

## Fair Trading Amendment Bill 2013

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Western Australia

LEGISLATIVE COUNCIL

## **Fair Trading Amendment Bill 2013**

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

1   **1.     Short title**

2           This is the *Fair Trading Amendment Act 2013*.

3   **2.     Commencement**

4           This Act comes into operation as follows —

- 5           (a) sections 1 and 2 — on the day on which this Act  
6                receives the Royal Assent;
- 7           (b) the rest of the Act — on a day fixed by proclamation,  
8                and different days may be fixed for different provisions.

9   **3.     Act amended**

10          This Act amends the *Fair Trading Act 2010*.

11   **4.     Section 15 amended**

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

14

15               the *Australian Consumer Law (WA)* Part 3-3 or an applied  
16               regulation

17

18          (2) After section 15(1) insert:

19

20          (2A) In subsection (1) —

21               ***applied regulation*** means a regulation that —

- 22               (a) is referred to in section 19(1)(b); and  
23               (b) is applied by section 19(2)(a); and  
24               (c) has effect for the purposes of the *Australian*  
25                *Consumer Law (WA)* Part 3-3.

26

1 **5. Section 19 amended**

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

4  
5 1 January 2013  
6

7 (2) In section 19(3) delete “20,”.

8 **6. Section 20 deleted**

9 Delete section 20.

10 **7. Section 32 replaced**

11 Delete section 32 and insert:

12  
13 **32. Offences against ACL (WA) are crimes**

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

- 18 (a) has aided, abetted, counselled or procured the  
19 commission of the offence; or  
20 (b) has induced, whether by threats or promises or  
21 otherwise, the commission of the offence; or  
22 (c) has been in any way, directly or indirectly,  
23 knowingly concerned in, or party to, the  
24 commission of the offence; or  
25 (d) has conspired with others to effect the  
26 commission of the offence; or  
27 (e) has attempted to commit the offence, or to do  
28 any act of a kind referred to in paragraph (a),  
29 (b), (c) or (d).

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- 1 (2) A person who —  
2 (a) commits an offence against the *Australian*  
3 *Consumer Law (WA)*; or  
4 (b) is involved in the commission of an offence  
5 against the *Australian Consumer Law (WA)*,  
6 is guilty of a crime.  
7 Penalty: the penalty set out in the *Australian Consumer*  
8 *Law (WA)*.  
9 Summary conviction penalty: the lesser of a fine of  
10 \$36 000 or the maximum penalty provided by the  
11 *Australian Consumer Law (WA)* for the offence.  
12

13 **8. Section 36 amended**

14 In section 36(1) delete “the commencement of section 19,” and  
15 insert:  
16

17 1 January 2013,  
18

19 **9. Section 48 amended**

- 20 (1) Delete section 48(1)(b)(ii) and insert:  
21  
22 (ii) that it is in the public interest that —  
23 (I) the Commissioner take or, as  
24 the case requires, defend those  
25 proceeding on behalf of the  
26 complainant; or  
27 (II) if proceedings are already  
28 being taken or defended by the  
29 complainant with respect to the  
30 matter — the Commissioner  
31 assume the conduct or defence

1 of those proceedings on behalf  
2 of the complainant.  
3

4 (2) In section 48(2) and (3) delete “take or defend” and insert:  
5

6 take, defend or assume the conduct or defence of  
7

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

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

12 **10. Section 49 amended**

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

15  
16 the Commissioner institutes, defends or assumes the conduct or  
17 defence of  
18

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

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

22 **11. Section 58 amended**

23 (1) In section 58(1)(a)(ii) and (b) delete “institute or defend” and  
24 insert:  
25

26 institute, defend or assume the conduct or defence of  
27

**s. 12**

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- 1       (2) In section 58(2)(a) after “against the consumer,” insert:  
2
- 3               or assume the conduct or defence of proceedings already  
4               commenced by or against the consumer,  
5
- 6       (3) In section 58(2)(b) delete “business.” and insert:  
7
- 8               business, or assume the conduct or defence of proceedings  
9               already commenced by or against the business.  
10
- 11       (4) In section 58(3) and (4)(a) delete “institute or defend” and  
12       insert:  
13
- 14               institute, defend or assume the conduct or defence of  
15
- 16       (5) In section 58(4)(b) delete “instituting or defending” and insert:  
17
- 18               instituting, defending or assuming the conduct or defence of  
19
- 20       Note: The heading to amended section 58 is to read:  
21                        **Instituting, defending or assuming conduct or defence of legal**  
22                        **proceedings on behalf of consumers or businesses**
- 23       **12. Section 59 amended**
- 24               In section 59(1) delete “instituted or defended by the  
25               Commissioner” and insert:  
26
- 27               the Commissioner institutes, defends or assumes the conduct or  
28               defence of  
29



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

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

4 **13. Section 90 amended**

5 In section 90 delete “Division” and insert:

6

7 Part

8

9 **14. Section 107 amended**

10 In section 107:

11 (a) delete “commits an offence”;

12 (b) delete “person.” and insert:

13

14 person is guilty of a crime.

15

16 (c) after the Penalty insert:

17

18 Summary conviction penalty: a fine of \$36 000.

19

20 **15. Schedule 1 heading replaced**

21 Delete the heading to Schedule 1 and insert:

22

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

25

1   **16.     Schedule 2 amended**

2           In Schedule 2 insert in alphabetical order:

3

4           *Debt Collectors Licensing Act 1964*

5           *Employment Agents Act 1976*

6           *Travel Agents Act 1985*

7

8

