s 71**Civil penalty provisions—contravention by corporation representative**s 34S ins [A2020-42](#) s 71**Reasonable excuse—burden of proof**s 34T ins [A2020-42](#) s 71**Investigations**div 5.2 hdg reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#)  
div 3.2 hdg by [A2010-54](#) amdt 2.26**Definitions for div 5.2**s 35 hdg (prev s 35A hdg) am [A2005-60](#) amdt 1.93

s 35

**orig s 35**am [A2000-17](#) s 3 sch 1; [A2001-77](#) ss 7-9om [A2005-60](#) amdt 1.92**prev s 35**(prev s 35A) ins [A1999-66](#) sch 3am [A2000-17](#) sch 1; [A2005-60](#) amdt 1.94renum as s 35 [A2005-60](#) amdt 1.95om [A2010-54](#) amdt 1.10**pres s 35**reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 8A by  
[A2010-54](#) amdt 2.26**Evidence of approved code**

s 35A renum as s 35

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### Investigators

s 36

#### orig s 36

renum as s 24

#### pres s 36

reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 9 by

[A2010-54](#) amdt 2.26

sub [A2011-16](#) amdt 1.15

am [A2011-49](#) amdt 1.7

### Identity cards

s 37

#### orig s 37

renum as s 25

#### pres s 37

reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 10 by

[A2010-54](#) amdt 2.26

### Power not to be exercised before identity card shown

s 38

#### orig s 38

renum as s 26

#### pres s 38

reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 11 by

[A2010-54](#) amdt 2.26

### General power to enter premises

s 39

#### orig s 39

renum as s 27

#### pres s 39

reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12 by

[A2010-54](#) amdt 2.26

### Consent to entry

s 40

om [A2010-54](#) amdt 1.16

reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12A by

[A2010-54](#) amdt 2.26

### Warrants

s 41

am [A1998-54](#) sch; [A2004-18](#) s 24, s 25; ss renum R10 LA

(see [A2004-18](#) s 26)

om [A2010-54](#) amdt 1.16

reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12B by

[A2010-54](#) amdt 2.26

### Warrants—application made other than in person

s 42

am [A2000-17](#) sch 1

om [A2010-54](#) amdt 1.16

reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12C by

[A2010-54](#) amdt 2.26

am [A2018-33](#) amdt 1.23, amdt 1.24



**General powers on entry to premises**

s 43 am [A2000-17](#) sch 1  
om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12D by  
[A2010-54](#) amdt 2.26

**Inspection of records of agents**

s 44 am [A2000-17](#) sch 1; [A2008-7](#) amdt 1.49  
om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12DA  
by [A2010-54](#) amdt 2.26  
am [A2022-8](#) amdt 1.5, amdt 1.6

**Power to seize evidence**

s 45 am [A2000-17](#) sch 1; [A2007-39](#) amdt 3.63  
om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12E by  
[A2010-54](#) amdt 2.26

**Receipt for things seized**

s 46 om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12F by  
[A2010-54](#) amdt 2.26

**Access to things seized**

s 47 om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12G by  
[A2010-54](#) amdt 2.26

**Return of things seized**

s 48 sub [A2008-7](#) amdt 1.50  
om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12H by  
[A2010-54](#) amdt 2.26

**Self-incrimination etc**

s 49 am [A2001-77](#) ss 11-13  
om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12I by  
[A2010-54](#) amdt 2.26

**Damage etc to be minimised**

s 50 am [A1994-26](#) sch; [A2000-17](#) sch 1  
om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12M by  
[A2010-54](#) amdt 2.26

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### Compensation

s 51 am [A1998-54](#) sch; [A2000-17](#) sch 1; [A2005-20](#) amdt 3.152;  
[A2007-39](#) amdt 3.64  
om [A2010-54](#) amdt 1.16  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 12N by  
[A2010-54](#) amdt 2.26

### Power of Magistrates Court for pt 4

s 51AA ins [A2003-47](#) s 20  
om [A2010-54](#) amdt 1.16

### Enforcement of undertakings

s 51A ins [A2001-77](#) s 14  
om [A2010-54](#) amdt 1.16

### Substantiation of claims

s 51B ins [A2001-77](#) s 14  
om [A2010-54](#) amdt 1.16

### Definitions—pt 6

s 51C renum as s 62

### Maximum annual percentage rate

s 51D renum as s 63

### Disclosure of cost of credit

s 51E renum as s 64

### Investigator may require giving of information and producing of documents

s 52 om [A2010-54](#) amdt 1.20  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 13 by  
[A2010-54](#) amdt 2.26

### Copying of documents produced under s 52

s 53 om [A2010-54](#) amdt 1.20  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 14 by  
[A2010-54](#) amdt 2.26

### Secrecy

s 54 sub [A2001-44](#) amdt 1.1582  
om [A2010-54](#) amdt 1.20  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 15 by  
[A2010-54](#) amdt 2.26

### Commissioner may begin or defend legal proceeding on behalf of consumer

s 55 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 16 by  
[A2010-54](#) amdt 2.26

### Commissioner must obtain consent in relation to proceeding

s 56 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 16A by  
[A2010-54](#) amdt 2.26

**Conduct of proceeding by commissioner**

s 57 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 16B by  
[A2010-54](#) amdt 2.26

**Court's powers**

s 58 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 16C by  
[A2010-54](#) amdt 2.26

**Recovery of money other than costs**

s 59 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 16D by  
[A2010-54](#) amdt 2.26

**Costs**

s 60 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 16E by  
[A2010-54](#) amdt 2.26

**Commissioner not personally liable**

s 61 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 16F by  
[A2010-54](#) amdt 2.26

**Maximum annual percentage rate and disclosure**

pt 6 hdg (prev pt 4A hdg) ins [A2009-44](#) amdt 1.23  
renum as pt 6 hdg [A2010-54](#) amdt 1.17

**Definitions—pt 6**

s 62 (prev s 51C) ins [A2009-44](#) amdt 1.23  
sub [A2010-40](#) amdt 1.6  
renum as s 62 [A2010-54](#) amdt 1.19  
def **annual percentage rate** ins [A2009-44](#) amdt 1.23  
sub [A2010-40](#) amdt 1.6  
def **code** ins [A2009-44](#) amdt 1.23  
om [A2010-40](#) amdt 1.6  
ins [A2010-54](#) amdt 1.18  
def **contract document** ins [A2009-44](#) amdt 1.23  
sub [A2010-40](#) amdt 1.6  
def **credit** ins [A2009-44](#) amdt 1.23  
sub [A2010-40](#) amdt 1.6  
def **credit contract** ins [A2009-44](#) amdt 1.23  
sub [A2010-40](#) amdt 1.6  
def **credit fees and charges** ins [A2009-44](#) amdt 1.23  
sub [A2010-40](#) amdt 1.6

**Maximum annual percentage rate**

s 63 (prev s 51D) ins [A2009-44](#) amdt 1.23  
am [A2010-40](#) amdt 1.7  
renum as s 63 [A2010-54](#) amdt 1.19

**Disclosure of cost of credit**

s 64 (prev s 51E) ins [A2009-44](#) amdt 1.23  
am [A2010-40](#) amdts 1.8-1.11  
renum as s 64 [A2010-54](#) amdt 1.19

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### Miscellaneous

pt 7 hdg ins [A2010-54](#) amdt 1.20

### Certificate evidence

s 65 ins [A2010-54](#) amdt 1.20

### Protection of officials from liability

s 66 ins [A2010-54](#) amdt 1.20

### Regulation-making power

s 67 ins [A2010-54](#) amdt 1.20

### Australian consumer law transitional provisions

sch 1 hdg ins [A2010-54](#) amdt 1.21  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))

### Definitions—sch 1

s 1.1 ins [A2010-54](#) amdt 1.21  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))  
def **commencement day** ins [A2010-54](#) amdt 1.20  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))  
def **repealed Acts** ins [A2010-54](#) amdt 1.20  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))

### Transitional—reference to a repealed Act

s 1.2 ins [A2010-54](#) amdt 1.21  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))

### Transitional—advisory committees

s 1.3 ins [A2010-54](#) amdt 1.21  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))

### Transitional—dict, def *fair trading legislation*

s 1.3A ins as mod [SL2011-4](#) s 3  
mod lapsed on repeal of [SL2011-4](#) (12 April 2012)

### Transitional—regulations

s 1.4 ins [A2010-54](#) amdt 1.21  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))

### Expiry—sch 1

s 1.5 ins [A2010-54](#) amdt 1.21  
exp 1 January 2014 (s 1.5 (LA s 88 declaration applies))

### Trade measurement transitional provisions

sch 2 hdg reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) sch 2 hdg  
by [A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

**Definitions—sch 2**

- s 2.1 ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1 by  
[A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))  
 def **commencement day** ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1  
 by [A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))  
 def **Commonwealth law** ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1  
 by [A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))  
 def **continuing matter** ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1  
 by [A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))  
 def **National Measurement Institute** ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1  
 by [A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))  
 def **repealed Acts** ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1  
 by [A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))  
 def **repealed Administration Act** ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1  
 by [A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))  
 def **repealed Principal Act** ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.1  
 by [A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

**Transitional—application of repealed Acts to continuing matters**

- s 2.2 ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.2 by  
[A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

**Transitional—disciplinary actions**

- s 2.3 ins [A2010-13](#) amdt 1.23  
 reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.1 by  
[A2010-54](#) amdt 2.27  
 exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

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### **Transitional—reviews**

s 2.4 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.4 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

### **Transitional—seized property**

s 2.5 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.5 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

### **Transitional—unpaid fees**

s 2.6 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.6 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

### **Transitional—search warrants**

s 2.7 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.7 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

### **Transitional—disclosure of information**

s 2.8 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.8 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

### **Transitional—reference to a repealed Act**

s 2.9 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.9 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

### **Transitional—regulations**

s 2.10 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.10 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

### **Expiry—sch 2**

s 2.11 ins [A2010-13](#) amdt 1.23  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 2.11 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 2.11 (LA s 88 declaration applies))

**Consumer credit transitional provisions**

sch 3 hdg ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) sch 3 hdg  
by [A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

**Definitions—sch 3**

s 3.1 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.1 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))  
def **ASIC** ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.1  
by [A2010-54](#) amdt 2.27  
sub [A2012-21](#) amdt 3.74  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))  
def **national credit legislation** ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.1  
by [A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))  
def **repealed credit legislation** ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.1  
by [A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

**Transitional—financial counselling trust fund**

s 3.2 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.2 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

**Transitional—provision of information and assistance to ASIC**

s 3.3 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.3 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

**Transitional—ASIC has particular functions**

s 3.4 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.4 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

**Transitional—reference to repealed legislation**

s 3.5 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.5 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

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#### **Transitional—pre-credit code contracts**

s 3.6 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.6 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

#### **Transitional—finance broking commissions**

s 3.7 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.7 by  
[A2010-54](#) amdt 2.27  
exp 1 January 2011 (s 3.7 (2) (LA s 88 declaration applies))

#### **Transitional—regulations**

s 3.8 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.8 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

#### **Expiry—sch 3**

s 3.9 ins [A2010-40](#) amdt 1.18  
reloc from [Fair Trading \(Consumer Affairs\) Act 1973](#) s 3.9 by  
[A2010-54](#) amdt 2.27  
exp 1 July 2013 (s 3.9 (LA s 88 declaration applies))

#### **Dictionary**

dict ins [A2005-60](#) amdt 1.101  
am [A2009-44](#) amdt 1.24; [A2010-40](#) amdt 1.12, amdt 1.13;  
[A2010-54](#) amdt 1.22, amdt 1.23; [A2011-22](#) amdt 1.205;  
[A2020-42](#) s 72  
def **acquire** reloc from s 5 [A2005-60](#) amdt 1.87  
am [A2007-39](#) amdt 3.65  
om [A2010-54](#) amdt 1.24  
ins [A2020-42](#) s 73  
def **advisory committee** ins [A2010-54](#) amdt 1.25  
def **annual percentage rate** ins [A2009-44](#) amdt 1.25  
sub [A2010-54](#) amdt 1.26  
def **application law** ins [A2010-54](#) amdt 1.27  
def **approved code** ins [A2005-60](#) amdt 1.101  
def **arrive at** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.28  
def **Australian Consumer Law** ins [A2010-54](#) amdt 1.29  
def **Australian Consumer Law (ACT)** ins [A2010-54](#)  
amdt 1.29  
def **Australian Consumer Law text** ins [A2010-54](#) amdt 1.29  
def **business** reloc from s 5 [A2005-60](#) amdt 1.87  
sub [A2010-54](#) amdt 1.30; [A2020-42](#) s 74  
def **business premises** ins [A2010-54](#) amdt 1.31



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- def **civil penalty order** ins [A2020-42](#) s 75
- def **civil penalty provision** ins [A2020-42](#) s 75
- def **code** ins [A2009-44](#) amdt 1.25  
sub [A2010-40](#) amdt 1.14; [A2010-54](#) amdt 1.32
- def **commissioner** ins [A2000-17](#) sch 1  
reloc from s 5 [A2005-60](#) amdt 1.87  
sub [A2010-54](#) amdt 1.33
- def **compulsory conciliation notice** ins [A2020-42](#) s 75
- def **conciliation** ins [A2020-42](#) s 75
- def **conduct** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.34
- def **connected** ins [A2010-54](#) amdt 1.35
- def **consumer** ins [A2005-60](#) amdt 1.101  
sub [A2010-54](#) amdt 1.36; [A2020-42](#) s 76
- def **consumer complaint** ins [A2020-42](#) s 77
- def **consumer legislation** ins [A2020-42](#) s 77
- def **contract document** ins [A2009-44](#) amdt 1.25  
sub [A2010-54](#) amdt 1.36
- def **court** ins [A2010-54](#) amdt 1.37
- def **covenant** reloc from s 5 [A2005-60](#) amdt 1.87  
am [A2007-39](#) amdt 3.66  
om [A2010-54](#) amdt 1.38
- def **credit** ins [A2009-44](#) amdt 1.25  
sub [A2010-54](#) amdt 1.39
- def **credit contract** ins [A2009-44](#) amdt 1.25  
sub [A2010-54](#) amdt 1.39
- def **credit fees and charges** ins [A2009-44](#) amdt 1.25  
sub [A2010-54](#) amdt 1.39
- def **disposal** ins [A2007-39](#) amdt 3.67  
om [A2010-54](#) amdt 1.40
- def **engaging** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.40
- def **fair trading legislation** ins [A2010-54](#) amdt 1.41  
am [A2010-54](#) amdt 1.42; pars renum R24 LA; [A2011-16](#)  
amdt 1.16; pars renum R25 LA; [A2011-44](#) s 72; pars  
renum R29 LA; am [A2013-7](#) amdt 1.8; pars renum R30  
LA; [A2016-46](#) amdt 2.2; pars renum R35 LA
- def **goods** reloc from s 5 [A2005-60](#) amdt 1.87  
sub [A2010-54](#) amdt 1.43
- def **identity card** ins [A2010-54](#) amdt 1.44
- def **instrument** ins [A2010-54](#) amdt 1.44
- def **Intergovernmental Agreement** ins [A2010-54](#) amdt 1.44
- def **investigation** ins [A2010-54](#) amdt 1.44
- def **investigator** ins [A2010-54](#) amdt 1.44  
sub [A2011-16](#) amdt 1.17
- def **involved** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.45

## Endnotes

4 Amendment history

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- def **jurisdiction** ins [A2010-54](#) amdt 1.46
- def **law** ins [A2010-54](#) amdt 1.46
- def **modifications** ins [A2010-54](#) amdt 1.46
- def **month** ins [A2010-54](#) amdt 1.46
- def **new participant** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.47
- def **occupier** ins [A2010-54](#) amdt 1.48
- def **offence** ins [A2010-54](#) amdt 1.48
- def **offering** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.49
- def **other jurisdiction** ins [A2010-54](#) amdt 1.50
- def **participant** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.51
- def **participate** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.51
- def **participating jurisdiction** ins [A2010-54](#) amdt 1.52
- def **participation payment** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.53
- def **party** ins [A2020-42](#) s 77
- def **payment** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.53
- def **price** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.53
- def **provision** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.53
- def **published** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.53
- def **pyramid selling scheme** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.53
- def **recruitment payment** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.53
- def **refusing** ins [A2005-60](#) amdt 1.101  
om [A2010-54](#) amdt 1.53
- def **require** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.53
- def **resupply** ins [A2007-39](#) amdt 3.67  
om [A2010-54](#) amdt 1.53
- def **send** sub [A2005-60](#) amdt 1.85  
reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.53
- def **services** am [A2000-66](#) sch 1 pt 6  
reloc from s 5 [A2005-60](#) amdt 1.87  
am [A2007-39](#) amdt 3.68, amdt 3.69  
sub [A2010-54](#) amdt 1.54
- def **share** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.55
- def **State** ins [A2010-54](#) amdt 1.56

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- def **statement** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.57
- def **supplier** ins [A2010-54](#) amdt 1.58
- def **supply** am [A2005-60](#) amdt 1.86  
reloc from s 5 [A2005-60](#) amdt 1.87  
am [A2007-39](#) amdt 3.70  
sub [A2010-54](#) amdt 1.59
- def **Territory** ins [A2010-54](#) amdt 1.60
- def **this jurisdiction** ins [A2010-54](#) amdt 1.60
- def **trade or commerce** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.61
- def **undertaking** ins [A2005-60](#) amdt 1.101
- def **unsolicited goods** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.61
- def **unsolicited services** reloc from s 5 [A2005-60](#) amdt 1.87  
om [A2010-54](#) amdt 1.61

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	<a href="#">A1993-44</a>	31 January 1994
2	<a href="#">A1997-96</a>	1 June 1998
3	<a href="#">A1998-54</a>	31 March 1999
4	<a href="#">A2000-17</a>	31 July 2000
5	<a href="#">A2001-77</a>	14 September 2001
5 (RI)	<a href="#">A2001-77</a> ‡	11 August 2003
6	<a href="#">A2001-77</a>	14 March 2002
6 (RI)	<a href="#">A2001-77</a> ‡	11 August 2003
7	<a href="#">A2002-31</a>	25 November 2002
7 (RI)	<a href="#">A2002-31</a> ‡	11 August 2003
8	<a href="#">A2003-2</a>	31 March 2003
8 (RI)	<a href="#">A2003-2</a> ‡	11 August 2003
9	<a href="#">A2003-47</a>	1 November 2003
10	<a href="#">A2004-18</a>	20 April 2004
11	<a href="#">A2004-18</a>	1 July 2004
12*	<a href="#">A2005-20</a>	2 June 2005
13	<a href="#">A2005-20</a>	2 November 2005
14	<a href="#">A2005-60</a>	22 December 2005
15	<a href="#">A2005-60</a>	23 December 2006
16	<a href="#">A2007-39</a>	27 December 2007
17	<a href="#">A2008-7</a>	7 May 2008
18	<a href="#">A2008-25</a>	15 January 2009

Republication No	Amendments to	Republication date
19	<a href="#">A2009-44</a>	22 December 2009
20	<a href="#">A2010-40</a>	6 October 2010
21 (RI) ††	<a href="#">A2010-54</a>	15 July 2013
22 (RI) ††	<a href="#">A2010-54</a>	15 July 2013
23 (RI) ††	<a href="#">A2010-54</a>	15 July 2013
24 (RI) ††	<a href="#">A2011-22</a>	15 July 2013
25 (RI) ††	<a href="#">A2011-22</a>	15 July 2013
26 (RI) ††	<a href="#">A2011-49</a>	15 July 2013
27 (RI) ††	<a href="#">A2011-49</a>	15 July 2013
28 (RI) ††	<a href="#">A2012-21</a>	15 July 2013
29 (RI) ††	<a href="#">A2012-21</a>	15 July 2013
30 (RI) ††	<a href="#">A2013-7</a>	15 July 2013
31 (RI) ††	<a href="#">A2013-19</a>	15 July 2013
32 (RI) ††	<a href="#">A2013-19</a>	15 July 2013
33	<a href="#">A2013-19</a>	2 January 2014
34	<a href="#">A2016-20</a>	1 August 2016
35	<a href="#">A2016-46</a>	22 August 2017
36	<a href="#">A2018-25</a>	9 August 2018
37	<a href="#">A2018-33</a>	23 October 2018
38	<a href="#">A2020-42</a>	27 August 2021

‡ includes textual correction in s 37 (1)

†† reissue for textual correction (dictionary)

## Endnotes

6 Expired transitional or validating provisions

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### 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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