

Western Australia

## **Fair Trading Amendment Act 2013**

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As at 04 Oct 2013

No. 11 of 2013

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## Fair Trading Amendment Act 2013

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Western Australia

## **Fair Trading Amendment Act 2013**

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**No. 11 of 2013**

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

*[Assented to 4 October 2013]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**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).

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(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

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- (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**

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**16. Schedule 2 amended**

In Schedule 2 insert in alphabetical order:

*Debt Collectors Licensing Act 1964*

*Employment Agents Act 1976*

*Travel Agents Act 1985*