



# **Fair Trading Act 1989**

**Current as at 21 November 2022**

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## Queensland

# Fair Trading Act 1989

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# Fair Trading Act 1989

**An Act to make provision with respect to certain unfair or undesirable trade practices, to regulate the supply of goods and services, to provide for a commissioner for fair trading and for related purposes**

## Part 1 Preliminary

### 1 Short title and citation

This Act may be cited as the *Fair Trading Act 1989*.

### 3 Objective of this Act

The principal objective of this Act is to improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

### 4 This part does not apply for the Australian Consumer Law (Queensland)

This part (other than sections 1 and 3) does not apply for the interpretation or operation of the Australian Consumer Law (Queensland).

*Example—*

The definitions in section 5 of this Act do not apply for the interpretation of the Australian Consumer Law (Queensland). That law has its own list of definitions in section 2 of that law.

#### **4A Application of Act**

- (1) This Act applies to and in relation to—
  - (a) persons carrying on business within Queensland; or
  - (b) bodies corporate incorporated or registered under the law of Queensland; or
  - (c) persons ordinarily resident in Queensland; or
  - (d) persons otherwise connected with Queensland.
- (2) Subject to subsection (1), this Act extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside Queensland (whether within or outside Australia).

#### **4B Reference to this Act or to a particular provision of the Australian Consumer Law (Queensland)**

- (1) To remove any doubt, a reference in this Act to this Act may be taken to include a reference to the Australian Consumer Law (Queensland).

*Example—*

Section 90 (Power to obtain information) refers to any matter relevant to the operation or enforcement of this Act, which would include any matter relevant to the operation or enforcement of the Australian Consumer Law (Queensland).

- (2) In this Act, a reference to a particular provision of the Australian Consumer Law (Queensland) is a reference to the provision of that number in schedule 2 of the Competition and Consumer Act, applying as a law of Queensland under part 3.

#### **5 Definitions**

In this Act—

***ACL(Q)*** means the Australian Consumer Law (Queensland).

***acquire***, in relation to services, includes accept.

***application law***, for part 3, see section 14(1).

***Australian Consumer Law (Queensland)*** means the Australian Consumer Law (Queensland) as provided for in part 3.

***Australian Consumer Law text*** see section 14(1).

***code of practice*** means a code of practice prescribed by regulation under section 88A.

***commissioner*** means the commissioner for fair trading.

***Competition and Consumer Act*** means the *Competition and Consumer Act 2010* (Cwlth).

***consumer*** has the same meaning as it has in the Australian Consumer Law (Queensland).

***consumer contract*** has the same meaning as it has in the Australian Consumer Law (Queensland).

***District Court*** means the District Court of Queensland.

***embargo notice*** see section 39(1).

***embargo period***, for an embargo notice, means the period stated in the embargo notice under section 39(4)(c) or (d).

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***extended application*** see section 56(1).

***FTA consumer offence provision*** means—

- (a) section 84(1); or
- (b) section 86.

***FTA offence provision*** means—

- (a) an FTA consumer offence provision; or
- (b) section 45; or

- (c) section 47; or
- (d) section 90(4); or
- (e) section 91; or
- (f) section 92(1)(b), (c), (d) or (e); or
- (g) section 92B; or
- (h) section 104; or
- (i) section 105.

**goods** has the same meaning as it has in the Australian Consumer Law (Queensland).

**infringement notice** means an infringement notice issued under section 31(1).

**infringement notice compliance period** see section 36(1).

**infringement notice provision** see section 31(2).

**inspector** means—

- (a) the commissioner; or
- (b) an inspector appointed for the purposes of this Act.

**instrument**, for part 3, see section 14(1).

**Intergovernmental Agreement**, for part 3, see section 14(1).

**involved**, in relation to a contravention, or conduct that constitutes a contravention, of a provision of this Act, has the same meaning as it has in the Australian Consumer Law (Queensland) in relation to a contravention, or conduct that constitutes a contravention, of a provision of that law.

**jurisdiction** see section 14(1).

**law**, for part 3, see section 14(1).

**listed corporation** has the meaning given by the Corporations Act, section 9.

**Magistrates Court** has the meaning given by the *Acts Interpretation Act 1954*, schedule 1.

*Note—*

The Competition and Consumer Act confers jurisdiction on the Federal Magistrates Court for particular matters arising under the Australian Consumer Law applying as a law of the Commonwealth, but that court does not have jurisdiction in relation to matters arising under the Australian Consumer Law (Queensland).

***modifications***, for part 3, see section 14(1).

***month***, for part 3, see section 14(1).

***participating jurisdiction***, for part 3, see section 14(1).

***premises*** has the same meaning as it has in the Australian Consumer Law (Queensland).

***product related service*** has the same meaning as it has in the Australian Consumer Law (Queensland).

***published***, in relation to a statement, includes—

- (a) inserted in a publication; and
- (b) publicly exhibited in any place; and
- (c) contained in a document or other thing capable of providing information that is given or sent to any person or left at the person's address; and
- (d) broadcast by radio or television or otherwise publicly announced by any means; and
- (e) reproduced electronically.

***records*** includes any record of information however compiled, recorded or stored and any books, documents or writings.

***send*** includes deliver.

***services*** has the same meaning as it has in the Australian Consumer Law (Queensland).

***State***, for part 3, see section 14(1).

***supply*** has the same meaning as it has in the Australian Consumer Law (Queensland).

***Supreme Court*** means the Supreme Court of Queensland.

*Territory*, for part 3, see section 14(1).

*the tribunal* means QCAT.

*this jurisdiction*, for part 3, see section 14(1).

*trade or commerce* has the same meaning as it has in the Australian Consumer Law (Queensland).

## **5A Engaging in conduct and related matters**

The Australian Consumer Law (Queensland), section 2(2) applies for the interpretation of this Act in relation to the matters mentioned in it.

## **5C Further meaning of acquisition or supply of services**

In this Act—

- (a) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services; and
- (b) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both.

## **5D Meaning of *loss or damage* and *amount of loss or damage***

In this Act—

- (a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and
- (b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

## **7 Crown bound**

This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities, subject to the following—

- (a) the Crown shall not be liable to a penalty for a contravention of this Act;
- (b) an agent of the Crown who contravenes this Act shall be liable for any penalty prescribed by this Act in relation to such a contravention.

## **Part 2 Commissioner for fair trading**

### **8 Commissioner for fair trading**

- (1) There is to be a commissioner for fair trading.
- (2) Subject to subsection (3), the person who is the chief executive is, without further appointment, also the commissioner for fair trading.
- (3) If the chief executive appoints another person to be the commissioner, that person is the commissioner while the appointment is in force.
- (4) A person may hold the office of commissioner as well as holding an office under the *Public Service Act 2008*.
- (5) Judicial notice must be taken of the commissioner's signature.

### **9 Other officers**

The inspectors and other officers necessary to assist the commissioner are to be appointed under the *Public Service Act 2008*.

## **10 Delegation by commissioner**

The commissioner may delegate the commissioner's powers under this or another Act to a public service officer employed in the department.

## **11 Functions of commissioner**

- (1) The functions of the commissioner are—
- (a) to administer the provisions of this Act and to facilitate its operation; and
  - (b) to promote the interests of consumers and persons negotiating or considering the acquisition of goods or services as consumers and to assist them to a greater awareness in relation to their assessment and use of goods or services; and
  - (c) to collect, examine and disseminate information in respect of matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers; and
  - (d) to receive and consider complaints concerning matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and, if the commissioner is of the opinion that such action is warranted, to investigate the complaints and take such action in respect of the matter as seems proper to the commissioner; and
  - (e) to investigate fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and to take such action in respect of the practices as seems proper to the commissioner; and
  - (f) to advise and assist persons who seek from the commissioner information or guidance on matters



- affecting or likely to affect their interests as consumers or as persons negotiating or considering the acquisition of goods or services as consumers; and
- (g) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services; and
  - (h) to take action to promote and ensure safety in the supply of goods and services; and
  - (i) to administer such provisions of other Acts and discharge such other functions as the Minister may direct the commissioner to administer or discharge.
- (2) Subsection (1) shall not be construed to require the commissioner or any officer of the department to give, or hold himself or herself out as ready or competent to give, to any person advice concerning the rights and liabilities in law of the person concerning any matter, or to aid in the enforcement of the rights of the person.

## **12 Acting inspectors**

The Minister or the commissioner may appoint in writing any person who holds for the time being any office under the Crown in right of the State to act as an inspector for the purposes of this Act.

## **13 Aid by government departments in supplying information**

Except in respect of information which under any Act is not to be divulged, the chief executive of each department shall cooperate and shall cause the officers under the chief executive's control to cooperate with the commissioner and shall render assistance in the provision of information required by the commissioner for the purposes of this Act.

## Part 3                      The Australian Consumer Law

### Division 1                Definitions

#### 14        Definitions for pt 3

(1) In this part, unless the contrary intention appears—

*application law* means—

- (a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications.

*Australian Consumer Law* means (according to the context)—

- (a) the Australian Consumer Law text; or
- (b) the Australian Consumer Law text, applying as a law of a participating jurisdiction, either with or without modifications.

*Australian Consumer Law text* means the text described in section 15.

*instrument* means any document whatever, including the following—

- (a) an Act or an instrument made under an Act;
- (b) a law of this jurisdiction or an instrument made under such a law;
- (c) an award or other industrial determination or order, or an industrial agreement;

- (d) any other order (whether executive, judicial or otherwise);
- (e) a notice, certificate or licence;
- (f) an agreement;
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose;
- (h) an indictment, presentment, summons or writ;
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding.

***Intergovernmental Agreement*** means the Intergovernmental Agreement for the Australian Consumer Law made on 2 July 2009 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

***jurisdiction*** means a State or the Commonwealth.

***law***, in relation to a Territory, means a law of, or in force in, that Territory.

***modifications*** includes additions, omissions and substitutions.

***month*** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

***notification***, for a regulation, see the *Statutory Instruments Act 1992*, section 47.

***participating jurisdiction*** means a jurisdiction that is a party to the Intergovernmental Agreement and applies the Australian Consumer Law as a law of the jurisdiction, either with or without modifications.

***State*** includes a Territory.

***Territory*** means the Australian Capital Territory or the Northern Territory of Australia.

***this jurisdiction*** means Queensland.

- (2) Terms used in this part and also in the Australian Consumer Law (Queensland) have the same meanings in this part as they have in that law.
- (3) For the purposes of this part—
  - (a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and
  - (b) that corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

## **Division 2                      Application of Australian Consumer Law**

### **15            The Australian Consumer Law text**

The Australian Consumer Law text consists of—

- (a) schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth; and
- (b) the regulations under section 139G of that Act.

### **16            Application of Australian Consumer Law**

- (1) The Australian Consumer Law text, as in force from time to time—
  - (a) applies as a law of this jurisdiction; and
  - (b) as so applying may be referred to as the Australian Consumer Law (Queensland); and
  - (c) as so applying is a part of this Act.

- (2) This section has effect subject to sections 17, 18 and 19.

## **17 Future modifications of Australian Consumer Law text**

- (1) A modification made by a Commonwealth law to the Australian Consumer Law text after the commencement of this section does not apply under section 16 if the modification is declared by a regulation under this Act to be excluded from the operation of that section.
- (2) A regulation under subsection (1) has effect only if its making is notified no later than 2 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further regulation under this Act so provides.
- (4) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is registered under the *Legislative Instruments Act 2003* of the Commonwealth.

## **18 Meaning of generic terms in Australian Consumer Law for purposes of this jurisdiction**

In the Australian Consumer Law (Queensland)—

*regulator* means the commissioner for fair trading under this Act.

## **19 Interpretation of Australian Consumer Law**

- (1) The *Acts Interpretation Act 1901* (Cwlth) applies as a law of this jurisdiction to the Australian Consumer Law (Queensland).
- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if—
- (a) the statutory provisions in the Australian Consumer Law (Queensland) were a Commonwealth Act; and

- (b) the regulations in the Australian Consumer Law (Queensland) or instruments under that law were regulations or instruments under a Commonwealth Act.
- (3) The *Acts Interpretation Act 1954* of Queensland does not apply to—
  - (a) the Australian Consumer Law (Queensland); or
  - (b) any instrument under that law.

## **20 Application of Australian Consumer Law**

- (1) The Australian Consumer Law (Queensland) applies to and in relation to—
  - (a) persons carrying on business within this jurisdiction; or
  - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
  - (c) persons ordinarily resident in this jurisdiction; or
  - (d) persons otherwise connected with this jurisdiction.
- (2) Subject to subsection (1), the Australian Consumer Law (Queensland) extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

## **Division 3                      References to Australian Consumer Law**

### **21 References to Australian Consumer Law**

- (1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.
- (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

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## **22 References to Australian Consumer Law of other jurisdictions**

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
- (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.

## **Division 4 Application of Australian Consumer Law to jurisdictions**

### **23 Division does not apply to Commonwealth**

In this division, *participating jurisdiction* or *other jurisdiction* does not include the Commonwealth.

### **24 Application law of this jurisdiction**

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) this jurisdiction and each other jurisdiction, so far as the jurisdiction carries on a business, either directly or by an authority of the jurisdiction concerned.

### **25 Application law of other jurisdictions**

- (1) The application law of each participating jurisdiction other than this jurisdiction binds this jurisdiction, so far as this jurisdiction carries on a business, either directly or by an authority of this jurisdiction.
- (2) If, because of this part, a provision of the law of another participating jurisdiction binds this jurisdiction, this jurisdiction is subject to that provision despite any prerogative right or privilege.

## 26 Activities that are not business

- (1) For the purposes of sections 24 and 25, the following do not amount to carrying on a business—
  - (a) imposing or collecting—
    - (i) taxes; or
    - (ii) levies; or
    - (iii) fees for authorisations;
  - (b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions);
  - (c) a transaction involving—
    - (i) only persons who are all acting for the same jurisdiction (and none of whom is an authority of a State); or
    - (ii) only persons who are all acting for the same authority of a State; or
    - (iii) only a State and 1 or more non-commercial authorities of that State; or
    - (iv) only non-commercial authorities of the same State;
  - (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because—
    - (i) the body chooses to acquire the products; or
    - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 24 and 25.
- (3) In this section—

***acquisition of primary products by a government body under legislation*** includes vesting of ownership of primary products in a government body by legislation.



**authorisation** means a licence, permit, certificate or other authorisation that allows the holder of the authorisation to supply goods or services.

**government body** means a State or an authority of a State.

**primary products** means—

- (a) agricultural or horticultural produce; or
  - (b) crops, whether on or attached to the land or not; or
  - (c) animals (whether dead or alive); or
  - (d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of a State is **non-commercial** if—
- (a) it is constituted by only one person; and
  - (b) it is neither a trading corporation nor a financial corporation.

## **27 Jurisdictions not liable to penalty or prosecution**

- (1) Nothing in the application law of this jurisdiction makes any jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.
- (2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

## **Division 5 Miscellaneous**

### **28 Conferral of functions and powers on certain bodies**

- (1) The authorities and officers of the Commonwealth referred to in the Australian Consumer Law (Queensland) have the

functions and powers conferred or expressed to be conferred on them under the Australian Consumer Law (Queensland).

- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.

## **29 No doubling-up of liabilities**

- (1) If—
- (a) an act or omission is an offence against the Australian Consumer Law (Queensland) and is also an offence against an application law of another participating jurisdiction; and
  - (b) the offender has been punished for the offence under the application law of the other jurisdiction;
- the offender is not liable to be punished for the offence against the Australian Consumer Law (Queensland).
- (2) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the Australian Consumer Law (Queensland) in respect of the same conduct.

## **Part 3A**                      **Provisions supporting application of Australian Consumer Law as a law of Queensland**

### **Division 1**                      **Infringement notices**

#### **30**                      **Purpose and effect of this division**

- (1) The purpose of this division is to provide for the issue of an infringement notice to a person for an alleged contravention of an infringement notice provision as an alternative to proceedings for an order under the Australian Consumer Law (Queensland), section 224.
- (2) This division does not—
  - (a) require an infringement notice to be issued to a person for an alleged contravention of an infringement notice provision; or
  - (b) affect the liability of a person to proceedings under the Australian Consumer Law (Queensland), chapter 4 or chapter 5, part 5-2 in relation to an alleged contravention of an infringement notice provision if—
    - (i) an infringement notice is not issued to the person for the alleged contravention; or
    - (ii) an infringement notice issued to a person for the alleged contravention is withdrawn under section 37; or
  - (c) prevent a court from imposing a higher penalty than the penalty stated in the infringement notice if the person does not comply with the notice.

### 31 Issuing infringement notice

- (1) If the commissioner has reasonable grounds to believe that a person has contravened an infringement notice provision, the commissioner may issue an infringement notice to the person.
- (2) Each of the following is an *infringement notice provision*—
  - (a) any of the following provisions of the Australian Consumer Law (Queensland)—
    - (i) a provision of chapter 2, part 2-2;
    - (ii) a provision of chapter 3, part 3-1 (other than section 32(1), 35(1), 36(1), (2) or (3), 40 or 43);
    - (iii) section 66(2);
    - (iv) a provision of chapter 3, part 3-2, division 2 (other than section 85);
    - (v) a provision of chapter 3, part 3-2, division 3 (other than section 96(2));
    - (vi) section 99B(1), 99C, 99D(1), 99E or 99F(2);
    - (vii) section 100(1) or (3), 101(3) or (4), 102(2) or 103(2);
    - (viii) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1), 132(1), 136(1), (2) or (3) or 137(1) or (2);
    - (ix) section 221(1) or 222(1);
  - (b) an FTA consumer offence provision.
- (3) The commissioner must not issue more than 1 infringement notice to the person for the same alleged contravention of the infringement notice provision.
- (4) The infringement notice does not have any effect if the notice—
  - (a) is issued more than 1 year after the day on which the contravention of the infringement notice provision is alleged to have occurred; or

- (b) relates to more than 1 alleged contravention of an infringement notice provision by the person.

## **32 Matters to be included in infringement notice**

An infringement notice must—

- (a) be identified by a unique number; and
- (b) state the day on which it is issued; and
- (c) state the name and address of the person to whom it is issued; and
- (d) identify the commissioner; and
- (e) state how the commissioner may be contacted; and
- (f) give details of the alleged contravention by the person, including—
  - (i) the date of the alleged contravention; and
  - (ii) the particular infringement notice provision that was allegedly contravened; and
- (g) state the maximum pecuniary penalty that the court could order the person to pay under the Australian Consumer Law (Queensland), section 224 for the alleged contravention; and
- (h) state the penalty that is payable in relation to the alleged contravention; and
- (i) state that the penalty is payable within the infringement notice compliance period for the notice; and
- (j) state that the penalty is payable to the commissioner on behalf of the State; and
- (k) explain how payment of the penalty is to be made; and
- (l) explain the effect of sections 34, 35, 36 and 37.

**33 Amount of penalty**

- (1) The penalty to be stated in an infringement notice that is to be issued to a person, in relation to an alleged contravention of a provision of the Australian Consumer Law (Queensland), must be a penalty equal to the amount worked out using the following table—

<b>Amount of penalty</b>		
<b>Item</b>	<b>If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law (Queensland) ...</b>	<b>the amount is ...</b>
1	a provision of chapter 2, part 2-2	<p>(a) if the person is a listed corporation—600 penalty units; or</p> <p>(b) if the person is a body corporate other than a listed corporation—60 penalty units; or</p> <p>(c) if the person is not a body corporate—12 penalty units.</p>
2	a provision of chapter 3, part 3-1 (other than section 32(1), 35(1), 36(1), (2) or (3), 40, 43 or 47(1))	<p>(a) if the person is a listed corporation—600 penalty units; or</p> <p>(b) if the person is a body corporate other than a listed corporation—60 penalty units; or</p> <p>(c) if the person is not a body corporate—12 penalty units.</p>
3	section 47(1)	<p>(a) if the person is a body corporate—10 penalty units; or</p> <p>(b) if the person is not a body corporate—2 penalty units.</p>

<b>Amount of penalty</b>		
<b>Item</b>	<b>If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law (Queensland) ...</b>	<b>the amount is ...</b>
4	section 66(2)	(a) if the person is a body corporate—55 penalty units; or (b) if the person is not a body corporate—11 penalty units.
5	a provision of chapter 3, part 3-2, division 2 (other than section 85)	(a) if the person is a body corporate—60 penalty units; or (b) if the person is not a body corporate—12 penalty units.
6	a provision of chapter 3, part 3-2, division 3 (other than section 96(2))	(a) if the person is a body corporate—55 penalty units; or (b) if the person is not a body corporate—11 penalty units.
6A	section 99B(1), 99C, 99D(1), 99E or 99F(2)	(a) if the person is a body corporate—55 penalty units; or (b) if the person is not a body corporate—11 penalty units.
7	section 100(1) or (3) or 101(3) or (4)	(a) if the person is a body corporate—20 penalty units; or (b) if the person is not a body corporate—4 penalty units.

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**Amount of penalty**

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<b>Item</b>	<b>If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law (Queensland) ...</b>	<b>the amount is ...</b>
8	section 102(2) or 103(2)	(a) if the person is a body corporate—60 penalty units; or (b) if the person is not a body corporate—12 penalty units.
9	section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5) or 119(1) or (2)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
10	section 125(4)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units.
11	section 127(1) or (2)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.



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**Amount of penalty**

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Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law (Queensland) ...	the amount is ...
12	section 128(2) or (6), 131(1) or 132(1)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units.
13	section 136(1), (2) or (3) or 137(1) or (2)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
14	section 221(1)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units.
15	section 222(1)	(a) if the person is a body corporate—50 penalty units; or (b) if the person is not a body corporate—10 penalty units.

(2) The penalty to be stated in an infringement notice that is to be issued to a person, in relation to an alleged contravention of an FTA consumer offence provision, must be—

- (a) if the person is a listed corporation—600 penalty units;  
or

- (b) if the person is a body corporate other than a listed corporation—60 penalty units; or
  - (c) if the person is not a body corporate—12 penalty units.
- (3) For this section, the value of a penalty unit is the same value it has for the time being under the *Crimes Act 1914* (Cwlth) for a law of the Commonwealth.

### **34 Effect of compliance with infringement notice**

- (1) This section applies if—
- (a) an infringement notice for an alleged contravention of an infringement notice provision is issued to a person; and
  - (b) the person pays the penalty stated in the infringement notice within the infringement notice compliance period and as required by the notice; and
  - (c) the infringement notice is not withdrawn under section 37.
- (2) The person is not, merely because of the payment, regarded as—
- (a) having contravened the infringement notice provision; or
  - (b) having been convicted of an offence constituted by the same conduct that constituted the alleged contravention of the infringement notice provision.
- (3) No proceedings (whether criminal or civil) may be started or continued against the person, by or for the State, in relation to—
- (a) the alleged contravention of the infringement notice provision; or
  - (b) an offence constituted by the same conduct that constituted the alleged contravention.

### 35 Effect of failure to comply with infringement notice

- (1) This section applies if—
  - (a) an infringement notice for an alleged contravention of an infringement notice provision is issued to a person; and
  - (b) the person fails to pay the penalty stated in the infringement notice within the infringement notice compliance period and as required by the notice; and
  - (c) the infringement notice is not withdrawn under section 37.
- (2) The person is liable—
  - (a) to be proceeded against under the Australian Consumer Law (Queensland), chapter 5, part 5-2 in relation to the alleged contravention of the infringement notice provision; or
  - (b) if the contravention also constitutes the commission of an offence provided for in the Australian Consumer Law (Queensland), chapter 4—to be proceeded against for the commission of the offence; or
  - (c) if the contravention also constitutes the commission of an offence against an FTA consumer offence provision—to be proceeded against for the commission of the offence.

### 36 Infringement notice compliance period for infringement notice

- (1) Subject to this section, the *infringement notice compliance period* for an infringement notice is the period of 28 days beginning on the day after the day on which the infringement notice is issued by the commissioner.
- (2) The commissioner may extend, by notice in writing, the infringement notice compliance period for the notice if the commissioner is satisfied that it is appropriate to do so.

- (3) Only 1 extension may be given and the extension must not be for more than 28 days.
- (4) Notice of the extension must be given to the person who was issued the infringement notice.
- (5) A failure to comply with subsection (4) does not affect the validity of the extension.
- (6) If the commissioner extends the infringement notice compliance period for an infringement notice, a reference in this division to the infringement notice compliance period for an infringement notice is taken to be a reference to the infringement notice compliance period as so extended.

### **37 Withdrawal of infringement notice**

- (1) The person to whom an infringement notice has been issued for an alleged contravention of an infringement notice provision may make written representations to the commissioner seeking the withdrawal of the infringement notice.
- (2) Evidence or information that the person, or a representative of the person, gives to the commissioner in the course of making representations under subsection (1) is not admissible in evidence against the person or representative in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).
- (3) The commissioner may, by written notice (the *withdrawal notice*) given to the person to whom an infringement notice was issued, withdraw the infringement notice if the commissioner is satisfied that it is appropriate to do so.
- (4) Subsection (3) applies whether or not the person has made representations seeking the withdrawal.
- (5) The withdrawal notice must state—
  - (a) the name and address of the person; and
  - (b) the day on which the infringement notice was issued to the person; and

- (c) that the infringement notice is withdrawn; and
- (d) that proceedings under the Australian Consumer Law (Queensland), chapter 4 or chapter 5, part 5-2 may be started or continued against the person in relation to—
  - (i) the alleged contravention of the infringement notice provision; or
  - (ii) an offence constituted by the same conduct that constituted the alleged contravention.
- (6) To be effective, the withdrawal notice must be given to the person within the infringement notice compliance period for the infringement notice.
- (7) If the infringement notice is withdrawn after the person has paid the penalty stated in the infringement notice, the commissioner must refund to the person an amount equal to the amount paid.

## Division 2                      Embargo notices

### 38            Definition for div 2

In this division—

*services* includes product related services.

### 39            Embargo notices

- (1) An inspector who enters premises under section 89 may give an ***embargo notice*** to the occupier of the premises in relation to the supply of goods or services from the premises.
- (2) The inspector may give the embargo notice to the occupier only if the inspector is satisfied on reasonable grounds—
  - (a) to the extent the embargo notice relates to goods—that the goods have been supplied, or offered to be supplied, from the premises in contravention of this Act; and

- (b) to the extent the embargo notice relates to services—that the services have been supplied, or offered to be supplied, from the premises in contravention of this Act.
- (3) The inspector may give the notice to the occupier of the premises—
  - (a) by causing a copy of the notice to be served on the occupier; or
  - (b) if the occupier cannot be located after all reasonable steps have been taken to do so—by causing a copy of the notice to be—
    - (i) served on a person on the premises who is reasonably believed to be in regular contact with the occupier; or
    - (ii) affixed to the premises, or to a thing on the premises, in a prominent position.
- (4) The embargo notice must—
  - (a) be in writing; and
  - (b) state the goods and services to which the notice relates; and
  - (c) if the notice relates to goods—state that the stated goods must not be—
    - (i) supplied in or from the premises; or
    - (ii) transferred, moved, altered, destroyed or otherwise interfered with;during the period stated in the notice; and
  - (d) if the notice relates to services—state that the stated services must not be supplied in or from the premises during the period stated in the notice; and
  - (e) explain the effect of—
    - (i) for goods—section 42; or
    - (ii) for services—section 43.

- (5) Despite anything in any other law, a contract for the supply of goods or services that is prohibited by an embargo notice is void.
- (6) If goods are supplied in contravention of an embargo notice—
  - (a) the supplier must immediately return or refund to the person who acquired the goods any consideration (or the value of any consideration) that the person gave—
    - (i) under an agreement for the supply; or
    - (ii) under a related contract or instrument; and
  - (b) if the goods have been removed from the premises in which they were subject to the embargo notice—the person who acquired the goods must—
    - (i) return the goods to the premises; or
    - (ii) notify the supplier of the place where the supplier may collect the goods; and
  - (c) if paragraph (b)(ii) applies—the supplier must collect the goods from the place notified to the supplier, and return them to the premises.

#### **40 Embargo period for embargo notice**

- (1) Subject to this section, the embargo period for an embargo notice must not be longer than—
  - (a) if the inspector giving the notice secures goods under section 42 or secures equipment under section 43—24 hours; or
  - (b) otherwise—28 days.
- (2) An inspector may, before the embargo period ends, apply to a Magistrates Court for an extension of the period.
- (3) If an inspector intends to make an application under subsection (2), the inspector must, before making the application, notify the occupier of the premises to which the embargo notice relates of that intention.

- (4) The occupier of the premises is entitled to be heard in relation to the application.
- (5) The court may extend the embargo period for a stated period if the judge is satisfied that the extension is necessary in all the circumstances.

**41 Multiple embargo notice for supply of the same kind of goods or services from the same premises**

If an inspector has given an embargo notice (the *earlier embargo notice*), an inspector must not give another embargo notice (the *later embargo notice*) if—

- (a) the later embargo notice would relate to goods or services of the same kind, and to the same premises, as the earlier embargo notice related to; and
- (b) the embargo period for the earlier embargo notice did not end at least 5 days ago.

**42 Power of inspector to secure goods**

If—

- (a) an embargo notice relates to goods; and
- (b) the inspector who gives the notice believes on reasonable grounds that it is necessary to secure the goods in order to ensure that the notice is complied with;

the inspector may, during the embargo period for the embargo notice, do anything that the inspector thinks is necessary to secure the goods (whether by locking them up, placing a guard or otherwise).

**43 Power of inspector to secure equipment used to supply services**

If—

- (a) an embargo notice relates to services; and



- (b) the inspector who gives the notice believes on reasonable grounds that it is necessary to secure equipment used to supply the services in order to ensure that the notice is complied with;

the inspector may, during the embargo period for the embargo notice, do anything that the inspector thinks is necessary to secure the equipment (whether by locking it up, placing a guard or otherwise).

#### **44 Approval relating to embargoed goods or services**

- (1) If an embargo notice relating to goods has been given, the owner of the goods or another person who has an interest in the goods may, in writing, ask the commissioner for approval to do any of the following—
  - (a) supply the goods;
  - (b) transfer, move, alter, destroy or otherwise interfere with the goods.
- (2) If an embargo notice relating to services has been given, the following persons may, in writing, ask the commissioner for approval to supply the services—
  - (a) the person who would, but for the embargo notice, supply the services;
  - (b) another person whose interests would be affected if the services were not supplied.
- (3) If a request for an approval is made under subsection (1) or (2), the requested approval may be given, in writing, by the commissioner.

#### **45 Compliance with embargo notice**

- (1) A person commits an offence if—
  - (a) the person knows that an embargo notice has been given; and

- (b) the person, contrary to the embargo notice, does an act or omits to do an act.

Maximum penalty—

- (a) if the person is a body corporate—200 penalty units; or
- (b) if the person is not a body corporate—40 penalty units.

- (2) A person commits an offence if—

- (a) the person knows that an embargo notice has been given; and
- (b) the person causes another person to do an act or to omit to do an act; and
- (c) doing the act, or omitting to do the act, is contrary to the embargo notice.

Maximum penalty—

- (a) if the person is a body corporate—200 penalty units; or
- (b) if the person is not a body corporate—40 penalty units.

- (3) Subsections (1) and (2) do not apply in relation to—

- (a) an act done under an approval given under section 44; or
- (b) if the embargo notice relates to goods—an act done to protect or preserve the goods; or
- (c) if the embargo notice relates to services—an act done to protect or preserve equipment used to supply the services.

- (4) Subsection (5) applies if—

- (a) a proceeding is brought against a person for a contravention of subsection (1) or (2); and
- (b) the person seeks to rely on a matter (the *relevant matter*) stated in subsection (3)(a), (b) or (c).

- (5) The person has an evidential burden in relation to the matter.

- (6) For this section, the value of a penalty unit is the same value it has for the time being under the *Crimes Act 1914* (Cwlth) for a law of the Commonwealth.

## **Division 3                      Orders for the preservation of property**

### **46            Court may make order for preserving money or other property held by a person**

- (1) The District Court may, on the application of the Minister or the commissioner, make an order or orders mentioned in subsection (3) if—
  - (a) proceedings of a kind mentioned in subsection (2) have been taken against a person, or proceedings of a kind mentioned in subsection (2)(d) may be taken against a person; and
  - (b) the court is satisfied that it is necessary or desirable to make the order or orders to preserve money or other property held by or for the person if the person is liable, or may become liable, under the Australian Consumer Law (Queensland)—
    - (i) to pay money by way of a fine, damages, compensation, refund or otherwise; or
    - (ii) to transfer, sell or refund other property; and
  - (c) the court is satisfied that the making of such an order or orders will not unduly prejudice the rights and interests of any other person.
- (2) For subsection (1)(a), the kinds of proceedings are—
  - (a) proceedings against the person for an offence against a provision of the Australian Consumer Law (Queensland), chapter 4 or against an FTA offence provision; or
  - (b) an application under the Australian Consumer Law (Queensland), section 232 for an injunction against the person in relation to—
    - (i) a contravention of a provision of the Australian Consumer Law (Queensland), chapter 2, 3 or 4, or of a relevant provision under section 65; or

- (ii) a term of a consumer contract in relation to which a declaration under the Australian Consumer Law (Queensland), section 250 has been made; or
  - (c) an action under the Australian Consumer Law (Queensland), section 236(1) against the person in relation to a contravention of a provision of the Australian Consumer Law (Queensland), chapter 2, part 2-1 or chapter 3, or of a relevant provision under section 66; or
  - (d) an application for an order under the Australian Consumer Law (Queensland), section 237(1) or 239(1) against a person in relation to—
    - (i) a contravention of a provision of the Australian Consumer Law (Queensland), chapter 2, 3 or 4, or of a relevant provision under section 67; or
    - (ii) a term of a consumer contract in relation to which a declaration under the Australian Consumer Law (Queensland), section 250 has been made.
- (3) The court may make the following orders under subsection (1) in relation to money or other property held by or for a person (the *respondent*)—
  - (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the respondent, or to an associate of the respondent, from making a payment, in total or partial discharge of the debt—
    - (i) to the respondent; or
    - (ii) to another person at the direction or request of the respondent;
  - (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property for the respondent, or for an associate of the respondent—
    - (i) from paying all or any of the money to the respondent, or to another person at the direction or request of the respondent; or

- (ii) from transferring the other property to the respondent, or to another person at the direction or request of the respondent, or otherwise parting with possession of that property;
  - (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the respondent, or of an associate of the respondent, to a place outside the State in which the money is held;
  - (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the respondent, or of an associate of the respondent, to a place outside the State in which that property is located;
  - (e) if the respondent is an individual—an order appointing a receiver or trustee of the property, or of part of the property, of the respondent with such powers as are stated in the order.
- (4) If the court makes such an order, the order operates—
- (a) for the period stated in the order (of not more than 30 days if the application for the order was an *ex parte* application); or
  - (b) if proceedings in relation to which the order is made are concluded before the stated period ends—until the conclusion of the proceedings.
- (5) This section—
- (a) has effect subject to the *Bankruptcy Act 1966* (Cwlth); and
  - (b) does not affect any other powers of the court.
- (6) In this section—
- associate**, of the respondent, means a person who—
- (a) holds money or other property for the respondent; or

- (b) if the respondent is a body corporate—is a wholly-owned subsidiary (within the meaning of the Corporations Act) of the respondent.

#### **47 Compliance with orders made under this division**

- (1) A person commits an offence if—
  - (a) an order made under section 46 applies to the person; and
  - (b) the person contravenes, or refuses or fails to comply with, the order.

Maximum penalty—

- (a) if the person is a body corporate—900 penalty units; or
  - (b) if the person is not a body corporate—180 penalty units.
- (2) For this section, the value of a penalty unit is the same value it has for the time being under the *Crimes Act 1914* (Cwlth) for a law of the Commonwealth.

### **Division 4 Court jurisdiction**

#### **48 Purpose and scope of division**

- (1) The purpose of this division is to confer jurisdiction to deal with particular matters arising under the Australian Consumer Law (Queensland).
- (2) This division does not apply in relation to—
  - (a) provisions of the Australian Consumer Law (Queensland) that provide for offences; or
  - (b) any FTA consumer offence provision to the extent a contravention or alleged contravention of the provision is being dealt with as for a criminal offence.

## **49 Jurisdiction extends to provisions having wider application**

- (1) This section applies if—
  - (a) this division confers jurisdiction on an entity to deal with matters arising under a particular provision of the Australian Consumer Law (Queensland); and
  - (b) under part 3B, the particular provision has an extended application.
- (2) The conferral of jurisdiction also applies in relation to the provision's extended application.

### *Example for subsection (2)—*

Under part 3B of this Act, the application of the Australian Consumer Law (Queensland), chapter 5, part 5-2, division 2 (Injunctions) is extended to particular provisions of this Act, including, for example, the FTA consumer offence provisions. Under this division, depending on circumstances, either the District Court or the Supreme Court has jurisdiction for injunctions under the Australian Consumer Law (Queensland). That jurisdiction arrangement will therefore also apply for injunctions relating to contraventions of the FTA consumer offence provisions even though those provisions do not form part of the Australian Consumer Law (Queensland).

## **50 Proceedings referred to court of competent jurisdiction**

- (1) A proceeding for the purposes of a provision of the Australian Consumer Law (Queensland) listed in the table to this section must be heard in the tribunal or in a court having jurisdiction for the proceeding, having regard to—
  - (a) for the tribunal, whether the subject of the proceeding—
    - (i) would be a minor civil dispute within the meaning of the QCAT Act; or
    - (ii) would be a matter to which section 50A applies; or
  - (b) for a court—any civil jurisdictional limit, including any monetary limit, applying to the court.

- (2) Subsection (1) applies whether or not the listed provision already includes reference to a court of competent jurisdiction.

**Table**

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>
section 43(4)	Assertion of right to payment for unauthorised entries or advertisements	Action to recover payment made by a person to another person
section 85(4)	Obligations and rights of consumers on termination	Recovery of compensation
section 99(2)	Effect of termination	Recovery of unpaid termination charge
section 138(2)	Liability for loss or damage suffered by an injured individual	Action to recover amount of loss or damage
section 139(2)	Liability for loss or damage suffered by a person other than an injured individual	Action to recover amount of loss or damage
section 140(2)	Liability for loss or damage suffered by a person if other goods are destroyed or damaged	Action to recover amount of loss or damage
section 141(2)	Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged	Action to recover amount of loss or damage



<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>
section 236(1)	Actions for damages	Action to recover amount of loss or damage
section 259(2), (3) and (4)	Action against suppliers of goods	s 259(2) - Action to recover reasonable costs incurred by consumer  s 259(3) - Action to recover compensation for reduction in value of goods  s 259(4) - Action to recover damages because of failure to comply with guarantee
section 265(3)	Termination of contracts for the supply of services that are connected with rejected goods	Action to recover refund
section 267(2), (3) and (4)	Action against suppliers of services	s 267(2) - Action to recover reasonable costs incurred by consumer  s 267(3) - Action to recover compensation for reduction in value of services  s 267(4) - Action to recover damages because of failure to comply with guarantee

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>
section 269(3)	Termination of contracts for the supply of services	Action to recover refund
section 271(1), (3) and (5)	Action for damages against manufacturers of goods	Action to recover damages from manufacturer
section 274(3)	Indemnification of suppliers by manufacturers	Action against manufacturer for legal or equitable relief
section 279(1)	Action by consumer to recover amount of loss or damage	Action to recover amount of loss or damage

#### **50A Tribunal's jurisdiction for particular matters relating to motor vehicles**

- (1) A person may apply, as provided under the QCAT Act, to the tribunal for an order mentioned in subsection (2) for an action—
  - (a) under a provision of the Australian Consumer Law (Queensland) listed in the table to this section; and
  - (b) relating to a motor vehicle; and
  - (c) seeking an amount or value of other relief of not more than \$100,000.
- (2) In a proceeding under subsection (1), the tribunal may make only the following orders—
  - (a) an order requiring a party to the proceeding to pay a stated amount to a stated person;
  - (b) an order that a stated amount is not due or owing by the applicant to a stated person, or by any party to the proceeding to the applicant;

- (c) an order requiring a party to the proceeding, other than the applicant, to perform work to rectify a defect in goods or services to which the claim relates;
  - (d) an order requiring a party to the proceeding to return goods that relate to the claim and are in the party's possession or control to a stated person;
  - (e) an order combining 2 or more orders mentioned in paragraphs (a), (b), (c) and (d).
- (3) However, the tribunal can not make an order under subsection (2) that—
- (a) purports to require payment of an amount, performance of work or return of goods of a value of more than \$100,000; or
  - (b) purports to grant relief of a value of more than \$100,000 from the payment of an amount; or
  - (c) combines 2 or more orders mentioned in subsection (2) and purports to award or declare entitlements or benefits (or both) of a total value of more than \$100,000.
- (4) In this section—
- motor vehicle* see the *Motor Dealers and Chattel Auctioneers Act 2014*, section 12.

**Table**

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>
section 236(1)	Actions for damages	Action to recover amount of loss or damage

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>
section 259(2), (3) and (4)	Action against suppliers of goods	s 259(2) - Action to recover reasonable costs incurred by consumer  s 259(3) - Action to recover compensation for reduction in value of goods  s 259(4) - Action to recover damages because of failure to comply with guarantee
section 265(3)	Termination of contracts for the supply of services that are connected with rejected goods	Action to recover refund
section 267(2), (3) and (4)	Action against suppliers of services	s 267(2) - Action to recover reasonable costs incurred by consumer  s 267(3) - Action to recover compensation for reduction in value of services  s 267(4) - Action to recover damages because of failure to comply with guarantee
section 269(3)	Termination of contracts for the supply of services	Action to recover refund

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>
section 271(1), (3) and (5)	Action for damages against manufacturers of goods	Action to recover damages from manufacturer
section 274(3)	Indemnification of suppliers by manufacturers	Action against manufacturer for legal or equitable relief
section 279(1)	Action by consumer to recover amount of loss or damage	Action to recover amount of loss or damage

## **50B Expedited hearing**

An expedited hearing under the QCAT Act, section 94, may be conducted for a proceeding under section 50A if—

- (a) the amount or value of other relief sought in the proceeding is not more than \$25,000; or
- (b) the president of the tribunal considers it appropriate having regard to—
  - (i) the nature and complexity of the proceeding; and
  - (ii) the views of the parties to the proceeding; and
  - (iii) anything else the president considers relevant.

## **50C Costs**

The tribunal may make an order under section 102(1) of the QCAT Act against a party to a proceeding under section 50A—

- (a) only if the party is a respondent against whom the tribunal has made a final decision; and

- (b) only to order the party to pay to the applicant the amount of any prescribed fee paid by the applicant on filing the application for the proceeding.

## **50D Constitution of tribunal**

For section 195(b) of the QCAT Act, an adjudicator may hear and decide a proceeding under section 50A if either or both of the following apply—

- (a) the amount or value of other relief sought in the proceeding is not more than \$25,000;
- (b) an expedited hearing is to be conducted for the proceeding.

## **51 Proceedings referred to particular court**

A proceeding for the purposes of a provision of the Australian Consumer Law (Queensland) listed in the table to this section must be heard in the court as provided for in the table to this section.

**Table**

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
section 218(3)	Regulator may accept undertakings	Application for order under section 218(4) of ACL(Q) for breach of undertaking	District Court

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
chapter 5, part 5-2, division 1	Pecuniary penalties	Proceeding for the recovery of a pecuniary penalty	If the maximum amount of the pecuniary penalty payable under section 224 of ACL(Q) in relation to the contravention is equal to or less than the civil jurisdictional monetary limit applying under the <i>Magistrates Courts Act 1921</i> , a Magistrates Court has jurisdiction. Otherwise, the District Court has jurisdiction, regardless of the maximum amount of the pecuniary penalty payable.

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
section 232(2)	Injunctions	Application by regulator or other person for grant of injunction	If the injunction is sought in conjunction with, and in the course of, another proceeding under this Act, whether for an offence or otherwise, before the District Court, the District Court has jurisdiction. Otherwise, the Supreme Court has jurisdiction.



<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
section 237(1)	Compensation orders etc. on application by an injured person or the regulator	Application by injured person, or by regulator for injured person, for order for compensation or for prevention or reduction of loss or damage	If the order is sought in conjunction with, and in the course of, another proceeding under this Act, whether for an offence or otherwise, the court hearing the other proceeding has jurisdiction for the proceeding for the order. Otherwise, the District Court has jurisdiction, regardless of any civil jurisdictional limit, including any monetary limit, applying to the District Court.

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
section 239(1)	Orders to redress etc. loss or damage suffered by non-party consumers	Application by regulator for order redressing loss or damage or for preventing or reducing loss or damage	If the order is sought in conjunction with, and in the course of, another proceeding under this Act, whether for an offence or otherwise, the court hearing the other proceeding has jurisdiction for the proceeding for the order. Otherwise, the District Court has jurisdiction, regardless of any civil jurisdictional limit, including any monetary limit, applying to the District Court.

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
section 246(1)	Non-punitive orders	Application by regulator for order under section 246(2) of ACL(Q)	If the order is sought in conjunction with, and in the course of, another proceeding under this Act, whether for an offence or otherwise, the court hearing the other proceeding has jurisdiction for the proceeding for the order. Otherwise, a Magistrates Court has jurisdiction, regardless of any civil jurisdictional limit, including any monetary limit, applying to a Magistrates Court.

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
section 247(1)	Adverse publicity orders	Application by regulator for adverse publicity order	If the order is sought in conjunction with, and in the course of, another proceeding under this Act, whether for an offence or otherwise, the court hearing the other proceeding has jurisdiction for the proceeding for the order. Otherwise, a Magistrates Court has jurisdiction, regardless of any civil jurisdictional limit, including any monetary limit, applying to a Magistrates Court.

<b>Provision of Australian Consumer Law (Queensland)</b>	<b>Name of provision</b>	<b>Nature of proceeding</b>	<b>Court having jurisdiction</b>
section 248(1)	Order disqualifying a person from managing corporations	Application by regulator for order disqualifying a person from managing corporations for a period	If the order is sought in conjunction with, and in the course of, another proceeding under this Act, whether for an offence or otherwise, before the District Court, the District Court has jurisdiction. Otherwise, the Supreme Court has jurisdiction.
section 250(1)	Declarations relating to consumer contracts	Application by party to consumer contract or by regulator for declaration that a term of a contract is an unfair term	District Court

## **Division 5                      Miscellaneous**

### **52            Miscellaneous supporting provision for proceedings for recovery of pecuniary penalties**

- (1) For a relevant proceeding, if a court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

- (2) If, for a relevant proceeding—
- (a) a court orders a corporation to pay a pecuniary penalty; and
  - (b) the corporation does not have the resources to pay the pecuniary penalty;
- the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.
- (3) It is a defence to a liability under subsection (2) for an executive officer to prove that—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the act or omission the subject of the relevant proceeding—the officer exercised reasonable diligence to ensure the corporation did not do the act or make the omission; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the act or omission the subject of the relevant proceeding.
- (4) If 2 or more relevant proceedings are to be dealt with concurrently and, under division 4, the District Court would have jurisdiction for at least 1 but not all of the relevant proceedings, the District Court may exercise jurisdiction for all the proceedings.
- (5) In this section—
- relevant proceeding*** means a proceeding under the Australian Consumer Law (Queensland), chapter 5, part 5-2, division 1, including under that division’s extended application.

## 53 Interpretation of offence provisions

- (1) To remove any doubt, it is declared that—
- (a) chapter 2 of the *Criminal Code* (Cwlth) does not apply to offences against the Australian Consumer Law (Queensland), chapter 4; and

- (b) accordingly, any statement included in the Australian Consumer Law (Queensland), chapter 4 to the effect that a provision of that law is an offence of strict liability is not relevant for the purposes of that law.

*Note—*

The Criminal Code (of Queensland) applies for the purposes of offences included in the Australian Consumer Law (Queensland), chapter 4. For example, the Criminal Code, section 23(2) applies to make immaterial the result intended to be caused by an act or omission constituting an offence unless intention to cause the result is expressly declared to be an element of the offence. The application of the Criminal Code is subject to provisions of this Act (including the Australian Consumer Law (Queensland)). For example, the Australian Consumer Law (Queensland), chapter 4, part 4-6 includes defences that are available for prosecutions for contraventions of provisions of chapter 4.

- (2) Despite section 19, the *Acts Interpretation Act 1954* sections 41, 41A, 43, 44(4), 45 and 46 apply in relation to offences under the Australian Consumer Law (Queensland) as if that law were an Act to which the *Acts Interpretation Act 1954* applied.

### **53A Interpretation of unsolicited consumer agreement permitted hours provisions and termination period provision**

- (1) In a permitted hours provision, for applying the definition *unsolicited consumer agreement* as provided for in the Australian Consumer Law (Queensland), section 69, subsection (1) of that section is taken not to include paragraph (d).
- (2) In the termination period provision, for applying the definition *unsolicited consumer agreement* as provided for in the Australian Consumer Law (Queensland), section 69, subsection (1) of that section is taken not to include paragraph (d), but only if the Australian Consumer Law (Queensland), section 73 was contravened in relation to the agreement the subject of termination.

(3) If an agreement is terminated under the termination period provision because of the operation of subsection (2) of this section, the agreement is taken to be, for any related provision, an unsolicited consumer agreement terminated in accordance with the termination period provision.

(4) In this section—

*permitted hours provision* means—

(a) the Australian Consumer Law (Queensland), section 73;  
or

(b) the Australian Consumer Law (Queensland), section 170.

*related provision* means a section of the Australian Consumer Law (Queensland) that refers to an unsolicited consumer agreement terminated in accordance with section 82 of that law.

*termination period provision* means the Australian Consumer Law (Queensland), section 82.

#### **54 Gazettal of notice under Australian Consumer Law (Queensland) about interim ban, recall notice or safety warning**

(1) This section applies if the Minister, as a responsible Minister under the Australian Consumer Law (Queensland), publishes a written notice on the internet under any of the following provisions of the Australian Consumer Law (Queensland)—

(a) section 109, 111 or 113;

(b) section 122;

(c) section 129 or 130.

(2) The Minister must, as soon as practicable after the publication of the written notice, publish a gazette notice containing a copy of the written notice.

(3) A failure to comply with subsection (2) does not affect the validity of the written notice.



## 55 Limitation on right to itemised bill

- (1) This section applies if—
  - (a) apart from this section, under the Australian Consumer Law (Queensland), section 101, a person is entitled, as a consumer, to request the supplier of legal services to give the consumer an itemised bill, complying with that section, relating to the legal services; and
  - (b) under the *Legal Profession Act 2007*, section 332, the person is entitled to request a law practice to give the person an itemised bill relating to the legal services.
- (2) The Australian Consumer Law (Queensland), section 101 ceases to have application to the legal services.

## Part 3B Provisions utilising Australian Consumer Law (Queensland) provisions

### 56 Australian Consumer Law (Queensland) not limited

- (1) This section applies if a provision of this part (the *application provision*) applies a provision of the Australian Consumer Law (Queensland) (the *applied provision*), whether for the purposes of an FTA offence provision or for some other purpose (the *extended application*).
- (2) The application provision does not limit or otherwise affect the operation of the applied provision as a provision of the Australian Consumer Law (Queensland).

### 57 Defences

- (1) The defences provided for in the Australian Consumer Law (Queensland), chapter 4, part 4-6 also apply for the purposes of each FTA offence provision as if the FTA offence provision were a provision of the Australian Consumer Law (Queensland), chapter 4.

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- (2) For subsection (1), the Australian Consumer Law (Queensland), section 211 may also be read as if the reference to section 195 of that law were a reference to section 84(1).
- (3) Subsection (1) applies in relation to an FTA consumer offence provision only to the extent a contravention or alleged contravention of the provision is being dealt with as for a criminal offence.

## **58 Prosecutions to be commenced within 3 years**

The Australian Consumer Law (Queensland), section 212 applies to an offence against an FTA offence provision as if the offence were an offence against a provision of the Australian Consumer Law (Queensland), chapter 4.

## **59 Preference must be given to compensation for victims**

- (1) The Australian Consumer Law (Queensland), section 213 applies in relation to a relevant provision as if the reference in section 213(a)(i) of that law to a provision of that law included a reference to the relevant provision.
- (2) In this section—

*relevant provision* means an FTA offence provision other than section 92(1)(b), (c), (d) or (e) or 92B.

## **60 Penalties for contraventions of the same nature for FTA offence provisions**

- (1) The Australian Consumer Law (Queensland), section 214 applies to 2 or more offences constituted by, or relating to, contraventions of the same FTA offence provision as if the offences were constituted by, or related to, contraventions of the same provision of the Australian Consumer Law (Queensland), chapter 4.
- (2) The Australian Consumer Law (Queensland), section 215 applies to an offence constituted by, or relating to, a contravention of an FTA offence provision as if the offence

were constituted by, or related to, a contravention of a provision of the Australian Consumer Law (Queensland), chapter 4.

## **61 General provision about injunctions and other remedies**

- (1) The Australian Consumer Law (Queensland), section 216 applies to an FTA offence provision as if the reference in section 216 to a provision of the Australian Consumer Law (Queensland), chapter 4 included a reference to the FTA offence provision.
- (2) The Australian Consumer Law (Queensland), section 216, to the extent the provision relates to the granting of an injunction, applies to a code of practice as if the reference in section 216 to a provision of the Australian Consumer Law (Queensland), chapter 4 included a reference to the code of practice.

## **62 Undertakings for matters arising other than under Australian Consumer Law (Queensland)**

- (1) The Australian Consumer Law (Queensland), chapter 5, part 5-1, division 1 applies to a relevant matter as if the reference to a matter in the Australian Consumer Law (Queensland), section 218(1) included a reference to the relevant matter.
- (2) In this section—  
*relevant matter* means any matter in relation to which the commissioner has a power or function under this Act, other than under the Australian Consumer Law (Queensland), including any contravention of an FTA offence provision.

## **63 Public warning notices**

- (1) The Australian Consumer Law (Queensland), chapter 5, part 5-1, division 3 applies to a relevant provision as if the reference in the Australian Consumer Law (Queensland), section 223(1)(a) to a contravention of a provision of

chapter 2, 3 or 4 included a reference to a contravention of the relevant provision.

(2) In this section—

*relevant provision* means—

- (a) an FTA consumer offence provision; or
- (b) section 45 or 47; or
- (c) a code of practice.

## **64 Pecuniary penalties for FTA consumer offence provisions**

(1) The Australian Consumer Law (Queensland), chapter 5, part 5-2, division 1 applies to an FTA consumer offence provision as if the provisions of the Australian Consumer Law (Queensland) listed in the Australian Consumer Law (Queensland), section 224(1)(a) included each of the FTA consumer offence provisions.

(2) For the application of the Australian Consumer Law (Queensland) as provided for in subsection (1)—

- (a) the reference in the Australian Consumer Law (Queensland), section 224(2)(c) to proceedings under the Australian Consumer Law (Queensland), chapter 4 may be taken to include a reference to proceedings under this Act for a criminal offence; and
- (b) the FTA consumer offence provision that is section 84(1) is taken to be included in the table to the Australian Consumer Law (Queensland), section 224(3) in the same grouping as section 107(1) of that law; and
- (c) the FTA consumer offence provision that is section 86 is taken to be included in the table to the Australian Consumer Law (Queensland), section 224(3) in the same grouping as section 119(1) of that law.

## 65 Injunctions

- (1) The Australian Consumer Law (Queensland), chapter 5, part 5-2, division 2 applies to a relevant provision as if the reference in the Australian Consumer Law (Queensland), section 232(1)(a) to a contravention of a provision of chapter 2, 3 or 4 of that law included a reference to a contravention of the relevant provision.
- (2) In this section—  
*relevant provision* means—
  - (a) an FTA offence provision other than section 92(1)(b), (c), (d) or (e) or 92B; or
  - (b) a code of practice.

## 66 Actions for damages

- (1) The Australian Consumer Law (Queensland), chapter 5, part 5-2, division 3 applies to a contravention of a relevant provision as if the reference in the Australian Consumer Law (Queensland), section 236(1)(b) to contravention of a provision of the Australian Consumer Law (Queensland), chapter 2 or 3 included a reference to contravention of the relevant provision.
- (2) In this section—  
*relevant provision* means—
  - (a) an FTA consumer offence provision; or
  - (b) section 45 or 47; or
  - (c) a code of practice.

## 67 Orders for compensation or redress

- (1) The Australian Consumer Law (Queensland), chapter 5, part 5-2, division 4 applies to a relevant provision—
  - (a) as if the references in sections 237(1)(a)(i) and 238(1)(a) of that law to a provision of chapter 2, 3 or 4

of that law included a reference to the relevant provision; and

- (b) as if the reference in section 239(1)(a)(i) of that law to a provision of chapter 2, chapter 3, part 3-1 or part 3-2, division 2, 3 or 4 or chapter 4 of that law included a reference to the relevant provision.

- (2) In this section—

*relevant provision* means an FTA offence provision other than section 92(1)(b), (c), (d) or (e) or 92B.

## **68 Non-punitive orders**

The Australian Consumer Law (Queensland), section 246 applies to an FTA offence provision as if the reference in the section to a provision of chapter 2, 3 or 4 of that law included a reference to the FTA offence provision.

## **69 Adverse publicity orders**

The Australian Consumer Law (Queensland), section 247 applies to an FTA offence provision as if the reference in section 247(1)(b) of that law to a person who has committed an offence against chapter 4 of that law included a reference to a person who has committed an offence against the FTA offence provision.

## **70 Orders disqualifying a person from managing a corporation**

- (1) The Australian Consumer Law (Queensland), section 248 applies in relation to a relevant provision as if the provisions of the Australian Consumer Law (Queensland) mentioned in section 248(1)(a) of that law included the relevant provision.

- (2) In this section—

*relevant provision* means—

- (a) an FTA consumer offence provision; or

(b) section 45 or 47.

**71 Privilege against exposure to penalty or forfeiture—disqualification from managing a corporation**

- (1) The Australian Consumer Law (Queensland), section 249 applies to a civil or criminal proceeding in relation to a relevant provision as if the proceeding were a civil or criminal proceeding mentioned in section 249(1) of that law.
- (2) In this section—  
*relevant provision* means—
  - (a) an FTA consumer offence provision; or
  - (b) section 45 or 47.

**72 Publication of advertisement in the ordinary course of business**

- (1) The Australian Consumer Law (Queensland), section 251 applies in relation to a relevant provision as if the reference in section 251(1) of that law to a contravention of chapter 3 of that law included a reference to a contravention of the relevant provision.
- (2) In this section—  
*relevant provision* means—
  - (a) an FTA consumer offence provision; or
  - (b) section 45 or 47.

**73 Supplying services for the purpose of resupply**

- (1) Without limiting the Australian Consumer Law (Queensland), section 253, section 253(2) of that law also applies to a proceeding under chapter 5, part 5-2 of that law in relation to a contravention of section 84(1) committed by the supplying of services (the *relevant services*) that did not comply with a safety standard for the services prescribed under section 83.

- (2) For applying subsection (1), the references in the Australian Consumer Law (Queensland), section 253(2) and (3) to product related services may be taken to be references to the relevant services.

## **Part 4                      Safety and codes of practice**

### **Division 2                Safety provisions**

#### **83                      Safety standards**

- (1) A regulation may prescribe a safety standard for a specified kind of services.
- (3) A prescribed safety standard for services shall consist of such requirements as to—
- (a) the manner in which services are to be supplied; and
  - (b) the form and manner of disclosure of warnings, instructions or other information to be communicated to a person to whom services are to be supplied;
- as are reasonably necessary to prevent or reduce risk of injury, including physical, mental or psychological injury, to any person.
- (4) A regulation under this section may be made to apply subject to—
- (a) the means of supply or the class of contract, agreement or act that constitutes the supply; or
  - (b) the persons to whom services are supplied or by whom they are likely to be used; or
  - (c) the purpose for which services are acquired; or
  - (d) any exemption or circumstance defined in the regulation.



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## 84 Compliance with safety standard

- (1) A person shall not, in trade or commerce, supply or offer for supply services in relation to which there is a prescribed safety standard unless that safety standard is complied with.

Maximum penalty—

- (a) if the person is a body corporate—\$1,100,000; or  
(b) if the person is not a body corporate—\$220,000.

*Note—*

A pecuniary penalty may be imposed for a contravention of this section—see section 64 (Pecuniary penalties for FTA consumer offence provisions).

- (2) If—

- (a) a person supplies services in contravention of subsection (1); and  
(b) another person suffers loss or damage because of a defect in, or a dangerous characteristic of, the services, or by not having particular information in relation to the services, but would not have suffered it if the prescribed safety standard had been complied with;

the person who suffers the loss or damage shall be taken, for the purposes of this Act, to have suffered it by the supplying of the services.

## Division 3 Ministerial prohibition

### 84A Definition for div 3

In this division—

*regulating instrument* means—

- (a) an order made under section 85 (including an interim order mentioned in section 85A); or  
(b) a regulation—  
(i) prohibiting the supply of services; or

- (ii) authorising the supply of services subject to conditions or restrictions prescribed in the regulation.

## **85 Minister may make orders prohibiting or restricting supply of dangerous or undesirable services**

- (1) The Minister, if in the Minister's opinion any services of any kind are likely to cause the death of any person or to injure or adversely affect the health or wellbeing of any person whether physical, mental or psychological, may by order—
  - (a) prohibit the supply of those services; or
  - (b) authorise supply of those services subject to conditions or restrictions prescribed in the order.
- (2) An order made under subsection (1) is subordinate legislation.
- (3) The Minister shall, before the Minister makes an order under subsection (1), cause to be given to every person that in the Minister's opinion has a substantial interest in the matter, a written notice accompanied by a copy of the order the Minister intends to make calling on that person to show cause in writing why the Minister should not make that order.
- (4) A person called upon to show cause by the Minister, if the person wishes to show cause, shall make written submissions to the Minister so that these submissions are received by the Minister within 7 days of receipt by that person of the notice and copy of the order from the Minister.
- (4A) The Minister shall consider any such submissions before making the order under subsection (1).
- (5) An order made under this section after the commencement of this subsection expires 18 months after the order commences, and may not be renewed.

## **85A Interim orders**

- (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.

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- (3) To give effect to an interim order, the Minister must publish the interim order in the gazette.
  - (4) An interim order is in force during the period (the *ban period*) that—
    - (a) starts on the day (the *start day*) that is the day stated in the interim order, or the day the interim order is gazetted, whichever is the later; and
    - (b) ends at the end of 60 days after the start day.
  - (5) Before the ban period for the interim order ends, the Minister may, by gazette notice, extend the ban period for the interim order by a period of up to 30 days.
  - (7) An interim order may be extended only once.
  - (8) The *Statutory Instruments Act 1992*, sections 49 to 51 apply to an interim order published in the gazette as if it were subordinate legislation.

*Editor's note—*

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

## 86 Offence

A person must not supply or offer for supply services—

- (a) if the supply of the services is prohibited under a regulating instrument; or
- (b) if the supply of the services is, under a regulating instrument, authorised subject to conditions or restrictions prescribed in the regulating instrument—other than subject to the conditions or restrictions.

Maximum penalty—

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

*Note—*

A pecuniary penalty may be imposed for a contravention of this section—see section 64 (Pecuniary penalties for FTA consumer offence provisions).

## **87 Seizure etc. of goods in certain cases**

- (1) An inspector may at any time seize and detain goods that the inspector suspects on reasonable grounds are intended for supply or have been supplied—
  - (a) in contravention of a relevant pecuniary penalty provision; or
  - (b) in circumstances that constitute the commission of an offence against section 45.
- (2) Where a person is charged with an offence against a relevant offence provision, the court before which the complaint is heard, if it is satisfied that any goods that are the subject of the charge are goods in respect of which a relevant regulating instrument is in force, may, whether or not that person is convicted of the offence charged, order the goods to be forfeited to the Crown.
- (3) A person claiming to be entitled to goods that have been seized and detained under subsection (1) may, within 28 days after the date of the seizure of the goods, apply to a magistrate for an order for the delivery to the person of those goods.
- (3A) Notice of the application shall be served by the applicant on the commissioner before the hearing of the application.
- (3B) The commissioner shall be entitled to appear at the hearing of the application as respondent and may be represented at the hearing either by an inspector appointed by the commissioner or by counsel or solicitor.
- (4) In a proceeding upon an application under subsection (3)—
  - (a) if the magistrate is satisfied that any of the goods in question are goods in respect of which the relevant regulating instrument is in force, the magistrate may order them to be forfeited to the Crown; and

- (b) if the magistrate is not so satisfied, the magistrate may order them to be delivered to any person that appears to the magistrate to be entitled to them.
- (5) Upon the expiration of 28 days after the date of seizure of goods under subsection (1), if no application for the delivery of the goods has been properly made, the goods shall be forfeited to the Crown.
- (6) Where an application for delivery of those goods has been made under subsection (3), but has been withdrawn before it is heard, then, upon—
- (a) the withdrawal of the application; or
- (b) the expiration of 28 days after the date of seizure of the goods;
- whichever is the later, the goods shall be forfeited to the Crown.
- (7) Goods forfeited to the Crown under this section may be disposed of in such way as the Minister directs.
- (8) In this section—
- relevant offence provision*** means—
- (a) section 45; or
- (b) section 86; or
- (c) any of the following provisions of the Australian Consumer Law (Queensland)—
- (i) section 194;
- (ii) section 195;
- (iii) section 197;
- (iv) section 198;
- (v) section 199.

***relevant pecuniary penalty provision*** means—

- (a) section 86; or

- (b) any of the following provisions of the Australian Consumer Law (Queensland)—
- (i) section 106(1);
  - (ii) section 107(1);
  - (iii) section 118(1);
  - (iv) section 119(1);
  - (v) section 127(2).

*relevant regulating instrument* means a regulating instrument that is directly relevant to the offence with which the person is charged.

## Division 4                      Codes of practice

### 88A      Codes of practice

- (1) 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.
- (2) In this section—
- consumer* includes prospective consumer.

## Part 5                              Enforcement and remedies

### Division 1                      Powers of commissioner and inspectors

#### 88B      Definitions for div 1

In this division—

*services* includes product related services.

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## 89 Powers of inspectors

- (1) For the purpose of the discharge by the commissioner of any of the commissioner's functions under this Act, or for any other purposes of this Act, an inspector may at all reasonable times—
  - (a) enter any premises the inspector knows or reasonably suspects—
    - (i) are being used for the production, manufacture, assembly, preparation, storage or supply of goods or the supply of services; or
    - (ii) have been or are being or are likely to be used by any person in connection with a contravention of this Act; and
  - (b) enter any premises where the inspector knows or reasonably suspects that records are kept relating to the supply of goods or services or relating to a contravention of this Act; and
  - (c) enter any premises that the inspector knows or reasonably suspects to be used by any person for printing or as an office in connection with the trade or commerce of printing any newspaper or other publication, which the inspector knows or reasonably suspects to be associated with any contravention of this Act; and
  - (d) enter any commercial broadcasting or television station, which the inspector knows or reasonably suspects to be associated with any contravention of this Act; and
  - (e) in any premises entered by the inspector—
    - (i) search for, examine, take possession of or make copies of or extracts from records relating to goods or services supplied or to be supplied or relating to any matter the subject of an investigation under this Act; and
    - (ii) search for and examine goods found on the premises; and

- (iii) exercise any power under this Act to seize goods without payment or take any goods found on the premises, on payment or tendering of a reasonable price for them; and
  - (iv) seize without payment any brochures, leaflets, books, writings, documents or other materials that the inspector knows or reasonably suspects have been, are being, or are likely to be used to advertise, promote or make representations with respect to any matter in contravention of this Act; and
  - (v) open any room, place or container or package that the inspector knows or reasonably suspects to contain goods; and
  - (vi) question with respect to matters under this Act any person the inspector finds on the premises; and
- (f) make such inquiry and examination as the inspector believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act or to ascertain whether any contravention of this Act has been, is being, or is likely to be committed.
- (1A) Subsection (1) does not authorise forcible entry by an inspector to any premises other than under the authority of a warrant obtained by the inspector under subsection (3).
- (2) Before an inspector enters any part of premises which part is used as a dwelling the inspector shall, unless the inspector has the permission of the occupier of that part to the inspector's entry, obtain from a justice a warrant to enter.
- (3) A justice who is satisfied upon the complaint of an inspector that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Act or for the keeping of records relating to a contravention of this Act may issue the justice's warrant directed to the inspector to enter the place specified in the warrant for the purpose of the inspector exercising in the premises the powers conferred on an inspector by this Act.



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- (4) A warrant issued under this section shall be, for a period of 1 month from its issue, sufficient authority—
- (a) to the inspector to whom it is directed and to all persons acting in aid of the inspector to enter the place specified in the warrant; and
  - (b) to the inspector to whom it is directed and to all persons acting in aid of the inspector to exercise in respect of the place specified in the warrant all the powers conferred on an inspector by this Act.
- (5) For the purpose of gaining entry to any place, an inspector may call to the inspector's aid such persons as the inspector considers necessary and such persons, while acting in aid of an inspector in the lawful exercise by the inspector of the inspector's power of entry, shall have a like power of entry.
- (6) Where an inspector has taken possession of records or of other property for the purposes of this Act the inspector may—
- (a) in the case of any records—retain the same for so long as is necessary for those purposes, but the person otherwise entitled to possession of the records, if the person so requests it is entitled to be furnished as soon as practicable with a copy of the records certified by the commissioner to be a true copy and such a certified copy shall be received in all courts and elsewhere as evidence of the matters contained in the copy as if it were the original; and
  - (b) in the case of other property—subject to the express provisions of this Act, retain the property for so long as is necessary for those purposes, and afterwards dispose of it as the commissioner directs.

## **90 Power to obtain information**

- (1) In relation to any matter relevant to the operation or enforcement of this Act, an inspector may require a person (either by oral or written requisition) to furnish—
- (a) any information; and

- (b) any records or a copy of them;  
in the person's possession.
- (2) For the purpose of subsection (1), a person shall be taken to be in possession of—
  - (a) information, if the person has the information or is entitled to access to the information; and
  - (b) records, if the person has them in the person's possession or if the person has them under control in any place, whether for the person's own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.
- (3) A requisition made under subsection (1) may require that the information or records or copy of them be furnished—
  - (a) to the inspector or another inspector or to a stated officer of the department; or
  - (b) at the place the requisition is made or at another place; or
  - (c) immediately or at, by or within a time specified; or
  - (d) in person, or by certified mail or in another way specified; or
  - (e) by means of, or accompanied by, verification in the form of, a statutory declaration; or
  - (f) in the case of information, orally or in writing.
- (4) A person must not, without reasonable excuse—
  - (a) refuse or fail to furnish any information, records or a copy of them as required of the person under this section; or
  - (b) in response to a requisition made under this section furnish information, records or copies that is or are false or misleading in a material particular.

Maximum penalty—100 penalty units.

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- (5) It is not a reasonable excuse for a person to refuse or fail to furnish information, a record or copy of a record on the ground that the information, record or copy might tend to incriminate the person.
- (6) However, information mentioned in subsection (5) is not admissible in evidence against the person—
- (a) for an individual—in any criminal proceedings; or
  - (b) for a body corporate—in any criminal proceedings, other than proceedings under this Act.
- (6A) Subsection (6) does not apply to information as to the name and address of the person or as to the person's ownership of, control over or position in, any business.
- (7) Where a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters shall be construed as including a duty to produce the matters in written form if that is demanded.
- (7A) The duty imposed by this section to produce a copy of any records shall be construed as a duty to produce a clear reproduction.
- (8) An inspector or an officer of the department may take notes or copies of or extracts from records or a copy of them produced under this section.
- (9) Records furnished under this section may be retained for so long as it is necessary to do so for the purposes of this Act, but the person otherwise entitled to possession of them, if the person so requests it, is entitled to be furnished as soon as practicable with a copy of them certified by the commissioner to be a true copy and such a certified copy shall be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original.

## 91 Obstruction

- (1) A person shall not obstruct an inspector in the exercise of powers under this Act.

Maximum penalty—100 penalty units.

- (2) For the purposes of this Act a person shall be taken to obstruct an inspector in the exercise of powers under this Act if the person—
- (a) assaults, abuses, intimidates or insults an inspector or any other person assisting an inspector in the exercise of powers under this Act; or
  - (b) directly or indirectly deliberately prevents any person from being questioned by an inspector or from furnishing under this Act any information or records or copies or attempts to do so; or
  - (c) in any other way obstructs or attempts to obstruct an inspector in the exercise of powers under this Act.

## **Division 1A            General power of inspectors to seize goods**

### **Subdivision 1        Seizing and returning goods**

#### **91A    General power to seize goods**

- (1) This division applies if an inspector reasonably believes goods have been supplied in contravention of this Act, other than a relevant offence provision under section 87.
- (2) The inspector may seize enough of the goods—
- (a) to decide whether the contravention has happened; or
  - (b) to be used as evidence in a proceeding under this Act about the contravention.

*Example of operation of paragraph (a)—*

An inspector may seize a quantity of fabric to test its fibre content and to work out whether its labelling complies with the prescribed information standard about fibre content.

- (3) If the goods are in a container and it is not practicable to seize them without the container, the inspector may seize the container and its contents.

## **91B Returning the seized goods**

- (1) The commissioner must return the seized goods to their owner at the end of—
  - (a) 9 months; or
  - (b) if a prosecution for an offence, or a relevant pecuniary penalty proceeding, involving the seized goods is started within the 9 months—the prosecution for the offence, or the relevant pecuniary penalty proceeding, and any appeal from the prosecution or relevant pecuniary penalty proceeding.
- (2) Despite subsection (1), the commissioner must return the seized goods to their owner immediately if the commissioner is not satisfied or stops being satisfied the retention of the goods as evidence is necessary.
- (3) In this section—

*relevant pecuniary penalty proceeding* means a proceeding under the Australian Consumer Law (Queensland), chapter 5, part 5-2, division 1 in relation to an act or omission to which section 224 of that law applies.

## **Subdivision 2 Appealing against seizure of the goods**

### **91C Where and how to start appeal**

- (1) A person whose goods have been seized under this division may appeal to the Magistrates Court nearest where the goods were seized.
- (2) The appeal is started by—

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- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and
- (b) giving a copy of the notice to the commissioner.
- (3) Without limiting subsection (2)(b), the commissioner is given a copy of the notice if a copy is given to the inspector who seized the goods.
- (4) The notice of appeal must state the grounds of the appeal.

### **91D Hearing procedures**

- (1) The power to make rules of court under the *Supreme Court of Queensland Act 1991* includes power to make rules of court for appeals to Magistrates Courts under this Act.
- (2) The procedure for an appeal to a Magistrates Court under this Act is to be—
  - (a) in accordance with the *Uniform Civil Procedure Rules 1999*; or
  - (b) in the absence of relevant rules, as directed by a magistrate.
- (3) In deciding the appeal, the Magistrates Court—
  - (a) is not bound by the rules of evidence; and
  - (b) must observe natural justice; and
  - (c) may hear the appeal in court or chambers.

### **91E Powers of Magistrates Court on appeal**

In deciding the appeal, the Magistrates Court may—

- (a) confirm the seizure of the goods; or
- (b) set aside the seizure and order the return of the goods.

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## **91F Appeal to District Court on questions of law only**

A party dissatisfied by the decision of the Magistrates Court may appeal to the District Court, but only on a question of law.

## **Subdivision 3 Forfeiting the goods**

### **91G Court hearing offence proceeding may order forfeiture of seized goods**

- (1) If, in proceedings for an offence for which goods were seized, the court finds the offence proved and that the offence concerned goods seized and retained by an inspector, the court may order that the goods be forfeited to the Crown.
- (2) The forfeited goods may be disposed of in any way the Minister directs.

## **Division 1B Register of undertakings**

### **91L Register of undertakings**

- (1) The commissioner is to keep a register of each undertaking given to the commissioner by a person under the Australian Consumer Law (Queensland), chapter 5, part 5-1, division 1, including under that division's extended application.
- (2) The register is to contain a copy of the undertaking.
- (3) A person may, on payment of the fee prescribed under a regulation—
  - (a) inspect the register at the commissioner's office when the office is open to the public; and
  - (b) obtain a copy of an undertaking in the register.
- (4) The commissioner may publish the information contained in the register on the department's website.

## **Division 2                      Offences, court enforcement and remedies**

### **92            Offences**

- (1) A person who—
  - (a) contravenes; or
  - (b) aids, abets, counsels or procures a person to contravene; or
  - (c) induces a person whether by threats or promises or otherwise to contravene; or
  - (d) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
  - (e) conspires with others to contravene;

a provision of this Act for which a penalty is provided, commits an offence against this Act.

*Note—*

A provision of this Act for which a penalty is provided would include any provision of the Australian Consumer Law (Queensland), chapter 4 that provides for an offence.

- (2) Each of the persons mentioned in subsection (1)(a) to (d) is taken to have committed the offence that is the contravention of the provision and may be charged with actually committing the offence.
- (3) A person who counsels, procures, or induces another person to contravene the provision may be charged with committing the offence or with counselling, procuring or inducing the commission of the offence.
- (4) A conviction of counselling, procuring or inducing the commission of the offence, or conspiring to commit the offence, has the same consequences in all respects as a conviction of committing the offence.



- (5) Subsection (1)(b) to (d) only applies when a provision of this Act is contravened.
- (6) This section is in addition to, and does not limit, the Criminal Code, chapter 2 and the *Acts Interpretation Act 1954*, section 41A.

## **92B Attempts to commit offences**

- (1) A person who attempts to commit an offence mentioned in subsection (2) commits an offence.

Maximum penalty—the maximum penalty for committing the offence attempted.

- (2) Subsection (1) applies to an offence against any of the following provisions—
  - (a) a provision of the Australian Consumer Law (Queensland), chapter 4;
  - (b) an FTA consumer offence provision;
  - (c) section 45.
- (3) The Criminal Code, section 4, applies to subsection (1).
- (4) A person charged with an offence mentioned in subsection (2) may be convicted of attempting to commit the offence.

## **93 Continuing offences**

Where a person commits an offence defined in section 90, by failing to furnish information or to produce records or a copy of them—

- (a) the person's obligation to furnish the information or produce the records or a copy of them, as the case may be, continues until the person complies with the requirement even though in a particular case a time was specified at, by or within which compliance was required and that time has passed; and

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- (b) the person shall commit a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues; and
- (c) the person shall be liable to a penalty of 2 penalty units for each day during which the offence continues; and
- (d) the person may be prosecuted from time to time in respect of the offence.

## 94 Proceedings for offences

- (1) Proceedings for an offence against this Act for which the maximum penalty is less than the higher level penalty amount shall be taken in a summary way under the *Justices Act 1886*.
- (2) Proceedings for an offence against this Act for which the maximum penalty is the higher level penalty amount or more may be prosecuted either in a summary way under the *Justices Act 1886* or on indictment, at the election of the prosecution.
- (3) If, under subsection (2), the prosecution elects to prosecute an offence against this Act in a summary way under the *Justices Act 1886*—
  - (a) the maximum penalty that may be imposed for that offence is half of the maximum penalty stated for the offence; and

*Example—*

The maximum penalty for an offence against the Australian Consumer Law (Queensland), section 151(1) (False or misleading representations about goods or services) is \$1,100,000 for a body corporate or \$220,000 for a person who is not a body corporate. If the offence is prosecuted in a summary way, the maximum penalty that could be imposed for the offence would be \$550,000 for a body corporate or \$110,000 for a person who is not a body corporate.

  - (b) for all purposes the offence alleged shall be taken to be a simple offence and not an indictable offence.
- (4) If, under subsection (2), the prosecution elects to prosecute an offence against this Act on indictment—

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- (a) the tribunal of fact as well as law shall consist of a judge of the court in which the trial takes place sitting alone; and
  - (b) the Criminal Code with all necessary adaptations shall be read and construed with this Act.
- (5) The maximum term of imprisonment that a court may order in default of payment of a penalty imposed under this Act is 1 year.
- (6) A proceeding for an offence against this Act may be commenced only by—
- (a) an inspector; or
  - (b) another person, with the commissioner’s approval.
- (7) In this section—

***higher level penalty amount***, in relation to a maximum penalty for an offence, means an amount of maximum penalty that is, or that is calculated to be—

- (a) if the person committing the offence is a body corporate—\$1,100,000; or
- (b) if the person committing the offence is not a body corporate—\$220,000.

*Example of offence for which the maximum penalty is the higher level penalty amount—*

The Australian Consumer Law (Queensland), section 194(1) (Supplying etc. consumer goods that do not comply with safety standards) provides for a penalty of \$1,100,000 for a body corporate or \$220,000 for a person who is not a body corporate.

*Example of offence for which the maximum penalty is calculated to be less than the higher level penalty amount—*

Section 45(1) (Compliance with embargo notice) provides for a maximum penalty of 200 penalty units for a body corporate or 40 penalty units for a person who is not a body corporate. If the value of a penalty unit for that section is \$110 (see section 45(6)), the maximum penalty for the offence is calculated to be \$22,000 for a body corporate or \$4,400 for a person who is not a body corporate.

## **95 Conduct by directors, servants or agents**

- (1) If, in a proceeding under this Act in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate—
  - (a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- (3) If, in a proceeding under this Act in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate—
  - (a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first person, if the giving of the direction,

consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be taken, for the purposes of this Act, to have been engaged in also by the first person.

- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.
- (6) For the purposes of this section—  
*conduct* also includes the making of any omission, inadvertently or otherwise.

## 97 Proceedings for an offence against this Act

The provisions of the Criminal Code, section 23 to the extent that it provides exculpation from criminal responsibility for an act or omission that constitutes an offence against this Act, and the provisions of the Criminal Code, section 24 do not apply in respect of any offence against this Act.

## 101 Mode of enforcement of compensation

Without derogating from any other right to enforce an order made under the Australian Consumer Law (Queensland), chapter 5, part 5-2, division 4 (the *ACL(Q) provision*)—

- (a) if an order made under the *ACL(Q)* provision orders a person to pay an amount of money—on the filing of that order in the registry of a court that has jurisdiction in an action for debt for that amount, the order shall be enforceable as an order made by that court; and
- (b) any other amount of money a person is liable to pay as a consequence of an order made under the *ACL(Q)* provision may be recovered from the person by action as for a debt in any court of competent jurisdiction.

### **103A Examination costs**

- (1) In this section—
  - examination* includes test and analysis.
  - services* includes product related services.
  - 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 a safety standard under section 83, or an information standard or safety standard under the Australian Consumer Law (Queensland), applying to their supply; or
  - (b) results in an order being made under section 85, or under the Australian Consumer Law (Queensland), section 109 or 114, 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.

## Part 6                      General

### 104      Impersonation

A person shall not falsely represent that the person is an inspector or that the person is an officer of the department.

Maximum penalty—100 penalty units.

### 105      Reference to consumer authorities and other matters restricted

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services—

- (a) without the Minister's prior written agreement—
  - (i) refer to an inspector, the commissioner or an officer of the department; or
  - (ii) use an expression that is, or that resembles, the expression 'Office of Fair Trading'; or
  - (iii) use, in relation to a matter falling within the functions of the commissioner, an expression that is, or that resembles, the current or a previous name of the department; or
- (b) falsely represent that any goods or services are produced or provided—
  - (i) by a person holding a royal warrant; or
  - (ii) for any government or department of any government or for the service of Her Majesty.

Maximum penalty—100 penalty units.

## **106 Savings of rights and remedies**

Nothing in this Act derogates from any right of action or other right or remedy that a person has apart from this Act.

## **107 Contracting out prohibited**

This Act has effect even though any provision in any contract or agreement purportedly provides expressly or impliedly to the contrary.

## **109 Limitation of action**

- (1) No liability shall be incurred by the Crown or any person—
  - (a) because of any disclosure made to the commissioner, any officer of the department or any inspector; or
  - (b) on account of any disclosure or publication made in good faith by the Minister, the commissioner or by someone on the commissioner's behalf, concerning any of the following matters if the Minister or the commissioner is satisfied it is in the public interest to make the disclosure or publication—
    - (i) the supply of goods or services;
    - (ii) the commercial or business reputation of any person associated with the supply of goods or services;
    - (iii) the quality or standard of goods or services supplied by any person;
    - (iv) a contravention or alleged contravention of this Act or the operation or enforcement of this Act.
- (2) Without limiting subsection (1), no liability shall be incurred by the Crown, the Minister, the commissioner, a person acting on the commissioner's behalf, an officer of the department or an inspector on account of any act or thing—



- (a) done or omitted to be done under this Act; or
  - (b) done or omitted to be done genuinely for the purposes of this Act and without negligence.
- (3) This section does not affect the liability of a person to disciplinary action under the *Public Service Act 2008*.
- (4) The provisions of this Act shall be read and construed subject to the provisions of any other Act that limit the liability of the Crown or any other person.

## **110 Preservation of secrecy**

- (1) A person who is or was at any time the commissioner, an assistant commissioner or an officer of the department, or an inspector shall not, other than in the course of the person's duty under this Act or where it is competent to the person so to do because of a provision of this Act, directly or indirectly, communicate information that came to the person's knowledge as a consequence of the person holding that appointment or position.
- (2) It is competent—
- (a) to the commissioner, an officer of the department, and an inspector to communicate to a person whose complaint concerning any matter has been investigated by the bureau, or to QCAT, information concerning that matter, which has come to his or her knowledge because of the investigation and which is of a class of information that the commissioner has authorised, either generally or in a particular case, to be so communicated; and
  - (b) to the commissioner or a person authorised in that behalf by the commissioner to make a disclosure or publication concerning any of the matters referred to in section 109(1)(b); and
  - (c) to the commissioner or a person authorised in that behalf by the commissioner to communicate to the appropriate Minister or official of the Crown in right of

the Commonwealth or of Queensland or of any other State or of a Territory information which the commissioner considers should be communicated for the purpose of the administration of any law of the Commonwealth or of Queensland or of any other State or of a Territory.

- (2A) The commissioner may communicate to the appropriate Minister or official of another country information that the commissioner considers should be communicated for the administration of the law of the other country.
- (3) Subsection (1) shall not be construed to prohibit any person referred to in that subsection when called as a witness in any legal proceedings from answering any question that the person is compellable to answer in those proceedings.
- (4) In no case shall a person referred to in subsection (1) disclose or be compelled to disclose the source of information that came to the person's knowledge in consequence of the person holding an appointment or position under this Act.
- (5) Subsection (4) does not apply in any case where the person or the body that is the source of the information consents to the disclosure.
- (6) Subsection (1) is taken also to refer to a person who was at any time—
- (a) a member of the former Consumer Safety Committee or former Consumer Affairs Council; or
  - (b) an officer of the former Office of Fair Trading.

## **112 Evidence**

- (1) In any proceedings under this Act—
- (a) where—
    - (i) a published statement is intended, or apparently intended, to promote the supply or use of any goods or services; and

- (ii) a name, business name, address, telephone number, post office box number, facsimile number, telex number, or newspaper office reply number specified in the statement is that of a person, or the agent of a person, who—
  - (A) is the owner, whether alone or jointly with another person or other persons, of such goods; or
  - (B) is a supplier of such goods or services; or
  - (C) has an interest, otherwise than as owner, in such goods; or
  - (D) has an interest, otherwise than as supplier, in the supply of such services;it shall be presumed, unless the contrary is proved, that the person or agent, as the case may be, caused the statement to be published; and
- (b) in which it is alleged that a person in contravention of the Australian Consumer Law (Queensland), section 29 or 151 falsely represented that a vehicle as at a particular time had not travelled more than a specified distance—
  - (i) the distance shown on the odometer of the vehicle at any time shall be taken, unless the contrary is proved, to be a representation to all persons that the vehicle had not travelled more than the distance so shown; and
  - (ii) evidence that, at any time before the representation was made, the distance shown on the odometer of the vehicle was greater than the distance specified in the representation shall be evidence and, unless the contrary is proved, conclusive evidence that the representation was false; and
- (c) in relation to an offence against section 90 in respect of a failure to furnish information or to produce records or a copy of them, an allegation or averment in a charge that a person failed as required to furnish information, or produce records or a copy of them shall be evidence

and, unless the contrary is proved, conclusive evidence of the matter so alleged or averred; and

- (d) it shall not be necessary to prove the appointment of an inspector or other officer or the authority of the inspector or officer to do any act, make any requirement or give any order; and
  - (e) the authority of any person to take any proceeding shall be presumed unless the contrary is proved; and
  - (f) a printed document that purports—
    - (i) to be a standard, rule, code or specification of an association or body referred to in, or prescribed under, the regulations; and
    - (ii) to have been published or issued by or on behalf of that association or body;is evidence of that standard, rule, code or specification.
- (2) In a proceeding against a person under the Australian Consumer Law (Queensland), section 236, in a proceeding in which the court may make an order under the Australian Consumer Law (Queensland), section 238 or in an application under the Australian Consumer Law (Queensland), section 237 or 239 for an order against a person, a finding of any fact by a court made in proceedings under the Australian Consumer Law (Queensland), chapter 5, part 5-2, division 2 or for an offence against this Act in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of this Act is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (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.

- (4) In subsection (1)(f)(i)—  
*regulations* includes regulations under section 139G of the Competition and Consumer Act.

### **113 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made for or about a matter mentioned in the schedule.
- (3) A regulation may provide for an offence punishable by a maximum penalty of 20 penalty units.

### **114 Approval of forms**

The chief executive may approve forms for use under this Act.

## **Part 7 Transitional provisions for Equity and Fair Trading (Miscellaneous Provisions) Act 1999**

### **115 Transitional provision for references to commissioner for consumer affairs**

A reference in any Act or document to the commissioner for consumer affairs may, if the context permits, be taken to be a reference to the commissioner for fair trading.

## **Part 8**

# **Transitional provision for Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2003**

### **117 Transitional provision for actions for damages and compensation and other remedial orders—TPA, ss 82 and 87**

Sections 99, 100 and 103, as in force before the commencement of this section, continue to apply to an act or omission that is a contravention of part 3, division 1 (other than section 39), section 52 or 53 or part 3, division 2A that happens before the commencement.

## **Part 9**

# **Transitional provision for Criminal Proceeds Confiscation and Other Acts Amendment Act 2009**

### **118 Existing exemptions and applications for exemptions for section 63**

- (1) On the commencement—
  - (a) any relevant exemption existing immediately before the commencement is revoked; and
  - (b) any application for a relevant exemption existing immediately before the commencement ends; and
  - (c) any entitlement or expectation that anyone has immediately before the commencement to apply for or to be given a relevant exemption is extinguished.
- (2) In this section—

*commencement* means the commencement of the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009*, section 68.

*relevant exemption* means an exemption given under section 71A for section 63.

## Part 10                      Transitional provisions for Fair Trading (Australian Consumer Law) Amendment Act 2010

### 119      Definitions for this part

In this part—

*amending Act* means the *Fair Trading (Australian Consumer Law) Amendment Act 2010*.

*commencement* means the day this definition commences.

### 120      Transitional provision for references to Office of Consumer Affairs or Office of Fair Trading

A reference in any Act or document to the Office of Consumer Affairs or the Office of Fair Trading may, if the context permits, be taken to be a reference to whichever of the following is appropriate in the circumstances—

- (a) the commissioner;
- (b) the department in which this Act is administered.

### 121      Transitional provision relating to undertakings and the register of undertakings

- (1) The register of undertakings kept under section 91L before the commencement continues after the commencement to be the register kept for that section as amended by the amending Act.
- (2) An undertaking (an *old undertaking*) that, immediately before the commencement, was still in force and was included

in the register continues to have effect after the commencement, to the greatest practicable extent, as if it were an undertaking (a *new undertaking*) given under the Australian Consumer Law (Queensland), chapter 5, part 5-1, division 1.

- (3) Without limiting subsection (2), a breach of the old undertaking that happens after the commencement must be dealt with as if it were a breach of a new undertaking.
- (4) For subsection (3), a reference in an old undertaking to a provision of this Act that is repealed on the commencement must be taken, to the greatest practicable extent, to be a reference to a provision of the Australian Consumer Law (Queensland) that corresponds to the repealed provision.

## 122 Proceedings

- (1) A proceeding started under this Act before the commencement must be completed under this Act as if the amending Act had not been enacted.
- (2) After the commencement, a relevant proceeding may be started, and may be completed, under this Act as if the amending Act had not been enacted.
- (3) Subsection (2) applies only if, at the time the proceeding is started, it could have been started under this Act if the amending Act had not been enacted.
- (4) In this section—

*relevant proceeding* means a proceeding in relation to—

- (a) a contravention of this Act happening before the commencement; or
- (b) another matter or thing arising under this Act before the commencement.

## 123 Unfair contract terms

- (1) The Australian Consumer Law (Queensland), chapter 2, part 2-3—



- (a) applies to a contract entered into on or after the commencement; and
  - (b) does not apply to a contract entered into before the commencement.
- (2) Despite subsection (1)(b), if a contract entered into before the commencement is renewed on or after the commencement, the Australian Consumer Law (Queensland), chapter 2, part 2-3 applies to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that happens on or after the renewal day.
- (3) Also, if a term of a contract entered into before the commencement is varied on or after the commencement, and subsection (2) has not already applied in relation to the contract, the Australian Consumer Law (Queensland), chapter 2, part 2-3 applies to the term as varied, on and from the day (the *variation day*) on which the variation takes effect, in relation to conduct that happens on or after the variation day.
- (4) If subsection (3) applies to a term of a contract, the Australian Consumer Law (Queensland), sections 23(2) and 27 apply to the contract.

## **Schedule                      Subject matters for regulations**

section 113

### **1                      Functions, powers and duties**

The discharge of any function and the exercise of any powers by any body or person appointed under this Act.

### **2                      Qualifications and appointments**

The qualifications required before a person is appointed under this Act.

### **3                      Supply of services**

Prohibiting the supply of services mentioned in the regulation, and authorising the supply of services mentioned in the regulation subject to conditions or restrictions prescribed in the regulation.

### **4                      Prevention of injury**

Any matter of any kind relating to the prevention of injury to any person from the supply or use of services under any circumstances.

### **5                      Prevention of deception of consumers**

Any matter relating to the prevention of deception of consumers in relation to the supply to them of goods or services or relating to the suppression of practices in trade or commerce that in the opinion of the commissioner are undesirable having regard to the interests of consumers.

**6 Matters ancillary to Act**

Any matter relating to the manufacture or marketing of goods or services where regulation facilitates the operation or enforcement of this Act.