

Queensland



FAIR TRADING AMENDMENT ACT 1994

Act No. 36 of 1994

Queensland



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MINOR AMENDMENTS

Queensland



Fair Trading Amendment Act 1994

Act No. 36 of 1994

*An Act to amend the *Fair Trading Act 1989**

[Assented to 12 August 1994]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Fair Trading Amendment Act 1994*.

Act amended

2. This Act amends the *Fair Trading Act 1989*.

Amendment of s 5 (Interpretation)

- 3.(1) Section 5(1)—

insert—

- ‘ **“code of practice”** means a code of practice prescribed by regulation under section 88A;
- “consumer”** has the meaning given by section 6;
- “Court”** in sections 98, 100 and 102 has the meaning given by section 103;
- “interest”** in land includes a right to occupy the land, or a building or part of a building on the land, conferred by shares, or under a contract to purchase shares, in a corporation that owns the land or building;¹.

- (2) Section 5(1) (definition **“inspector”**, paragraphs (d) and (e))—

omit, insert—

- ‘(d) an inspector as defined by section 3(1) of the *Trade Measurement Administration Act 1990*; or’.

Replacement of s 6 (Meaning of consumer)

4. Section 6—

omit, insert—

¹ See also definition of **“interest”** in section 36 of the *Acts Interpretation Act 1954*.

‘Meaning of “consumer”

‘6.(1) In this Act—

“consumer” means a person who, in a particular transaction, whether a separate contract or separate transaction within a contract, acquires goods or services or an interest in land as a consumer.

‘(2) A person acquires goods or services or an interest in land as a consumer under subsection (1) if—

(a) the person—

(i) is an individual; and

(ii) acquires the goods, services or interest otherwise than for a business carried on by the person, whether as an individual or a member of a business partnership; or

(b) the price of the goods, services or interest is not more than \$40 000.

‘(3) If a person acquires goods for resupply by way of sale, exchange, lease, hire or hire-purchase, the person does not acquire the goods as a consumer.

‘(4) For the purposes of subsection (2)(b), if the price of goods or services or an interest in land cannot be decided by reference to a cash price specified in the contract concerned, the price is taken to be the reasonable cash price having regard to the circumstances of the case.

‘(5) If it is claimed in a proceeding or about an issue under this Act that a person is a consumer of particular goods or services or an interest in land, it must be presumed unless the contrary is proved that the person is a consumer of the goods, services or interest.’.

Amendment of s 28 (Meetings of the Committee)

5.(1) Section 28(3)—

omit, insert—

‘(3) A quorum of the Committee is a majority of its members.

‘(3A) Business may be conducted at a meeting of the Committee only if a quorum is present.’.

(2) Section 28—

insert—

‘(6) The Committee may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another type of communication.

‘(7) A member who takes part in a meeting under subsection (6) is taken to be present at the meeting.’.

Amendment of s 40 (False or misleading representations)

6. Section 40(a) and (b)—

omit, insert—

- ‘(a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
- (b) falsely represent that services are of a particular standard, quality, value or grade;’.

Insertion of new s 40A

7. After section 40—

insert—

‘False representations and other misleading or offensive conduct in relation to land (TPA s 53A)

‘**40A.(1)** A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion in any way of the sale or grant of an interest in land—

- (a) represent that the person has a sponsorship, approval or affiliation the person does not have; or
- (b) make a false or misleading representation about—
 - (i) the nature of the interest in land; or
 - (ii) the price payable for the land; or

- (iii) the location of the land; or
 - (iv) the characteristics of the land; or
 - (v) the use to which the land is capable of being put or may lawfully be put; or
 - (vi) the existence or availability of facilities associated with the land; or
- (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered; or
- (d) in Queensland do anything to cause a representation mentioned in paragraph (a) or (b), or an offer mentioned in paragraph (c), to be made outside Queensland.

‘(2) A person must not use physical force, undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.

‘(3) This section does not imply that other provisions of this Act do not apply to the supply or acquisition, or the possible supply or acquisition, of interests in land.’.

Amendment of s 77 (Use as warranties of deficient documents prohibited)

8. Section 77(1), ‘in respect of every major component of the goods.’

omit, insert—

‘to—

- (c) every major component of the goods; and
- (d) if installation is arranged in connection with the supply of the goods—the installation.’.

Replacement of heading to Pt 4 (Information and safety provisions)

9. Part 4, heading—

omit, insert—

‘PART 4—INFORMATION, SAFETY AND CODES OF PRACTICE’.

Amendment of s 82 (Compliance with information standard)

10. Section 82(1)—

omit, insert—

‘(1) A person must not, in trade or commerce, supply goods or services for which there is an information standard prescribed by regulation unless the person complies with the prescribed information standard.

Maximum penalty—400 penalty units’.

Insertion of new s 85A

11. After section 85—

insert—

‘Interim orders

‘**85A.(1)** The Minister may make an interim order under section 85(1).

‘(2) Section 85(2) to (4A) does not apply to an interim order.

‘(3) The Minister may make an interim order only if—

- (a) the Committee, after a reference is made to it under section 32, recommends to the Minister or Commissioner that an order under section 85(1) be made about the goods or services concerned; or
- (b) the supply of the goods or services concerned is prohibited or restricted on a permanent or interim basis under a law of the Commonwealth, another State or a Territory corresponding to this Division.

‘(4) To give effect to an interim order, the Minister may—

- (a) if the order relates to goods or services supplied by a particular supplier—give written notice of the interim order to the supplier; or
- (b) in any case—publish the interim order in the Gazette.

‘(5) An interim order stops having effect at the end of 42 days.

‘(6) An interim order may be renewed on the recommendation of the Committee.

‘(7) An interim order may only be renewed once.

‘(8) Sections 43 to 45 of the *Statutory Instruments Act 1992* apply to an interim order published in the Gazette as if it were subordinate legislation.²’.

Insertion of new Pt 4, Div 5

12. After section 88—

insert—

‘Division 5—Codes of practice

‘Codes of practice

‘**88A.** A regulation may prescribe a code of practice for fair dealing—

- (a) between a particular type of supplier and consumer; or
- (b) by a particular type of person in relation to consumers.’.

Amendment of s 92 (Offences)

13. Section 92(1), ‘section 38 or 39’—

omit, insert—

‘section 38 or 39 or a code of practice’.

Amendment of s 98 (Injunctions)

14.(1) Section 98(2)(a), after ‘Act’—

insert—

‘or a code of practice’.

² This means that the interim order must be tabled in the Legislative Assembly and may be disallowed.

(2) Section 98(2)(b) to (f), ‘such a provision’—

omit, insert—

‘a provision of this Act or a code of practice’.

(3) Section 98(3)(b), after ‘39’—

insert—

‘or a code of practice’.

(4) Section 98(4), after ‘this Act’—

insert—

‘or a code of practice’.

Amendment of s 99 (Actions for damages)

15. Section 99(1), ‘of this Act’—

omit, insert—

‘or of an injunction granted under section 98’.

Amendment of s 100 (Compensation and other remedial orders)

16. Section 100(6), after ‘39’—

insert—

‘or a code of practice’.

Insertion of new s 103A

17. After section 103—

insert—

‘Examination costs

‘103A.(1) In this section—

“**examination**” includes test and analysis;

“**supplies**” includes—

(a) offer to supply; and

- (b) in relation to the supply of goods—expose, exhibit or possess for supply.

‘(2) The Commissioner may recover from a person who supplies goods or services the Commissioner’s reasonable costs of an examination of the goods or services if the examination—

- (a) assists in establishing that the goods or services do not comply with an information or safety standard applying to their supply; or
- (b) results in an order being made under section 85 about the goods or services.

‘(3) Also, the Commissioner may recover from a person who gives to an inspector false or misleading information, records or a copy of records in contravention of this Act the Commissioner’s reasonable costs of an examination that assists in establishing the contravention had happened.

‘(4) Costs recoverable under this section may be recovered—

- (a) as a debt payable to the Commissioner; or
- (b) in a proceeding mentioned in subsection (6).

‘(5) Before starting a proceeding to recover costs from a person under this section, the Commissioner must give the person the Commissioner’s signed certificate—

- (a) outlining the examination; and
- (b) stating the amount of the costs of the examination.

‘(6) On application by the Commissioner, a court that finds a person guilty of an offence against this Act may order the person to pay the Commissioner the cost of an examination that assisted in establishing that the offence had happened.’.

Insertion of new s 109A

18. After section 109—

insert—

‘Insurance contracts—limitation on effect of information disclosure

‘109A.(1) This section applies to an insurance contract about—

- (a) the recall of goods the person insured under the contract (the “**insured**”) has supplied or may supply; and
- (b) the liability of the insured for possible defects in goods the insured has supplied or may supply.

‘(2) Despite the terms of the insurance contract, the liability of the insurer under the contract is not affected merely because the insured gives information about the supply or possible supply of goods to the Minister, the Committee or an inspector.’.

Amendment of s 112 (Evidence)

19. Section 112—

insert—

‘(3) In a proceeding to recover costs under section 103A, a document that purports to be—

- (a) a certificate mentioned in section 103A(5); and
- (b) endorsed with the Commissioner’s signed statement that the certificate was given to a person on a specified date;

is evidence of the matters stated in the certificate and the endorsement.’.

Repeal of Land (Fair Dealings) Act

20. The *Land (Fair Dealings) Act 1988* is repealed.

SCHEDULE**MINOR AMENDMENTS**

section 2

1. Section 2(2), 2nd sentence—*omit.***2. Section 5, definition “services”, after ‘includes any rights’—***insert—*

‘(including rights about, and interests in, real or personal property)’.

3. Section 5(2), as heading—*insert—*

‘Meaning of “engaging in conduct” and “conduct” ’.

4. Section 5(3), as heading—*insert—*

‘Effect of provision dealing with enforceability of a contract’.

5. Section 5(4), as heading—*insert—*

‘Further meaning of acquisition, supply or resupply of goods or services’.

SCHEDULE (continued)

6. Section 5(5), as heading—*insert—***‘Meaning of “loss or damage” and “amount of loss or damage” ’.****7. Section 5(6), as heading—***insert—***‘Meaning of “making of a representation” ’.****8. Section 5(9), as heading—***insert—***‘Meaning of persons involved in contravention’.****9. Section 5(11), as heading—***insert—***‘Meaning of related corporation’.****10. Section 5(2) to (11)—***renumber* as sections 5A to 5G respectively.**11. Section 9(3), ‘by Gazette notice’—***omit.***12. Section 9(4), from ‘but’ to ‘reappointment’—***omit.*

SCHEDULE (continued)

13. Section 10(1), ‘by Gazette notice’—

omit.

14. Section 10(2)(c), ‘, by Gazette notice,’—

omit.

15. Section 11(3)—

omit, insert—

‘(3) The deputy chairperson is to act as chairperson during—

- (a) all vacancies in the office of chairperson; or
- (b) all periods when the chairperson is absent from duty or, for another reason, cannot perform the functions of the office.’.

16. Section 12(1), ‘, by Gazette notice,’—

omit.

17. Section 12(3)—

omit, insert—

‘(3) If the appointed member is absent from a meeting of the Council, the deputy may attend and act as the appointed member.

‘(4) However, the deputy cannot act as chairperson or deputy chairperson.’.

18. Section 13(1)(d), ‘by Gazette notice’—

omit.

SCHEDULE (continued)

19. Section 13(3), ‘, by Gazette notice,’—

omit.

20. Section 15—

omit.

21. Section 16—

omit, insert—

‘Fees and allowances for Council members

‘**16.** A Council member is entitled to be paid fees and allowances the Governor in Council may decide.’.

22. Section 22(2)—

omit.

23. Section 24(5), ‘and shall be appointed by the Minister by Gazette notice’—

omit.

24. Section 25(1), from ‘but’ to ‘reappointment’—

omit.

25. Section 29—

omit.

26. Section 30—

omit, insert—

SCHEDULE (continued)

‘Fees and allowances of Committee members

‘**30.** A Committee member is entitled to be paid fees and allowances the Governor in Council may decide.’.

27. Section 36(2)—

omit, insert—

‘**(2)** If the appointed member is absent from a meeting of the Committee, the deputy may attend and act as the appointed member.’.

28. Section 40, at the end—

insert—

‘Maximum penalty—400 penalty units’.

29. Section 41, at the end—

insert—

‘Maximum penalty—400 penalty units’.

30. Section 42, at the end—

insert—

‘Maximum penalty—400 penalty units’.

31. Section 43, at the end—

insert—

‘Maximum penalty—400 penalty units’.

SCHEDULE (continued)

32. Section 44, at the end—*insert—*

‘Maximum penalty—400 penalty units’.

33. Section 45, at the end—*insert—*

‘Maximum penalty—400 penalty units’.

34. Section 46(1), at the end—*insert—*

‘Maximum penalty—400 penalty units’.

35. Section 46(2), at the end—*insert—*

‘Maximum penalty—400 penalty units’.

36. Section 47, at the end—*insert—*

‘Maximum penalty—400 penalty units’.

37. Section 48, at the end—*insert—*

‘Maximum penalty—400 penalty units’.

38. Section 49, at the end—*insert—*

‘Maximum penalty—400 penalty units’.

SCHEDULE (continued)

39. Section 50, at the end—*insert—*

‘Maximum penalty—400 penalty units’.

40. Section 52(1), at the end—*insert—*

‘Maximum penalty—400 penalty units’.

41. Section 52(2), at the end—*insert—*

‘Maximum penalty—400 penalty units’.

42. Section 52(3), at the end—*insert—*

‘Maximum penalty—400 penalty units’.

43. Section 57(1), definition “consumer”—*omit, insert—*‘**“consumer”** means a consumer within the meaning of section 6 who is—

- (a) an individual; and
- (b) acquires goods or services otherwise than for a business carried on by the person, whether as an individual or a member of a business partnership;’.

44. Section 68, penalty—*omit, insert—*

‘Maximum penalty for subsection (7)—100 penalty units.’.

SCHEDULE (continued)

45. Section 77, penalty—*omit, insert—*

‘Maximum penalty for subsection (2)(a) and (b)—100 penalty units.’.

46. Section 78(1), at the end—*insert—*

‘Maximum penalty—100 penalty units’.

47. Section 78(2), penalty—*omit.***48. Section 84(1), at the end—***insert—*

‘Maximum penalty—400 penalty units’.

49. Section 86, at the end—*insert—*

‘Maximum penalty—400 penalty units’.

50. Section 88(1), at the end—*insert—*

‘Maximum penalty—400 penalty units’.

51. Section 91(1), at the end—*insert—*

‘Maximum penalty—100 penalty units’.

SCHEDULE (continued)

52. Section 91(2), penalty—

omit.

53. Section 92(2)—

omit.

54. Section 113—

omit, insert—

‘Regulation making power

‘**113.(1)** The Governor in Council may make regulations for the purposes of this Act.

‘**(2)** A regulation may be made about a matter mentioned in Schedule 1.

‘**(3)** A regulation may provide for an offence punishable by a maximum penalty of 20 penalty units.’.

55. Section 114—

omit.