

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).

s. 8

- 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 proceedings 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

- 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

