Western Australia

Fair Trading Act 2010

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Defined terms

Western Australia

Fair Trading Act 2010

An Act to —

- **promote and encourage fair trading practices and a competitive and fair market, and protect the interests of consumers, by applying the Australian Consumer Law (with modifications) as a law of Western Australia, and providing for codes of practice; and**
- **provide for the powers and functions of a Commissioner, including powers to carry out investigations into alleged breaches of this Act; and**
- **provide for the repeal of the *Consumer Affairs Act 1971*, *Fair Trading Act 1987* and *Door to Door Trading Act 1987*; and**
- **make consequential amendments to various Acts [1],**

and for related purposes.

Part 1 — Preliminary

1. Short title

This is the *Fair Trading Act 2010*.

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Object of Act

The object of this Act is to improve consumer well-being through consumer empowerment and protection, to foster effective competition, and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

Part 2 — Interpretation and application

Division 1 — General interpretation

4. Which interpretation Act applies to ACL (WA)

Section 23 deals with the application of the *Acts Interpretation Act 1901* (Commonwealth) and the *Interpretation Act 1984* of Western Australia to the *Australian Consumer Law (WA).*

5. Application of s. 6-9 and 17

(1) Sections 6 to 9 apply to this Act other than Part 3 and the *Australian Consumer Law (WA).*

(2) Section 17 applies to the interpretation of terms used in Part 3 and the *Australian Consumer Law (WA).*

6. Terms used

In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

acquire includes —

(a) in relation to goods — acquire by purchase or exchange or by taking on lease, on hire or on hire-purchase; and

(b) in relation to services — accept; and

(c) in relation to an interest in land — acquire by purchase or exchange or by taking on lease, or in any other manner in which an interest in land may be acquired for valuable consideration;

Australian Consumer Law (WA) has the meaning given in section 17;

business includes —

(a) a business not carried on for profit; and

(b) a trade or profession;

Commissioner means the person for the time being designated as the Commissioner under section 55;

consumer has the meaning given in section 7;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

disposal, in relation to an interest in land, means disposal by sale, exchange or lease or by any other method by which an interest in land may be disposed of for valuable consideration;

document has the meaning given in the *Australian Consumer Law (WA)* section 2(1);

goods has the meaning given in the *Australian Consumer Law (WA)* section 2(1);

interest has the meaning given in the *Australian Consumer Law (WA)* section 2(1);

provision, in relation to an understanding, means any matter forming part of the understanding;

re-supply, in relation to goods acquired from a person, includes —

(a) a supply of the goods to another person in an altered form or condition; and

(b) a supply to another person of goods in which the first-mentioned goods have been incorporated;

services has the meaning given in section 8;

supplier means a person who, in the course of business, supplies goods or services;

supply includes —

(a) in relation to goods —

(i) supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(ii) exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade;

and

(b) in relation to services — provide, grant or render for valuable consideration; and

(c) in relation both to goods and to services — donate for promotional purposes;

trade or commerce includes any business or professional activity (whether or not carried on for profit).

7. Term used: consumer

(1) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

consumer means —

(a) a person who purchases or takes on hire or lease, or is a potential purchaser or hirer or lessee of, or borrows money for the purpose of purchasing, goods otherwise than for resale or letting on hire or leasing; or

(b) a person who uses or is a potential user of, or borrows money for the purpose of using, any service rendered for fee or reward; or

(c) a person who purchases or is the potential purchaser of, or borrows money for the purpose of purchasing, an estate or interest in any land or building otherwise than for resale, letting or leasing; or

(d) a person who becomes a tenant or lessee of, or is a potential tenant or lessee of, any land or building or part of a building otherwise than for assignment or underletting.

(2) However, a person who carries on a trade or business is not a consumer for the purposes of subsection (1) in respect of or in relation to —

(a) goods purchased or taken on hire or lease by that person, or of which that person is a potential purchaser, hirer or lessee, in the course of or for the purpose of the carrying on of that trade or business;

(b) a service used by that person, or of which the person is a potential user, in the course of or for the purpose of the carrying on of that trade or business;

(c) an estate or interest in land or a building purchased by that person, or of which the person is a potential purchaser, in the course of or for the purpose of the carrying on of that trade or business;

(d) any land or building or part of a building of which the person becomes the tenant or lessee, or is a potential tenant or lessee, in the course of or for the purpose of the carrying on of that trade or business.

(3) A person who carries on an agricultural, apicultural, pastoral, horticultural, orcharding, viticultural or other farming undertaking does not carry on a trade or business for the purposes of subsection (2).

8. Term used: services

(1) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce.

(2) Without limiting the generality of subsection (1), the definition of ***services*** includes the rights, benefits, privileges and facilities that are, or are to be, provided, granted or conferred under —

(a) a contract for or in relation to —

(i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or

(ii) the provision of gas or electricity or the provision of any other form of energy; or

(iii) the provision for reward of lodging or accommodation; or

(iv) the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or

(v) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

or

(b) a contract of insurance; or

(c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or

(d) a contract for or in relation to the lending of money.

(3) The definition of ***services*** does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

(4) Legal services as defined in the *Legal Profession Uniform Law (WA)* section 6(1) are not services for the purposes of this section.

[Section 8 amended: No. 9 of 2022 s. 424.]

9. Further provisions about interpretation

(1) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*), unless the contrary intention appears —

(a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods; and

(b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods upon a supply of the goods; and

(c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services; and

(d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both; and

(e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods or other property or other services; and

(f) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods or services; and

(g) a reference to goods or services includes a reference to goods and services; and

(h) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether or not the agreement is in writing or evidenced by writing.

(2) For the purposes of this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

(a) the obtaining of credit by a person in connection with the acquisition of goods or services by the person is an acquisition by the person of services; and

(b) any amount by which the price of the goods or services is increased because credit was obtained is the price of the services represented by the obtaining of credit.

(3) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

(a) a reference to engaging in conduct is to be read as a reference to doing or refusing to do any act, including —

(i) the making of, or the giving effect to a provision of, a contract or arrangement; or

(ii) the arriving at, or the giving effect to a provision of, an understanding;

and

(b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is to be read as a reference to the doing of or the refusing to do any act, including —

(i) the making of, or the giving effect to a provision of, a contract or arrangement; or

(ii) the arriving at, or the giving effect to a provision of, an understanding;

and

(c) a reference to refusing to do an act includes —

(i) a reference to refraining (otherwise than inadvertently) from doing the act; and

(ii) a reference to making it known that the act will not be done;

and

(d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making known a willingness to accept applications, offers or proposals for the person to do the act or to do that act on the condition.

(4) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

(a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and

(b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

(5) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*), a reference to the making of a representation includes a reference to the publishing of a statement.

Division 2 — Application

10. Act binds Crown

(1) This Act binds the Crown not only in right of Western Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) This Act applies to and in respect of the Crown in any of its capacities to the same extent as if the Crown were, in that capacity, a body corporate.

(3) Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

(4) The protection in subsection (3) does not apply to an authority of the Crown.

(5) This section is subject to Part 3 Division 4.

11. Territorial application of Act

(1) This Act applies to and in respect of an acquisition or supply or the proposed acquisition or supply of goods or services, or the disposal or proposed disposal of an interest in land —

(a) if the person by or to whom the goods or services are or are proposed to be acquired or supplied signs in Western Australia a document relating to the acquisition or supply or the proposed acquisition or supply; or

(b) if the person by or to whom the interest in land is or is proposed to be disposed of signs in Western Australia a document relating to the disposal or the proposed disposal of that interest; or

(c) if that person does not so sign such a document, if the goods or services are or are proposed to be delivered or supplied, or that land is situated, in Western Australia.

(2) Subsection (1) applies —

(a) despite anything to the contrary in any other Act or law; but

(b) except as otherwise expressly provided in or under this Act.

(3) This Act 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.

(4) Subject to subsection (3), this Act extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

(5) This Act applies to a contract in the following circumstances, despite the terms of the contract —

(a) if the proper law of a contract for the supply of goods or services to a consumer would, but for a term that it should be the law of some other place or a term to the like effect, be the law of Western Australia;

(b) if a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country or of another State or of a Territory for all or any of the provisions of this Act.

(6) This section is subject to section 24.

12. Concurrent operation of laws of other jurisdictions not limited

This Act is not intended to exclude or limit the concurrent operation of any law of the Commonwealth or of another State or a Territory.

13. No contracting out

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

(2) If the making of a contract contravenes this Act because the contract includes a particular provision, nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision, so far as that provision is severable.

(3) Subsection (2) is subject to subsection (1) and to any order made under section 105 or 106.

14. Relationship with other Acts and rules of law

(1) This Act is to be read and construed as being in addition to, and not in derogation of or in substitution for, any other Act or rule

of law for the time being in force in this State that relates to the duty or liability of persons with respect to goods or services supplied to a consumer.

(2) Except as expressly provided by this Act, nothing in this Act is to be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Act had not been enacted.

15. Inconsistencies with other enactments

(1) This section applies if a provision of the *Australian Consumer Law (WA)* Part 3-3 or an applied regulation is inconsistent with —

(a) a provision of an Act specified in Schedule 1; or

(b) a provision of an instrument made under an Act so specified.

(2A) In subsection (1) —

applied regulation means a regulation that —

(a) is referred to in section 19(1)(b); and

(b) is applied by section 19(2)(a); and

(c) has effect for the purposes of the *Australian Consumer Law (WA)* Part 3-3.

(2) If this section applies, the provision of the Act so specified, or of the instrument, prevails.

[Section 15 amended: No. 11 of 2013 s. 4; No. 19 of 2016 s. 136.]

Part 3 — The Australian Consumer Law

Division 1 — Object and interpretation

16. Object of this Part

The object of this Part is to apply (with modifications) the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) as a law of Western Australia.

17. Terms used

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

amend includes replace;

amending law means a Commonwealth Act that amends either or both of the following —

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth);

(b) the regulations made under section 139G of that Act;

application law means —

(a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or

(b) any regulations or other legislative instrument made under a law described in paragraph (a); or

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

Australian Consumer Law means (according to the context) —

(a) the Australian Consumer Law text; or

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

Australian Consumer Law text means the text described in section 18;

Australian Consumer Law (WA) means the provisions applying in this jurisdiction because of section 19;

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, prosecution notice lodged, information or complaint laid, affidavit sworn, or warrant issued, for any purpose;

(h) an indictment, presentment, summons or writ;

(i) any other pleading in, or process issued in connection with, a legal or other proceeding;

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

jurisdiction means a State or the Commonwealth;

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

modifications includes additions, omissions and substitutions;

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

State includes a Territory;

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

this jurisdiction means Western Australia.

(2) Terms used in this Part and also in the *Australian Consumer Law (WA)* have the same meanings in this Part as they have in that Law.

(3) For the purposes of this Part —

(a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and

(b) the corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

[Section 17 amended: No. 34 of 2022 s. 4.]

Division 2 — Application of Australian Consumer Law

18. Australian Consumer Law text

The Australian Consumer Law text consists of —

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth); and

(b) the regulations made under section 139G of that Act.

19. Application of Australian Consumer Law text

(1) For the purposes of this section, the Australian Consumer Law text consists of —

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) as in force on 1 June 2021 and as amended by each provision that —

(i) is in an amending law that has effect for the purposes of this section under section 19B; and

(ii) has come into operation for the purposes of this section under section 19C;

and

(b) the regulations made under section 139G of that Act, as those regulations are in force from time to time, subject to subsection (1A).

(1A) For the purposes of subsection (1)(b), a provision of an amending law does not amend regulations made under the *Competition and Consumer Act 2010* (Commonwealth) section 139G unless —

(a) the amending law has effect for the purposes of this section under section 19B; and

(b) the provision has come into operation for the purposes of this section under section 19C.

(2) The Australian Consumer Law text —

(a) applies as a law of this jurisdiction; and

(b) as so applying, may be referred to as the *Australian Consumer Law (WA)*; and

(c) in so far as it constitutes Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth), is part of this Act; and

(d) in so far as it constitutes regulations made under section 139G of the *Competition and Consumer Act 2010* (Commonwealth), is subsidiary legislation for the purposes of this Act.

(3) This section has effect subject to sections 21, 22, 23 and 116(3).

[Section 19 amended: No. 11 of 2013 s. 5; No. 26 of 2019 s. 4; No. 34 of 2022 s. 5.]

19A. Tabling amending laws

An amending law must be laid before each House of Parliament within 18 sitting days of the House after the day on which the law receives the Royal Assent.

[Section 19A inserted: No. 34 of 2022 s. 6.]

19B. Disallowance of amending laws

(1) In this section —

disallowance period, in relation to a disallowance resolution notice of which is given in a House of Parliament, means the period of 30 sitting days of the House after the day on which the notice is given;

disallowance resolution means a resolution that an amending law be disallowed;

notice period, in relation to an amending law laid before a House of Parliament under section 19A, means the period of 14 sitting days of the House after the day on which the amending law is laid before it.

(2) An amending law has effect for the purposes of section 19 if the amending law is laid before each House of Parliament under section 19A and either —

(a) no notice of a disallowance resolution is given in either House within the notice period; or

(b) at least 1 notice of a disallowance resolution is given in a House within the notice period and, for each such notice, 1 of the following applies —

(i) the notice is withdrawn or discharged within the disallowance period;

(ii) the disallowance resolution is lost in the House or not agreed to within the disallowance period.

(3) For the purposes of this section and section 19A —

(a) the period specified in section 19A, a notice period or a disallowance period continues to run even though a House of Parliament is prorogued or dissolved or expires; and

(b) notice of a disallowance resolution given in a House of Parliament, or a motion that an amending law be disallowed in the House, does not lapse even though the House is prorogued or dissolved or expires.

[Section 19B inserted: No. 34 of 2022 s. 6.]

19C. Commencement of amending laws

(1) In this section —

amending provision means a provision of an amending law that amends either or both of the following —

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth);

(b) the regulations made under section 139G of that Act.

(2) If, under section 19B(2), an amending law has effect for the purposes of section 19, the Governor must declare that fact by proclamation as soon as practicable.

(3) If an amending provision has come into operation in the Commonwealth before the proclamation is published in the *Gazette*, the amending provision comes into operation for the purposes of section 19 on a day fixed by the proclamation.

(4) If an amending provision has not come into operation in the Commonwealth before the proclamation is published in the *Gazette*, the amending provision comes into operation for the purposes of section 19 when the amending provision comes into operation in the Commonwealth in accordance with the amending law.

[Section 19C inserted: No. 34 of 2022 s. 6.]

19D. Amending laws enacted after 1 June 2021 but before commencement day

If an amending law receives the Royal Assent after 1 June 2021 but before the day (***commencement day***) on which the *Fair Trading Amendment Act 2022* section 6 comes into operation, sections 19A to 19C apply to the amending law as if the amending law received the Royal Assent on commencement day.

[Section 19D inserted: No. 34 of 2022 s. 6.]

19E. Tabling of amending law taken to be publication for Standing Orders

(1) In this section —

parliamentary committee means a committee established by either or both of the Houses of Parliament.

(2) If a Standing Order of a House of Parliament provides that on the publication of an instrument under a written law the instrument is referred to a parliamentary committee for consideration, the laying of an amending law before the House under section 19A is taken to be publication of the amending law for the purposes of the Standing Order.

(3) This section does not apply if the Standing Orders of the House provide specifically for an amending law to be considered by a parliamentary committee.

[Section 19E inserted: No. 34 of 2022 s. 6.]

*[**20.** Deleted: No. 11 of 2013 s. 6.]*

21. Certain instruments to be published, and may be disallowed by Parliament

(1) This section applies to the following instruments —

(a) regulations made under the *Competition and Consumer Act 2010* (Commonwealth) section 139G;

(b) a determination under the *Australian Consumer Law (WA)* section 66(1) (display notices);

(c) a notice under the *Australian Consumer Law (WA)* section 104(1) or 105(1) (safety standards);

(d) a notice under the *Australian Consumer Law (WA)* section 114(1) or (2) (permanent bans);

(e) a notice under the *Australian Consumer Law (WA)* section 117 (revocation of permanent bans);

(f) a notice under the *Australian Consumer Law (WA)* section 122(1) (recall notices) by a responsible Minister of this jurisdiction;

(g) a notice under the *Australian Consumer Law (WA)* section 134(1) or 135(1) (information standards).

(2) Where an instrument to which this section applies is made, a copy of the instrument must be published in the *Gazette* not later than 28 days after the instrument is made.

(3) If a copy of an instrument is not published in the *Gazette* in accordance with subsection (2) —

(a) the instrument ceases to have effect in this jurisdiction on the expiry of the 28th day after the instrument is made, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime; but

(b) if a copy of the instrument is subsequently published in the *Gazette*, the instrument again has effect on and from the day after the day of publication of a copy of the instrument.

(4) Where a copy of an instrument to which this section applies is published in the *Gazette*, the *Interpretation Act 1984* section 42 applies to that instrument as if it were a regulation published in the *Gazette*.

22. Term used in ACL (WA): regulator

In the *Australian Consumer Law (WA)* —

regulator means the Commissioner (as defined in section 6).

23. ACL (WA), interpretation of

(1) The *Acts Interpretation Act 1901* (Commonwealth) applies as a law of this jurisdiction to the *Australian Consumer Law (WA)*.

(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 (WA)* were a Commonwealth Act; and

(b) the regulations in the *Australian Consumer Law (WA)* or instruments under that Law were regulations or instruments under a Commonwealth Act.

(3) The *Interpretation Act 1984* of Western Australia does not apply to —

(a) the *Australian Consumer Law (WA)*; or

(b) any instrument under that Law.

(4) Subsection (3) is subject to section 21.

24. ACL (WA), application of

(1) The *Australian Consumer Law (WA)* 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 (WA)* extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

Division 3 — References to Australian Consumer Law

25. 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.

26. References to Australian Consumer Law 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 4 — Application of Australian Consumer Law to Crown

27. Division does not apply to Commonwealth

In this Division —

participating jurisdiction or ***other jurisdiction*** does not include the Commonwealth.

28. Application law of this jurisdiction binds Crown

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.

29. Application law of other jurisdictions binds Crown

(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.

30. 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 5 — Miscellaneous

31. No doubling-up of criminal liabilities

(1) For the purposes of this section, a person is convicted of an offence if a court finds the person guilty of the offence, or accepts a plea of guilty of the offence, whether or not a conviction is recorded.

(2) If —

(a) an act or omission is an offence against the *Australian Consumer Law (WA)* and is also an offence against the application law of another participating jurisdiction; and

(b) the offender has been acquitted or convicted of the offence with which the offender is charged, or has already been convicted or acquitted of an offence of which the offender might be convicted upon the indictment or prosecution notice on which the offender has been charged, under the application law of the other participating jurisdiction,

the offender is not liable to be prosecuted or punished for the offence against the *Australian Consumer Law (WA)*.

(3) Nothing in subsection (2) prevents the Commissioner from making or issuing a statement under section 57.

(4) 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 (WA)* in respect of the same conduct.

32. Offences against ACL (WA) are crimes

(1) A reference in this section to a person involved in the commission of an offence against the *Australian Consumer Law (WA)* is to be read as a reference to a person who —

(a) has aided, abetted, counselled or procured the commission of the offence; or

(b) has induced, whether by threats or promises or otherwise, the commission of the offence; or

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence; or

(d) has conspired with others to effect the commission of the offence; or

(e) has attempted to commit the offence, or to do any act of a kind referred to in paragraph (a), (b), (c) or (d).

(2) A person who —

(a) commits an offence against the *Australian Consumer Law (WA)*; or

(b) is involved in the commission of an offence against the *Australian Consumer Law (WA)*,

is guilty of a crime.

Penalty: the penalty set out in the *Australian Consumer Law (WA)*.

Summary conviction penalty: the lesser of a fine of $36 000 or the maximum penalty provided by the *Australian Consumer Law (WA)* for the offence.

[Section 32 inserted: No. 11 of 2013 s. 7.]

33. Pecuniary penalty proceedings under ACL (WA) s. 224, civil rules of evidence etc. apply

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a pecuniary penalty under the *Australian Consumer Law (WA)* section 224.

*[**34.** Deleted: No. 19 of 2016 s. 137.]*

35. *Sale of Goods Act 1895*, inconsistency with certain provisions of ACL (WA)

(1) Where a provision of the *Australian Consumer Law (WA)* Part 3-2 Division 1 is, in its application to any circumstance, matter or thing, inconsistent with a provision of the *Sale of Goods Act 1895* in its application to the same circumstance, matter or thing —

(a) the provision of the *Australian Consumer Law (WA)* Part 3-2 Division 1 prevails; and

(b) the provision of the *Sale of Goods Act 1895* is inoperative to the extent of the inconsistency.

(2) This section applies despite —

(a) any rule of law or construction to the contrary; and

(b) an agreement that provides otherwise.

*[**36.** Deleted: No. 34 of 2022 s. 7.]*

Division 6 — Transitional

37. Certain injunction proceedings pending at 1 Jan 2011

(1) To the extent that any proceedings to which the *Fair Trading Act 1987* section 3C(2)(c) applies are proceedings for an injunction under section 74 or 75 of that Act, the proceedings are taken, after the commencement of this section, to be proceedings for an injunction under the *Australian Consumer Law (WA)* section 232.

(2) This section overrides the *Fair Trading Act 1987* section 3C(2)(c).

38. ACL (WA) Part 2-3 (unfair contract terms), application of to contracts made on or after 1 Jan 2011

(1) The *Australian Consumer Law (WA)* Part 2-3 applies to a contract entered into on or after the commencement of this section.

(2) That Part does not apply to a contract entered into before that commencement. However —

(a) if the contract is renewed on or after that commencement — that Part applies to the contract as renewed, on and from the day (the ***renewal day***) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or

(b) if a term of the contract is varied on or after that commencement, and paragraph (a) has not already applied in relation to the contract — that Part applies to the term as varied, on and from the day (the ***variation day***) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.

(3) If subsection (2)(b) applies to a term of a contract, sections 23(2) and 27 of the *Australian Consumer Law (WA)* apply to the contract.

39. ACL (WA) Part 3-2 Div. 2 (unsolicited consumer agreements), application of to contracts made before 1 Jan 2011 etc.

(1) The *Australian Consumer Law (WA)* Part 3-2 Division 2 does not apply to any contract made before the commencement of this section.

(2) The *Australian Consumer Law (WA)* Part 3-2 Division 2 applies to a contract made on or after the commencement of this section even though negotiations leading to the formation of the

contract may have taken place before the commencement of this section.

(3) The *Door to Door Trading Act 1987* section 3C relates to the application of that Act to contracts made before the commencement of this section.

40. ACL (WA) s. 101 (requests for itemised bills), application of for services supplied before 1 Jan 2011

The *Australian Consumer Law (WA)* section 101 does not apply in relation to a supply of services to the extent that the services were supplied before the commencement of this section.

41. ACL (WA) s. 224(4)(c), interpretation of

The reference in the *Australian Consumer Law (WA)* section 224(2)(c) to proceedings under Chapter 4 or Part 5-2 of that Law includes a reference to proceedings, commenced before the commencement of this section, under or in relation to —

(a) Part VC or VI of the *Trade Practices Act 1974* (Commonwealth); or

(b) Part II, V, VI or VII of the *Fair Trading Act 1987*.

Part 4 — Codes of practice

Division 1 — Preliminary

42. Outline of this Part

(1) This Part provides for the making of regulations prescribing a code of practice for fair dealing between a particular class of suppliers and consumers, or by a particular class of persons in relation to consumers.

(2) If a person carries on business in contravention of a prescribed code of practice applying to them, the Commissioner can apply to the State Administrative Tribunal for an order requiring the person to comply with the code and rectify the consequence of the contravention of the code.

(3) This section is intended only as a guide to the general scheme and effect of this Part, and does not limit the other provisions of this Part.

43. Term used: code of practice

In this Part —

code of practice means a code of practice for fair dealing —

(a) between a particular class of suppliers and consumers; or

(b) by a particular class of persons in relation to consumers; or

(c) in relation to the supply of a particular kind of goods or services.

Division 2 — Development and implementation of codes of practice

44. Draft codes of practice, preparation of

(1) The Commissioner may, with the approval of the Minister, prepare a draft code of practice for submission to the Minister for consideration.

(2) The Commissioner must, if the Minister directs, prepare a draft code of practice for submission to the Minister for consideration.

(3) For the purpose of preparing a draft code of practice, the Commissioner must arrange for consultation with, and invite submissions from, persons and organisations that the Commissioner considers would have an interest in the terms of the proposed draft code.

(4) Without limiting subsection (3), the Commissioner must consult with, and invite submissions from, the following —

(a) principal organisations that represent those suppliers that are likely to be affected by the terms of the draft code of practice;

(b) principal organisations representing consumers.

45. Regulations prescribing code of practice

(1) The regulations may prescribe a code of practice that —

(a) has been submitted to the Minister in accordance with section 44; and

(b) has been approved by the Minister with or without amendments.

(2) Regulations prescribing a code of practice must provide that the regulations expire on a date specified in the regulations, which must be a date that is not later than the last day of the period of

3 years after the date on which the code of practice first takes effect.

(3) Regulations prescribing a code of practice may be amended to remove the expiry date of the regulations if —

(a) the Commissioner undertakes a review of the code of practice before the regulations expire; and

(b) in undertaking the review, the Commissioner follows the consultation procedures set out in section 44.

46. Interim code of practice, regulations may prescribe

(1) The regulations may prescribe a code of practice even though the procedures set out in section 44 have not been followed or completed.

(2) A code of practice prescribed under this section is an interim code of practice, and may have effect for a period (not exceeding 6 months) specified in the regulations.

Division 3 — Enforcement of codes of practice

47. SAT's powers to deal with contraventions of prescribed code of practice

(1) Where it appears to the Commissioner that a person has carried on business in contravention of a prescribed code of practice applicable to that person, the Commissioner may apply to the State Administrative Tribunal for an order under this section.

(2) Where, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a person has carried on business in contravention of a prescribed code of practice applicable to that person, the Tribunal may make either or both of the following orders —

(a) an order that the person cease contravening the code;

(b) an order that the person rectify any consequence of that contravention.

(3) The State Administrative Tribunal may make an order under subsection (2) in relation to a person with that person's consent, without being satisfied that there are grounds for making the order.

(4) Where the contravention is by a body corporate, and the Tribunal is satisfied that it occurred with the consent or connivance of a person who, at the time of the contravention, was a director of the body corporate or a person concerned in its management, the Tribunal may make the following additional orders —

(a) an order prohibiting the person from continuing to consent to, or connive at, the contravention;

(b) an order prohibiting the person from consenting to, or conniving at, a similar contravention by any other body corporate of which the person is a director or in whose management the person is concerned.

(5) An order under this section may be made subject to any conditions (whether as to the duration of the order or otherwise) the State Administrative Tribunal thinks fit, including —

(a) conditions relating to the future conduct of the person affected; and

(b) conditions specifying the action to be taken by the person to rectify the consequences of the contravention that is the subject of the order.

(6) A person who fails to comply with an order of the State Administrative Tribunal under this section commits an offence.

Penalty: a fine of $50 000.

48. Commissioner may take or defend, or assume the conduct or defence of, proceedings relating to contravention of code of practice

(1) This section applies where —

(a) a person (other than a body corporate) has made a complaint to the Commissioner in respect of a matter arising under a code of practice or in relation to a contravention or suspected contravention of a code of practice; and

(b) the Commissioner, after investigating the complaint, is satisfied —

(i) that the complainant may, with respect to the matter, have a right to take proceedings before a court or the State Administrative Tribunal, or a defence to proceedings taken before a court or the State Administrative Tribunal by another person against the complainant in respect of the matter; and

(ii) that it is in the public interest that —

(I) the Commissioner take or, as the case requires, defend those proceedings on behalf of the complainant; or

(II) if proceedings are already being taken or defended by the complainant with respect to the matter — the Commissioner assume the conduct or defence of those proceedings on behalf of the complainant.

(2) If this section applies, the Commissioner may take, defend or assume the conduct or defence of those proceedings on behalf of, and in the name of, the complainant.

(3) The Commissioner must not take, defend or assume the conduct or defence of any proceedings under this section without first obtaining —

(a) the written consent of the complainant, which once given cannot be revoked unless the Commissioner consents to the revocation; and

(b) the written consent of the Minister, which may be given subject to any conditions the Minister thinks fit.

[Section 48 amended: No. 11 of 2013 s. 9.]

49. Provisions for proceedings Commissioner institutes, defends or assumes conduct or defence of

(1) The following provisions apply in relation to any proceedings the Commissioner institutes, defends or assumes the conduct or defence of under section 48 on behalf of a complainant —

(a) the Commissioner has, on behalf of the complainant, in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the complainant would have had in the conduct of those proceedings;

(b) the Commissioner may, without consulting or seeking the consent of the complainant, conduct the proceedings in whatever manner the Commissioner thinks appropriate and proper;

(c) any moneys (excluding costs) recovered by the Commissioner belong and must be paid to the complainant without deduction, and any amount awarded against the complainant must be paid by and is recoverable from the complainant;

(d) in all cases the costs of the proceedings must be borne by or paid to and retained by the Commissioner as the case may require;

(e) if any party to the proceedings files a counterclaim, or if the complainant on whose behalf the proceedings are

being defended is entitled to file a counterclaim, and that counterclaim is not related to the cause of action, the court or, as the case requires, the State Administrative Tribunal hearing the proceedings —

(i) must, on the application of the Commissioner, order that the counterclaim be heard separately and that the consumer be a party to the counterclaim in the complainant's own right; and

(ii) may make any other orders or give any directions in that behalf the court or Tribunal thinks fit.

(2) Any money that the Commissioner becomes liable to pay by virtue of this section is to be charged to the Consolidated Account, and this Act, without any further appropriation, is sufficient authority for the payment of the money.

[Section 49 amended: No. 11 of 2013 s. 10.]

50. No doubling-up of liabilities

(1) For the purposes of this section, a person is convicted of an offence if a court finds the person guilty of the offence, or accepts a plea of guilty of the offence, whether or not a conviction is recorded.

(2) If an act or omission is a contravention of a prescribed code of practice and is also an offence against the *Australian Consumer Law (WA)*, and an order is made under section 47 in respect of that contravention, the offender is not liable to be punished for the offence against the *Australian Consumer Law (WA)*.

(3) If an act or omission is a contravention of a prescribed code of practice and is also an offence against the *Australian Consumer Law (WA)*, and the offender has been convicted of the offence under the *Australian Consumer Law (WA)*, the offender is not liable to have an order made against them under section 47.

51. Action taken for breach of code of practice doesn't preclude other civil action

(1) The fact that the Commissioner has made an application under section 47 in respect of a matter that is alleged to be a contravention of a prescribed code of practice, or that the State Administrative Tribunal has made an order under that section in respect of that matter, does not prevent any other person from taking proceedings before a court or the State Administrative Tribunal in respect of the matter.

(2) Nothing in this section permits a person other than the Commissioner to make an application under section 47.

52. Transitional provisions for codes of practice prescribed before 1 Jan 2011

(1) Regulations made under the *Fair Trading Act 1987* section 84 prescribing a code of practice in accordance with section 43(1) of that Act and that were in force immediately before the commencement of this section continue in force after that commencement as if they were made under section 45, but nothing in section 45(2) and (3) applies in relation to those regulations.

(2) However, in the case of regulations prescribing a code of practice that first took effect at least 3 years before the commencement of this section, those regulations do not continue in force under subsection (1) unless, within the period of 3 years beginning on the date on which that code of practice first took effect, a review, in accordance with the *Fair Trading Act 1987* section 42, has been undertaken.

(3) Where regulations (other than regulations to which subsection (2) applies) continue in force under subsection (1), the regulations expire at the close of the last day of the period of 3 years beginning on the date on which the code of practice

prescribed by the regulations first took effect unless, within that period —

(a) the Commissioner undertakes a review of the code of practice; and

(b) in undertaking the review, the Commissioner follows the consultation procedures set out in section 44.

(4) Regulations made under the *Fair Trading Act 1987* section 84 prescribing an interim code of practice in accordance with section 43(2) of that Act and that were in force immediately before the commencement of this section continue in force after that commencement as if they were made under section 46.

53. Transitional provisions for undertakings under *Fair Trading Act 1987* s. 44

(1) The following provisions apply to a deed executed under the *Fair Trading Act 1987* section 44 and that was in force immediately before the commencement of this section —

(a) the deed continues in force after that commencement;

(b) a person must observe undertakings given by the person in the deed;

(c) if, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a person has failed to observe an undertaking given by the person in the deed, the State Administrative Tribunal may order the person —

(i) to observe the undertaking; and

(ii) in the case of an undertaking to rectify the consequence of a contravention of a code of practice — to observe the undertaking within a time specified by the State Administrative Tribunal in the order.

(2) A person who contravenes subsection (1)(b) commits an offence.

Penalty: a fine of $10 000.

(3) A prosecution for an offence under subsection (2) can be instituted only by the Commissioner, and only with leave of the State Administrative Tribunal given when making an order under subsection (1)(c).

(4) Section 47(3) to (6) apply in relation to proceedings under subsection (1)(c) as if they were proceedings for an order under that section.

54. Transitional provisions for contraventions of code of practice before 1 Jan 2011

(1) This section applies if —

(a) before the commencement of section 52, a person has carried on business in contravention of a prescribed code of practice applicable to the person; and

(b) the code of practice continues in force under section 52; and

(c) the person did not execute a deed under the *Fair Trading Act 1987* section 44 in relation to the contravention of the code of practice before the commencement of this section.

(2) If this section applies —

(a) the Commissioner can make an application under section 47 in respect of the contravention of the code of practice, as long as the application is made not later than 6 months after the commencement of this section; and

(b) the State Administrative Tribunal can deal with the application under that section accordingly.

Part 5 — Administrative provisions

Division 1 — Commissioner

55. Commissioner, designation and title of

(1) In this section —

executive officer has the meaning given by the *Public Sector Management Act 1994* section 3(1).

(2) The Minister must, by notice published in the *Gazette*, designate an executive officer of the Department as the Commissioner for the purposes of this Act.

(3) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.

56. General functions of Commissioner

(1) The functions of the Commissioner include the following —

(a) to promote the interests of consumers and assist them to a greater awareness in relation to their assessment and use of goods and services;

(b) to collect, collate and disseminate information in respect of matters affecting the interests of consumers;

(c) to receive complaints from consumers concerning matters affecting their interests as consumers, to consider and, if the Commissioner considers it warranted, to investigate those complaints and to take whatever action in respect of those complaints as seems proper to the Commissioner;

(d) to receive complaints of fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers, and to make whatever investigations and inquiries and to take whatever other action in respect of those complaints as seems proper to the Commissioner;

(e) to advise and assist consumers who seek from the Commissioner information or guidance on matters affecting their interests as consumers;

(f) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services;

(g) to perform any other functions that are conferred or imposed on the Commissioner by this Act or any other Act.

(2) Without limiting the generality of subsection (1), the Commissioner is to —

(a) make whatever recommendations to the Minister the Commissioner considers necessary or desirable in the interests of consumers and, in particular, investigate and make recommendations to the Minister in relation to any matters that concern the need for, or desirability of, legislative or administrative action in the interests of consumers;

(b) advise the Minister on any matters affecting the interests of consumers that the Minister may refer to the Commissioner;

(c) make recommendations to the Minister for the establishment and maintenance of means by which —

(i) matters that affect the interests of consumers and of persons engaged in the production, manufacture, preparation or supply of goods or in commerce or in the provision of services may receive adequate consideration; and

(ii) information concerning those matters and considerations may be widely disseminated.

(3) The Commissioner may cooperate, associate or consult with organisations that have the power to make investigations of the nature referred to in subsection (2)(a).

57A. Licensing and regulatory functions of Commissioner

The Commissioner has the following functions with respect to the licensing, registration and certification schemes provided for in the Acts specified in Schedule 2 —

(a) to administer the scheme of licensing, registration and certification established under those Acts;

(b) to conduct and promote education and provide advisory services for persons who are licensed, registered or certificated under those Acts, or involved in the administration of those Acts, and for members of the public on —

(i) matters relating to the operation of those Acts;

(ii) matters relating to the operations of persons who are licensed, registered or certificated under those Acts;

(c) to advise the Minister as to the general administration of those Acts;

(d) to make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under those Acts;

(e) to carry out any other functions conferred on the Commissioner under those Acts.

[Section 57A inserted: No. 58 of 2010 s. 4.]

57. Warnings and information, Commissioner may issue

(1) The Commissioner may publish (in any form) a statement identifying and giving warnings or information about any of the following —

(a) goods that are unsatisfactory or dangerous and persons who supply or are likely to supply those goods;

(b) services supplied in an unsatisfactory or dangerous manner and persons who supply or are likely to supply those services;

(c) unfair business practices and persons who engage or are likely to engage in those practices;

(d) any other matter that adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of goods or services.

(2) A statement under subsection (1) may identify particular goods, services, business practices, persons, corporate names, business names and trading names.

(3) The Commissioner must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.

58. Instituting, defending or assuming conduct or defence of legal proceedings on behalf of consumers or businesses

(1) This section applies where —

(a) after a complaint or matter has been made or referred to the Department, the Commissioner is satisfied —

(i) that a consumer has a cause of action or a good defence to an action; and

(ii) that it is in the public interest or proper to institute, defend or assume the conduct or defence of legal proceedings on behalf of the consumer;

or

(b) the Commissioner is satisfied that it is proper to institute, defend or assume the conduct or defence of legal proceedings on behalf of a business in relation to the supply or possible supply of goods or services in trade or commerce because a matter of public interest is involved.

(2) If this section applies, the Commissioner may —

(a) where subsection (1)(a) applies, on behalf of the consumer, institute legal proceedings against any other person, or defend any proceedings brought against the consumer, or assume the conduct or defence of proceedings already commenced by or against the consumer, with a view to enforcing or protecting the rights of the consumer in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of any Act or any other law relating to the interests of consumers; or

(b) where subsection (1)(b) applies, on behalf of the business, institute legal proceedings against any other person, or defend any proceedings brought against the business, or assume the conduct or defence of proceedings already commenced by or against the business.

(3) The Commissioner must not institute, defend or assume the conduct or defence of any proceedings under this section —

(a) unless either —

(i) the amount claimed or involved in either case does not exceed $100 000 or such greater amount as is prescribed for the purposes of this paragraph; or

(ii) an order for specific performance of a contract, or an order in the nature of an order for specific performance of a contract, is the only remedy sought in the proceedings;

and

(b) without first obtaining —

(i) the written consent of the consumer or, as the case requires, the business, which once given cannot be revoked unless the Commissioner consents to the revocation; and

(ii) the written consent of the Minister, which may be given subject to any conditions the Minister thinks fit.

(4) The Commissioner may make any investigation or inquiry under Part 6 that the Commissioner considers necessary or desirable for the purposes of —

(a) satisfying himself or herself that it is proper to institute, defend or assume the conduct or defence of legal proceedings on behalf of a business under subsection (1)(b); and

(b) instituting, defending or assuming the conduct or defence of those proceedings; and

(c) conducting those proceedings.

(5) Nothing in subsection (4) limits Part 6.

[Section 58 amended: No. 11 of 2013 s. 11.]

59. Provisions for proceedings Commissioner institutes, defends or assumes conduct or defence of

(1) The following provisions apply in relation to any proceedings the Commissioner institutes, defends or assumes the conduct or defence of under section 58 on behalf of a consumer or business —

(a) the Commissioner has, on behalf of the consumer or business, in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the consumer or business would have had in the conduct of those proceedings;

(b) the Commissioner may, without consulting or seeking the consent of the consumer or business, conduct the proceedings in whatever manner the Commissioner thinks appropriate and proper;

(c) any moneys (excluding costs) recovered by the Commissioner belong and must be paid to the consumer

or business without deduction, and any amount awarded against the consumer or business must be paid by and is recoverable from the consumer or business;

(d) in all cases the costs of the proceedings must be borne by or paid to and retained by the Commissioner as the case may require;

(e) if any party to the proceedings files a counterclaim, or if the consumer or business on whose behalf the proceedings are being defended is entitled to file a counterclaim, and that counterclaim is not related to the cause of action and in no way relates to the interests of the consumer as a consumer or, as the case requires, the interests of the business as a business, the court hearing the proceedings —

(i) must, on the application of the Commissioner, order that the counterclaim be heard separately and that the consumer or business be a party to the counterclaim in the consumer's or business's own right; and

(ii) may make any other orders or give any directions in that behalf the court thinks fit.

(2) Any money that the Commissioner becomes liable to pay by virtue of this section is to be charged to the Consolidated Account, and this Act, without any further appropriation, is sufficient authority for the payment of the money.

[Section 59 amended: No. 11 of 2013 s. 12.]

60. Delegation by Commissioner

(1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under a provision of this or any other Act.

(2) The delegation must be in writing signed by the Commissioner.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

61. Judicial notice of Commissioner's signature etc.

All courts, judges and persons acting judicially must take judicial notice of —

(a) the official signature of every person who is for the time being, and every person who has at any time been, the Commissioner; and

(b) the fact that the person holds or has held that office.

Division 2 — Offence

62. Advertisements not to imply approval by consumer affairs authority

(1) In this section —

consumer affairs authority —

(a) means —

(i) the Department or the chief executive officer or the Commissioner; or

(iia) an advisory committee appointed under Division 3; or

(ii) any person, or statutory body or authority, appointed or constituted under any law of the Commonwealth or of any State or Territory of the Commonwealth and having powers, functions and duties under the laws of the

Commonwealth or that State or Territory similar to those of the Department or the chief executive officer or the Commissioner under the laws of this State;

and

(b) includes —

(i) any officer of the Department; and

(ii) any officer or employee of a statutory body, an advisory committee or an authority referred to in paragraph (a)(iia) or (a)(ii) of this definition;

publish includes —

(a) include in a newspaper or other publication published in this State;

(b) disseminate by the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound;

(c) broadcast by radio or for television;

(d) include on an internet website or otherwise publicly disseminate by means of the internet;

(e) publicly exhibit in, on, over or under any building, vehicle or place, or in the air, in view of persons in or on any street or public place;

(f) include in a document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or left on a vehicle;

(g) make verbally to any person.

(2) A person must not publish or cause to be published any statement —

(a) that is intended or is apparently intended to promote the sale, hiring or leasing of goods, or the sale of an estate or interest in any land or building, or the letting or leasing

of any land or building or part of a building, or the use of a service rendered for fee or reward; and

(b) that states, either expressly or by implication, that any consumer affairs authority has approved, or has refrained from disapproving, the statement or any material particular in the statement or any claim made in the statement or any goods or services depicted or described, whether by a trade name or otherwise, in the statement.

Penalty: a fine of $10 000.

(3) It is a defence in any proceedings for an offence under subsection (2) if the accused satisfies the court that, before the publication of the statement, the Minister consented in writing to its publication.

[Section 62 amended: No. 58 of 2010 s. 5.]

Division 3 — Advisory committees

[Heading inserted: No. 58 of 2010 s. 6.]

Subdivision 1 — Property Industry Advisory Committee

[Heading inserted: No. 58 of 2010 s. 6.]

63A. Committee established

A committee called the Property Industry Advisory Committee is established.

[Section 63A inserted: No. 58 of 2010 s. 6.]

63B. Membership

(1) The Committee consists of —

(a) the Commissioner ex officio; and

(b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.

(2) The Minister must appoint a Committee member to be the Chairperson.

[Section 63B inserted: No. 58 of 2010 s. 6; amended: No. 26 of 2019 s. 5.]

63C. Functions

The functions of the Committee are to advise the Minister and the Commissioner on —

(a) the regulation of the real estate, settlement and land valuation industries in Western Australia, including the licensing, regulation and training of persons or businesses who or which undertake the functions of a real estate agent, real estate sales representative, business agent, business sales representative, settlement agent or land valuer; and

(b) the provision by the Commissioner of education, information and advice to consumers and to the real estate, settlement and land valuation industries in Western Australia; and

(c) the criteria required for applications under the *Real Estate and Business Agents Act 1978* section 131O; and

(d) any matter referred to the Committee by the Minister or the Commissioner.

[Section 63C inserted: No. 58 of 2010 s. 6.]

63D. Procedure

(1) The Committee may regulate its own procedure.

(2) Subsection (1) is subject to the regulations.

[Section 63D inserted: No. 58 of 2010 s. 6.]

Subdivision 2 — Motor Vehicle Industry Advisory Committee

[Heading inserted: No. 58 of 2010 s. 6.]

63E. Committee established

A committee called the Motor Vehicle Industry Advisory Committee is established.

[Section 63E inserted: No. 58 of 2010 s. 6.]

63F. Membership

(1) The Committee consists of —

(a) the Commissioner ex officio; and

(b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.

(2) The Minister must appoint a Committee member to be the Chairperson.

[Section 63F inserted: No. 58 of 2010 s. 6; amended: No. 26 of 2019 s. 6.]

63G. Functions

The functions of the Committee are to advise the Minister and the Commissioner on —

(a) the regulation of the motor vehicle dealing and repair industry in Western Australia, including the licensing, certification and training of persons or businesses who or which engage in motor vehicle dealing and repair; and

(b) the provision by the Commissioner of education, information and advice to consumers and to the motor vehicle dealing and repair industry in Western Australia; and

(c) any matter referred to the Committee by the Minister or the Commissioner.

[Section 63G inserted: No. 58 of 2010 s. 6.]

63H. Procedure

(1) The Committee may regulate its own procedure.

(2) Subsection (1) is subject to the regulations.

[Section 63H inserted: No. 58 of 2010 s. 6.]

Subdivision 3 — Consumer Advisory Committee

[Heading inserted: No. 58 of 2010 s. 6.]

63I. Committee established

A committee called the Consumer Advisory Committee is established.

[Section 63I inserted: No. 58 of 2010 s. 6.]

63J. Membership

(1) The Committee consists of —

(a) the Commissioner ex officio; and

(b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.

(2) The Minister must appoint a Committee member to be the Chairperson.

[Section 63J inserted: No. 58 of 2010 s. 6; amended: No. 26 of 2019 s. 7.]

63K. Functions

The functions of the Committee are to advise the Minister and the Commissioner on —

(a) the activities and policies of the Department as they affect consumers; and

(b) current and emerging consumer issues; and

(c) research and education projects relating to consumers; and

(d) any matter referred to the Committee by the Minister or the Commissioner.

[Section 63K inserted: No. 58 of 2010 s. 6.]

63L. Procedure

(1) The Committee may regulate its own procedure.

(2) Subsection (1) is subject to the regulations.

[Section 63L inserted: No. 58 of 2010 s. 6.]

Subdivision 4 — Regulations prescribing committee procedures, etc.

[Heading inserted: No. 58 of 2010 s. 6.]

63M. Regulations

(1) The regulations may provide for the constitution and operation of the advisory committees established under this Division.

(2) Without limiting the generality of subsection (1), the regulations may —

(a) require that persons appointed as members of a committee —

(i) possess particular expertise or qualifications; or

(ii) represent particular interest groups, industries or occupations;

(b) provide for the number of members, the manner, and terms and conditions of appointment, and the resignation and removal of members of the committees;

(c) provide for the appointment of deputies of members;

(d) provide for the manner in which members of the committees are to disclose interests;

(e) regulate the procedure for meetings of the committees, including the quorum for meetings;

(f) provide for the remuneration of members of the committees (other than a member ex officio).

[Section 63M inserted: No. 58 of 2010 s. 6.]

Part 6 — Investigation and enforcement

Division 1 — Preliminary

[Heading inserted: No. 23 of 2014 s. 10.]

63. Terms used

In this Part —

authorised person means —

(a) the Commissioner; and

(b) in relation to a power of the Commissioner under a provision of this Act or any other Act, a person to whom that power is delegated under section 60; and

(c) an investigator, or a police officer assisting in an investigation under section 88D;

investigator means a person designated under section 64 as an investigator;

motor vehicle has the meaning given in the *Road Traffic (Administration) Act 2008* section 4.

[Section 63 amended: No. 58 of 2010 s. 7; No. 8 of 2012 s. 102.]

64A. Authorised persons cannot be public officers under *Criminal Investigation Act 2006*

The office held by an authorised person cannot be prescribed by an Act or regulations under the *Criminal Investigation Act 2006* section 9(1)(a).

[Section 64A inserted: No. 23 of 2014 s. 11.]

Division 2 — Investigators

64. Designating people as investigators

The Commissioner may designate any of the following persons as an investigator for the purposes of this Part —

(a) any person employed in the Department;

(b) any person who —

(i) is an officer of a Public Sector agency that provides services to the Department; and

(ii) assists in the exercise of the Commissioner's functions under this Act;

(c) any person engaged by the chief executive officer to assist in the exercise of the Commissioner's functions under this Act.

65. Certificate of authority of investigator

(1) The Commissioner is to provide each investigator with a document, signed by the Commissioner, certifying that the person is entitled to exercise the powers of an investigator.

(2) A person to whom a document is provided under this section and who ceases to be an investigator must return the document to the Commissioner as soon as practicable.

(3) A person who contravenes subsection (2) without reasonable excuse, the onus of proving which is on the person, commits an offence.

Penalty: a fine of $1 000.

66. Certificate of authority to be produced on demand

An investigator must produce the document provided under section 65 when demanded by a person in respect of whom the investigator performs, has performed, or is proposing to perform any function under this Act or another Act.

67. Persons assisting investigators

(1) Where an investigator is exercising any of the investigator's powers under this Part, a person (the ***assistant***), including an interpreter, may accompany the investigator to assist the investigator if the investigator considers the assistance is necessary.

(2) The assistant —

(a) may do such things and in such manner as the investigator reasonably requires to assist the investigator to exercise the investigator's powers; but

(b) must not do anything that the investigator does not have power to do, except as permitted under a warrant under Division 3.

(3) Anything done lawfully by the assistant is taken for all purposes to have been done by the investigator.

Division 3 — General powers

68. Investigations and inquiries, Commissioner's powers to make

(1) The Commissioner may, of the Commissioner's own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for the purposes of carrying out the Commissioner's functions under this Act or any other Act.

(2) An authorised person may make an investigation or inquiry under this section on behalf of the Commissioner.

69. Investigations and inquiries, powers for

(1) For the purposes of carrying out any investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or any other Act, an authorised person may —

(a) require any person —

(i) to give whatever information the authorised person requires in relation to any matter the subject of an investigation or inquiry; and

(ii) to answer any question put to the person in relation to any matter the subject of an investigation or inquiry;

and

(b) require any person to produce any document or thing relating to an investigation or inquiry; and

(c) enter at all reasonable times and search any premises or motor vehicle named in a warrant obtained in accordance with this Division and exercise the powers set out in the warrant; and

(d) make a copy or abstract of any document produced or inspected under this section, or of any entry made in the document.

(2) A requirement made under subsection (1)(a) —

(a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case requires; and

(b) must specify the time at or within which the information is to be given or the question is to be answered, as the case requires; and

(c) may, by its terms, require that the information or answer required —

(i) be given orally or in writing; and

(ii) be given at or sent or delivered to any place specified in the requirement; and

(iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and

(iv) be given on oath or affirmation or by statutory declaration.

(3) An authorised person may administer an oath or affirmation or witness a statutory declaration for the purposes of subsection (2)(c)(iv).

(4) A requirement made under subsection (1)(b) —

(a) must be made by notice in writing served on the person required to produce a document or thing, unless the circumstances require the authorised person to have immediate access to the document or thing, in which case the requirement may be given orally; and

(b) must specify the time at or within which the document or thing is to be produced; and

(c) may, by its terms, require that the document or thing required be produced —

(i) at any place specified in the requirement; and

(ii) by any means specified in the requirement.

(5) Where, under subsection (1)(a) or (b), an authorised person orally requires a person to give any information, answer any question or produce any document or thing, the authorised person must inform the other person that the other person is required, under this Act or another Act, to give the information, answer the question or produce the document or thing, as the case requires.

(6) Where, under subsection (1)(a) or (b), a person is required by notice in writing to give any information, answer any question or produce any document or thing, the notice must state that the

person is required, under this Act or another Act, to give the information, answer the question or produce the document or thing, as the case requires.

70. Interviews under s. 69(1)(a), conduct of

(1) An interview conducted by an authorised person under section 69(1)(a) must be conducted in private if —

(a) the authorised person considers it appropriate; or

(b) the person being interviewed so requests.

(2) Subsection (1) does not limit the operation of section 67 or prevent a representative of the person being interviewed from being present at the interview.

(3) Subsection (1) may be invoked during an interview by —

(a) the authorised person; or

(b) the person being interviewed.

(4) If subsection (1) is invoked during an interview, the subsection applies to the remainder of the interview.

71. Warrant to enter premises or motor vehicle

(1) If an authorised person considers in a particular case that there are reasonable grounds for believing that entry to premises or a motor vehicle is necessary for the purposes of carrying out any investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or any other Act, the authorised person may apply to a magistrate or justice of the peace for a warrant to be issued in respect of those premises or that motor vehicle.

(2) An application for a warrant must —

(a) be in writing; and

(b) be accompanied by a notice in writing from the authorised person stating that the person considers in the particular case that there are reasonable grounds for

believing that entry to premises or a motor vehicle is necessary for the purposes of carrying out an investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or another Act; and

(c) set out the grounds for seeking the warrant; and

(d) describe the premises or motor vehicle that are to be entered.

(3) A magistrate or justice of the peace to whom an application is made under this section must refuse it if —

(a) the application does not comply with the requirements of this Act; or

(b) when required to do so by the magistrate or justice of the peace, the applicant does not give to the magistrate or justice of the peace more information about the application.

(4) The information in an application or given to a magistrate or justice of the peace under this section must be verified before the magistrate or justice of the peace on oath or affirmation or by affidavit, and the magistrate or justice of the peace may for that purpose administer an oath or affirmation or take an affidavit.

72. Warrants wanted urgently, may be obtained by telephone etc.

(1) If an authorised person requires a warrant urgently, or a magistrate or justice of the peace is not available within a reasonable distance of the authorised person, the authorised person may apply to a magistrate or justice of the peace by telephone, fax or other electronic means for a warrant under section 71.

(2) The magistrate or justice of the peace may —

(a) require communication by voice to the extent that it is practicable in the circumstances; and

(b) make a recording of the whole or any part of any such communication by voice.

(3) Before applying for the warrant, the authorised person must prepare an affidavit that sets out the grounds on which the warrant is sought.

(4) If it is necessary to do so, the authorised person may apply for the warrant before the affidavit is sworn or affirmed.

(5) The magistrate or justice of the peace may complete and sign the same warrant that the magistrate or justice of the peace would issue under section 74 if the application had been made under section 71 if the magistrate or justice of the peace is satisfied that there are reasonable grounds for issuing the warrant, after having —

(a) considered the terms of the affidavit; and

(b) received such further information (if any) as the magistrate or justice of the peace requires concerning the grounds on which the issue of the warrant is sought.

73. Warrants by telephone etc., further provisions for

(1) If a magistrate or justice of the peace completes and signs a warrant under section 72(5) —

(a) the magistrate or justice of the peace must —

(i) tell the authorised person what the terms of the warrant are; and

(ii) tell the authorised person the day on which and the time at which the warrant was signed; and

(iii) tell the authorised person the day (not more than one week after the magistrate or justice of the

peace completes and signs the warrant) on which the warrant ceases to have effect; and

(iv) record on the warrant the reasons for issuing the warrant;

and

(b) the authorised person must —

(i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate or justice of the peace; and

(ii) write on the form the name of the magistrate or justice of the peace and the day on which and the time at which the warrant was signed.

(2) The authorised person must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate or justice of the peace —

(a) the form of warrant completed by the authorised person; and

(b) the affidavit referred to in section 72(3), which must have been duly sworn or affirmed.

(3) When the magistrate or justice of the peace receives those documents, the magistrate or justice of the peace must —

(a) attach them to the warrant that the magistrate or justice of the peace completed and signed; and

(b) deal with them in the way in which the magistrate or justice of the peace would have dealt with them if the application had been made under section 71.

(4) A form of warrant duly completed under subsection (1)(b) is authority for the same powers as are authorised by the warrant signed by the magistrate or justice of the peace.

(5) If a magistrate or justice of the peace completes and signs a warrant under section 72(5), in any proceedings a court must

assume, unless the contrary is proved, that the exercise of a power was not authorised by the warrant if —

(a) it is material, in those proceedings, for the court to be satisfied that the exercise of the power was authorised by this section; and

(b) the warrant is not produced in evidence.

74. Warrants, issue and effect of

(1) A magistrate or justice of the peace to whom an application is made under section 71 may issue a warrant if satisfied that the authorised person has reasonable grounds for believing that entry and inspection of the premises or motor vehicle are necessary for the purposes of carrying out an investigation or inquiry under this Act or another Act.

(2) A warrant under subsection (1) authorises the person to whom the warrant is issued —

(a) to enter the premises or motor vehicle named in the warrant and search the premises or motor vehicle and any thing that is found on the premises or in or on the motor vehicle; and

(b) to inspect documents and other things, and take copies or extracts from documents found on the premises or in or on the motor vehicle; and

(c) to inspect, examine, take measurements of, or conduct tests on, any thing found on the premises, or in or on the motor vehicle, that is relevant to the investigation or inquiry; and

(d) to take and remove for examination, analysis or testing a sample of any thing found on the premises, or in or on the motor vehicle, that is relevant to the investigation or inquiry, without paying for the sample; and

(e) to inspect any service carried on in the premises or from the motor vehicle; and

(f) to take measurements or recordings of any sort; and

(g) to take photographs, sound and video recordings and drawings of the premises or motor vehicle searched, and of any thing found in those premises or in or on that motor vehicle, if the person exercising the power has reasonable grounds for believing that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search; and

(h) to seize things that may be seized under section 79.

(3) The warrant must state —

(a) the purpose for which the warrant is issued; and

(b) the name of the person to whom the warrant is issued; and

(c) a description of the premises or motor vehicle that may be entered.

(4) The magistrate or justice of the peace who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate or justice of the peace has relied on to justify the issue of the warrant.

75. Warrants, powers under to obtain access information for computers etc.

(1) In this section —

access information includes access codes, passwords, and encryption keys, and any related information that enables access to a computer or other data storage device;

specified person means a person who —

(a) is the owner or lessee of the computer or other data storage device, or is in possession or control of the computer or other data storage device, an employee of any of the above, or any service provider who provides service to the above and holds access information; and

(b) has relevant knowledge of —

(i) the computer or a computer network of which the computer or other data storage device forms a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or other data storage device.

(2) A person executing a warrant under section 74 may require a specified person to provide access information and other information or assistance that is reasonable and necessary to allow the person executing the warrant to access data held in, or accessible from —

(a) a computer that is on the premises or in or on the motor vehicle named in the warrant; or

(b) any other data storage device that is on the premises or in or on the motor vehicle named in the warrant.

76. Warrants, further powers under

(1) A warrant under section 74 also authorises the person to whom the warrant is issued —

(a) to bring and use in the premises or in or on the motor vehicle named in the warrant any equipment, to use any equipment found in the premises or in or on the motor vehicle, and to extract any electricity or other form of energy from the premises or vehicle to operate the equipment that it is reasonable to use in the circumstances, for the purposes of executing the warrant; and

(b) to access and copy intangible material from computers and other data storage devices located at or accessible from the premises or vehicle named in the warrant (including copying by means of previewing, cloning, or other forensic methods either before or after removal for examination); and

(c) to use any reasonable measures to —

(i) gain access to any computer or other data storage device that is at the premises or in or on the vehicle named in the warrant, or that can be accessed from a computer or other data storage device that is at those premises or in or on that vehicle; and

(ii) create a forensic copy of any material in such a computer or other data storage device.

(2) This section does not limit section 74, 75 or 78.

77. Damage to equipment or data, compensation for

(1) This section applies where —

(a) either —

(i) damage is caused to equipment as a result of it being operated as mentioned in section 76; or

(ii) the data recorded on or accessible from the equipment is damaged;

and

(b) the damage was caused as a result of —

(i) insufficient care being exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care being exercised by the person operating the equipment.

(2) Where this section applies, the owner of the equipment or the user of data recorded on or accessible from the equipment is entitled to compensation for the damage.

(3) For the purposes of subsection (1), damage to data includes damage by erasure of data or addition of other data.

(4) An application for compensation is to be made to the Commissioner.

(5) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises (or the person in charge of the motor vehicle, as the case requires) and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

(6) Any compensation that is payable under this section is to be charged to the Consolidated Account, and this Act, without further appropriation, is sufficient authority for the payment of the compensation.

78. Warrants, execution and duration of

(1) Entry authorised by a warrant under section 74 may be made with whatever assistance and equipment is reasonably necessary for the purpose for which entry is required.

(2) A person executing a warrant under section 74, and a person assisting that person, may use any force that is reasonably necessary for the execution of the warrant.

(3) A warrant authorising the entry and search of a motor vehicle authorises the person executing the warrant to enter any place where the person has reasonable grounds to believe that the vehicle is, for the purpose of locating it and searching it.

(4) Before entering any premises or motor vehicle under a warrant, the person executing the warrant must show the person, if any, who gives the person entry to the premises or motor vehicle —

(a) in the case of the Commissioner, a document signed by the Minister and certifying that the person is the Commissioner; and

(b) in the case of an authorised person other than the Commissioner, a document signed by the Commissioner and certifying that that person is an authorised person.

(5) The person executing the warrant must produce it for inspection if asked by —

(a) the occupier or a person in charge of the premises; or

(b) a person in charge of the motor vehicle.

(6) When executing a warrant, an authorised person may require any person who has the control of any premises, motor vehicle or thing that the authorised person is authorised to enter or inspect to furnish reasonable access to it and to give other reasonable assistance.

(7) A warrant ceases to have effect on the earliest of the following —

(a) at the end of the period of one month after its issue;

(b) if it is withdrawn by the magistrate or justice of the peace who issued it;

(c) when it is executed.

79. Seizing things

(1) An authorised person may seize a document or other thing that is produced or given in response to a requirement under this Division, or that is found as the result of executing a warrant under this Division.

(2) However, a document or other thing cannot be seized unless the authorised person reasonably suspects that the document or thing —

(a) is being, or has been, used to commit a breach of this Act or another Act that confers functions on the Commissioner; or

(b) may provide evidence of the commission of a breach of this Act or another Act that confers functions on the Commissioner.

(3) As soon as practicable after the document or other thing is seized, the authorised person must give a receipt for it to the person from whom it was seized.

(4) The receipt must clearly describe the document or thing seized and its condition.

(5) If, for any reason, it is not practicable to comply with subsection (3), the authorised person must —

(a) leave the receipt at the place of seizure; and

(b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

80. Seized things, copies of to be provided

(1) This section applies if the person executing a warrant relating to premises seizes, under section 79 —

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device, the information in which can be readily copied.

(2) Where this section applies, the person executing the warrant must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.

(3) Subsection (2) does not apply if possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

81. Seized things, access to by owner

(1) Until a thing seized under section 79 is forfeited or returned, the person in whose custody the seized thing is must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

82. Seized things, return of

(1) Where a document or other thing is seized under section 79, an authorised person may retain the document or other thing for as long as is reasonably necessary for the purposes of —

(a) the investigation to which the document or other thing is relevant; and

(b) any proceedings to which the document or other thing is relevant.

(2) When the retention of the document or other thing ceases to be reasonably necessary for those purposes, the authorised person must ensure that the document or other thing is delivered to the person who appears to the authorised person to be entitled to possession of it.

83. Seizure, SAT may review

(1) A person aggrieved by the seizure of any thing under section 79 may apply to the State Administrative Tribunal for a review of the decision to seize the thing.

(2) In dealing with an application under subsection (1), the State Administrative Tribunal may determine whether the thing seized must be destroyed, disposed of, forfeited to the State, restored to the person from whom it was seized or otherwise dealt with.

(3) Subsection (2) does not limit the powers that the *State Administrative Tribunal Act 2004* gives the State Administrative Tribunal.

(4) If an application under subsection (1) consists of or includes a claim that legal professional privilege applies to the thing

seized, the State Administrative Tribunal hearing the application is to be constituted by —

(a) a judicial member; and

(b) such other members, if any, as the President considers appropriate.

(5) In subsection (4), each of these terms has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1) —

judicial member

President

[Section 83 amended: No. 23 of 2014 s. 12.]

84. Seized things, forfeiture of

(1) The Commissioner may determine that a thing seized under section 79 is forfeited to the State if the authorised person who seized the thing —

(a) cannot find its owner, after making reasonable inquiries; or

(b) cannot return the thing to the owner or other person entitled to possession of the thing, after making reasonable efforts.

(2) In applying subsection (1) —

(a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and

(b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to the owner or other person entitled to possession of the thing.

(3) Regard must be had to a thing's nature, condition and value in deciding —

(a) whether it is reasonable to make inquiries or efforts; and

(b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

85. Forfeited things, dealing with

(1) On the forfeiture of a thing to the State under section 84, the thing becomes the property of the State, and may be dealt with as the chief executive officer considers appropriate.

(2) Without limiting subsection (1), the chief executive officer may cause the thing to be destroyed, sold or disposed of.

86. Privilege against self-incrimination doesn't apply

(1) Where under section 69 a person is required to give any information, or answer any question or produce any document or thing —

(a) that person cannot refuse to comply with that requirement on the ground that the information, answer, document or thing may tend to incriminate the person or render the person liable to any penalty; but

(b) the information or answer given, or document or thing produced, by the person is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 88(1)(b).

(2) This section is without prejudice to the provisions of the *Evidence Act 1906* section 11.

87. Information obtained, use of etc.

(1) Information concerning the affairs of a person that is obtained under this Division by an authorised person may (for the purposes of section 112 (which relates to the confidentiality of information officially obtained)) be recorded, used or disclosed on the basis that it has been acquired by the authorised person for the purposes of this Act.

(2) Where an authorised person copies a document under section 69(1)(d) or when executing a warrant —

(a) the authorised person may certify the copy as being a true and accurate copy of the document; and

(b) in the absence of proof to the contrary, the certified copy is to be accepted by any court or tribunal as evidence of, and as having equal validity as, the original.

Division 4A — Specific powers for enforcement of licensing and regulatory provisions

[Heading inserted: No. 58 of 2010 s. 8.]

88A. Terms used

In this Division —

authorisation means a licence, registration, approval, permit, exemption, certificate or other form of authority;

registration Act means an Act listed in Schedule 2;

regulated activity means an occupation or activity that can be lawfully carried on only under an authorisation granted or obtained under a registration Act;

regulated person means a person who carries on a regulated activity.

[Section 88A inserted: No. 58 of 2010 s. 8.]

88B. Investigations and inquiries for licensing and regulatory purposes, Commissioner's powers to make

(1) For the purposes of performing the Commissioner's functions under section 57A, the Commissioner may, of the Commissioner's own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for any of the following purposes —

(a) determining any application or other matter before the Commissioner;

(b) determining whether or not a regulated person is or has been complying with —

(i) the conditions, if any, of their authorisation; or

(ii) the requirements of the registration Act under which he or she holds an authorisation; or

(iii) a code of conduct applying to the regulated person under a registration Act;

(c) determining whether or not any other cause exists that might be considered by the Commissioner to be grounds for disciplinary action against a regulated person under a registration Act;

(d) detecting offences against a registration Act.

(2) An authorised person may make an investigation or inquiry under this section on behalf of the Commissioner.

[Section 88B inserted: No. 58 of 2010 s. 8.]

88C. Authorised persons' powers for this Division

Authorised persons may exercise the powers set out in Division 3 for the purposes of the performance of any function under this Division.

[Section 88C inserted: No. 58 of 2010 s. 8.]

88D. Police assistance with investigations and inquiries

(1) The Commissioner of Police must, at the request of the Commissioner, arrange for one or more police officers —

(a) to make an investigation or inquiry relating to any matter that is the subject of investigation or inquiry under section 88B; and

(b) to report on the results of their investigation or inquiry.

(2) The report must be forwarded to the Commissioner.

(3) Where a police officer makes an investigation or inquiry or report relating to any matter that is the subject of investigation or inquiry under section 88B —

(a) in addition to any power, authority, and immunity of the police officer apart from this Act, the police officer has the same powers, authorities, and immunities as an investigator appointed under this Act has in respect of the same matter; and

(b) for the purposes of section 66, it is sufficient if the police officer identifies himself or herself as a police officer to the person, if any, affording entry to the police officer.

[Section 88D inserted: No. 58 of 2010 s. 8.]

88E. Compliance checks at regulated person's business premises, powers for

(1A) This section does not apply to the extent that the purpose of exercising a power under subsection (1) is in relation to a regulated activity carried on by a regulated person under the *Charitable Collections Act 1946* or the *Short-Term Rental Accommodation Act 2024*.

(1) An authorised person may, for all or any of the purposes listed in subsection (2) —

(a) during normal business hours, enter premises where the business of a regulated person is being carried on, without obtaining a warrant under section 74; and

(b) exercise the powers in sections 69, 79 and 87 once entry is made.

(2) The purposes referred to in subsection (1) are as follows —

(a) to determine whether or not a regulated person is or has been complying with the conditions, if any, of their authorisation;

(b) to determine whether or not a regulated person is or has been complying with the requirements of the registration Act under which he or she holds an authorisation;

(c) to determine whether or not a regulated person is or has been complying with a code of conduct applying to the registered person under a registration Act.

(3) An authorised person may invoke the powers in subsection (1) even though an investigation is not under way in relation to any particular regulated person.

[Section 88E inserted: No. 58 of 2010 s. 8; amended: No. 25 of 2019 s. 28; No. 12 of 2024 s. 54.]

Division 4 — Offences

88. Failing to cooperate with investigation

(1) A person commits an offence who, without reasonable excuse (proof of which lies on the person), when required under Division 3 or 4A to give any information, answer any question or produce any document or thing —

(a) fails to give that information or answer that question at or within the time specified in the requirement; or

(b) gives any information or answer that is false or misleading in any material particular; or

(c) fails to produce that document or thing at or within the time specified in the requirement.

Penalty: a fine of $10 000.

(2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —

(a) that, in the case of an alleged offence arising out of a requirement made orally under section 69, the authorised person did not, when making the requirement, inform the accused that he or she was required under this Act or the other Act that is relevant to give the information,

answer the question or produce the document or thing, as the case requires; or

(b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 69, the notice did not state that the accused was required under this Act or the other Act that is relevant to give the information, answer the question or produce the document or thing, as the case requires; or

(c) that the time specified in the requirement did not give the accused sufficient notice to enable him or her to comply with the requirement; or

(d) that, in any case, the authorised person did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation or inquiry being carried out.

[Section 88 amended: No. 58 of 2010 s. 9.]

89. Obstructing authorised person

(1) A person must not prevent or attempt to prevent an authorised person from entering premises or a motor vehicle in the exercise of the authorised person's powers under section 69.

Penalty: a fine of $2 000.

(2A) A person must not prevent or attempt to prevent an authorised person from entering business premises in the exercise of the authorised person's powers under section 88E.

Penalty: a fine of $2 000.

(2) A person must not obstruct or impede an authorised person in the exercise of the authorised person's powers under section 69 or 88E.

Penalty: a fine of $2 000.

(3) A person must comply with a requirement to assist an authorised person executing a warrant under section 74 when requested to do so under section 75(2).

Penalty: a fine of $2 000.

(4) A person must comply with a requirement to furnish reasonable access to a place or motor vehicle, or to give other reasonable assistance to an authorised person under section 78(6).

Penalty: a fine of $2 000.

(5A) A person must comply with a requirement to furnish reasonable access to business premises, or to give other reasonable assistance to an authorised person, when the authorised person is exercising the authorised person's powers under section 88E.

Penalty: a fine of $2 000.

(5) For the purposes of this section, a reference to an authorised person includes an assistant accompanying an investigator in accordance with section 67.

[Section 89 amended: No. 58 of 2010 s. 10.]

Part 7 — Criminal and civil proceedings

Division 1 — Preliminary

90. Term used: person involved in a contravention of a provision of this Act

A reference in this Part to a person involved in a contravention of a provision of this Act is to be read as a reference to a person who —

(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; or

(e) has attempted to contravene the provision, or to do any act of a kind referred to in paragraph (a), (b), (c) or (d).

[Section 90 amended: No. 11 of 2013 s. 13.]

Division 2 — Criminal proceedings

91. Time limit for commencing proceedings

Proceedings for an offence against this Act may be commenced within 3 years after the alleged commission of the offence.

92. Who may institute criminal proceedings

(1) Prosecutions for offences against this Act may be instituted by the Commissioner or by a person authorised in writing by the Commissioner.

(2) No other person may institute a prosecution for an offence against this Act unless written consent to the institution of the prosecution is given by —

(a) the Commissioner; or

(b) a person authorised in writing by the Commissioner to give consents under this section.

(3) In proceedings for an offence against this Act, a document giving consent to the institution of a prosecution and purporting to have been signed by the Commissioner, or by an authorised person, is evidence of that consent without proof of the signature.

93. Court of summary jurisdiction to be constituted by magistrate

A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

94. Courts' other powers in criminal proceedings

(1) Where proceedings in the Supreme Court or the District Court are taken against a person for contravening, or being involved in a contravention of, a provision of this Act, the Court, in addition to dealing with the offence charged, may —

(a) grant an injunction under section 99 or 100 against the person in relation to —

(i) the conduct that constitutes, or is alleged to constitute, the contravention; or

(ii) other conduct of that kind;

and

(b) make an order under section 105 in relation to the contravention.

(2) If a person is convicted of an offence against this Act, the court by which the conviction was effected may order the offender to

reimburse the Department for the cost of purchasing or testing any goods to which the conviction relates.

(3) Where a person is, by any conviction or order of a court, adjudged to pay a fine, or costs or other sum of money in respect of an offence against this Act, the court by which the conviction or order was effected or made may —

(a) exercise any power that the court has apart from this section; or

(b) on the application of the Minister or the Commissioner, order that the amount unpaid be recoverable as if it were a judgment debt payable by the defaulter to the Crown under a judgment entered up in the court.

94A. Liability of officers for offence by body corporate

(1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 62(2) of this Act.

(2) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of the *Australian Consumer Law (WA)* listed in Table A.

Table A

s. 157(1) and (2)	s. 159(1) and (2)
s. 161(1), (3) and (4)	s. 163(1) and (2)
s. 164(1)	s. 166(1)
s. 167(1)	s. 169(1)
s. 170(1)	s. 171(1)
s. 173(1)	s. 176(1)

s. 177(1)	s. 178(1)
s. 179(1)	s. 180(1)
s. 181(1) and (2)	s. 182(1) and (2)
s. 183(1)	s. 188(1)
s. 192(1)	s. 193(1)
s. 206(1)	

(3) *The Criminal Code* section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of the *Australian Consumer Law (WA)* listed in Table B.

Table B

s. 151(1)	s. 152(1)
s. 153(1)	s. 155(1)
s. 156(1)	s. 158(1), (3), (5) and (7)
s. 162(1), (2) and (3)	s. 164(2)
s. 168(1)	s. 172(1) and (2)
s. 174(1) and (2)	s. 175(1)
s. 194(1), (2), (3) and (5)	s. 195(1) and (2)
s. 197(1), (2), (3) and (5)	s. 198(1) and (2)

s. 199(1) and (2)	s. 200(1)
s. 203(1), (2) and (3)	s. 204(1) and (2)

[Section 94A inserted: No. 9 of 2023 s. 68.]

95. Vicarious liability of employers, principals and other persons

[(1)-(3) deleted]

(4) Where the employee or agent of a person (***person A***) is convicted of an offence against this Act, each person (***person B***) who, at the time of the commission of the offence, was person A's employer or principal —

(a) is also guilty of an offence, unless person B proves that person B could not by the exercise of reasonable diligence have prevented the commission of the offence of which person A was convicted; and

(b) is liable to a penalty not exceeding the penalty prescribed for the offence of which person A was convicted.

(5) Where a person has committed an offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3), or would have committed an offence but for the fact that the person could establish a defence under section 96 or 97, and the contravention, or what would have constituted the contravention, was due to the act or default of another person —

(a) that other person —

(i) is also guilty of an offence and liable to the same penalty as is provided for the offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3); and

(ii) may be charged and convicted of the offence, whether or not proceedings are taken against the first-mentioned person for the offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3);

and

(b) the first-mentioned person is a competent and compellable witness in any proceedings taken against that other person in respect of the offence.

[Section 95 amended: No. 9 of 2023 s. 69.]

96. Defence: reasonable mistake of fact

(1) In a prosecution under this Part for an offence against this Act, it is a defence if the accused establishes that the contravention in respect of which the proceeding was instituted was due to reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.

(2) However, subsection (1) does not apply in relation to information relied upon by the accused that was supplied to the accused by another person who was, at the time when the contravention occurred —

(a) an employee or agent of the accused; or

(b) if the accused is a body corporate, a director, employee or agent of the accused.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the accused is not entitled to rely on that defence unless —

(a) the court gives leave; or

(b) the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a notice in

writing giving whatever information the accused then had that would identify or assist in identifying the other person.

97. Defences: accident, act or default of another etc.

(1) In a prosecution under this Part for an offence against this Act, it is a defence if the accused establishes that —

(a) the contravention in respect of which the proceeding was instituted was due to —

(i) the act or default of another person; or

(ii) an accident; or

(iii) some other cause beyond the accused's control;

and

(b) the accused took reasonable precautions and could not by the exercise of due diligence have prevented the commission of the offence.

(2) However, subsection (1) does not apply in relation to the act or default of another person who was, at the time when the contravention occurred —

(a) an employee or agent of the accused; or

(b) if the accused is a body corporate, a director, employee or agent of the accused.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to the act or default of another person, the accused is not entitled to rely on that defence unless —

(a) the court gives leave; or

(b) the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a notice in writing giving whatever information the accused then

had that would identify or assist in identifying the other person.

98. Defence: publication of advertisements in ordinary course of business

In a proceeding under this Part in relation to a contravention of this Act committed by the publication of an advertisement, it is a defence if it is established —

(a) that the accused is a person whose business it is to publish or arrange for the publication of advertisements; and

(b) that the accused received the advertisement for publication in the ordinary course of business; and

(c) that the accused did not know and had no reason to suspect that its publication would amount to a contravention of this Act.

Division 3 — Civil proceedings

99. Injunctions to prevent or stop contraventions of Act

(1) The Supreme Court or the District Court, on the application of the Minister, the Commissioner or any other person, may grant an injunction in whatever terms the Court determines to be appropriate where the Court is satisfied that a person —

(a) has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of a provision of this Act; or

(b) is involved in a contravention of a provision of this Act.

(2) The power of the Court to grant an injunction restraining a person (***person A***) from engaging in conduct may be exercised —

(a) whether or not it appears to the Court that person A intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not person A has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if person A engages in conduct of that kind.

100. Injunctions to prevent etc. other contraventions

(1) The Supreme Court or the District Court, on the application of the Commissioner, may grant an injunction in whatever terms the Court determines to be appropriate where the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes, or would constitute, or is involved in, a contravention of —

(a) an interim ban or a permanent ban under the *Australian Consumer Law (WA)* Part 3-3 Division 2; or

(b) a provision of any other legislation administered by the Minister or of an order made under any such legislation, being a provision relevant to the alleged contravention; or

(c) a provision of a prescribed code of practice in force under Part 4 in respect of which the Commissioner has applied to the State Administrative Tribunal under section 47; or

(d) a provision of an order of the State Administrative Tribunal under section 47.

(2) If the Court is satisfied, on the application of the Commissioner, that a person has engaged in conduct constituting, or is involved in, a contravention of a provision of this Act, the Court may grant an injunction requiring that person to take specified action to remedy any adverse consequence of that conduct, including —

(a) an order requiring that person or a person involved in the contravention to disclose, in the way and to the persons specified in the order, such information as is so

specified, being information that the person has possession of or access to; or

(b) an order requiring the person or a person involved in the contravention to publish, at the person's own expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

101. Injunctions, general provisions about

(1) An injunction granted under this Division may be, or include, an injunction restraining a person from carrying on a business of supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business) —

(a) for a specified period; or

(b) except on specified terms and conditions.

(2) The power of the Court to grant an injunction under this Division requiring a person to 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 person if the first-mentioned person refuses or fails to do that act or thing.

102. Interim injunctions

(1) An interim injunction may be granted under this Division pending final determination of the application.

(2) Where the Minister or the Commissioner makes an application to the Court for the grant of an injunction under this Division, the Court must not require the applicant or any other person, as

a condition of granting an interim injunction, to give any undertakings as to damages or costs.

(3) If, in a case to which subsection (2) does not apply, the Court would, but for this subsection, require a person to give an undertaking as to damages or costs, then —

(a) if the Minister gives the undertaking, the Court must accept the undertaking by the Minister; and

(b) the Court must not require a further undertaking from any other person.

103. Final injunction may be granted if parties consent

A final injunction may, by consent of the parties, be granted under this Division without proof that proper grounds for the injunction exist.

104. Injunction may be rescinded or varied

An injunction under this Division may be rescinded or varied at any time.

105. Supreme and District Courts' other powers in Part 7 proceedings

(1) Without limiting the generality of section 99 or 100, if, in a proceeding instituted under this Part, or for an offence against 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 conduct of another person that contravened a provision of this Act, the Court may make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention for the purpose of compensating the first-mentioned person wholly or in part for the loss or damage or of preventing or reducing the extent of the loss or damage.

(2) The Court may make an order under this section whether or not an injunction under this Division or any other relief is granted or any other order is made in the proceedings.

(3) Whether or not other proceedings have been instituted under this Act in relation to a contravention, the Court may make orders under this section —

(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.

(4) The orders that may be made under this section include the following —

(a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void from its beginning or at all times on and after such date, before the date on which the order is made, as is specified in the order;

(b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified;

(c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;

(d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund

money or return property to the person who suffered the loss or damage;

(e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;

(f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage;

(g) an order, in relation to an instrument creating or transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that —

(i) varies, or has the effect of varying, the first-mentioned instrument; or

(ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.

(5) The powers conferred on the Supreme Court and the District Court under this section in relation to a contract or arrangement do not affect any powers that any other court may have in relation to the contract or arrangement in proceedings instituted in that other court in respect of the contract or arrangement.

106. Supreme and District Courts' powers to prohibit payments, transfers of property etc.

(1) In this section, a person (the ***first person***) is an associate of another person if —

(a) the first person holds money or other property on behalf of the other person; or

(b) if the other person is a body corporate, the first person is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001* (Commonwealth)) of the other person.

(2) A Court may, on the application of the Minister or the Commissioner, make an order or orders of the kind specified in subsection (4) if —

(a) proceedings of a kind referred to in subsection (3) have been taken against a person, or proceedings of a kind referred to in subsection (3)(d) may be taken against a person; and

(b) the Court is satisfied that it is necessary or desirable to make the order or orders for the purpose of preserving money or other property held by, or on behalf of, the person if the person is liable or may become liable under this Act —

(i) to pay moneys by way of a fine, damages, compensation, refund or otherwise; or

(ii) to transfer, sell or return other property;

and

(c) the Court is satisfied that the making of the order or orders will not unduly prejudice the rights and interests of any other person.

(3) For the purposes of subsection (2)(a), the kinds of proceedings taken against the person are as follows —

(a) proceedings in the Supreme Court or the District Court against the person for an offence against this Act;

(b) an application under section 99 or 100 for an injunction against the person in relation to a contravention of a provision of this Act;

(c) an action under the *Australian Consumer Law (WA)* section 236(1) against the person in relation to a contravention of a provision of this Act;

(d) an application for an order under section 105 against a person in relation to a contravention of a provision of this Act.

(4) The Court may make the following orders under subsection (2) in relation to money or other property held by, or on behalf of, a person (the ***respondent***) —

(a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the respondent, or to an associate of the respondent, from making a payment, in total or partial discharge of the debt —

(i) to the respondent; or

(ii) to another person at the direction or request of the respondent;

(b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the respondent, or on behalf of an associate of the respondent —

(i) from paying all or any of the money to the respondent, or to another person at the direction or request of the respondent; or

(ii) from transferring the other property to the respondent, or to another person at the direction

or request of the respondent, or otherwise parting with possession of that property;

(c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the respondent, or of an associate of the respondent, to a place outside the State;

(d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the respondent, or of an associate of the respondent, to a place outside the State;

(e) if the respondent is a natural person, an order appointing a receiver or trustee of the property, or of part of the property, of the respondent with such powers as are specified in the order.

(5) If the Court makes an order under this section, the order operates —

(a) for a period specified in the order (which must not be longer than 30 days if the application for the order was made in the absence of the person against whom the order is sought); or

(b) if proceedings in relation to which the order is made are concluded before the end of that period, until the conclusion of those proceedings.

(6) This section —

(a) has effect subject to the *Bankruptcy Act 1966* (Commonwealth); and

(b) does not affect any other powers of the Supreme Court or the District Court.

107. Contravening s. 106 order, offence

A person who contravenes or fails to comply with an order by the Supreme Court or the District Court under section 106 that is applicable to the person is guilty of a crime.

Penalty:

(a) in the case of a body corporate, a fine of $1 100 000;

(b) in the case of a person other than a body corporate, a fine of $220 000.

Summary conviction penalty: a fine of $36 000.

[Section 107 amended: No. 11 of 2013 s. 14.]

108. Findings of fact or admissions in certain proceedings to be evidence in others

(1) In an action against a person under the *Australian Consumer Law (WA)* section 236(1) —

(a) a finding of a fact by a court, or an admission of a fact by the person, in proceedings to which subsection (3) applies is prima facie evidence of that fact; and

(b) the finding or admission may be proved by production of a document under the seal of the court from which the finding or admission appears.

(2) In proceedings for an order against a person under section 105(3) or the *Australian Consumer Law (WA)* section 237(1), 238(1) or 239(1) —

(a) a finding of a fact by a court, or an admission of a fact by the person, in proceedings to which subsection (3) applies is prima facie evidence of that fact; and

(b) the finding or admission may be proved by production of a document under the seal of the court from which the finding or admission appears.

(3) This subsection applies to proceedings under section 99 or 100, or the *Australian Consumer Law (WA)* section 228, 232, 246, 247 or 248, or for an offence against this Act, in which the person has been found to have contravened, or to have been involved in a contravention of, a provision of the *Australian Consumer Law (WA)* Chapter 2, 3 or 4.

[Section 108 amended: No. 26 of 2019 s. 8.]

Division 4 — Further provisions relating to proceedings

109. State of mind of person, meaning of in s. 110 and 111

A reference in sections 110 and 111 to the state of mind of a person includes a reference to —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for that intention, opinion, belief or purpose.

110. State of mind and conduct of body corporate, establishing

(1) Where, in a proceeding under this Part or the *Australian Consumer Law (WA)* in respect of conduct that is engaged in by a body corporate and to which this Part or the *Australian Consumer Law (WA)* applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show —

(a) that a director, employee or agent of the body corporate engaged in that conduct within the scope of the person's actual or apparent authority; and

(b) that the director, employee or agent had that state of mind.

(2) Conduct of the kind set out in paragraph (a) or (b) that is engaged in on behalf of a body corporate is to be treated, for the purposes of this Act, as having been engaged in by the body corporate as well —

(a) conduct by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or

(b) conduct by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within

the scope of the actual or apparent authority of the director, employee or agent.

111. State of mind and conduct of principal (not a body corporate), establishing

(1) Where, in a proceeding under this Part or the *Australian Consumer Law (WA)* in respect of conduct that is engaged in by a person (the ***principal***) other than a body corporate and to which this Part or the *Australian Consumer Law (WA)* applies, it is necessary to establish the state of mind of the principal, it is sufficient to show —

(a) that an employee or agent of the principal engaged in that conduct within the scope of the person's actual or apparent authority; and

(b) that the employee or agent had that state of mind.

(2) Conduct of the kind set out in paragraph (a) or (b) that is engaged in on behalf of a person (the ***principal***) other than a body corporate is to be treated, for the purposes of this Act, as having been engaged in by the principal as well —

(a) conduct by an employee or agent of the principal within the scope of the person's actual or apparent authority; or

(b) conduct by any other person, at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the principal, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent.

Part 8 — Miscellaneous

112. Personal information obtained officially, when may be divulged etc.

(1) In this section —

personal information means information concerning the affairs of a person;

regulated person has the meaning given in section 88A.

(2) A person must not, either directly or indirectly, make a record of, or divulge or communicate to any other person, any personal information obtained by him or her by reason of his or her office, position, employment or engagement under or for the purposes of this Act.

Penalty: a fine of $20 000.

(3) Subsection (2) does not prohibit the recording, divulging or communicating of any personal information —

(a) with the consent of the person to whom the information relates, or each of them if there is more than one; or

(b) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information relates; or

(c) for the purposes of performing a function under or in connection with —

(i) this Act; or

(ii) an Act listed in Schedule 2;

or

(da) for the purposes of giving information to a body established under a written law if —

(i) the information concerns the affairs of a regulated person or former regulated person; and

(ii) the information is given in relation to the performance by that body of a function under or in connection with that written law;

or

(d) for the purposes of legal proceedings arising out of the administration of this Act or another written law; or

(e) for the purpose of the investigation of any suspected offence or the conduct of proceedings against any person for any offence; or

(f) by the Commissioner for the purpose of making the public aware of —

(i) investigations or inquiries being conducted into the conduct of a regulated person, former regulated person or purported regulated person, and the results of those inquiries; and

(ii) disciplinary action being contemplated or undertaken in relation to a regulated person, former regulated person or purported regulated person, and the outcome of that action.

(4) Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

[Section 112 amended: No. 58 of 2010 s. 11; No. 23 of 2014 s. 13.]

113. Information obtained officially may be used for certain other purposes and legislation

(1) This section applies to information that is obtained by a person by reason of his or her office, position, employment or engagement under or for the purposes of this Act.

(2) Without limiting section 112(3), the fact that information to which this section applies is obtained in connection with the performance of a particular function under this Act does not

prevent that information from being used or disclosed in connection with the performance of —

(a) any other function under this Act; or

(b) any function under any other written law that is administered through the Department.

114. Protection from liability for wrongdoing

(1) In this section —

(a) a reference to the doing of anything includes a reference to an omission to do anything; and

(b) ***liability*** includes liability for defamation.

(2) A person is not liable for anything that the person has done, in good faith, in the course of the operations of the Department or the administration of this Act.

(3) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (2).

(4) The protection given by this section applies even though the thing done as described in subsection (2) may have been capable of being done whether or not this Act had been enacted.

(5) This section is subject to the *Chattel Securities Act 1987* sections 24 and 25.

115. Protection from liability for publishing official statements

(1) In this section —

liability includes liability for defamation.

(2) This section applies to statements made or issued by a person in the course of the operations of the Department or the administration of this Act.

(3) A person is not liable for publishing, in good faith —

(a) a statement to which this section applies; or

(b) a fair report or summary of a statement to which this section applies.

(4) Nothing in this section limits section 114.

116. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) A regulation may create an offence punishable by a penalty of a fine not exceeding $2 000.

(3) Without limiting subsection (1), regulations made under that subsection may —

(a) prescribe calling hours with respect to unsolicited consumer agreements under the *Australian Consumer Law (WA)* section 73;

(b) provide that the *Australian Consumer Law (WA)* Part 3-2 Division 2 (unsolicited consumer agreements) does not apply, or provisions of that Division that are specified in the regulations do not apply, to or in relation to agreements of a kind specified in the regulations.

(4) Regulations made under subsection (3)(a) may alter the operation of the *Australian Consumer Law (WA)* sections 73(1) and 170(1).

(5) Regulations made under subsection (3)(b) may alter the operation of the *Australian Consumer Law (WA)* Part 3-2 Division 2.

Part 9 — Transitional provisions

117. Regulations for transitional matters

(1) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(2) In subsection (1) —

transitional matter —

(a) means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the *Consumer Affairs Act 1971*, *Door to Door Trading Act 1987* and *Fair Trading Act 1987* to the provisions of this Act; and

(b) includes a saving or application matter.

(3) Regulations made under subsection (1) may provide that specified provisions of a written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specified modifications to or in relation to any matter.

(4) If regulations under subsection (1) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this section comes into operation, the regulations have effect according to their terms.

(5) In subsections (3) and (4) —

specified means specified or described in the regulations.

(6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

(7) Regulations made under subsection (1) in relation to a matter referred to in subsection (3) must be made within such period as is reasonably and practicably necessary to deal with a transitional matter that arises as a result of the enactment of this Act.

118. *Fair Trading (Product Information Standard) Regulation 2005* Part 4 (builders plates for recreational vessels), continuation of

(1) The *Fair Trading (Product Information Standard) Regulations 2005* (other than Parts 2 and 3) continue in force after the commencement of this section as if those regulations were an information standard under the *Australian Consumer Law (WA)* Part 3-4, and may be enforced accordingly.

(2) The regulations continued in force by subsection (1) may be repealed as if they were regulations made under section 116.

119. Orders made before 1 Jan 2011 recalling defective goods etc., effect of

If an order under the *Fair Trading Act 1987* section 54(2) has effect immediately before the commencement of Part 10, that order continues to have effect on and after that commencement as if it were a recall notice issued under the *Australian Consumer Law (WA)* section 122(1).

120. Delegations made before 1 Jan 2011, effect of

(1) If a delegation under the *Consumer Affairs Act 1971* section 23 has effect immediately before the commencement of Part 10, that delegation continues to have effect on and after that commencement as if it had taken place under section 60.

(2) This section does not limit the *Interpretation Act 1984* Part V.

121. *Interpretation Act 1984,* application of to expiring Acts

To avoid doubt, the provisions of the *Interpretation Act 1984* (for example, sections 16(1), 36 and 38) about the repeal of written laws and the substitution of other written laws for those so repealed apply to the *Consumer Affairs Act 1971, Door to Door Trading Act 1987* and *Fair Trading Act 1987* as if, on the commencement of Part 10, those Acts were repealed and re-enacted by this Act.

[Part 10 omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1 — Acts that override the Australian *Consumer Law (WA)* Part 3-3

[s. 15]

[Heading inserted: No. 11 of 2013 s. 15.]

The following enactments are specified for the purpose of section 15(1)(a) —

Biosecurity and Agriculture Management Act 2007

Dangerous Goods Safety Act 2004

Firearms Act 1973

Food Act 2008

Health (Miscellaneous Provisions) Act 1911

Medicines and Poisons Act 2014

Mines Safety and Inspection Act 1994

Motor Vehicle Dealers Act 1973

Radiation Safety Act 1975

Road Traffic Act 1974

Road Traffic (Administration) Act 2008.

Road Traffic (Authorisation to Drive) Act 2008.

Road Traffic (Vehicles) Act 2012.

Trade Measurement Act 2006

Veterinary Chemical Control and Animal Feeding Stuffs Act 1976

Work Health and Safety Act 2020

[Schedule 1 amended: No. 24 of 2007 s. 23, 29, 61, 64, 75 and 86 (as amended: No. 58 of 2010 s. 192(1)-(6) and (8)); No. 8 of 2012 s. 103; No. 13 of 2014 s. 185; No. 19 of 2016 s. 138; No. 50 of 2016 s. 22; No. 36 of 2020 s. 354.]

Schedule 2 — Registration Acts

[s. 88A]

[Heading inserted: No. 58 of 2010 s. 12.]

The following Acts are specified for the purposes of section 88A —

Charitable Collections Act 1946

Debt Collectors Licensing Act 1964

Employment Agents Act 1976

Land Valuers Licensing Act 1978

Motor Vehicle Dealers Act 1973

Motor Vehicle Repairers Act 2003

Real Estate and Business Agents Act 1978

Settlement Agents Act 1981

Short-Term Rental Accommodation Act 2024

[Schedule 2 inserted: No. 58 of 2010 s. 12; amended: No. 11 of 2013 s. 16; No. 21 of 2014 s. 8; No. 25 of 2019 s. 29; No. 12 of 2024 s. 55.]

Notes

This is a compilation of the *Fair Trading Act 2010* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Fair Trading Act 2010	57 of 2010	8 Dec 2010	s. 1 and 2: 8 Dec 2010 (see s. 2(a)); Act other than s. 1 and 2: 1 Jan 2011 (see s. 2(b) and *Gazette* 24 Dec 2010 p. 6805)
Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007 s. 23, 29, 61, 64 75 and 86	24 of 2007 (as amended by No. 58 of 2010 s. 192(2)-(6) and (8))	12 Oct 2007	1 May 2013 (see s. 2(2) and *Gazette* 5 Feb 2013 p. 823)
Acts Amendment (Fair Trading) Act 2010 Pt. 2	58 of 2010	8 Dec 2010	1 Jul 2011 (see s. 2(c) and *Gazette* 7 Jun 2011 p. 2057)
Reprint 1: The *Fair Trading Act 2010* as at 3 Feb 2012 (includes amendments listed above except those in the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*)			
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 21	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Fair Trading Amendment Act 2013	11 of 2013	4 Oct 2013	s. 1 and 2: 4 Oct 2013 (see s. 2(a)); Act other than s. 1 and 2: 30 Nov 2013 (see s. 2(b) and *Gazette* 29 Nov 2013 p. 5455)
Medicines and Poisons Act 2014 s. 185	13 of 2014	2 Jul 2014	30 Jan 2017 (see s. 2(b) and *Gazette* 17 Jan 2017 p. 403)
Travel Agents Amendment and Expiry Act 2014 s. 8	21 of 2014	29 Aug 2014	25 Jan 2017 (see s. 2(c) and *Gazette* 24 Jan 2017 p. 741)
Consumer Protection Legislation Amendment Act 2014 Pt. 4	23 of 2014	9 Oct 2014	19 Nov 2014 (see s. 2(b) and *Gazette* 18 Nov 2014 p. 4315)

Short title	Number and year	Assent	Commencement
Public Health (Consequential Provisions) Act 2016 Pt. 3 Div. 12	19 of 2016	25 Jul 2016	24 Jan 2017 (see s. 2(1)(c) and *Gazette* 10 Jan 2017 p. 165)
Statutes (Repeals) Act 2016 Pt. 4 Div. 2	50 of 2016	28 Nov 2016	29 Nov 2016 (see s. 2(b))
Reprint 2: The *Fair Trading Act 2010* as at 22 Jun 2018 (includes amendments listed above)			
Consumer Protection Legislation Amendment Act 2019 Pt. 5	25 of 2019	24 Oct 2019	1 Jan 2020 (see s. 2(b) and *Gazette* 24 Dec 2019 p. 4415)
Fair Trading Amendment Act 2019	26 of 2019	24 Oct 2019	25 Oct 2019 (see s. 2(b))
Work Health and Safety Act 2020 Pt. 15 Div. 4 Subdiv. 3	36 of 2020	10 Nov 2020	31 Mar 2022 (see s. 2(1)(c) and SL 2022/18 cl. 2)
Legal Profession Uniform Law Application Act 2022 s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Fair Trading Amendment Act 2022	34 of 2022	28 Oct 2022	s. 1 and 2: 28 Oct 2022 (see s. 2(a)); Act other than s. 1 and 2: 29 Oct 2022 (see s. 2(b))
Directors' Liability Reform Act 2023 Pt. 3 Div. 26	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))
Short-Term Rental Accommodation Act 2024 Pt. 8	12 of 2024	22 Apr 2024	1 Jul 2024 (see s. 2(b) and SL 2024/88 cl. 2(a)))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007 s. 83	24 of 2007 (as amended by No. 58 of 2010 s. 192(7))	12 Oct 2007	To be proclaimed (see s. 2(2))
Public Health (Consequential Provisions) Act 2016 Pt. 5 Div. 7	19 of 2016	25 Jul 2016	To be proclaimed (see s. 2(1)(c))
Firearms Act 2024 Pt. 17 Div. 3 Subdiv. 10	23 of 2024	27 Jun 2024	31 Mar 2025 (see s. 2(d) and SL 2024/289 cl. 2)

Other notes

[1] The provisions in this Act amending these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

[2] For the Australian Consumer Law (WA) text see: *Australian Consumer Law (WA)*.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
access information	75(1)
acquire	6
amend	17(1)
amending law	17(1)
amending provision	19C(1)
application law	17(1)
applied regulation	15(2A)
assistant	67(1)
Australian Consumer Law	17(1)
Australian Consumer Law text	17(1)
Australian Consumer Law (WA)	6, 17(1)
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Commissioner	6
consumer	6, 7(1)
consumer affairs authority	62(1)
Department	6
disallowance period	19B(1)
disallowance resolution	19B(1)
disposal	6
document	6
executive officer	55(1)
first person	106(1)
goods	6
instrument	17(1)
interest	6
Intergovernmental Agreement	17(1)
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jurisdiction	17(1)
law	17(1)
liability	114(1), 115(1)
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motor vehicle	63
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participating jurisdiction ..... 17(1), 27
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personal information ..... 112(1)
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President ..... 83(5)
principal ..... 111(1) and (2)
provision 6
publish ..... 62(1)
registration Act 88A
regulated activity 88A
regulated person ..... 88A, 112(1)
regulator 22
renewal day ..... 38(2)
respondent ..... 106(4)
re-supply 6
services ..... 6, 8(1)
specified ..... 117(5)
specified person ..... 75(1)
State ..... 17(1)
supplier 6
supply 6
Territory ..... 17(1)
this jurisdiction ..... 17(1)
trade or commerce 6
transitional matter ..... 117(2)
variation day ..... 38(2)

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