Western Australia

Fair Trading Amendment Act 2013

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Western Australia

Fair Trading Amendment Act 2013

No. 11 of 2013

An Act to amend the *Fair Trading Act 2010*.

[*Assented to 4 October 2013*]

The Parliament of Western Australia enacts as follows:

##### 1. Short title

This is the *Fair Trading Amendment Act 2013*.

##### 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. Act amended

This Act amends the *Fair Trading Act 2010*.

##### 4. Section 15 amended

(1) In section 15(1) delete “this Act or a regulation made under this Act” and insert:

the *Australian Consumer Law (WA)* Part 3‑3 or an applied regulation

(2) After section 15(1) insert:

(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.

##### 5. Section 19 amended

(1) In section 19(1)(a) delete “the commencement of this section” and insert:

1 January 2013

(2) In section 19(3) delete “20,”.

##### 6. Section 20 deleted

Delete section 20.

##### 7. Section 32 replaced

Delete section 32 and insert:

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.

##### 8. Section 36 amended

In section 36(1) delete “the commencement of section 19,” and insert:

1 January 2013,

##### 9. Section 48 amended

(1) Delete section 48(1)(b)(ii) and insert:

(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) In section 48(2) and (3) delete “take or defend” and insert:

take, defend or assume the conduct or defence of

Note: The heading to amended section 48 is to read:

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

##### 10. Section 49 amended

In section 49(1) delete “instituted or defended by the Commissioner” and insert:

the Commissioner institutes, defends or assumes the conduct or defence of

Note: The heading to amended section 49 is to read:

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

##### 11. Section 58 amended

(1) In section 58(1)(a)(ii) and (b) delete “institute or defend” and insert:

institute, defend or assume the conduct or defence of

(2) In section 58(2)(a) after “against the consumer,” insert:

or assume the conduct or defence of proceedings already commenced by or against the consumer,

(3) In section 58(2)(b) delete “business.” and insert:

business, or assume the conduct or defence of proceedings already commenced by or against the business.

(4) In section 58(3) and (4)(a) delete “institute or defend” and insert:

institute, defend or assume the conduct or defence of

(5) In section 58(4)(b) delete “instituting or defending” and insert:

instituting, defending or assuming the conduct or defence of

Note: The heading to amended section 58 is to read:

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

##### 12. Section 59 amended

In section 59(1) delete “instituted or defended by the Commissioner” and insert:

the Commissioner institutes, defends or assumes the conduct or defence of

Note: The heading to amended section 59 is to read:

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

##### 13. Section 90 amended

In section 90 delete “Division” and insert:

Part

##### 14. Section 107 amended

In section 107:

(a) delete “commits an offence”;

(b) delete “person.” and insert:

person is guilty of a crime.

(c) after the Penalty insert:

Summary conviction penalty: a fine of $36 000.

##### 15. Schedule 1 heading replaced

Delete the heading to Schedule 1 and insert:

Schedule 1 — Acts that override the *Australian Consumer Law (WA)* Part 3‑3

##### 16. Schedule 2 amended

In Schedule 2 insert in alphabetical order:

*Debt Collectors Licensing Act 1964*

*Employment Agents Act 1976*

*Travel Agents Act 1985*

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