

South Australia

## **Fair Trading Act 1987**

An Act to provide for the appointment and functions of the Commissioner for Consumer Affairs; to provide for the administration of certain aspects of the Act by the Small Business Commissioner; to apply the Australian Consumer Law as a law of South Australia; to make provision for industry codes; to otherwise regulate unfair or undesirable practices affecting business and other consumers; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Fair Trading Act 1987*.

### 3—Interpretation

(1) In this Act, unless the contrary intention appears—

**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 (SA)**—see section 14(1)(b);

**Australian Consumer Law text** means the text described in section 13;

**authorised officer** means a person who is an authorised officer under Part 7 Division 1A;

**Commissioner for Consumer Affairs** means the person holding or acting in the office of Commissioner for Consumer Affairs;

**Competition and Consumer Act** means the *Competition and Consumer Act 2010* of the Commonwealth;

**consumer affairs authority** means—

- (a) the Commissioner for Consumer Affairs; or
- (b) a person or authority that has, under a law of another jurisdiction, powers and functions similar to those of the Commissioner for Consumer Affairs;

**contravene** includes fail to comply;

**District Court** means the Administrative and Disciplinary Division of the District Court;

**instrument** means any document whatever, including the following:

- (a) an Act or an instrument made under an Act;
- (b) a law of this jurisdiction or an instrument made under such a 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;

***involved***—a person is involved, in a contravention of a provision of this Act or in conduct that constitutes such a contravention, if the person—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention;

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

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

***Magistrates Court*** means the Civil (Consumer and Business) Division of the Magistrates Court;

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

***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;

***related Act*** means an Act or a provision of an Act—

- (a) of which the Commissioner for Consumer Affairs or the Small Business Commissioner is stated, in that Act, to have the administration; or
- (b) that is prescribed by the regulations to be a related Act;

***Small Business Commissioner*** means the person holding or acting in the office of Small Business Commissioner;

***State*** includes a Territory;

***Territory*** means the Australian Capital Territory or the Northern Territory of Australia;

***this jurisdiction*** means South Australia;

***trader*** means a person who in the course of a business—

- (a) supplies, or offers to supply, goods or services; or
- (b) sells or lets, or offers to sell or let, premises;

*trading debt* means a debt owed to a trader.

- (2) A reference in this Act to the supply of goods or services extends to the supply of both goods and services.
- (3) The regulations may exclude a person, or a class of persons, from the ambit of the definition of *consumer* for the purposes of this Act or a specified provision of this Act (other than the Australian Consumer Law (SA)).
- (4) Terms used in this Act and also in the Australian Consumer Law (SA) have, unless the contrary intention appears, the same meanings in this Act as they have in that Law.
- (5) For the purposes of this Act—
  - (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.

#### **4—Crown bound**

This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

#### **4A—Extraterritorial application**

- (1) This Act is intended to have extraterritorial application insofar as the legislative powers of the State permit.
- (2) Without limiting subsection (1), this Act extends to conduct either in or outside the State that—
  - (a) is in connection with goods or services supplied in the State; or
  - (b) affects a person in the State; or
  - (c) results in loss or damage in the State.

#### **4B—Administration of Act**

- (1) Subject to this section, the Commissioner for Consumer Affairs is responsible for the administration of this Act (including the Australian Consumer Law (SA)).
- (2) The Small Business Commissioner is responsible for the administration of—
  - (a) the Australian Consumer Law (SA) to the extent specified by the Minister by notice in the Gazette made on the recommendation of the Minister responsible for the administration of the *Small Business Commissioner Act 2011*; and
  - (b) Part 3A in relation to an industry code or provisions of an industry code if the regulations prescribing the code or provisions for the purposes of that Part declare that the Commissioner is to have that responsibility.

- (3) However, the Small Business Commissioner may only be assigned responsibility for administration of the Australian Consumer Law (SA) or Part 3A in relation to an industry code or provisions of an industry code insofar as the Law, code or provisions apply to persons who acquire or propose to acquire goods or services for the purpose of trade or commerce or regulate the conduct of traders towards other traders.
- (4) To the extent that the Commissioner for Consumer Affairs is responsible for the administration of this Act, the Commissioner is subject to direction by the Minister.
- (5) To the extent that the Small Business Commissioner is responsible for the administration of this Act, the Commissioner is subject to direction by the Minister responsible for the administration of the *Small Business Commissioner Act 2011* in accordance with section 6 of that Act.

## **Part 2—Commissioner for Consumer Affairs**

### **5—Commissioner for Consumer Affairs**

- (1) There will be a Commissioner for Consumer Affairs.
- (2) The Commissioner will be a person employed in the Public Service of the State.

### **8—Functions of Commissioner for Consumer Affairs**

- (1) The functions of the Commissioner for Consumer Affairs are—
  - (a) to conduct research into matters concerning the interests of consumers generally or a particular class of consumers; and
  - (b) to conduct consumer education programmes and to publish reports and disseminate information on matters concerning the interests of consumers; and
  - (c) to give advice to consumers in relation to their rights and obligations under this Act or any other law, or in relation to transactions entered into by them as consumers; and
  - (d) to attempt to resolve by conciliation disputes between consumers and traders; and
  - (e) to monitor business activities (to which this Act and the related Acts apply) that affect consumers and investigate practices that may adversely affect the interests of consumers generally or a particular class of consumers; and
  - (f) to encourage trade, industry and professional associations to develop, disseminate to their members and enforce codes of practice designed to promote fair trading and to safeguard the interests of consumers; and
  - (g) to prepare and disseminate guidelines to traders in relation to their obligations under this Act and related Acts; and
  - (h) to enforce the requirements of this Act and related Acts by the prosecution of offences and other appropriate action; and
  - (ha) to license and register traders under other Acts; and
  - (i) to make reports to the Minister on matters referred to the Commissioner by the Minister and on the exercise of the functions of the Commissioner; and



- (j) any other functions conferred on the Commissioner by or under this or any other Act.

## **8A—Conciliation**

- (1) The Commissioner for Consumer Affairs must not attempt to resolve a dispute between a consumer and trader by conciliation except—
  - (a) at the request or with the consent of the consumer; or
  - (b) at the request of a court, board or tribunal in which proceedings have been taken in relation to the dispute.
- (2) The Commissioner may call voluntary or compulsory conferences of the parties to the dispute for the purpose of attempting to resolve the dispute by agreement.
- (3) If—
  - (a) the Commissioner is requested to resolve a dispute between a consumer and trader by conciliation; and
  - (b) the consumer, without reasonable excuse, fails to attend a conference called for that purpose when asked to do so by the Commissioner,the Commissioner may refuse to take any further action in relation to the dispute.
- (4) A trader who is asked by the Commissioner to attend a conference under this section must attend the conference if the Commissioner indicates in the request that attendance is compulsory.

Maximum penalty:

- (a) in the case of a minor offence—\$5 000;
- (b) in any other case—\$10 000.

Expiation fee: In the case of a minor offence—\$315.

- (5) A conciliation conference may, with the approval of the Commissioner, be conducted by telephone or other electronic means (and a person who participates in a conference by such means will, for the purposes of this section, be taken to have attended the conference).
- (6) The following provisions govern representation in conciliation proceedings:
  - (a) representation of a party by a lawyer will not be permitted unless—
    - (i) another party to the dispute is a lawyer; or
    - (ii) each of the parties to the dispute agrees; or
    - (iii) the Commissioner is of the opinion that the party would be unfairly disadvantaged if not represented by a lawyer;
  - (b) if a party to the dispute is a body corporate, the Commissioner must, if the party seeks to be represented by an officer or employee who is not a lawyer, permit such representation;
  - (c) the Commissioner may permit a party to the dispute to be assisted by a person who is not a lawyer but only if that person is not acting for fee or reward.

- (7) If an agreement that is reached as a result of conciliation is recorded in a written instrument and signed by the Commissioner and the parties to the agreement—
- (a) a copy of the instrument must be given to each party; and
  - (b) in the event that a party to the agreement fails to carry out the party's obligations under the agreement—the Commissioner or the other party may apply to the Magistrates Court for an order enforcing the terms of the agreement.
- (8) Evidence of anything said or done in the course of conciliation proceedings under this section is only admissible in subsequent proceedings by consent of the Commissioner and all parties to the proceedings.
- (9) An application to the Magistrates Court under subsection (7)(b) is a minor statutory proceeding for the purposes of the *Magistrates Court Act 1991*.
- (10) In this section—
- minor offence* means an offence where the value of the goods or services the subject of the dispute is not more than \$1 000 or, if some other amount is prescribed by the regulations, that amount.

## **9—Co-operation**

The Commissioner for Consumer Affairs may, in the interests of consumers, co-operate with public or private bodies or persons within or outside the State.

## **10—Delegations**

- (1) The Commissioner for Consumer Affairs may delegate to a person employed in the Public Service of the State or, with the Minister's consent, to a person not so employed any of the Commissioner's powers under this Act or a related Act.
- (2) The Minister may delegate any of the Minister's powers under this Act.
- (3) A delegation under this section—
- (a) must be in writing; and
  - (b) may be made subject to such conditions as the delegator thinks fit; and
  - (c) if made to the holder of a specified office or position, empowers any person for the time being holding or acting in that office or position to exercise the delegated powers; and
  - (d) is revocable at will; and
  - (e) does not prevent the delegator from acting personally in any matter.

## **12—Annual report**

- (1) The Commissioner for Consumer Affairs must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act by the Commissioner during the year ended on the preceding 30 June.
- (2) The Minister must cause a copy of the report to be laid before each House of Parliament within 14 sitting days of that House after receiving the report.

## **Part 3—Australian Consumer Law**

### **Division 1—Application of Australian Consumer Law**

#### **13—Australian Consumer Law text**

The Australian Consumer Law text consists of—

- (a) Schedule 2 of the *Competition and Consumer Act 2010* of the Commonwealth; and
- (b) the regulations under section 139G of that Act.

#### **14—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 (SA); and
  - (c) as so applying is a part of this Act.
- (2) This section has effect subject to sections 15, 16 and 17.

#### **15—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 14 if the modification is declared by proclamation to be excluded from the operation of that section.
- (2) A proclamation under subsection (1) only has effect if it is made within 2 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further proclamation so provides.
- (4) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives Royal Assent or the regulation effecting the modification is registered under the *Legislative Instruments Act 2003* of the Commonwealth.

#### **16—Meaning of generic terms used in Australian Consumer Law**

In the Australian Consumer Law (SA)—

*court*—

- (a) in respect of proceedings under section 218 of the Australian Consumer Law (SA)—means the Magistrates Court; and
- (b) in respect of any other proceedings—means the court of this State having appropriate jurisdiction in relation to the proceedings;

*regulator* means—

- (a) the Commissioner for Consumer Affairs; or

- (b) the Small Business Commissioner (but only if the Small Business Commissioner is responsible for the administration of any aspect of the Australian Consumer Law (SA)).

### **17—Interpretation of Australian Consumer Law**

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this jurisdiction to the Australian Consumer Law (SA).
- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if—
  - (a) the statutory provisions in the Australian Consumer Law (SA) were a Commonwealth Act; and
  - (b) the regulations in the Australian Consumer Law (SA) or instruments mentioned under that Law were regulations or instruments under a Commonwealth Act.
- (3) The *Acts Interpretation Act 1915* does not apply to—
  - (a) the Australian Consumer Law (SA); or
  - (b) any instrument under that Law.

### **18—Application of Australian Consumer Law**

- (1) The Australian Consumer Law (SA) applies to and in relation to—
  - (a) persons carrying on business within this jurisdiction; or
  - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
  - (c) persons ordinarily resident in this jurisdiction; or
  - (d) persons otherwise connected with this jurisdiction.
- (2) Subject to subsection (1), the Australian Consumer Law (SA) 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—References to Australian Consumer Law**

### **19—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.

### **20—References to Australian Consumer Laws of other jurisdictions**

- (1) This section has effect for the purposes of 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 3—Application of Australian Consumer Law to Crown**

#### **21—Division does not apply to Commonwealth**

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

#### **22—Application law of this jurisdiction**

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

#### **23—Application law of other jurisdictions**

- (1) The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown 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 the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

#### **24—Activities that are not business**

- (1) For the purposes of sections 22 and 23, the following activities 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 persons who are all acting for the Crown in the same right (and none of whom is an authority of a State); or
    - (ii) only persons who are all acting for the same authority of a State; or
    - (iii) only the Crown in right of 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 the purposes of sections 22 and 23.
- (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* includes a licence, permit or certificate 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 the purposes of this section, an authority of a State is *non-commercial* if—
  - (a) it is constituted by only 1 person; and
  - (b) it is neither a trading corporation nor a financial corporation.

## **25—Crown not liable to pecuniary penalty or prosecution**

- (1) Nothing in the application law of this jurisdiction makes the Crown in any capacity 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 the Crown in right of 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 4—Miscellaneous**

### **25A—Application of Australian Consumer Law (SA) to bills under *Legal Practitioners Act 1981***

Section 101 of the Australian Consumer Law (SA) does not apply to a contract for the provision of legal services to which the *Legal Practitioners Act 1981* applies.

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

- (1) The authorities and officers of the Commonwealth referred to in the Australian Consumer Law (SA) have the functions and powers conferred or expressed to be conferred on them under the Australian Consumer Law (SA).

- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to 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 referred to in that subsection.

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

- (1) If—
- (a) an act or omission is an offence against the Australian Consumer Law (SA) 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 (SA).
- (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 (SA) in respect of the same conduct.

## **28—Certain proceedings prevented in certain circumstances**

If a person expiates an alleged offence against the Australian Consumer Law (SA), proceedings cannot be started or continued against the person under section 224 of the Australian Consumer Law (SA) in relation to an alleged contravention of a provision of the Australian Consumer Law (SA) in respect of the same conduct.

## **28A—Minister may require information**

- (1) The Minister may, by notice in writing given to a person, require the person to provide (within the period specified in the notice) any information that is reasonably necessary for the purpose of determining whether—
- (a) a provision of Part 3-3 of the Australian Consumer Law (SA) is being or has been complied with; or
  - (b) the Minister should impose or revoke an interim ban on consumer goods, or product related services, of a particular kind; or
  - (c) the Minister should issue a recall notice for consumer goods of a particular kind; or
  - (d) the Minister should publish a safety warning notice about consumer goods and product related services under section 129 of the Australian Consumer Law (SA).
- (2) Subject to subsection (3), a person given a notice under this section—
- (a) must not refuse or fail to comply with a reasonable requirement under this section; and
  - (b) must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in an answer given or information provided under this section.

Maximum penalty: \$20 000.

- (3) A person is not required to provide information under this section if the provision of the information would result in or tend towards self-incrimination.

### **28B—Minister to publish certain notices in Gazette**

- (1) If, under the Australian Consumer Law (SA), the Minister publishes a written notice on the Internet, the Minister must, as soon as reasonably practicable after the publication, publish the notice in the Gazette.
- (2) A failure of the Minister to publish a notice in the Gazette as required under subsection (1) does not affect the validity of a notice published on the Internet.

### **28C—Cost of testing**

- (1) If, as the result of an examination, analysis or test of consumer goods, or product related services, conducted under this Act, the Minister—
- (a) imposes an interim ban on the goods or services; or
  - (b) issues a recall notice for the goods,
- the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any such examination, analysis or test.
- (2) If, as the result of an examination, analysis or test of consumer goods, or product related services, conducted under this Act—
- (a) the goods are found not to comply with an applicable safety standard; or
  - (b) the services are found not to comply with an applicable safety standard,
- the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any such examination, analysis or test.
- (3) If a person provides (in contravention of this Act) materially inaccurate information in relation to consumer goods or product related services, the Minister may recover as a debt from that person the reasonable cost of any examination, analysis or test carried out for the purpose of testing the accuracy of the information.
- (4) The court by which a person is convicted of an offence against this Act may, on the application of the Minister, order payment of any amount that the Minister is entitled to recover from the convicted person under this section.
- (5) The Minister must, before proceeding to recover costs from a person under this section, supply to the person a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred.
- (6) In proceedings for the recovery of the cost of carrying out an examination, analysis or test to which this section applies, a certificate apparently signed by the Minister—
- (a) certifying that the Minister supplied a statement in accordance with subsection (5) on a date specified in the certificate; or
  - (b) certifying the amount of the costs,
- will be accepted, in the absence of proof to the contrary, as proof of the matter so certified.



## Part 3A—Industry codes

### 28D—Interpretation

In this Part—

*industry code* means a code regulating the conduct of participants in an industry towards other participants in the industry or towards persons to whom goods or services are or may be supplied by participants in the industry.

### 28E—Contravention of industry codes

A person must not, in trade or commerce, contravene a prescribed industry code or a prescribed provision of an industry code.

### 28F—Regulations relating to industry codes

- (1) The regulations may—
  - (a) prescribe an industry code, or provisions of an industry code, for the purposes of this Part and declare (subject to section 4B(3)) whether the Commissioner for Consumer Affairs or the Small Business Commissioner is to be responsible for the administration of this Part in relation to the code or provisions; and
  - (b) declare that a contravention of section 28E of a particular class (constituted of a contravention of the whole or any specified part of a prescribed industry code or prescribed provisions of an industry code) is to be subject to a civil penalty under Part 7 Division 3A; and
  - (c) fix expiation fees (not exceeding \$6 000 in the case of a body corporate and \$1 200 in the case of a natural person) for alleged civil penalty contraventions within the meaning of Part 7 Division 3A; and
  - (d) declare that a specified activity is to be taken to be an industry for the purposes of this Part and that persons of a specified class are to be taken to be participants in the industry.
- (2) A proposal for regulations prescribing an industry code or provisions of an industry code under this section may be initiated by—
  - (a) if the Commissioner for Consumer Affairs is to be responsible for the administration of this Part in relation to the code or provisions—the Minister responsible for the administration of this Act; and
  - (b) if the Small Business Commissioner is to be responsible for the administration of this Part in relation to the code or provisions—the Minister responsible for the administration of the *Small Business Commissioner Act 2011*.
- (3) If a Minister initiates a proposal for regulations prescribing an industry code or provisions of an industry code under this section, the Minister must, before the regulations are made, consult with each organisation that the Minister considers to be representative of an industry likely to be affected by the code or provisions.

- (4) For the purposes of the *Subordinate Legislation Act 1978*, the Minister responsible for the administration of the *Small Business Commissioner Act 2011* is to be taken to be the Minister responsible for the administration of this Act in respect of regulations that declare the Small Business Commissioner to be responsible for the administration of this Part in relation to an industry code or provisions of an industry code.

## Part 4—Fair reporting

### 29—Interpretation

- (1) In this Part, unless the contrary intention appears—

*file* means any repository or record in which information relating to any person is recorded or retained, in any manner or form, by a reporting agency;

*prescribed benefit* means—

- (a) a benefit of a commercial nature; or
- (b) a benefit in or affecting employment; or
- (c) a lease of premises or a licence conferring a right to occupy premises;

*prescribed report* means a communication made to a trader by a reporting agency or another trader of information relating to a person, not being a communication made with the knowledge of, and of information known to, that person;

*reporting agency* means a person who carries on the business of providing prescribed reports.

- (2) For the purposes of this Part, where a prescribed report consists of a communication by electronic or mechanical means (except by telephone or other means of voice transmission) the report will be regarded as being written.

### 30—Application of Part

- (1) Subject to subsection (2), this Part applies to and in relation to a reporting agency or trader where—
- (a) the reporting agency or trader provides a prescribed report to a person carrying on a business or letting premises in the State; and
  - (b) the person to whom the report relates is domiciled or resident in the State.
- (2) This Part does not apply to or in relation to a prescribed report that is provided through the use of a residential tenancy database to which Part 5A of the *Residential Tenancies Act 1995* applies.

### 31—Procedures in respect of prescribed reports

- (1) A reporting agency or trader must adopt all procedures reasonably practicable for ensuring accuracy and fairness in the contents of prescribed reports provided by the agency or trader.
- (2) A reporting agency or trader must not include in any prescribed report—
- (a) any information based on evidence that is not the best evidence reasonably available; or

- (b) any unfavourable personal information based upon hearsay evidence unless the agency or trader has made reasonable efforts to substantiate the evidence on which the personal information is based and, where the information is unsubstantiated, the lack of substantiation is stated in any report in which the information is given.
- (3) A reporting agency or trader must not include in any prescribed report information as to the race, colour or religious or political belief or affiliation of any person.

### **32—Duties of traders**

Where a trader—

- (a) denies a prescribed benefit sought by a person; or
- (b) grants a prescribed benefit sought by a person but upon terms less favourable than those upon which the trader grants similar benefits to other persons in the course of the trader's business,

and the trader has during the last preceding 6 months received a prescribed report in relation to that person, the trader must at the written request of that person—

- (c) inform the person that the trader has received that report; and
- (d) give the person the name and address of the reporting agency or other trader who provided that report.

### **33—Duties of reporting agencies**

- (1) A reporting agency must, on the written application of a person in relation to whom the agency has recorded information, disclose without charge—
  - (a) all information in its files relating to that person at the time the request; and
  - (b) the name and address of every person to whom a prescribed report relating to that person has been provided within the year preceding the date of the request; and
  - (c) a copy of every such prescribed report that was in writing.
- (2) A reporting agency may require any person seeking disclosure of information under this section to produce reasonable evidence of the person's identity.
- (3) A reporting agency must take reasonable steps to ensure that information to which a person is entitled under this section is disclosed in a form that is readily intelligible to that person and will permit that person to make a copy of, or to take an extract from, the information so disclosed.
- (4) A reporting agency must not require a person to give any undertaking, or to waive any right that the person may have, as a condition of disclosing information under this section.

### **34—Correction of errors**

- (1) A person who disputes the accuracy or completeness of any information compiled by a reporting agency in relation to the person or included in a prescribed report relating to the person provided by a reporting agency or trader may, by notice in writing served upon the agency or trader, object to the inaccuracy or incompleteness of the information.

- (2) Where, pursuant to subsection (1), a person disputes the accuracy or completeness of any information, the reporting agency or trader must, within a reasonable time, use its best endeavours to verify or supplement the information in accordance with good practice.
- (3) A reporting agency or trader upon whom a notice of objection is served under this section must, within 30 days after the date of service of the notice, inform the person by whom the objection was made—
  - (a) whether the agency or trader has made any amendment or supplementation to or deletion from the information; and
  - (b) if so, the nature of the amendment, supplementation or deletion.
- (4) Where information is altered under this section by amendment, supplementation or deletion, the following provisions apply:
  - (a) where a reporting agency makes such an alteration, the agency must give notice in writing of the alteration to—
    - (i) every person provided by the agency with a prescribed report based on the information within the period of 60 days before the making of the alteration; and
    - (ii) every person provided by the agency with such a prescribed report before the commencement of that period and nominated by the person to whom the information relates;
  - (b) where a trader makes such an alteration, the trader must give notice in writing of the alteration to every person provided by the trader with a prescribed report based on the information and nominated by the person to whom the information relates.
- (5) A person by whom an objection has been made under this section may appeal to the Magistrates Court against any failure on the part of a reporting agency or trader to make any deletion from or amendment or supplementation to information.
- (6) Upon the hearing of an appeal under this section, the Magistrates Court may make such orders as it considers just.
- (7) Where an objection or appeal has been made or instituted under this section and a prescribed report is made by the reporting agency or trader before the determination by the agency or trader or by the Magistrates Court of the matters raised in the objection or appeal, the agency or trader must include in the report a statement to the effect that those matters are subject to an objection or appeal under this Part.

### **35—Qualified privilege**

- (1) Subject to subsection (2), any communication to a reporting agency or trader or to a trader by a reporting agency or another trader of information relating to the credit-worthiness of any person is protected by qualified privilege.
- (2) Subsection (1) does not apply where information is communicated in contravention of an order made under this Part.

### 36—Offences

Subject to this Part, a person who—

- (a) contravenes a provision of this Part; or
- (b) contravenes an order made under this Part (other than an order under section 37); or
- (c) knowingly provides false or misleading information to another person, being a person who is engaged in compiling information for a prescribed report; or
- (d) divulges information relating to another person from the files of a reporting agency without proper authority to do so or except for the purposes of legal proceedings; or
- (e) obtains information relating to another person from a reporting agency or trader by false pretences,

is guilty of an offence.

Maximum penalty: \$10 000.

### 37—Powers of District Court

- (1) The District Court may, on the application of the Commissioner for Consumer Affairs, make such orders against a reporting agency or trader as may be necessary or expedient in the opinion of the Court to ensure that the reporting agency or trader complies with this Part or any provision of this Part.
- (2) Where a reporting agency or trader—
  - (a) commits an offence against this Part; or
  - (b) does any act that, in the opinion of the District Court, shows the agency or trader to be unfit to provide prescribed reports,

the Court may, on the application of the Commissioner for Consumer Affairs, make an order—

- (c) prohibiting the agency or trader from providing prescribed reports; or
  - (d) requiring the agency or trader to comply with conditions specified in the order in relation to the provision of prescribed reports.
- (3) An order under subsection (1) or (2) is effective for such period as may be specified in the order or until further order of the Court.
- (4) A reporting agency or trader that contravenes an order under subsection (1) or (2) is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

## Part 4A—Regulation of event ticket transactions

### Division 1—Preliminary

#### 37A—Interpretation

In this Part—

*authorised seller*, in relation to an event or a ticket for an event, means—

- (a) if the event organiser has authorised a person to supply the ticket on behalf of the event organiser or to resupply the ticket after acquiring it from the authorised seller—that person; or
- (b) in any other case—any event organiser for the event;

*event organiser*—see section 37C;

*resale restriction*—see section 37B.

#### 37B—Tickets to which Part applies

- (1) This Part applies to tickets to sporting or entertainment events in this State that are subject to a resale restriction.
- (2) A *resale restriction* is a term or condition of a ticket that limits the circumstances in which the ticket may be resold or prohibits the resale of the ticket.
- (3) A term or condition that limits the circumstances in which a ticket may be resold or prohibits the resale of the ticket includes a term or condition that provides for the ticket to be cancelled or rendered invalid if the ticket is resold, or if the ticket is resold in certain circumstances.

#### 37C—Meaning of *event organiser*

- (1) The *event organiser*, in relation to an event, is the person who authorises the first supply of tickets for the event, whether or not that person is also the performer, the promoter of the event or the operator of the event venue.
- (2) The regulations may declare any other person (or class of persons) to be the event organiser in relation to the event or in relation to any class of events to which the event belongs.

### Division 2—Resale of tickets

#### 37D—Interpretation

In this Division—

*first purchaser*, in relation to a ticket, means the person to whom the ticket is first supplied by an authorised seller;

*original supply cost*—see section 37E;

*prohibited advertisement*—see section 37F;

*sell* includes offer or advertise to sell;

*supply* includes offer to supply and advertise for supply;

*ticket resale advertisement* means an advertisement for the sale of a ticket by any person other than the authorised seller;

*transaction cost*—see section 37E.

### **37E—Meaning of *original supply cost***

- (1) The *original supply cost* of a ticket is the amount for which the ticket was sold to the first purchaser by an authorised seller, excluding any transaction cost.
- (2) The *transaction cost* is the cost of any commission, booking fee, payment surcharge or ticket delivery fee incurred by the first purchaser of the ticket in connection with the purchase of the ticket.
- (3) If no amount was paid by the first purchaser of the ticket in consideration for the ticket, the original supply cost is taken to be an amount determined by the authorised seller of the ticket as the recommended retail price of the ticket.
- (4) In any proceedings, an apparently genuine certificate purporting to be signed by the Commissioner and certifying as to the recommended retail price of a ticket determined by an authorised seller for the purposes of subsection (3) is, in the absence of proof to the contrary, proof of the matter so certified.

### **37F—Meaning of *prohibited advertisement***

- (1) A *prohibited advertisement* is a ticket resale advertisement that does not comply with this section.
- (2) A ticket resale advertisement must not specify an amount for the sale of the ticket that exceeds 110% of the original supply cost of the ticket.
- (3) A ticket resale advertisement must specify the following particulars:
  - (a) the original supply cost of the ticket;
  - (b) details of the location from which the ticket holder is authorised to view the event (including, for example, any bay number, row number and seat number for the ticket).

### **37G—Restriction on ticket resale profit**

A person must not sell a ticket to any other person for an amount that exceeds 110% of the original supply cost of the ticket.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

Expiation fee: \$550.

### **37H—Supply of tickets not to be made contingent on other purchases**

- (1) A person (the *supplier*) must not supply a ticket to any other person (the *recipient*) under an agreement that makes the liability of the supplier to supply the ticket to the recipient contingent on payment by the recipient to the supplier of any amount in consideration for the provision to the recipient of any other goods or services.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;

(b) in the case of a natural person—\$20 000.

Expiation fee: \$550.

- (2) This section does not apply to the supply of a ticket under an agreement authorised by the event organiser or under any other agreement of a kind prescribed by the regulations.

### **37I—Ticket resale advertising**

- (1) The owner of an advertising publication must ensure that no prohibited advertisement is published in the publication.

Maximum penalty:

(a) in the case of a body corporate—\$100 000;

(b) in the case of a natural person—\$20 000.

Expiation fee: \$550.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that—
- (a) the agreement between the defendant and the person placing the ticket resale advertisement was subject to terms or conditions prohibiting the publication of prohibited advertisements; and
  - (b) the defendant, as soon as practicable after becoming aware that the prohibited advertisement had been published in the publication, took reasonable steps to ensure that the advertisement was removed from the publication; and
  - (c) the defendant took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication.
- (3) The regulations may exclude an advertisement or publication of a kind described by the regulations from the application of this section.

- (4) In this section—

*advertisement* means any advertisement, whether paid or not;

*advertising publication* means any website, newspaper, magazine or other publication containing advertisements to which members of the public have access (whether or not a member of the public is first required to pay a fee or subscription, register or become a member);

*owner*, of an advertising publication, includes any person who conducts the business or undertaking of the advertising publication, but does not include a person of a class prescribed by the regulations.

### **37J—Defence for certain ticket sales**

- (1) It is a defence to a charge of an offence against this Division involving the sale or supply, or an advertisement for the sale or supply, of a ticket if the defendant proves—
- (a) that the ticket was or was advertised to be (as the case may require) sold or supplied as a fundraiser for approved purposes; and
  - (b) the whole of the net proceeds of the sale or supply of the ticket were, or were to be, applied for the approved purposes.



- (2) For the purposes of subsection (1)—
- (a) the following are **approved purposes**:
- (i) a religious, educational, charitable or benevolent purpose;
  - (ii) the purpose of promoting or encouraging literature, science or the arts;
  - (iii) the purpose of providing medical treatment or attention, or promoting the interests of persons who have a particular physical, mental or intellectual disability;
  - (iv) the purpose of establishing, carrying on or improving a community centre, or promoting the interests of a local community or a particular section of a local community;
  - (v) the purpose of sport, recreation or amusement;
  - (vi) the purpose of promoting animal welfare;
  - (vii) the purpose of conserving resources or preserving any part of the environmental, historical or cultural heritage of the State;
  - (viii) the purpose of promoting the interests of students or staff of an educational institution;
  - (ix) a political purpose;
  - (x) the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry;
- and
- (b) the **net proceeds** of the sale or supply of a ticket are the gross proceeds of the sale or supply less the expenses incurred in conducting the sale or supply.

### **37K—Certain resale restrictions void**

A resale restriction is void to the extent that it provides for the ticket to be cancelled or rendered invalid if the ticket is resold for an amount not exceeding 110% of the original supply cost of the ticket.

## **Division 3—Online purchase of tickets**

### **37L—Prohibited conduct in relation to use of ticketing websites**

- (1) A person must not engage in prohibited conduct in relation to the use of a ticketing website.
- Maximum penalty:
- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (2) A person will be taken to have contravened subsection (1) if the person uses any software (including, but not limited to, software prescribed by regulations) to enable or assist the person to circumvent the security measures of the website and to purchase tickets in contravention of the terms of use of the website that are published on the website.

- (3) The security measures of a website include any measures of a kind prescribed by the regulations.

## **Division 4—Public disclosure of ticketing information**

### **37M—Minister may require notification of number of tickets available for general public sale**

- (1) The Minister may, by notice in the Gazette, declare that a specified event organiser (or a specified class of event organisers) is required to give public notice of the total number of tickets for the event that are to be made available by authorised sellers for general public sale.
- (2) The public notice must be given within the time and in the manner specified in the declaration.
- (3) The total number of tickets specified in a public notice required under this section must be a number that the event organiser believes, on reasonable grounds, is not more than 10% greater or less than the total number of tickets that are to be made available for general public sale before the day on which the event is held (including any number of tickets made available before the public notice is given).
- (4) A ticket is not made available by an authorised seller for general public sale if the authorised seller requires a person to do either of the following in order to acquire the ticket:
  - (a) pay a fee (in addition to the price of the ticket and any transaction cost such as a commission, booking fee, payment surcharge or ticket delivery fee);
  - (b) register for access to any pre-sale, publication, competition or other special offer.
- (5) The regulations may make further provision for the circumstances in which a ticket is, or is not, made available for general public sale for the purposes of this section.
- (6) The Minister may not make a declaration under this section unless—
  - (a) the Minister is satisfied that each event organiser for an event to which the proposed declaration applies has been notified (whether by public notice or otherwise) of the Minister's intention to make the declaration; and
  - (b) the event organiser has been given a reasonable opportunity to make submissions in relation to the proposed declaration; and
  - (c) the Minister has considered any such submission; and
  - (d) the Minister is satisfied that it is in the public interest to make the declaration.
- (7) An event organiser must not fail to comply with a requirement made in a declaration under this section.

Maximum penalty:

  - (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (8) The Minister may, by further notice in the Gazette, vary or revoke a declaration made under this section.

## Division 5—Review of Part

### 37N—Review of Part

- (1) The Minister must cause a review of the operation of this Part to be conducted not before 18 months, and not later than 2 years, following the commencement of this Division.
- (2) The review must be completed, and a report on the results of the review provided to the Minister, within 3 years following the commencement of this Division.
- (3) The Minister must, within 12 sitting days after receipt of the report, cause copies of the report to be laid before each House of Parliament.

## Part 5—Additional consumer protection provisions

### 41—Advertisements must not state or imply approval of consumer affairs authority

A person must not, without the approval of the Commissioner for Consumer Affairs, publish, or cause to be published, a statement promoting, or apparently intended to promote, the supply of goods or services or the sale or letting of premises that states, either expressly or by implication, that a consumer affairs authority has approved or refrained from disapproving—

- (a) the statement; or
- (b) any particular contained, or claim made, in the statement; or
- (c) any goods or services referred to in the statement.

Maximum penalty: \$10 000.

### 42—Recreational services

- (1) Subject to this section, a term of a contract for the supply of recreational services by a person (the *supplier*) to a consumer may exclude, restrict or modify a guarantee that would otherwise have been implied in the contract under section 60 or 61 of the Australian Consumer Law.
- (2) Subsection (1) applies only if—
  - (a) the exclusion, restriction or modification contained in the term is limited to excluding, restricting or modifying the liability of the supplier for any personal injury suffered by the consumer or another person for whom or on whose behalf the consumer is acquiring the services (a *third party consumer*); and
  - (b) the term contains the prescribed particulars and is in the prescribed form; and
  - (c) the term is brought to the attention of the consumer and any third party consumer prior to the supply of the services; and
  - (d) the consumer agrees to the term in the prescribed manner; and
  - (e) a statement containing any other information prescribed by regulation is made available to the consumer and any third party consumer in accordance with the requirements prescribed by regulation.

- (3) Subsection (1) does not operate to exclude, restrict or modify the liability of the supplier for damages for any significant personal injury suffered by the consumer or any third party consumer if it is established (by applying the general principles set out in section 34 of the *Civil Liability Act 1936*) that the reckless conduct of the supplier caused the injury.
- (4) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void if it purports to indemnify, or has the effect of indemnifying, a person who supplies recreational services in relation to any liability that may not be excluded, restricted or modified under this Act or any other Act or law.
- (5) Subsection (4) does not apply in respect of a contract of insurance.
- (6) The Commissioner for Consumer Affairs must publish information setting out the rights of consumers in relation to contracts for the supply of recreational services on a website determined by the Commissioner.
- (7) In this section—

**conduct** includes any act or omission;

**personal injury** means bodily injury and includes—

- (a) mental and nervous shock; and
- (b) death;

**reckless**—a person's conduct is reckless if the person—

- (a) is aware, or should reasonably have been aware, of a significant risk that his or her conduct could result in personal injury to another; and
- (b) engages in the conduct despite the risk and without adequate justification;

**recreational services** means services that consist of participation in—

- (a) a sporting activity or a similar leisure-time pursuit; or
- (b) any other activity that—
  - (i) involves a significant degree of physical exertion or physical risk; and
  - (ii) is undertaken for the purposes of recreation, enjoyment or leisure;

**significant** means not nominal, trivial or minor.

### **43—Unlawful actions and representations**

- (1) A creditor, or the agent of a creditor, must not, for the purpose of recovering a trading debt of the creditor—
  - (a) make any demand for payment without indicating the creditor's identity and the balance owing to the creditor and, where the demand is made by the agent, the agent's identity and authority to make the demand; or
  - (b) demand payment of any amount that the creditor or agent does not honestly believe to be due and owing to the creditor; or

- (c) persist in demanding payment from a person who has denied liability without making reasonable inquiries to ensure that the demand is based on reasonable grounds; or
- (d) make any personal calls or telephone calls for the purpose of demanding payment—
  - (i) on a public holiday; or
  - (ii) between the hours of 10.00 p.m. of one day and 7.00 a.m. of the next; or
- (e) except as reasonably necessary to determine the debtor's whereabouts, communicate with an employer, acquaintance, friend, relative or neighbour of the debtor (not being a guarantor).

Maximum penalty: \$5 000.

- (2) A creditor, or the agent of a creditor, must not, for the purpose of recovering a trading debt—
  - (a) falsely represent that criminal or other proceedings will lie for non-payment of the debt; or
  - (b) falsely pretend to be authorised in some official capacity to claim or enforce payment; or
  - (c) falsely represent that a document has some official character that it does not have.

Maximum penalty:

In the case of a body corporate—\$25 000.

In any other case—\$5 000 or imprisonment for 6 months.

- (3) In this section—

*agent* includes an employee of a creditor whose main duty of employment is to seek to recover trading debts owed to the creditor.

#### **43A—Prohibition on trading or carrying on business as Starr-Bowkett society**

- (1) A person or body of persons, whether incorporated or unincorporated, must not—
  - (a) trade or carry on business as a Starr-Bowkett society; or
  - (b) trade or carry on business under a name or title of which the words "Starr-Bowkett" or "Bowkett" form a part; or
  - (c) in any manner hold out that its trade or business is that of a Starr-Bowkett society.

Maximum penalty: \$10 000.

- (2) An interstate Starr-Bowkett society does not contravene subsection (1) by reason of the fact that it conducts business with a person who resides in this State if the person became a member of the society prior to the person commencing to reside in this State.

- (3) For the purposes of this section—
- (a) a person or body trades or carries on a business as a Starr-Bowkett society if the person or body causes or permits applicants for loans to ballot for precedence, or otherwise makes the granting of a loan dependent on chance or lot; and
  - (b) a person or body trades or carries on a business in this State if the person or body—
    - (i) establishes or uses an office in this State for receiving share capital, deposits, subscriptions or loan funds; or
    - (ii) advertises in this State for share capital, deposits, subscriptions or loan funds; or
    - (iii) provides financial accommodation to members of the person or body who reside in this State.

- (4) In this section—

*interstate Starr-Bowkett society* means a person or body that trades or carries on business as a Starr-Bowkett society and has its principal office or place of business located in another State or Territory and is registered, incorporated or otherwise operates in accordance with the relevant laws of that State or Territory.

## Part 6—Third-party trading schemes

### 44—Interpretation

In this Part—

*approved third-party trading scheme* means a third-party trading scheme in relation to which a notice has been given under section 45;

*prohibited third-party trading scheme* means a third-party trading scheme that is the subject of a declaration under section 45A;

*third-party trading scheme* means a scheme or arrangement under which the acquisition of goods or services by a consumer from a supplier is a condition, or one of a number of conditions, compliance with which gives rise, or apparently gives rise, to an entitlement to a benefit from a third party in the form of goods or services or some discount, concession or advantage in connection with the acquisition of goods or services.

### 45—Power of Minister to approve third-party trading schemes

- (1) The Minister may, on application, give notice in writing that a specified third-party trading scheme is an approved third-party trading scheme.
- (2) The Minister must not approve a third-party trading scheme under this section unless satisfied that the scheme is genuine, reasonable and not contrary to the interests of consumers.
- (3) An approval under this section may be given subject to such conditions as the Minister thinks fit and specifies in the notice to the applicant.
- (4) An application under this section must be supported by such evidence as the Minister may require.

#### **45A—Power of Minister to prohibit third-party trading schemes**

- (1) The Commissioner for Consumer Affairs may recommend to the Minister that a third-party trading scheme be declared to be a prohibited third-party trading scheme if—
  - (a) the scheme is not an approved third-party trading scheme and the Commissioner is of the opinion that the scheme is not genuine and reasonable or is contrary to the interests of consumers; or
  - (b) in the case of an approved third-party trading scheme—a condition of the approval has been contravened.
- (2) The Minister may, on the recommendation of the Commissioner for Consumer Affairs, by notice published in the Gazette, declare a third-party trading scheme to be a prohibited third-party trading scheme.
- (3) The Minister may, by notice published in the Gazette, revoke a declaration under this section.

#### **45B—Offences**

A person who—

- (a) acts as a promoter of a prohibited third-party trading scheme; or
- (b) as a party to a prohibited third-party trading scheme, supplies goods or services; or
- (c) publishes an advertisement relating to a prohibited third-party trading scheme or causes such an advertisement to be published,

is guilty of an offence.

Maximum penalty: \$10 000.

#### **45C—Regulations**

The Governor may make regulations prescribing codes of practice to be complied with by persons who act as promoters of third-party trading schemes or supply goods or services as parties to such schemes.

### **Part 6A—Gift cards**

#### **45D—Prohibition on sale of gift cards with expiry date of less than 3 years**

- (1) A person must not sell to a consumer in South Australia a gift card with an expiry date that is earlier than 3 years after the date of sale of the gift card.  
Maximum penalty: \$5 000.
- (2) A person who sells a gift card to a consumer in South Australia, or who has agreed with the seller to redeem that gift card, must not impose any administrative charge or fee that reduces the redeemable value of the gift card after the sale of the gift card.  
Maximum penalty: \$5 000.
- (3) A term or condition of a gift card sold to a consumer in South Australia is void to the extent that it would make the sale of the gift card, or the imposition of a charge or fee, an offence under this section.

- (4) If the expiry date of a gift card is void because of subsection (3), the expiry date is to be taken to be 3 years after the date of sale of the gift card.
- (5) This section does not apply to—
- (a) a gift card sold to a consumer before the commencement of this section; or
  - (b) a gift card sold to a consumer online or by phone where—
    - (i) the gift card is to be delivered to the consumer at an address that is outside South Australia; or
    - (ii) the contact details of the consumer provided in connection with the sale of the gift card include a residential address that is outside South Australia; or
  - (c) a gift card of a class prescribed by the regulations; or
  - (d) a gift card sold to a person, or person of a class, prescribed by the regulations; or
  - (e) a gift card sold in circumstances prescribed by the regulations.
- (6) In this section—

*expiry date* of a gift card means the date on which the gift card ceases to be redeemable;

*gift card* means a card or voucher (however described and whether in a physical or electronic form) that is redeemable for goods or services in South Australia;

*redeemable value* of a gift card means the value of the goods or services for which the gift card is redeemable.

#### **45E—Review of Part**

- (1) The Minister must cause a review of the operation of this Part to be conducted not before 18 months, and not later than 2 years, following the commencement of this Part.
- (2) The review must be completed, and a report on the results of the review provided to the Minister, within 3 years following the commencement of this Part.
- (3) The Minister must, within 12 sitting days after receipt of the report, cause copies of the report to be laid before each House of Parliament.

## **Part 7—Enforcement and remedies**

### **Division A1—Interpretation**

#### **46—Interpretation**

In this Part, unless the contrary intention appears—

*Commissioner* means—

- (a) the Commissioner for Consumer Affairs; or
- (b) the Small Business Commissioner;



*Minister* means—

- (a) the Minister responsible for the administration of this Act; or
- (b) the Minister responsible for the administration of the *Small Business Commissioner Act 2011*.

## **Division 1—Legal proceedings and warnings**

### **47—Conduct of legal proceedings on behalf of consumers**

- (1) The Commissioner may, on behalf of a consumer and for the purpose of enforcing or protecting the rights of the consumer under this Act (other than the Australian Consumer Law (SA)), a related Act or some other law, institute, defend or assume the conduct of legal proceedings.
- (2) The Commissioner must not institute, defend or assume the conduct of legal proceedings pursuant to this section unless the Commissioner—
  - (a) is satisfied that the case raises questions of law affecting the interests of consumers generally or a particular class of consumers or that it is otherwise in the public interest to do so; and
  - (b) has first obtained the written consent of the consumer and of the Minister.
- (3) The consent of a consumer is irrevocable except with the agreement of the Commissioner or the Minister.
- (4) The consent of the Minister may be given subject to such conditions as the Minister thinks fit.
- (5) The Commissioner must not institute, defend or assume the conduct of legal proceedings pursuant to this section if the proceedings involve a monetary claim exceeding the prescribed amount.
- (6) In subsection (5)—

*the prescribed amount* means—

- (a) where the consumer is or is to be a party to proceedings in the capacity of purchaser or prospective purchaser of premises—\$100 000 or such greater amount as may be prescribed; and
  - (b) where the consumer is or is to be a party to proceedings in the capacity of mortgagor of premises—\$50 000 or such greater amount as may be prescribed; and
  - (c) in any other case—\$25 000 or such greater amount as may be prescribed.
- (7) The following provisions apply in relation to legal proceedings that the Commissioner institutes or defends or the conduct of which the Commissioner assumes pursuant to this section—
    - (a) the Commissioner has the same rights in and control over the proceedings as the consumer would have had in the conduct of those proceedings; and
    - (b) the Commissioner may, without consulting or seeking the consent of the consumer, conduct the proceedings as the Commissioner thinks appropriate; and

- (c) any money (excluding costs) recovered by the Commissioner must be paid to the consumer without deduction; and
- (d) any amount (excluding costs) awarded against the consumer is recoverable from the consumer, except if the consumer had, before that judgment was given, given written notice to the Commissioner of the consumer's desire to settle the matter, in which case the amount is recoverable from the Commissioner; and
- (e) the costs of the proceedings will be borne by or paid to the Commissioner; and
- (f) an unrelated counter-claim by or against the consumer must, if the Commissioner applies for a separate hearing, be heard separately.

#### **48—Public warning statements**

- (1) The Minister or the Commissioner may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about any of the following:
  - (a) goods that are unsatisfactory or dangerous and persons who supply those goods;
  - (b) services supplied in an unsatisfactory manner and persons who supply those services;
  - (c) unfair business practices and persons who engage in those practices;
  - (ca) conduct that the Commissioner has reasonable grounds to suspect may constitute a civil penalty contravention for the purposes of Division 3A that has resulted in or is likely to result in 1 or more persons suffering detriment;
  - (d) any other matter that adversely affects or may adversely affect the interests of persons in connection with the acquisition by them of goods or services from suppliers.
- (2) A statement under subsection (1) may identify particular goods, services, business practices and persons.
- (3) A public statement may not be made under subsection (1) about the conduct of a person if a public warning notice could be issued under section 223 of the Australian Consumer Law (SA) relating to the same conduct.

#### **49—Immunity from liability**

- (3) The Crown incurs no liability for a statement made by the Minister or the Commissioner in good faith in the exercise or purported exercise of powers under section 48.
- (4) No liability is incurred by a person for publishing in good faith—
  - (a) a statement referred to in subsection (3); or
  - (b) a fair report or summary of such a statement.

## Division 1A—Authorised officers

### 76—Authorised officers

- (1) The following persons are authorised officers for the purposes of this Act:
  - (a) the Commissioner for Consumer Affairs;
  - (b) the Small Business Commissioner;
  - (c) the Deputy Small Business Commissioner;
  - (d) persons appointed under this section.
- (2) The Minister responsible for the administration of this Act may, on the recommendation of the Commissioner for Consumer Affairs, appoint Public Service employees to be authorised officers for the purposes of this Act.
- (3) The Minister responsible for the administration of the *Small Business Commissioner Act 2011* may, on the recommendation of the Small Business Commissioner, appoint Public Service employees or persons employed by the Commissioner to be authorised officers for the purposes of this Act.
- (4) An appointment may be made subject to conditions specified in the instrument of appointment.
- (5) The relevant Minister may, at any time, revoke an appointment of an authorised officer or vary or revoke a condition of appointment or impose a further condition of appointment.
- (6) An authorised officer must be issued with an identity card—
  - (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised officer under this Act.
- (7) If the powers of an authorised officer have been limited by conditions, the identity card issued to the authorised officer must indicate those limitations.
- (8) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this Act, produce for the inspection of the person his or her identity card.

### 77—Obtaining information

- (1) For the purposes of this Act or any related Act, an authorised officer may require any person—
  - (a) to answer any questions, orally or in writing; or
  - (c) to produce books or documents.
- (1a) An authorised officer may, for the purposes of subsection (1), by notice in writing served on a person, require the person to attend at a specified time and place.
- (2) A person must not—
  - (a) refuse or fail to comply with a reasonable requirement under this section; or

- (b) without reasonable excuse, refuse or fail to attend at the time and place specified in a notice under subsection (1a) (or some other time and place allowed by an authorised officer); or
- (c) knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in an answer given or information provided under this section.

Maximum penalty: \$20 000.

- (2a) An authorised officer may require that the answer to a question under this section be verified by statutory declaration or given under oath.
- (3) A person is not required to answer a question or produce a book or document if the answer or the production of the book or document would result in or tend towards self-incrimination.

## **78—Entry and inspection**

- (1) For the purposes of this Act or any related Act, an authorised officer may at any reasonable time—
  - (a) enter and search any premises; and
  - (b) stop, enter and search any vessel or vehicle; and
  - (c) open any container, package or other item found in the premises, vessel or vehicle; and
  - (d) make any inspection; and
  - (e) conduct any analysis or test; and
  - (f) take any samples; and
  - (g) examine, copy and take extracts from any books or documents; and
  - (h) take any books or documents; and
  - (i) seize and remove anything that constitutes evidence of an offence against this Act or a related Act; and
  - (j) on payment or tender of a reasonable price for any goods found in any premises, vessel or vehicle—remove the goods from the premises, vessel or vehicle; and
  - (k) take photographs, films or video recordings; and
  - (l) take measurements and make notes; and
  - (m) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act or a related Act.
- (2) A person who, without reasonable excuse, fails to comply with a direction of an authorised officer under this section is guilty of an offence.

Maximum penalty: \$20 000.

- (3) The powers conferred by subsection (1) must be exercised so as to avoid any unnecessary disruption of, or interference with, the conduct of business or performance of work.

**78A—Use and inspection of books or documents produced or seized**

- (1) This section applies to a book or document that has been produced to an authorised officer or taken by an authorised officer.
- (2) A book or document to which this section applies may be retained for the purpose of enabling the book or document to be inspected and enabling copies of, or extracts or notes from, the book or document to be made or taken by or on behalf of the Commissioner.
- (3) However, if the book or document is required by the Commissioner as evidence for the purposes of legal proceedings, the book or document may be retained until the proceedings are finally determined.
- (4) The Commissioner must permit a person who would be entitled to inspect the book or document if it were not in the possession of the Commissioner to inspect the book or document at any reasonable time.
- (5) Nothing in this section prejudices a lien a person has on the book or document.

**78B—Dealing with goods bought or seized**

- (1) If goods are examined, analysed or tested under this Division, the Minister must—
  - (a) if the goods were seized and removed under this Division; or
  - (b) if the goods were purchased and removed under this Division and the examination, analysis or test leads to the institution of proceedings for an offence against this Act,by notice in writing served on the person who is the owner (or apparent owner) of the goods at the person's address last known to the Minister, inform the person of the results of the examination, analysis or test.
- (2) If proceedings for an offence against this Act are instituted against a person as a result of the examination, analysis or test, the Minister must, if it is reasonably practicable in the circumstances, allow the person to have the goods examined, analysed or tested on the person's own behalf.
- (3) The Minister must inform a person from whom goods were seized under this Division, by notice in writing served on the person at the person's address last known to the Minister, if—
  - (a) proceedings are not instituted for an offence against this Act in relation to the goods within 3 months of their seizure; or
  - (b) proceedings are instituted within that period but the defendant is not subsequently convicted,and, on receiving such notice, the person is entitled—
  - (c) to recover the goods; or
  - (d) if the goods have been destroyed or damaged, or have deteriorated—to recover from the Minister as a debt the market value of the goods at the time of their seizure.
- (4) If the goods have not been recovered by the person within 12 months after service of the notice under subsection (3), the Minister may dispose of the goods as the Minister thinks fit.

- (5) If goods are seized and removed and the person from whom the goods were seized is convicted of an offence against this Act in relation to the goods, the court convicting the person may, in addition, order that the goods be forfeited to the Crown.

### **78C—Embargo notices**

- (1) This section applies if—
- (a) an authorised officer is authorised to seize any record, device or other thing under this Division; and
  - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed or stored.
- (2) An authorised officer may issue an embargo notice under this section.
- (3) An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of an authorised officer.
- (4) The embargo notice must—
- (a) contain the particulars required by the regulations; and
  - (b) list the activities that it forbids; and
  - (c) set out a copy of subsection (9).
- (5) On issuing an embargo notice, an authorised officer must—
- (a) cause a copy of the notice to be served on the owner of the record, device or other thing; or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, affix a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person must not knowingly do anything that is forbidden by an embargo notice.  
Maximum penalty: \$10 000.
- (7) A person must not instruct or request another person to do anything that the first mentioned person knows is forbidden by an embargo notice.  
Maximum penalty: \$10 000.
- (8) It is a defence to a prosecution for an offence against subsection (6) to establish that the person charged—
- (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it; and
  - (b) notified the authorised officer who issued the embargo notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (9) A person on whom an embargo notice has been served must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.  
Maximum penalty: \$10 000.

- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

### **78D—Hindering an authorised officer**

A person who hinders an authorised officer acting in the exercise of powers conferred by or under this or any other Act is guilty of an offence.

Maximum penalty: \$5 000.

### **78E—Offence relating to intimidation**

A person must not persuade or attempt to persuade by threat or intimidation another person—

- (a) to fail to co-operate with an authorised officer in the performance or exercise of powers or functions conferred by or under this or any other Act; or
- (b) to fail to provide information or give evidence to an authorised officer as authorised or required under this or any other Act; or
- (c) to provide information or give evidence that is false or misleading in a material particular, or to provide information or give evidence in a manner that will make the information or evidence false or misleading in a material particular, to an authorised officer under this or any other Act.

Maximum penalty: \$5 000.

### **78F—Impersonating an authorised officer**

A person who falsely represents, by words or conduct, that the person is an authorised officer is guilty of an offence.

Maximum penalty: \$5 000.

## **Division 2—Assurances and enforcement orders**

### **79—Assurances**

- (1) The Commissioner may accept an assurance given by—
- (a) a trader; or
  - (b) a director of a body corporate that is a trader,
- in connection with a matter in relation to which the Commissioner has a power or function under this Act (other than the Australian Consumer Law (SA)) or a related Act.
- (3) An assurance under this section must be in writing.
- (4) A person who has given an assurance may, with the consent of the Commissioner, withdraw or vary the assurance at any time.
- (5) If the Commissioner accepts an assurance, the Commissioner must not proceed against the person who has given the assurance in respect of the conduct specified in the assurance, unless it appears to the Commissioner that the person has acted contrary to, or has failed to comply with, the assurance.

## 80—Registration of deeds of assurance

- (1) The Commissioner must maintain a register of assurances accepted by the Commissioner.
- (2) A person may on payment of the prescribed fee (if any) inspect the register of assurances.

## 81—Offence

- (1) A person who acts contrary to an assurance accepted by the Commissioner is guilty of an offence.  
Maximum penalty: \$10 000.
- (2) Proceedings for an offence against subsection (1) must not be commenced except on the authorisation of the Commissioner.
- (3) An apparently genuine document purporting to be under the hand of the Commissioner and to authorise the commencement of proceedings under this section must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

## 82—Enforcement orders

- (1) If the District Court is satisfied, on the application of the Commissioner, that a person has in the course of business acted contrary to, or failed to comply with, an assurance accepted by the Commissioner, the Court may make any or all of the following orders:
  - (a) an order prohibiting the person from engaging in specified conduct;
  - (b) an order directing the person to take specified action to comply with the assurance;
  - (c) an order directing the person to pay to the Crown an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach of, or non-compliance with, the assurance;
  - (d) any order that the Court considers appropriate directing the person to compensate any person who has suffered loss or damage as a result of the breach of, or non-compliance with, the assurance;
  - (e) any other order that the Court considers appropriate.
- (2) The Court may make an interim order under subsection (1)(a) pending final determination of the application.
- (3) The Court may, on the application of the Commissioner or a person, vary or discharge an order under subsection (1)(a).
- (4) An order under subsection (1)(a) may be made subject to such conditions as the Court thinks fit.
- (5) The Court must not make an order under this section (other than an interim order) unless satisfied on the balance of probabilities that proper grounds for the order have been established.



## **Division 3—Civil remedies**

### **82A—Application of Division**

This Division does not apply in relation to conduct that constitutes or would constitute a contravention of a provision of the Australian Consumer Law (SA).

### **83—Injunctions**

- (1) If the Court is satisfied, on the application of the Minister, the Commissioner or any other person, that a person has engaged or proposes to engage, in conduct that constitutes or would constitute a contravention of a provision of this Act or a related Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) If the Court is satisfied, on the application of the Minister or the Commissioner, that a person has engaged in conduct constituting a contravention of a provision of this Act or a related Act, the Court may grant an injunction requiring that person to take specified action (which may include the disclosure of information or the publication of advertisements) to remedy any adverse consequence of that conduct.
- (3) An injunction may be granted under this section—
  - (a) by the Supreme Court or the District Court in the course of criminal proceedings in which the defendant is alleged to have been guilty of conduct of the kind to which the application relates; or
  - (b) by the Supreme Court.
- (4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (5) The power of the Court to grant an injunction requiring a person do an act or thing may be exercised—
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (6) An interim injunction may be granted under this section pending final determination of the application.
- (7) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.

- (8) Where the Minister or the Commissioner applies for an injunction under this section, no undertaking as to damages will be required.
- (9) The Minister may give an undertaking as to damages or costs on behalf of some other applicant and, in that event, no further undertaking will be required.
- (10) An injunction under this section may be rescinded or varied at any time.

### **85—Orders for compensation**

- (1) If in proceedings under this Act the Supreme Court or the District Court is satisfied that a person has suffered, or is likely to suffer, loss or damage by reason of a contravention of this Act, then whether or not any other order is made or relief granted in those proceedings, the Court may, for the purpose of compensating that person or preventing or reducing the extent of the loss or damage, make orders under this section against the person who committed the contravention or a person involved in the contravention.
- (2) Whether or not other proceedings have been instituted under this Act in relation to a contravention of this Act, the Supreme Court may—
  - (a) on the application of a person who has suffered, or is likely to suffer, loss or damage by reason of the contravention; or
  - (b) on the application of the Commissioner on behalf of one or more such persons made with the written consent of each such person,make orders under this section, for the purpose of compensating such a person or preventing or reducing the extent of the loss or damage, against the person who committed the contravention or a person involved in the contravention.
- (3) An application under subsection (2) may be commenced at any time within 3 years after the day on which the cause of action arose.
- (5) The orders that may be made under this section are of the following kinds—
  - (a) an order for payment of the amount of the loss or damage;
  - (b) an order avoiding, in whole or part, a contract or instrument (including a contract or instrument relating to real property);
  - (c) an order for the variation of a contract or instrument (including a contract or instrument relating to real property);
  - (d) an order directing the refund of money or the return of property (including real property);
  - (e) an order directing the repair of, or provision of parts for, goods or the supply of specified services.

### **86—Sequestration orders**

- (1) Where—
  - (a) proceedings have been or may be commenced before the Supreme Court or the District Court against a person in relation to a contravention of this Act; and
  - (b) the Court is satisfied, on the application of the Minister or the Commissioner—

- (i) that certain money or other property may be required to satisfy an order that has been or may be made in those proceedings; and
  - (ii) that the making of a sequestration order under this section will not unduly prejudice the rights or interests of any other person,
- the Court may make an order for the sequestration of that money or other property.
- (2) Subject to subsection (3), an order under this section may be made—
    - (a) for a specified period; or
    - (b) until the conclusion of the proceedings referred to in subsection (1)(a).
  - (3) An order may be made under this section on an application without notice to the person but in that event it will have a maximum life of 30 days.
  - (4) An order under this section may be varied or revoked at any time.
  - (5) A person who has notice of a sequestration order under this section must not deal with property to which the order relates except as may be authorised by the order.
- Maximum penalty:
- In the case of a body corporate—\$100 000.
  - In any other case—\$20 000.

## **Division 3A—Civil penalties and civil expiation notices for contravention of industry codes**

### **Subdivision 1—Interpretation**

#### **86A—Interpretation**

For the purposes of this Division, a person commits a *civil penalty contravention* if the person—

- (a) contravenes section 28E and the contravention is of a class declared by regulation to be subject to a civil penalty; or
- (b) attempts such a contravention; or
- (c) is involved in such a contravention.

### **Subdivision 2—Civil penalties**

#### **86B—Civil penalties**

- (1) If the Magistrates Court is satisfied that a person has committed a civil penalty contravention, the Court may make an order (a *civil penalty order*) that the person pay to the Commissioner an amount as a civil penalty not exceeding—
  - (a) in the case of a body corporate—\$50 000; and
  - (b) in the case of a natural person—\$10 000.
- (2) Proceedings for a civil penalty order may be commenced by the Commissioner by application to the Court made within 3 years after the date of the alleged civil penalty contravention.

- (3) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to—
  - (a) the nature and extent of the contravention and any loss or damage suffered as a result of the contravention; and
  - (b) the circumstances in which the contravention was committed; and
  - (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
  - (d) whether the person has previously been found by a court in proceedings under this Act to have committed similar contraventions; and
  - (e) any other matter it considers relevant.
- (4) If conduct constitutes 2 or more civil penalty contraventions—
  - (a) an amount may be recovered from the person under this section in relation to any 1 or more of the contraventions; but
  - (b) the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct.
- (5) If, in proceedings for a civil penalty order against a person, the person establishes facts and circumstances that would have amounted to a defence under section 88 had the civil penalty contravention constituted an offence against this Act, the person is not liable to a civil penalty.
- (6) If, in proceedings for a civil penalty order against a natural person, the Court is satisfied that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability to a civil penalty.
- (7) The Court may, in proceedings for a civil penalty order, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

### **Subdivision 3—Civil expiation notices**

#### **86C—Certain civil penalty contraventions may be expiated**

If an expiation fee is fixed by the regulations for a civil penalty contravention, a civil expiation notice may be given to a person alleged to have committed the contravention and the alleged contravention may be expiated in accordance with this Subdivision.

#### **86D—Civil expiation notices**

- (1) A civil expiation notice may only be given by the Commissioner or by an authorised officer who is authorised in writing by the Commissioner to give civil expiation notices for the alleged civil penalty contravention.
- (2) A civil expiation notice—
  - (a) may relate to up to 3 alleged civil penalty contraventions arising out of the same incident (that is, if they are committed contemporaneously, or in succession, 1 following immediately on another); and

- (b) cannot be given after the expiry of the period of 12 months from the date on which the civil penalty contravention or contraventions were alleged to have been committed; and
  - (c) cannot be given to a person if proceedings have been commenced against the person for a civil penalty order for the alleged civil penalty contravention or contraventions.
- (3) If a civil expiation notice is given to a person alleged to have committed a civil penalty contravention, no further civil expiation notice can be given to that person in respect of any other alleged civil penalty contravention arising out of the same incident.
- (4) A civil expiation notice must—
  - (a) be identified by a unique number; and
  - (b) state the date of the notice; and
  - (c) state the name and address of the person to whom it is given; and
  - (d) state that the notice is given on behalf of the Commissioner; and
  - (e) state how the Commissioner may be contacted; and
  - (f) give details of the civil penalty contravention or contraventions allegedly committed by the person, including the date of the alleged contravention or contraventions; and
  - (g) state the maximum civil penalty that the person could be ordered to pay in respect of the alleged civil penalty contravention or contraventions; and
  - (h) specify the expiation fee that is payable in relation to the alleged civil penalty contravention or each alleged contravention; and
  - (i) state that the expiation fee is to be paid within 28 days from (and including) the date of the notice; and
  - (j) state that the expiation fee is payable to the Commissioner; and
  - (k) explain how payment of the expiation fee is to be made; and
  - (l) include any information prescribed by the regulations.

### **86E—Late payment**

The Commissioner may accept late payment of an expiation fee at any time before proceedings are commenced for a civil penalty order for the alleged civil penalty contravention to which the payment relates.

### **86F—Effect of expiation**

- (1) Subject to this Subdivision, if a civil penalty contravention, or contraventions, to which a civil expiation notice relates are expiated in accordance with this Subdivision, proceedings may not be commenced for a civil penalty order against the person to whom the notice was given for that contravention or those contraventions or any other expiable civil penalty contravention arising out of the same incident.
- (2) The expiation of a civil penalty contravention—
  - (a) does not constitute an admission of guilt or of any civil liability; and

- (b) will not be regarded as evidence tending to establish guilt or any civil liability; and
- (c) cannot be referred to in a report furnished to a court for the purposes of determining sentence for an offence.

### **86G—Commencement of proceedings if expiation fee not paid**

- (1) If a civil expiation notice relating to only 1 civil penalty contravention is given to a person and the contravention is not expiated in accordance with this Subdivision, proceedings may be commenced for a civil penalty order against the person for the contravention.
- (2) If a civil expiation notice relating to more than 1 civil penalty contravention is given to a person and 1 or more of those contraventions are expiated in accordance with this Subdivision but not all of them, proceedings may be commenced for a civil penalty order against the person for any contravention that is not expiated.

### **86H—Withdrawal of civil expiation notices**

- (1) The Commissioner may withdraw a civil expiation notice with respect to all or any of the alleged civil penalty contraventions to which the notice relates if—
  - (a) the Commissioner is of the opinion that the person to whom the notice was given did not commit the contravention or contraventions or that the notice should not have been given for the contravention or contraventions; or
  - (b) the notice is defective; or
  - (c) the Commissioner decides that proceedings should be commenced for a civil penalty order against the person for the contravention or contraventions.
- (2) A civil expiation notice may be withdrawn under subsection (1) despite payment of an expiation fee, but in that event the amount paid must be refunded.
- (3) However, a civil expiation notice cannot be withdrawn for the purposes of commencing proceedings for a civil penalty order for a civil penalty contravention if an expiation fee has been paid for the contravention and the period of 60 days from the date of the notice has expired.
- (4) If a civil expiation notice is withdrawn under subsection (1) despite payment of an expiation fee, proceedings for a civil penalty order for a civil penalty contravention to which the notice related may be commenced, but the fact that the person to whom the notice was given paid an expiation fee is not admissible in those proceedings as evidence against the person.
- (5) The Commissioner must withdraw a civil expiation notice if it becomes apparent that the person to whom the notice was given did not receive the notice until after the period for payment of the expiation fee, or has never received it, as a result of error on the part of the Commissioner or failure of the postal system.
- (6) However, a civil expiation notice cannot be withdrawn under subsection (5) if the expiation fee has been paid or proceedings have been commenced for a civil penalty order against the person to whom the notice was given.
- (7) A notice of withdrawal must specify the reason for withdrawal and include any information required by the regulations.

- (8) If a civil expiation notice is withdrawn by the Commissioner in respect of an alleged civil penalty contravention and the notice of withdrawal does not specify that the notice is withdrawn for the purposes of commencing proceedings for a civil penalty order against the person, proceedings cannot be commenced for a civil penalty order for the contravention unless the person has been given a fresh civil expiation notice and allowed the opportunity to expiate the contravention.

### **86I—Service of civil expiation notice or withdrawal notice**

- (1) A civil expiation notice, or a notice of withdrawal of a civil expiation notice, may be given to a person—
- (a) by delivering it personally to the person or an agent of the person; or
  - (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
  - (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.
- (2) Without limiting subsection (1), a civil expiation notice, or a notice of withdrawal of a civil expiation notice, may be given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth in accordance with that Act.

## **Division 4—General**

### **86J—Application of Division**

This Division (other than section 91) does not apply in relation to conduct that constitutes or would constitute a contravention of a provision of the Australian Consumer Law (SA) or proceedings relating to such conduct.

### **87—Prosecutions**

- (1) Proceedings for a summary offence against this Act must be commenced—
- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within two years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years of that date.
- (2) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of proceedings for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation.

### **88—Defences**

- (1) Subject to subsection (3), in a prosecution for a contravention of a provision of this Act, it is a defence if the defendant establishes—
- (a) that the contravention was due to reasonable mistake; or
  - (b) that the contravention was due to reasonable reliance on information supplied by another person; or
  - (c) that—

- (i) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
  - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In subsection (1)(b) and (c)—  
*another person* does not include a person who was—
  - (a) a servant or agent of the defendant; or
  - (b) in the case of a defendant that is a body corporate, a director, servant or agent of the defendant,at the time when the contravention occurred.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without permission, entitled to rely on that defence unless the defendant has, not later than seven days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.
- (4) In a prosecution for a contravention of a provision of this Act committed by the publication of an advertisement, it is a defence to establish that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the defendant received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Act.
- (5) This section does not apply in relation to a person who is charged with an offence under section 90(3).

## 90—Vicarious liability

- (1) Where an agent or employee is convicted of an offence against this Act, the principal or employer is also guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the offence committed by the agent or employee, unless it is proved that the principal or employer could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the agent or employee.
- (2) Where an offence is committed against this Act in relation to the formation of a contract, any person who has derived or would, if the contract were carried out, expect to derive a direct or indirect pecuniary benefit from the contract is also guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the principal offence, unless it is proved that the person could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence.



- (3) If a body corporate is guilty of an offence against section 28A or 37, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
- (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
  - (b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
  - (c) the director failed to exercise due diligence to prevent the commission of the offence.

### **91—Evidentiary provisions**

- (1) In any proceedings an apparently genuine certificate, purporting to be signed by the Minister, stating that a person named in the certificate is an authorised officer is, in the absence of proof to the contrary, proof that the person is such an officer.
- (2) In any proceedings an apparently genuine certificate, purporting to be signed by the Minister or the Commissioner (as the case requires) containing particulars of a delegation under this Act is, in the absence of proof to the contrary, proof of the particulars.
- (5) Where the Commissioner institutes, defends or assumes the conduct of proceedings on behalf of a consumer, all preconditions of that action required by this Act will, in the absence of proof to the contrary, be taken to have been satisfied.
- (6) In any proceedings an apparently genuine copy of any book or document, taken by an authorised officer pursuant to this Act, certified by the Commissioner to be a true copy of the original is proof of the existence of the original and of its contents.
- (7) In any proceedings an apparently genuine document purporting to be certified by the Commissioner as a true copy of an assurance given by a trader and accepted by the Commissioner under Division 2 is, in the absence of proof to the contrary, proof of the contents of the assurance and proof that the trader gave the assurance and that the Commissioner accepted it.
- (8) A finding of fact made by a court in proceedings under this Act will, in the absence of proof to the contrary, be accepted as proof of that fact in other proceedings (except criminal proceedings) under this Act.
- (9) A finding to which subsection (8) applies may be proved by production of a document under the seal of the court by which the finding was made.
- (10) In any proceedings in which a civil or criminal liability is dependent on a state of mind—
  - (a) the state of mind of a director, servant or agent of a body corporate will be imputed to the body corporate; and
  - (b) the state of mind of a servant or agent of a natural person will be imputed to that person.

## Part 12—Miscellaneous

### 92—Saving of other rights or remedies

Nothing in this Act derogates from any right of action or other right or remedy that a person has apart from this Act.

### 95—Service

Service of a notice, order or other document under this Act may be effected personally or by post.

### 96—Contracting out prohibited

This Act has effect despite any stipulation in any contract or agreement to the contrary.

### 96A—Confidentiality

- (1) A person must not divulge or communicate personal information, information relating to trade secrets or business processes or financial information acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act or a related Act, except—
  - (a) with the consent of the person to whom the information relates; or
  - (b) as authorised by the Commissioner for Consumer Affairs or the Small Business Commissioner or the person's employer; or
  - (c) in connection with the administration of this Act or a related Act; or
  - (d) to a police officer or a member of the police force of another State, a Territory of the Commonwealth or the Commonwealth; or
  - (e) to a person concerned in the administration of another law of the State, or a law of another State, a Territory of the Commonwealth or the Commonwealth, relating to trade or commercial practices or the protection of consumers; or
  - (f) for the purposes of legal proceedings.

Maximum penalty: \$20 000.

- (2) Information that has been disclosed under this section for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$20 000.

## 96B—Delegation by Minister responsible for administration of Small Business Commissioner Act

- (1) The Minister responsible for the administration of the *Small Business Commissioner Act 2011* may delegate to a person (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this Act (except a prescribed function or power).
- (2) A delegation—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in a matter; and
  - (d) is revocable at will.
- (3) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.

## 97—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) be of general or limited application; and
  - (b) confer powers or impose duties in connection with the regulations on the Minister, the Commissioner or an authorised officer; and
  - (ba) fix fees in respect of any matter under this Act and provide for their payment, recovery or waiver; and
  - (c) exempt a specified person or class of persons, or a specified transaction or class of transactions, from compliance with this Act or a specified provision of this Act, either absolutely or on conditions or subject to limitations; and
  - (d) make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply; and
  - (f) incorporate, adopt, apply or make prescriptions by reference to, with or without modifications, any document formulated or published by any body or authority as in force at a particular time or from time to time; and
  - (g) make provisions of a saving or transitional nature—
    - (i) consequent on the amendment of this Act by a relevant Act; or
    - (ii) relevant to the interaction between this Act and a relevant Commonwealth Act; and
  - (h) without derogating from the power to fix expiation fees under section 28F, fix expiation fees for an alleged offence against this Act or the regulations, not exceeding—
    - (i) in the case of an offence against this Act—\$1 200; and
    - (ii) in the case of an offence against the regulations—\$210; and

- (i) impose penalties not exceeding \$2 500 for contravention of a regulation.
- (3) A provision of a regulation made under subsection (2)(g) may, if the regulation so provides, take effect from the commencement of a relevant Act or relevant Commonwealth Act or from a later day.
- (3a) If a document formulated or published by any body or authority as in force at a particular time or from time to time is incorporated, adopted, applied or referred to in the regulations—
  - (a) a copy of the document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the document may be given in any legal proceedings by production of a document apparently certified by the Minister or the Minister responsible for the administration of the *Small Business Commissioner Act 2011* to be a true copy of the document.
- (4) In this section—

**relevant Act** means the *Statutes Amendment and Repeal (Australian Consumer Law) Act 2010*;

**relevant Commonwealth Act** means—

  - (a) the *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* of the Commonwealth; or
  - (b) any other Act of the Commonwealth relevant to the interaction between this Act and the Competition and Consumer Act.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1987	42	<i>Fair Trading Act 1987</i>	30.4.1987	26.10.1987 ( <i>Gazette</i> 24.9.1987 p940)
1988	42	<i>Tobacco Products Control Act Amendment Act 1988</i>	5.5.1988	s 19—1.1.1989 ( <i>Gazette</i> 26.5.1988 p1333)
1991	48	<i>Fair Trading (Miscellaneous) Amendment Act 1991</i>	21.11.1991	21.11.1991
1995	82	<i>Statutes Repeal and Amendment (Commercial Tribunal) Act 1995</i>	30.11.1995	Pt 3 (ss 5—8, 10 & 11)—10.3.1997 ( <i>Gazette</i> 6.3.1997 p1114); s 9—30.11.1997 (s 7(5) <i>Acts Interpretation Act 1915</i> ) but the amendments contained in that section were rendered nugatory by the prior substitution of s 82 by 64/1996 s 8
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 15)—3.2.1997 ( <i>Gazette</i> 19.12.1996 p1923)
1996	64	<i>Fair Trading (Miscellaneous) Amendment Act 1996</i>	15.8.1996	26.9.1996 ( <i>Gazette</i> 26.9.1996 p1209)
1997	30	<i>Statutes Amendment (References to Banks) Act 1997</i>	12.6.1997	Pt 7 (s 9)—3.7.1997 ( <i>Gazette</i> 3.7.1997 p4)
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 22)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2000	43	<i>Statutes Amendment (Consumer Affairs—Portfolio) Act 2000</i>	13.7.2000	Pt 2 (ss 4—6) & Sch 1—1.10.2000 ( <i>Gazette</i> 7.9.2000 p1638)
2003	38	<i>Statutes Amendment and Repeal (Starr-Bowkett Societies) Act 2003</i>	2.10.2003	Pt 2 (s 3)—2.10.2003
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 32 (ss 119 & 120)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)

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2009	15	<i>Fair Trading (Telemarketing) Amendment Act 2009</i>	16.4.2009	repealed by 23/2010 without coming into operation
2009	39	<i>Statutes Amendment and Repeal (Fair Trading) Act 2009</i>	23.7.2009	Pt 5 (ss 11(2), (3), 12—33, 35 & 37—46)—3.9.2009 ( <i>Gazette 3.9.2009 p4367</i> ); ss 11(1), 34 & 36—deleted by 23/2010 without coming into operation
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 60 (s 124)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2010	23	<i>Statutes Amendment and Repeal (Australian Consumer Law) Act 2010</i>	2.12.2010	Pt 2 (ss 4—30); Pt 3 (31—33); Pt 4 (s 34)—1.1.2011 ( <i>Gazette 9.12.2010 p5579</i> )
2011	41	<i>Small Business Commissioner Act 2011</i>	10.11.2011	Sch 1 (cll 2—33 & 37)—22.3.2012 ( <i>Gazette 15.3.2012 p992</i> )
2013	13	<i>Residential Tenancies (Miscellaneous) Amendment Act 2013</i>	9.5.2013	Sch 1 (cl 1)—1.3.2014 ( <i>Gazette 6.2.2014 p549</i> )
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 18 (ss 35—37)—17.6.2013 ( <i>Gazette 6.6.2013 p2498</i> )
2013	71	<i>Statutes Amendment (Occupational Licensing) Act 2013</i>	21.11.2013	Pt 4 (s 17)—1.11.2014 ( <i>Gazette 9.10.2014 p6095</i> )
2014	9	<i>Statutes Amendment (Legal Practitioners) Act 2014</i>	25.9.2014	Pt 2 (s 4)—25.9.2014: s 2
<b>2018</b>	<b>18</b>	<b><i>Fair Trading (Gift Cards) Amendment Act 2018</i></b>	<b>25.10.2018</b>	<b>10.12.2018</b> ( <i>Gazette 29.11.2018 p4057</i> )
<b>2018</b>	<b>20</b>	<b><i>Fair Trading (Ticket Scalping) Amendment Act 2018</i></b>	<b>25.10.2018</b>	<b>Pt 2 (s 4) &amp; Sch 1 (cl 2)—10.12.2018</b> ( <i>Gazette 29.11.2018 p4057</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 23/2010 s 4	1.1.2011
	substituted by 41/2011 Sch 1 cl 2	22.3.2012
Pt 1		
s 2	<i>deleted by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
s 3 before substitution by 23/2010		
s 3(1)		
District Court	<i>inserted by 82/1995 s 5(a)</i>	<i>10.3.1997</i>
Magistrates Court	<i>inserted by 39/2009 s 11(2)</i>	<i>3.9.2009</i>
the Tribunal	<i>deleted by 82/1995 s 5(b)</i>	<i>10.3.1997</i>
s 3(4)	<i>deleted by 39/2009 s 11(3)</i>	<i>3.9.2009</i>
s 3	substituted by 23/2010 s 5	1.1.2011
s 3(1)		
authorised officer	amended by 41/2011 Sch 1 cl 3(1)	22.3.2012

<i>Commissioner</i>	<i>deleted by 41/2011 Sch 1 cl 3(2)</i>	22.3.2012
Commissioner for Consumer Affairs	inserted by 41/2011 Sch 1 cl 3(2)	22.3.2012
consumer affairs authority	amended by 41/2011 Sch 1 cl 3(3)	22.3.2012
contravene	inserted by 41/2011 Sch 1 cl 3(4)	22.3.2012
related Act	amended by 41/2011 Sch 1 cl 3(5)	22.3.2012
Small Business Commissioner	inserted by 41/2011 Sch 1 cl 3(6)	22.3.2012
s 3(3)	amended by 41/2011 Sch 1 cl 3(7)	22.3.2012
s 4A	inserted by 23/2010 s 6	1.1.2011
s 4B	inserted by 41/2011 Sch 1 cl 4	22.3.2012
Pt 2		
heading	substituted by 41/2011 Sch 1 cl 5	22.3.2012
s 5		
s 5(1) and (2)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>ss 6 and 7</i>	<i>deleted by 41/2011 Sch 1 cl 6</i>	22.3.2012
s 8		
s 8(1)	amended by 64/1996 s 3	26.9.1996
	amended by 41/2011 Sch 1 cl 7	22.3.2012
s 8(2)	<i>amended by 43/2000 s 6 (Sch 1)</i>	1.10.2000
	<i>deleted by 39/2009 s 12</i>	3.9.2009
s 8A	inserted by 39/2009 s 13	3.9.2009
s 8A(1)	amended by 41/2011 Sch 1 cl 8	22.3.2012
s 8A(5)	amended by 71/2013 s 17	1.11.2014
s 9	amended by 41/2011 Sch 1 cl 9	22.3.2012
s 10		
s 10(1)	amended by 41/2011 Sch 1 cl 10	22.3.2012
s 11	<i>amended by 43/2000 s 6 (Sch 1)</i>	1.10.2000
	<i>amended by 39/2009 s 14</i>	3.9.2009
	<i>deleted by 41/2011 Sch 1 cl 11</i>	22.3.2012
s 12		
s 12(1)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
	amended by 41/2011 Sch 1 cl 12(1), (2)	22.3.2012
s 12(2)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>Pt 3 before substitution by 23/2010</i>		
s 14		
s 14(2)	<i>amended by 64/1996 s 4</i>	26.9.1996
	<i>amended by 43/2000 s 6 (Sch 1)</i>	1.10.2000
s 14(4)	<i>amended by 43/2000 s 6 (Sch 1)</i>	1.10.2000
s 15		
s 15(2)	<i>amended by 43/2000 s 6 (Sch 1)</i>	1.10.2000
	<i>amended by 39/2009 s 15</i>	3.9.2009

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<i>s 16</i>		
<i>s 16(2) and (4)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
<i>s 17</i>		
<i>s 17(2)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 16</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 18</i>		
<i>s 18(1)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 17(1)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 18(2)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 17(2)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 19</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 18</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 20</i>		
<i>s 20(1)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 19(1)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 20(2)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 19(2)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 21</i>		
<i>s 21(1)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 20(1)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 21(2)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 20(2)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 22</i>		
<i>s 22(1)</i>	<i>amended by 48/1991 s 2(a)</i>	<i>21.11.1991</i>
<i>s 22(2)</i>	<i>amended by 48/1991 s 2(b)</i>	<i>21.11.1991</i>
<i>s 22(3)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
<i>s 23</i>		
<i>s 23(3)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
<i>s 24</i>		
<i>s 24(1) and (2)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
<i>s 24(7)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 21</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 27</i>		
<i>s 27(1)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 22(1)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
<i>s 27(5)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i> <i>amended by 39/2009 s 22(2)</i>	<i>1.10.2000</i> <i>3.9.2009</i>
Pt 3	substituted by 23/2010 s 7	1.1.2011
<i>s 16</i>		
regulator	substituted by 41/2011 Sch 1 cl 13	22.3.2012
<i>s 25A</i>	inserted by 9/2014 s 4	25.9.2014
Pt 3A	inserted by 41/2011 Sch 1 cl 14	22.3.2012



*Pt 4 before deletion by  
23/2010*

<i>s 28</i>		
<i>s 28(1)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
	<i>amended by 39/2009 s 23</i>	<i>3.9.2009</i>
<i>s 28(4)</i>	<i>amended by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
<i>Pt 4</i>	<i>deleted by 23/2010 s 7</i>	<i>1.1.2011</i>
<b>Pt 4</b>		
heading	Pt 5 heading redesignated as Pt 4 heading by 23/2010 s 8	1.1.2011
<i>s 29</i>		
<i>s 29(1)</i>		
reporting agency	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 29(2)</i>	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 30</i>		
<i>s 30(1)</i>	<i>s 30 amended and redesignated as s 30(1) by 13/2013 Sch 1 cl 1(1), (2)</i>	<i>1.3.2014</i>
<i>s 30(2)</i>	<i>inserted by 13/2013 Sch 1 cl 1(2)</i>	<i>1.3.2014</i>
<i>s 31</i>		
<i>s 31(1)—(3)</i>	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 32</i>	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 33</i>		
<i>s 33(1), (3) and (4)</i>	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 34</i>		
<i>s 34(2)—(4)</i>	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 34(5) and (6)</i>	amended by 82/1995 s 6(a)	10.3.1997
<i>s 34(7)</i>	amended by 82/1995 s 6(a)	10.3.1997
	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 34(8)</i>	<i>inserted by 82/1995 s 6(b)</i>	<i>10.3.1997</i>
	<i>deleted by 23/2010 s 9</i>	<i>1.1.2011</i>
<i>s 36</i>	amended by 43/2000 s 6 (Sch 1)	1.10.2000
	amended by 39/2009 s 24	3.9.2009
	amended by 41/2011 Sch 1 cl 15	22.3.2012
<i>s 37</i>		
<i>s 37(1)</i>	amended by 82/1995 s 7(a), (b)	10.3.1997
	amended by 41/2011 Sch 1 cl 16(1)	22.3.2012
<i>s 37(2)</i>	amended by 82/1995 s 7(c), (d)	10.3.1997
	amended by 41/2011 Sch 1 cl 16(2)	22.3.2012
<i>s 37(3)</i>	amended by 82/1995 s 7(e)	10.3.1997
	amended by 43/2000 s 6 (Sch 1)	1.10.2000
<i>s 37(4)</i>	amended by 43/2000 s 6 (Sch 1)	1.10.2000
	amended by 39/2009 s 25	3.9.2009
	amended by 41/2011 Sch 1 cl 16(3)	22.3.2012
<b>Pt 4A</b>	<b>inserted by 20/2018 s 4</b>	<b>10.12.2018</b>

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*Pt 6 before deletion by  
23/2010*

*s 38*

*s 38(1)* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 26(1) 3.9.2009

*s 38(2)* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 26(2) 3.9.2009

*s 39* deleted by 48/1991 s 3 21.11.1991

*s 40* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 27 3.9.2009

*Pt 6* deleted by 23/2010 s 10 1.1.2011

**Pt 5**

heading Pt 7 heading substituted as Pt 5 heading by 1.1.2011  
23/2010 s 11

*s 41* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 28 3.9.2009  
amended by 41/2011 Sch 1 cl 17 22.3.2012

*s 42 before  
substitution 23/2010*

*s 42(2)* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 29 3.9.2009

*s 42* substituted by 23/2010 s 12 1.1.2011

*s 42(6)* amended by 41/2011 Sch 1 cl 18 22.3.2012

*s 43*

*s 43(1)* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 30(1) 3.9.2009

*s 43(2)* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 30(2) 3.9.2009  
amended by 16/2013 s 35 17.6.2013

*s 43A* inserted by 38/2003 s 3 2.10.2003

*s 43A(1)* amended by 39/2009 s 31 3.9.2009

*Pt 8 heading* deleted by 23/2010 s 13 1.1.2011

*Pt 8A heading* deleted by 23/2010 s 14 1.1.2011

**Pt 6** Pt 9 amended by 42/1988 s 19 1.1.1989  
Pt 9 substituted by 64/1996 s 5 26.9.1996

Pt 9 heading redesignated as Pt 6 heading by 1.1.2011  
23/2010 s 15

*s 45A*

*s 45A(1)* amended by 41/2011 Sch 1 cl 19(1), (2) 22.3.2012

*s 45A(2)* amended by 41/2011 Sch 1 cl 19(3) 22.3.2012

*s 45B* amended by 43/2000 s 6 (Sch 1) 1.10.2000  
amended by 39/2009 s 32 3.9.2009

**Pt 6A** inserted by 18/2018 s 4 10.12.2018

*Pt 10 before deletion by  
23/2010*

*Pt 10 Div 1*

*s 46*

*s 46(1)*

*document* deleted by 39/2009 s 33(1) 3.9.2009

*goods* amended by 39/2009 s 33(2) 3.9.2009

*services* amended by 30/1997 s 9 3.7.1997

amended by 33/1999 Sch (item 22) 1.7.1999

amended by 43/2000 s 6 (Sch 1) 1.10.2000

amended by 39/2009 s 33(3) 3.9.2009

*s 46(2) and (3)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 47* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 48*

*s 48(1)—(3)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*ss 50 and 51* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 54*

*s 54(1)—(3)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*Pt 10 Div 2*

*s 56*

*s 56(1) and (2)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 57*

*s 57(1), (3) and (4)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 58* amended by 48/1991 s 4 21.11.1991

amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 59*

*s 59(1)—(3)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*ss 60—64* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 65*

*s 65(1) and (2)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 66* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 67* amended by 43/2000 s 6 (Sch 1) 1.10.2000

substituted by 39/2009 s 35 3.9.2009

*s 68*

*s 68(1) and (2)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 69* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 70*

*s 70(4) and (6)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 71*

*s 71(1) and (3)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

*s 72*

*s 72(1), (2), (3), (5), (6) and (7)* amended by 43/2000 s 6 (Sch 1) 1.10.2000

s 74		
s 74(1)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
s 74(3)		
consortium	amended by 43/2000 s 6 (Sch 1)	1.10.2000
prescribed information provider	amended by 43/2000 s 6 (Sch 1)	1.10.2000
relevant goods or services	amended by 43/2000 s 6 (Sch 1)	1.10.2000
relevant interests in land	amended by 43/2000 s 6 (Sch 1)	1.10.2000
Pt 10 Div 3		
s 75		
s 75(1)	substituted by 43/2000 s 4	1.10.2000
s 75(2)	deleted by 43/2000 s 4	1.10.2000
Pt 10	deleted by 23/2010 s 16	1.1.2011
Pt 7	Pt 11 heading redesignated as Pt 7 heading by 23/2010 s 17	1.1.2011
heading	substituted by 41/2011 Sch 1 cl 20	22.3.2012
Pt 7 Div A1	inserted by 41/2011 Sch 1 cl 21	22.3.2012
Pt 7 Div 1		
heading	substituted by 41/2011 Sch 1 cl 22	22.3.2012
s 47	s 76 redesignated as s 47 by 41/2011 Sch 1 cl 23	22.3.2012
s 47(1)	s 76(1) amended by 23/2010 s 18	1.1.2011
s 47(7)	s 76(7) amended by 43/2000 s 6 (Sch 1)	1.10.2000
s 48	s 91A inserted by 64/1996 s 9	26.9.1996
	s 91A redesignated as s 48 by 41/2011 Sch 1 cl 30(3)	22.3.2012
s 48(1)	s 91A(1) amended by 41/2011 Sch 1 cl 30(1)	22.3.2012
s 48(3)	s 91A(3) inserted by 23/2010 s 28	1.1.2011
s 49	s 91B inserted by 64/1996 s 9	26.9.1996
	s 91B redesignated as s 49 by 41/2011 Sch 1 cl 30(3)	22.3.2012
s 91B(1) and (2)	deleted by 84/2009 s 124	1.2.2010
s 49(3)	s 91B(3) amended by 41/2011 Sch 1 cl 30(2)	22.3.2012
Pt 7 Div 1A		
heading	inserted by 41/2011 Sch 1 cl 24	22.3.2012
s 76	inserted by 41/2011 Sch 1 cl 24	22.3.2012
s 76—see s 47		
s 77		
s 77(1)	(b) deleted by 39/2009 s 37(1)	3.9.2009
s 77(1a)	inserted by 39/2009 s 37(2)	3.9.2009
s 77(2)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
	substituted by 39/2009 s 37(3)	3.9.2009

s 77(2a)	inserted by 39/2009 s 37(3)	3.9.2009
s 78		
s 78(1)	amended by 39/2009 s 38(1), (2)	3.9.2009
	substituted by 23/2010 s 19	1.1.2011
s 78(2)	substituted by 39/2009 s 38(3)	3.9.2009
s 78(4)	<i>amended by 39/2009 s 38(4)</i>	3.9.2009
	<i>deleted by 41/2011 Sch 1 cl 25</i>	22.3.2012
s 78A	inserted by 39/2009 s 39	3.9.2009
ss 78B and 78C	inserted by 23/2010 s 20	1.1.2011
s 78D	s 93 amended by 43/2000 s 6 (Sch 1)	1.10.2000
	s 93 amended by 39/2009 s 43	3.9.2009
	s 93 redesignated as s 78D by 41/2011 Sch 1 cl 31	22.3.2012
s 78E	s 93A inserted by 39/2009 s 44	3.9.2009
	s 93A redesignated as s 78E by 41/2011 Sch 1 cl 31	22.3.2012
s 78F	s 94 amended by 43/2000 s 6 (Sch 1)	1.10.2000
	s 94 amended by 39/2009 s 45	3.9.2009
	s 94 redesignated as s 78F by 41/2011 Sch 1 cl 31	22.3.2012
Pt 7 Div 2	heading substituted by 64/1996 s 6	26.9.1996
s 79	substituted by 64/1996 s 7	26.9.1996
s 79(1)	substituted by 39/2009 s 40(1)	3.9.2009
	amended by 23/2010 s 21	1.1.2011
s 79(2)	<i>deleted by 39/2009 s 40(1)</i>	3.9.2009
s 79(4)	substituted by 39/2009 s 40(2)	3.9.2009
s 79(5)	amended by 39/2009 s 40(3), (4)	3.9.2009
s 80		
s 80(1)	amended by 82/1995 s 8	10.3.1997
	amended by 41/2011 Sch 1 cl 26	22.3.2012
s 81		
s 81(1)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
	amended by 39/2009 s 41(1), (2)	3.9.2009
s 81(2)	substituted by 48/1991 s 5	21.11.1991
s 81(3)	inserted by 48/1991 s 5	21.11.1991
s 82	substituted by 64/1996 s 8	26.9.1996
s 82(1) and (3)	amended by 39/2009 s 42	3.9.2009
Pt 7 Div 3		
heading	amended by 41/2011 Sch 1 cl 27	22.3.2012
s 82A	inserted by 23/2010 s 22	1.1.2011
s 83		
s 83(2)	amended by 23/2010 s 23	1.1.2011
s 83(3)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
s 84	<i>deleted by 23/2010 s 24</i>	1.1.2011

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s 85		
s 85(1)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
s 85(3)	substituted by 23/2010 s 25	1.1.2011
s 85(4)	<i>deleted by 23/2010 s 25</i>	<i>1.1.2011</i>
s 86		
s 86(1)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
s 86(3)	amended by 17/2006 s 119	4.9.2006
s 86(5)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
Pt 7 Div 3A	inserted by 41/2011 Sch 1 cl 28	22.3.2012
Pt 7 Div 4		
s 86A—see s 86J		
s 86J	s 86A inserted by 23/2010 s 26	1.1.2011
	s 86A redesignated as s 86J by 41/2011 Sch 1 cl 29	22.3.2012
s 87	substituted by 43/2000 s 5	1.10.2000
s 88		
s 88(3)	amended by 17/2006 s 120	4.9.2006
s 88(5)	inserted by 16/2013 s 36	17.6.2013
s 89	<i>deleted by 34/1996 s 4 (Sch cl 15)</i>	<i>3.2.1997</i>
s 90		
s 90(3)	substituted by 16/2013 s 37	17.6.2013
s 91		
s 91(3) and (4)	<i>amended by 43/2000 s 6 (Sch 1)</i>	<i>1.10.2000</i>
	<i>deleted by 23/2010 s 27</i>	<i>1.1.2011</i>
s 91(5)	amended by 43/2000 s 6 (Sch 1)	1.10.2000
s 91(7)	substituted by 82/1995 s 10	10.3.1997
Pt 12		
ss 91A and 91B—see ss 48 and 49		
ss 93, 93A and 94—see ss 78D, 78E and 78F		
s 96	amended by 43/2000 s 6 (Sch 1)	1.10.2000
ss 96A and 96B	inserted by 41/2011 Sch 1 cl 32	22.3.2012
s 97		
s 97(2)	substituted by 23/2010 s 29	1.1.2011
	amended by 41/2011 Sch 1 cl 33(1), (3), (4)	22.3.2012
	(e) deleted by 41/2011 Sch 1 cl 33(2)	22.3.2012
s 97(3)	amended by 64/1996 s 10	26.9.1996
	amended by 34/1996 s 4 (Sch cl 15)	3.2.1997
	amended by 43/2000 s 6 (Sch 1)	1.10.2000
	amended by 39/2009 s 46(1), (2)	3.9.2009
	substituted by 23/2010 s 29	1.1.2011
s 97(3a)	inserted by 41/2011 Sch 1 cl 33(5)	22.3.2012

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s 97(4)	inserted by 23/2010 s 29	1.1.2011
Sch	deleted by 43/2000 s 6 (Sch 1)	1.10.2000

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Repeal and Amendment (Commercial Tribunal) Act 1995***

#### **11—Transitional provisions**

- (1) An order of the Commercial Tribunal in force under section 37 of the principal Act immediately before the commencement of this section continues in force as if it were an order of the District Court subject to that section.
- (2) The register of assurances maintained under section 80 of the principal Act immediately before the commencement of this section continues as the register of assurances maintained under that section.
- (3) An order of the Commercial Tribunal in force under section 82 of the principal Act immediately before the commencement of this section continues in force as if it were an order of the District Court subject to that section.
- (4) An apparently genuine document purporting to be a copy of an assurance certified by the Commercial Registrar under section 91(7) of the principal Act before the commencement of this section will be treated as if it were a copy of an assurance certified by the Commissioner under that section as amended by this Act.

### ***Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996***

#### **5—Transitional provision**

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

### ***Statutes Amendment and Repeal (Australian Consumer Law) Act 2010***

#### **30—Transitional provision**

An assurance in connection with a matter in relation to which the Commissioner has a power or function under Part 10 of the *Fair Trading Act 1987* included in the register of assurances maintained under section 80 of that Act immediately before the commencement of section 16 of this Act will be taken to be an undertaking for the purposes of section 218 of the Australian Consumer Law (SA) accepted by the Commissioner in connection with the relevant matter.

### ***Small Business Commissioner Act 2011, Sch 1 Pt 4—Transitional provisions***

#### **37—Provisions relating to Fair Trading Act**

- (1) A person holding office as an authorised officer under section 7 of the *Fair Trading Act 1987* immediately before the commencement of this clause will continue to hold office as an authorised officer as if the person had been appointed by the Minister responsible for the administration of that Act under section 76 of that Act as amended by this Act.

- (2) A code of practice prescribed by the regulations under the *Fair Trading Act 1987* as in force immediately before the commencement of this clause will be taken to have been prescribed as an industry code under Part 3A of that Act as amended by this Act and the Commissioner for Consumer Affairs will be taken to have been declared to be responsible for the administration of the code.

### ***Fair Trading (Ticket Scalping) Amendment Act 2018, Sch 1 Pt 2***

#### **2—Transitional provision**

- (1) Sections 37G to 37K (inclusive) of the principal Act do not apply in relation to a ticket sold or otherwise supplied to a first purchaser by an authorised seller before the commencement of this clause.
- (2) In this clause—

*principal Act* means the *Fair Trading Act 1987* as amended by the *Fair Trading (Ticket Scalping) Amendment Act 2018*.

#### **Historical versions**

Reprint No 1—1.7.1991  
Reprint No 2—21.11.1991  
Reprint No 3—26.9.1996  
Reprint No 4—3.2.1997  
Reprint No 5—10.3.1997  
Reprint No 6—3.7.1997  
Reprint No 7—1.7.1999  
Reprint No 8—1.10.2000  
Reprint No 9—2.10.2003  
4.9.2006  
3.9.2009  
1.2.2010  
1.1.2011  
22.3.2012  
17.6.2013  
1.3.2014  
25.9.2014  
1.11.2014