



Australian Capital Territory

# **Fair Trading (Consumer Affairs) Act 1973**

**A1973-17**

**Republication No 20**

**Effective: 22 September 2009 – 31 March 2010**

Republication date: 22 September 2009

Last amendment made by A2009-20

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Fair Trading (Consumer Affairs) Act 1973* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 September 2009. It also includes any amendment, repeal or expiry affecting the republished law to 22 September 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Fair Trading (Consumer Affairs) Act 1973

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Dictionary 2
2A	Notes 2
<b>Part 2</b>	<b>Fair trading advisory committees</b>
3	Appointment of committees 3
4	Functions of committees 3
5	Expenses 4

---

R20  
22/09/09

Fair Trading (Consumer Affairs) Act 1973  
Effective: 22/09/09-31/03/10

contents 1

	Page
<b>Part 3</b>	<b>Commissioner for fair trading</b>
<b>Division 3.1</b>	<b>Administration</b>
6	Commissioner for fair trading 4
7	Functions of commissioner 4
8	Delegation by commissioner 5
<b>Division 3.2</b>	<b>Investigations</b>
8A	Definitions for div 3.2 6
9	Investigators 7
10	Identity cards 7
11	Power not to be exercised before identity card shown 8
12	General power to enter premises 8
12A	Consent to entry 8
12B	Warrants 9
12C	Warrants—application made other than in person 10
12D	General powers on entry to premises 11
12DA	Inspection of records of agents 12
12E	Power to seize evidence 13
12F	Receipt for things seized 14
12G	Access to things seized 15
12H	Return of things seized 15
12I	Selfincrimination etc 15
12M	Damage etc to be minimised 16
12N	Compensation 17
13	Investigator may require giving of information and producing of documents 17
14	Copying of documents produced under s 13 19
15	Secrecy 19
16	Commissioner's power to institute or defend legal proceedings on behalf of consumers 20
<b>Part 4</b>	<b>Consumer product safety orders and standards</b>
<b>Division 4.1</b>	<b>Product safety advisory committee</b>
17	Product safety advisory committee 23

	Page
18	24
20	24
21	24
22	25
23	25
<b>Division 4.2</b>	<b>Orders and standards</b>
24	25
25	26
26	27
27	29
28	30
29	31
30	33
31	34
32	35
33	35
34	35
<b>Division 4.3</b>	<b>Notification and review of decisions</b>
35	36
36	36
36A	36
<b>Part 5</b>	<b>Product recall</b>
37	37
38	40
39	43
40	44
<b>Part 6</b>	<b>Miscellaneous</b>
41	45
41A	45
42	46
43	46
44	47

## Contents

---

45	References to director of consumer affairs etc	Page 47
<b>Schedule 1</b>	<b>Reviewable decisions</b>	<b>48</b>
<b>Dictionary</b>		<b>49</b>
<b>Endnotes</b>		
1	About the endnotes	52
2	Abbreviation key	52
3	Legislation history	53
4	Amendment history	58
5	Earlier republications	72



Australian Capital Territory

# **Fair Trading (Consumer Affairs) Act 1973**

---

An Act to make provision for the protection of consumers, and for the protection of traders against unfair commercial practices

---

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Fair Trading (Consumer Affairs) Act 1973*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*goods*—see the *Fair Trading Act 1992*, dictionary.’ means that the term ‘goods’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 2A Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



## Part 2 Fair trading advisory committees

### 3 Appointment of committees

- (1) The Minister may appoint such advisory committees as he or she thinks fit.
- (2) An advisory committee shall consist of the commissioner and such other members as are considered by the Minister to be qualified by reason of their knowledge or expertise on matters affecting the interests of consumers.
- (3) The procedure at meetings of an advisory committee shall be as determined by that committee.
- (4) The instrument of establishment of an advisory committee is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### 4 Functions of committees

- (1) The function of an advisory committee is to provide advice to the Minister or the commissioner about issues affecting the interests of consumers and unfair commercial practices affecting traders.
- (2) An advisory committee must provide advice as required by the Minister or the commissioner and may provide advice on its own initiative.
- (3) In carrying out its function, an advisory committee may consult with members of the public and with other entities interested in issues affecting the interests of consumers.

## **5 Expenses**

- (1) Subject to subsection (2), a member of an advisory committee is not entitled to be paid in respect of duties or functions exercised in connection with the work of the committee.
- (2) A member may apply to the commissioner for reimbursement of any expenses reasonably incurred by the member for the purpose of attending a meeting of a committee.

# **Part 3 Commissioner for fair trading**

## **Division 3.1 Administration**

### **6 Commissioner for fair trading**

The chief executive must appoint a public servant as the Commissioner for Fair Trading.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

### **7 Functions of commissioner**

- (1) The commissioner may—
  - (a) receive complaints about fraudulent conduct or unfair practices in relation to the supply of goods or services or the acquisition of interests in land; and
  - (b) deal with the complaints in a way the commissioner considers appropriate, including by investigating them or referring them to the entity the commissioner considers to be best able to take appropriate action; and
  - (c) conduct other investigations and research into consumer and fair trading issues and practices; and

- (d) inspect records and accounts that must be kept under fair trading legislation; and
- (e) make information available to, and provide guidance to, the public about consumer and fair trading issues and practices and about related laws; and
- (f) exercise any other function given to the commissioner under a Territory law; and
- (g) be responsible for any other function given to the commissioner by the Minister or chief executive.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (2) In exercising his or her functions, the commissioner may collaborate or consult with advisory committees, members of the public, and other entities.
- (3) A complaint mentioned in subsection (1) (a) may, but need not, relate to conduct or a practice to which fair trading legislation applies.

## **8 Delegation by commissioner**

- (1) The commissioner may delegate the commissioner's functions under the consumer and trader legislation or another territory law to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) In this section:

***consumer and trader legislation*** means the following:

- (a) the consumer credit legislation;
- (b) the fair trading legislation;
- (c) the *Liquor Act 1975*;

- (d) the *Pawnbrokers Act 1902*;
- (e) the *Second-hand Dealers Act 1906*;
- (f) the trade measurement legislation.

*consumer credit legislation*—see the *Consumer Credit (Administration) Act 1996*, dictionary.

*trade measurement legislation*—see the *Trade Measurement (Administration) Act 1991*, dictionary.

## Division 3.2 Investigations

### 8A Definitions for div 3.2

In this division:

*business premises* means premises where a business, trade, profession or calling is carried on, other than a part used for residential purposes.

*connected*—a thing is *connected* with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

## **9**      **Investigators**

An investigation for section 7 (1) (b), (c) or (d) (Functions of commissioner) may be made by the commissioner or a person authorised, in writing, by the commissioner.

*Note*      An *investigator* is the commissioner or an authorised person (see the dictionary, definition of *investigator*).

## **10**     **Identity cards**

- (1) The commissioner must issue an identity card to each investigator under this Act or the *Consumer Credit (Administration) Act 1996*.
- (2) The identity card must state that the person is an investigator.
- (3) The identity card must also—
  - (a) include a recent photograph of the person; and
  - (b) state—
    - (i) the person's name; and
    - (ii) the Acts for which the person is an investigator; and
    - (iii) the date of issue of the card; and
    - (iv) a date of expiry for the card; and
  - (c) include anything else prescribed under the regulations.
- (4) A person who ceases to be an investigator must return his or her identity card to the commissioner as soon as practicable, but within 21 days, after ceasing to be an investigator.

Maximum penalty (subsection (4)): 1 penalty unit.

**11 Power not to be exercised before identity card shown**

An investigator under this Act or the *Consumer Credit (Administration) Act 1996* may exercise a power under a Territory law in relation to a person only if the investigator first shows the person his or her identity card.

**12 General power to enter premises**

- (1) For an investigation, an investigator may—
  - (a) enter any premises at any time with the occupier's consent; or
  - (b) enter premises when open to the public; or
  - (c) enter business premises during business hours at the premises; or
  - (d) enter premises in accordance with a warrant under this division.
- (2) An investigator may, without the occupier's consent or a warrant, enter the land around premises to ask for consent to enter the premises.

**12A Consent to entry**

- (1) When seeking the consent of an occupier for entering premises under this division, an investigator must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this division may be used in evidence in court; and
    - (iii) that consent may be refused.

- (2) If the occupier consents, the investigator must ask the occupier to sign a written acknowledgment—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this division may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time, and day, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the investigator must immediately give a copy to the occupier.
- (4) A court must assume that an occupier of premises did not consent to an entry to the premises by an investigator under this division if—
  - (a) the question whether the occupier consented to the entry arises in proceedings in the court; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry; and
  - (c) it is not proved that the occupier consented to the entry.

## **12B Warrants**

- (1) An investigator may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against the fair trading legislation; and
  - (b) the thing or activity is at or happening at the premises, or may be at or happening at the premises within the next 14 days.
- (5) The warrant must state—
  - (a) that an investigator may, with necessary help and force, enter the premises and exercise the investigator’s powers under this division; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 14 days after the warrant’s issue, the warrant ends.

**12C Warrants—application made other than in person**

- (1) An investigator may apply for a warrant by phone, fax, radio or other form of communication if the investigator considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the investigator must prepare an application stating the grounds on which the warrant is sought.
- (3) The investigator may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the investigator if it is practicable to do so.



- (5) The faxed copy of the warrant authorises the entry and the exercise of the investigator's powers under this division.
- (6) The investigator must, at the first reasonable opportunity, send to the magistrate the sworn application.
- (7) On receiving the sworn application, the magistrate must attach it to the warrant.
- (8) A court must assume that a power exercised by an investigator was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

## **12D General powers on entry to premises**

- (1) An investigator who enters premises under this division may, for the fair trading legislation, do any of the following in relation to the premises or anything on the premises:
  - (a) inspect or examine;
  - (b) copy a document;
  - (c) take measurements or conduct tests;
  - (d) take samples of or from anything on the premises;
  - (e) take photographs, films, or audio, video or other recordings;
  - (f) subject to section 12E (Power to seize evidence), seize a thing;
  - (g) take into the premises any people, equipment or material the investigator reasonably needs for exercising a power under this division;

- (h) require the occupier, or a person on the premises, to give the investigator reasonable help to exercise a power under this division.
- (2) A person must not, without reasonable excuse, contravene a requirement under subsection (1) (h).  
Maximum penalty (subsection (2)): 50 penalty units.

### **12DA Inspection of records of agents**

- (1) For this section, the following is a *relevant circumstance* in relation to a person:
  - (a) the person is a licensed agent who cannot be found;
  - (b) the person is a licensed agent who has left the ACT apparently permanently or for an extended period;
  - (c) the person has ceased to be a licensed agent;
  - (d) the person is a licensed agent who has contravened or appears to have contravened the *Agents Act 2003*, part 7 (Trust accounts).
- (2) This section applies if an investigator is satisfied that—
  - (a) a relevant circumstance has happened in relation to a person; and
  - (b) the person has deposited money in an account with an authorised deposit-taking institution; and
  - (c) it is necessary to inspect the records relating to the person kept by the institution.
- (3) The investigator may give to the authorised deposit-taking institution a written notice—
  - (a) setting out the relevant circumstance; and

- (b) requiring the institution to produce for the investigator's inspection the records of the institution relating to the person.
- (4) An authorised deposit-taking institution must comply with the notice.
- (5) In this section:

***account***—

- (a) means a trust account or another account, whether related to a person's business activities or not; and
- (b) includes an account kept jointly with someone else.

***licensed agent***—see the *Agents Act 2003*, dictionary.

***trust account***—see the *Agents Act 2003*, dictionary.

## **12E Power to seize evidence**

- (1) An investigator who enters premises under a warrant under this division may seize the things for which the warrant was issued.
- (2) An investigator who enters premises under this division with the occupier's consent may seize a thing on the premises if—
  - (a) the investigator is satisfied on reasonable grounds that the thing is connected with an offence against the fair trading legislation; and
  - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.
- (3) An investigator may also seize anything on premises entered under this division if the investigator is satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against the fair trading legislation; and
  - (b) the seizure is necessary to prevent the thing from being—

- (i) concealed, lost or destroyed; or
  - (ii) used to commit, continue or repeat the offence.
- (4) In addition, an investigator may seize goods on premises entered under this division if—
- (a) the investigator is satisfied on reasonable grounds that the goods have been supplied in contravention of the fair trading legislation; and
  - (b) seizure of the goods is necessary to decide whether the contravention has happened, or to be used as evidence in proceedings under the fair trading legislation about the contravention.
- (5) Having seized a thing, an investigator may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (6) A person must not, without the commissioner’s approval, interfere with a thing to which access has been restricted under subsection (5).

Maximum penalty (subsection (6)): 50 penalty units, imprisonment for 6 months or both.

## **12F Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an investigator under this division, the investigator must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the investigator must leave the receipt, secured conspicuously at the place of seizure.

**12G Access to things seized**

A person who would, apart from the seizure, be entitled to a thing seized under this division may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

**12H Return of things seized**

- (1) A thing seized under this division must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
  - (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or
  - (b) the court does not find the offence proved in a prosecution for an offence against the fair trading legislation relating to the thing.
- (2) A thing seized under this division is forfeited to the Territory if a court—
  - (a) finds an offence against the fair trading legislation relating to the thing to be proved; and
  - (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but a court does not order forfeiture of the thing seized, the commissioner must return the thing to its owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.

**12I Selfincrimination etc**

- (1) A person is not excused from providing information or producing a document when required to do so under this division on the ground that the information or document may tend to incriminate the person.

- (2) However—
- (a) providing the information or producing the document; or
  - (b) any other information, document or thing obtained as a direct or indirect consequence of providing the information or producing the document;
- is not admissible in evidence against the person in a criminal proceeding.
- (3) Subsection (2) does not apply to a proceeding for—
- (a) an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents); or
  - (b) any other offence in relation to the falsity or misleading nature of the information or document.

*Note 1* A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

*Note 2* The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

## **12M Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this division, an investigator must take all reasonable steps to ensure that the investigator, and any person assisting the investigator, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an investigator, or a person assisting an investigator, damages anything in the exercise or purported exercise of a function under this division, the investigator must give written notice of the particulars of the damage to the person whom the investigator believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens on premises entered under this division in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

## **12N Compensation**

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this division by an investigator or a person assisting an investigator.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against the fair trading legislation brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## **13 Investigator may require giving of information and producing of documents**

- (1) An investigator making an investigation—
  - (a) on giving a person other than a corporation a warning, orally or in writing, of his or her obligation to comply with a requirement under this section, may, by written notice, require that person—
    - (i) to give to the investigator, by writing signed by that person, information specified in the notice; or
    - (ii) to give to the investigator, orally, information specified in the notice; or
    - (iii) to produce to the investigator a document specified in the notice;

- (b) may, on giving a person being a corporation a written warning of its obligation to comply with a requirement under this section, by written notice, require the person—
    - (i) to give to the investigator, through a competent officer of the corporation by writing signed by that officer, information specified in the notice; and
    - (ii) to give to the investigator, through such a competent officer, orally, information specified in the notice; and
    - (iii) to produce to the investigator, through such a competent officer, a document specified in the notice; and
  - (c) may require a person referred to in paragraph (a) or (b) so to give the information or produce the document—
    - (i) at a place specified in the notice; and
    - (ii) at or within a time specified in the notice.
- (2) A person who, without reasonable excuse, fails to comply with a requirement under this section commits an offence.
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) A reference in this section to information or a document specified in a notice under this section is a reference to information or a document, as the case may be, reasonably required for this Act.
- (4) An investigator who enters premises under section 12 is not authorised to remain on the premises if the investigator does not produce his or her identity card for inspection if asked to do so by the occupier or a person apparently in charge of the premises.



## **14 Copying of documents produced under s 13**

- (1) A prescribed person may—
  - (a) make copies of a document produced in accordance with a notice under section 13; and
  - (b) retain possession of such a document for as long as is necessary to make those copies.
- (2) A prescribed person who for subsection (1) is in the possession of a document shall comply with a request made by the person who produced the document, or by a person authorised by that person, to be afforded a reasonable opportunity to inspect and make copies of the document.
- (3) In this section:  
*prescribed person* means—
  - (a) the commissioner; or
  - (b) a person authorised by the commissioner by signed writing for this section.

## **15 Secrecy**

- (1) This section applies to every person who is, or has been, a person engaged in the administration of this Act, including a person who receives information or a document from the commissioner under section 7 (2).
- (2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the exercise of a duty under, or in connection with, this Act—
  - (a) make a record of, or divulge or communicate to a person, information about the affairs of another person acquired by him or her by reason of his or her office or employment under, or for, this Act; or

(b) produce to a person a document produced under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) A person to whom this section applies shall not, for the purposes of criminal proceedings against a person, communicate or produce to a court information, a document, or a copy of a document, that was given or produced by the secondmentioned person in accordance with a requirement under section 13 unless—

(a) the proceedings are for an offence against section 13 (2); or

(b) the proceedings are in respect of the falsity of the information or of a statement in the document.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(4) Subsection (2) does not apply to the communication of information, or the production of a document, to a court for the purposes of civil proceedings.

(5) Subsection (2) does not apply in relation to the communication, to a person appointed, or a body established, under a law of a State or another Territory for a purpose relating to matters affecting the interests of consumers, of information relating to a complaint received from a consumer that is being or has been investigated by the commissioner if the consumer, prior to the communication being made, consents, in writing, to the communication of that information.

## **16 Commissioner's power to institute or defend legal proceedings on behalf of consumers**

(1) If, after a complaint or other matter involving a consumer is made or referred to the commissioner, the commissioner is satisfied that—

(a) a consumer has a cause of action or a good defence to an action; or

- (b) it is otherwise in the public interest to do so;
- he or she may, on behalf of the consumer and either alone or jointly, institute legal proceedings against any other person or defend proceedings brought against the consumer with a view to enforcing or protecting the rights of the consumer in relation to an infringement, or suspected infringement, by that other person of—
- (c) those rights; or
- (d) a provision of a law in force in the ACT relating to the interests of consumers.
- (2) Notwithstanding subsection (1), the commissioner shall not institute or defend proceedings under this section unless he or she first obtains—
- (a) the written consent of the consumer; and
- (b) the written consent of the Minister.
- (3) Nothing in subsection (2) requires the commissioner to get the consent of the consumer or the Minister in relation to the defence of a counterclaim, set-off or cross-action.
- (4) A consent given under subsection (2) (a) is irrevocable except with the consent of the commissioner.
- (5) A consent given under subsection (2) (b) is subject to the conditions the Minister thinks fit.
- (6) Subject to subsection (2), the commissioner may, without consulting or seeking the consent of the consumer, conduct proceedings under this section in the name of the consumer and in the way the commissioner considers appropriate and proper.
- (7) For the purpose of conducting proceedings under this section, the commissioner has in all respects the same rights as the consumer would have had in the conduct of the proceedings, including the right—

- (a) to sign documents in connection with the proceedings on behalf of the consumer; and
  - (b) to settle an action or part of an action; and
  - (c) to give undertakings with regard to costs.
- (8) Money (other than costs) recovered by the commissioner as a result of proceedings under this section shall be paid to the consumer without deduction.
- (9) If an order for costs is made against the consumer—
- (a) the costs shall be paid by the commissioner; and
  - (b) the order may be enforced against the commissioner as if he or she were the consumer; and
  - (c) the order shall not be enforced against the consumer.
- (10) If an order for costs is made in favour of the consumer—
- (a) the costs are payable to the commissioner; and
  - (b) the order may be enforced by the commissioner.
- (11) In proceedings under this section, a court has the same powers as it would have had if the proceedings had been instituted by the consumer.
- (12) The commissioner is not personally liable as a result of proceedings instituted or defended by him or her under this section but an amount that the commissioner becomes liable to pay under subsection (9) shall be paid by the Territory.

## **Part 4**                      **Consumer product safety orders and standards**

### **Division 4.1**              **Product safety advisory committee**

#### **17**              **Product safety advisory committee**

- (1) There is established a product safety advisory committee having the functions given or imposed on it by this Act.
- (2) The product safety advisory committee consists of—
  - (a) a person appointed by the Minister as chairperson of the committee; and
  - (b) a public servant appointed by the Minister as executive officer of the committee; and
  - (c) such other persons appointed by the Minister as the Minister considers to be qualified by reason of their knowledge or expertise on matters related to product safety.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) If the chairperson is unable to exercise the functions of chairperson, they shall be exercised by a member of the committee appointed by the Minister as acting chairperson.
- (4) The instrument of establishment is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## 18 Appointment and tenure of office of members

- (1) Subject to subsection (2) a member of the product safety advisory committee holds office in accordance with the terms of his or her appointment.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of *appoint*).

- (2) The Minister may at any time remove from office a member of the committee by written notice addressed and delivered to the member.

*Note* A member's appointment also ends if the member resigns (see Legislation Act, s 210).

- (3) The executive officer of the committee vacates office as a member of the committee on ceasing to be a public servant.

## 20 Coopted members

- (1) The product safety advisory committee with the prior approval of the Minister may coopt any person whom it considers to have expertise in relation to the functions of the committee.
- (2) A person coopted under subsection (1) is, when attending a meeting of the committee, taken to be a member of the committee and has a right to vote and participate in the committee's proceedings.

## 21 General procedure

- (1) Meetings of a product safety advisory committee are to be held when and where it decides.
- (2) A product safety advisory committee may conduct its proceedings (including its meetings) as it considers appropriate.

**22 Voting at product safety advisory committee meetings**

At a meeting of a product safety advisory committee, a question is decided by a majority of the votes of the members present and voting.

**23 Product safety advisory committees to keep minutes**

A product safety advisory committee must keep minutes of its meetings.

**Division 4.2 Orders and standards**

**24 Advice about consumer product safety orders or standards**

- (1) The commissioner—
- (a) shall, at the request of the Minister; or
  - (b) may, of his or her own initiative;
- advise the Minister, after due consideration, whether—
- (c) a consumer product safety order or recall or notification order made under section 37 (1) should be made, amended or revoked; or
  - (d) a consumer product safety standard should be prescribed or a prescribed product safety standard should be amended or repealed; or
  - (e) a consumer product information standard should be prescribed or a prescribed consumer product information standard should be amended or repealed;

in relation to any goods or any class of goods.

- (2) The advice of the commissioner shall be given to the Minister in writing as soon as practicable following consideration of the matter and the advice shall include a recommendation of the action (if any) that should be taken.
- (3) The commissioner shall not recommend action of a kind referred to in subsection (1) (c), (d) or (e) in relation to any goods or any class of goods unless the commissioner considers the action is reasonable and necessary to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person.
- (4) The product safety advisory committee may of its own initiative request the commissioner to consider advising the Minister to take action of the kind referred to in subsection (1) (c), (d) or (e) in relation to any goods or any class of goods.

## **25 Consumer product safety standards**

- (1) The regulations may prescribe a consumer product safety standard to be used for a specified kind of goods.
- (2) A consumer product safety standard in relation to goods shall consist of such requirements as to—
  - (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
  - (b) the testing of the goods during, or after the completion of, manufacture or processing; and
  - (c) the form and content of markings, warnings or instructions to accompany the goods or be placed on a vending machine for the goods or a display stand or sign adjacent to the goods; and
  - (d) equipment or accessories to be supplied with the goods;as are reasonable and necessary to prevent or reduce risk of injury to a person.



- (3) A consumer product safety standard may apply, adopt or incorporate a law of another jurisdiction or an instrument, or a provision of a law of another jurisdiction or an instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act 2001, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

- (4) In this section:

*law of another jurisdiction*—see the Legislation Act, section 47 (10).

## **26 Interim safety orders**

- (1) If for the purpose of—
- (a) providing advice to the Minister under section 24; or
  - (b) a request under subsection (2) about advice by the product safety advisory committee;

in relation to goods or a class of goods, the commissioner considers that, before the relevant advice is provided, the supply of the goods or the class of goods should be prohibited or restricted to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person, the commissioner may, before that advice is provided, recommend that the Minister make an interim safety order in relation to the relevant goods or class of goods.

- (2) If for the purpose of providing advice in relation to goods or a class of goods in accordance with this Act, the product safety advisory committee considers that, before providing that advice, the supply of the goods or the class of goods should be prohibited or restricted to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those

goods by that person or any other person, the committee may request the commissioner to consider recommending in accordance with subsection (1) that the Minister make an interim safety order.

- (3) If the Minister is satisfied, on the recommendation of the commissioner made under subsection (1), that, pending advice from the commissioner or the product safety advisory committee, as the case may be, it is reasonable and necessary to prohibit or restrict the supply of any goods or any class of goods to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person, the Minister may, in writing, make an interim safety order—
- (a) prohibiting the supply of goods or a class of goods specified in the order; or
  - (b) imposing conditions or restrictions specified in the order on the supply of the relevant goods or class of goods.

*Note* A power given under an Act to make a statutory instrument (including an interim safety order) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (4) An interim safety order is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the *Legislation Act 2001*.

*Note 2* An amendment or repeal of an interim safety order is also a notifiable instrument (see *Legislation Act 2001*, s 46 (2)).

- (5) Unless the effect of an interim safety order is extended under subsection (7), the order expires on the earlier of the following:
- (a) 28 days after the day the notice is notified under the *Legislation Act 2001*;
  - (b) the commencement of a consumer product safety order under section 27 in relation to the goods specified in the order.
- (6) If an interim safety order (the ***first order***) is in force under this section in relation to specified goods or a specified class of goods,

the Minister may make a further interim safety order in relation to the same goods or class of goods only if the further order relates to an aspect of the goods or class of goods not covered by the first order.

- (7) If—
- (a) an interim safety order is in force in relation to goods or a class of goods; and
  - (b) further time is required for the commissioner to provide advice under section 24 (Advice about consumer product safety orders or standards), or for the product safety advisory committee to provide advice in accordance with this Act, in relation to the goods or class of goods;

the Minister, on the commissioner's recommendation, may, in writing, extend the period of the effect of the order.

- (8) If the effect of an interim safety order is extended under subsection (7), the order expires on the earlier of the following:
- (a) 28 days after the period of 28 days mentioned in subsection (5) (a);
  - (b) the commencement of a consumer product safety order under section 27 in relation to the goods specified in the interim safety order.
- (9) An extension under subsection (7) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **27 Consumer product safety orders**

- (1) The Minister may make an order (a *consumer product safety order*) prohibiting or restricting the supply of goods.

*Note 1* Power to make a consumer product safety order includes power to make an order about any 1 or more goods or a particular class of goods (see *Legislation Act*, s 48 (2)).

*Note 2* A power given under an Act to make a statutory instrument (including a consumer product safety order) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

- (2) A consumer product safety order restricting the supply of goods may be conditional.
- (3) The Minister may make a consumer product safety order only if satisfied that—
  - (a) the goods are dangerous; and
  - (b) the supply of the goods should be prohibited or restricted.
- (3) In this section:

*dangerous*—goods are *dangerous* if the possession, handling or use of the goods is, directly or indirectly, likely to cause death or injury to a person or affect a person’s health.
- (4) A consumer product safety order is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* An amendment or repeal of a consumer product safety order is also a notifiable instrument (see Legislation Act, s 46 (2)).

## **28 Consumer product information standards**

The regulations may prescribe a consumer product information standard to be used for a specified kind of goods consisting of requirements for, and for the form and manner of, disclosure of such information as to—

- (a) the price, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) the place of manufacture or production of the goods; and
- (c) the identity of the manufacturer, producer or supplier of the goods; and

(d) the date of the manufacture or production, or the durable life, of the goods; and

(e) care and storage of the goods;

as is reasonably necessary to give persons using the goods information as to their origin, quantity, quality, nature, durability or value.

## **29 Orders by commissioner**

(1) This section applies if a prescribed authority of the Commonwealth or a State has, by order or other instrument (the *interstate order*)—

(a) prohibited the supply of goods; or

(b) imposed conditions or restrictions on the supply of goods.

(2) The Minister may, at any time while the interstate order is in force, make an order (a *consumer product safety order*)—

(a) if the interstate order prohibits the supply of goods—prohibiting the supply of the goods in the ACT; or

(b) if the interstate order imposes conditions or restrictions on the supply of goods—imposing conditions or restrictions on the supply of the goods in the ACT.

*Note 1* Power to make a consumer product safety order includes power to make an order about any 1 or more goods or a particular class of goods (see Legislation Act, s 48 (2)).

*Note 2* A power given under an Act to make a statutory instrument (including a consumer product safety order) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

(3) However, the commissioner must not make a consumer product safety order under this section in relation to goods unless satisfied that it is reasonable and necessary to make the order to prevent or reduce the risk of injury to, or impairment of health of, someone because the person or someone else has or is handling or using the goods.

- (4) Also, the commissioner must not make a consumer product safety order under this section in relation to goods if the Minister has made, or refused to make, an interim safety order or consumer product safety order in relation to the goods.
- (5) A consumer product safety order made under this section may adopt an interstate order as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

- (6) A consumer product safety order made under this section in relation to goods ends on the earlier of the following:
- (a) if the order provides for its end—at the time stated by the order for its end;
  - (b) the commencement of a consumer product safety order under section 27 in relation to the goods.
- (7) Without limiting the powers implied by subsection (2), the Minister may, in writing, amend or repeal a consumer product safety order made under this section.
- (8) A consumer product safety order made under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (9) Written notice of the order must also be published in a newspaper circulating in the ACT.
- (10) In this section:

***prescribed authority*** means—

- (a) a Commonwealth or State Minister responsible for consumer affairs; or

- (b) a person appointed or authority established under a Commonwealth or State law with functions equivalent, or substantially equivalent, to the functions given to the Minister or commissioner under this part.

### **30 Offences**

- (1) Subject to this section, a person shall not supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if—
  - (a) there is a prescribed consumer product safety standard in respect of the goods and the goods do not comply with that standard; or
  - (b) the supplying of the goods contravenes an order under section 26, 27 or 29; or
  - (c) there is a consumer product information standard applicable to the goods and the goods do not comply with that standard.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) (a) does not apply to, or in relation to, the supply of goods—
  - (a) for the value of the material of which the goods are composed and not for the use of the goods as finished articles; or
  - (b) as damaged goods to—
    - (i) a person who carries on the business of repairing damaged goods for the purpose of reselling those goods; or
    - (ii) a person by whom those goods were insured against damage.
- (3) It is a defence to a prosecution for an offence against subsection (1) (a) that the defendant believed on reasonable grounds at the time he or she supplied the goods that they complied with the

prescribed consumer product safety standard or prescribed consumer product information standard.

- (4) If—
- (a) the supplying of goods by a person constitutes a contravention of subsection (1) by reason that the goods do not comply with a prescribed product safety standard or prescribed consumer product information standard; and
  - (b) a person suffers loss or damage by reason that the goods do not comply with that standard or by reason of his or her not having particular information in relation to the goods; and
  - (c) the person referred to in paragraph (b) would not have suffered the loss or damage if the good had complied with that standard;
- the person referred to in paragraph (b) is taken, for this part, to have suffered the loss or damage by the supplying of the goods.

- (5) If—
- (a) the supplying of goods by a person constitutes a contravention of subsection (1) by reason that the supplying contravenes an order under section 26, 27 or 29; and
  - (b) a person suffers loss or damage, being loss or damage caused by the goods or a defect in the goods or a dangerous characteristic of the goods or by reason of his or her not having particular information as to a characteristic of the goods;
- the person referred to in paragraph (b) is taken, for this part, to have suffered the loss or damage by the supplying of the goods.

### **31 Recovery of amount of loss or damage**

A person who suffers loss or damage by the supplying of goods in contravention of section 30 (1) may recover the amount of the loss or damage by action against the person by whom the goods were so supplied.



### **32 Recovery of amount paid for goods**

- (1) Subject to this section, a person to whom goods have been supplied in contravention of section 30 (1) may recover, as a debt due to him or her, against the person who supplied the goods—
  - (a) the amount paid in respect of the supplying of the goods by the secondmentioned person; and
  - (b) if the firstmentioned person has returned the goods to the secondmentioned person—the amount of any reasonable expenses incurred in so returning the goods.
- (2) A person to whom goods have been supplied in contravention of section 30 (1) and who supplies those goods to another person in contravention of that subsection shall not be entitled to recover any amount under subsection (1) unless he or she has paid to that other person the amounts that the other person is entitled to recover under subsection (1).

### **33 Finding in proceedings to be evidence**

In an action against a person under section 31 or 32, a finding of any fact by a court in proceedings for an offence against section 30 (1), in which that person has been found to have contravened that section, is evidence of that fact.

### **34 Contracting out**

Any agreement under which the rights and entitlements given to a person under section 31 or 32 are waived, limited or modified is void.

## Division 4.3 Notification and review of decisions

### 35 Meaning of *reviewable decision*—div 4.3

In this division:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 36 Reviewable decision notices

- (1) If a person makes a reviewable decision, the person must publish a reviewable decision notice in relation to the decision in a newspaper circulating in the ACT.

*Note* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (2) If schedule 1, column 4 states that a reviewable decision is notifiable, a reviewable decision notice in relation to the decision is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### 36A Applications for review

A person whose interests are affected by a reviewable decision may apply to the ACAT for review of the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 5                      Product recall

### 37                      Recall etc of goods

- (1) This section applies if—
  - (a) a person supplies goods; and
  - (b) any of the following subparagraphs apply:
    - (i) it appears to the Minister that the goods are of a kind that will or may cause injury to someone;
    - (ii) a consumer product safety standard prescribed under section 28 applies to the goods and the goods do not comply with the standard;
    - (iii) an interim safety order under section 26, or a consumer product safety order under section 27 or 29, applies to the goods; and
  - (c) it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods causing injury.
- (2) The Minister may, by written notice, require the supplier to take action within the period specified in the notice to—
  - (a) recall the goods in the manner specified in the order; or
  - (b) disclose to the public, or to a class of persons specified in the order in the manner so specified 1 or more of the following:
    - (i) the nature of any defect in the goods identified in the order;
    - (ii) the circumstances in which the use of the goods is dangerous;
    - (iii) procedures for disposing of the goods; or

(c) notify the public, or a class of persons specified in the order, in the manner and within the period so specified, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

- (i) except if the order identifies a dangerous characteristic of the goods—repair the goods;
- (ii) replace the goods;
- (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods;

within the period specified in the order.

(3) A notice under subsection (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

(4) If an order so provides, if—

- (a) the supplier undertakes to refund the price of the goods; and
- (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of the refund may be reduced by an amount, specified in the order, that represents the use that the person has had of the goods.

(5) If a supplier undertakes to repair goods, the supplier shall cause the goods to be repaired so that—

- (a) any defect in the goods identified in the order is remedied; and
- (b) if there is a consumer product safety standard for goods of that kind—the goods comply with the standard.

- (6) If a supplier undertakes to replace goods, the supplier shall replace the goods with like goods that—
- (a) if a defect in the goods to be replaced was identified in the order—do not contain that defect; and
  - (b) if there is a consumer product safety standard for goods of that kind—comply with that standard.
- (7) If a supplier undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transport costs, shall be borne by the supplier.
- (8) While an order under subsection (1) is in force, a supplier of goods to which the order relates shall not—
- (a) fail to comply with a requirement of, or a direction in, the order; or
  - (b) if the order identifies a defect in the goods—supply goods of the kind to which the order relates and that contain that defect; or
  - (c) in a case other than a case referred to in paragraph (b)—supply goods of the kind to which the order relates; or
  - (d) fail to carry out an undertaking notified by the supplier under subsection (1); or
  - (e) having given such an undertaking to repair or replace goods, fail to comply with subsection (5), (6) or (7), where applicable.

Maximum penalty: 200 penalty units.

- (9) If goods are recalled, whether voluntarily or in accordance with an order under subsection (1), a person who has supplied any of the recalled goods to another person outside the ACT shall, as soon as practicable after the supply of those goods, give written notice to that other person—
- (a) stating that the goods are subject to recall; and

- (b) if the goods have a defect—stating the nature of the defect; and
- (c) if the goods do not comply with a consumer product safety standard for the goods—setting out the nature of the noncompliance.

Maximum penalty: 20 penalty units.

- (10) A supplier who voluntarily takes action to recall goods shall, not later than 2 days after that action is taken, give to the commissioner written notice—
- (a) stating that the goods are subject to recall; and
  - (b) if the goods have a defect—stating the nature of the defect; and
  - (c) if the goods do not comply with a consumer product safety standard for the goods—setting out the nature of the noncompliance.

Maximum penalty: 20 penalty units.

- (11) It is a sufficient compliance with subsection (10) if a copy of the notice relating to the goods is given under the *Trade Practices Act 1974* (Cwlth), section 65R to the commissioner.

### **38 Conferences relating to compulsory product recall**

- (1) If the Minister—
- (a) makes in conjunction with a consumer product safety order under section 27 any order under section 37 relating to goods the subject of the consumer product safety order; or
  - (b) has under consideration a draft of any order under section 37 that is not proposed to be made in conjunction with a consumer product safety order under section 27;

the Minister must prepare a written notice that complies with subsection (2) in relation to the order or draft order.

- (2) A notice relating to an order or draft order complies with this subsection if it specifies—
- (a) that a supplier of the goods to which the order or draft order relates may, before a day specified in the notice (being a day that is not earlier than 10 days after publication of the notice) lodge with the product safety advisory committee a request for a conference with that committee; and
  - (b) for a draft order—the terms of the draft order and a summary of the reasons why it is under consideration.
- (3) A notice under subsection (1) is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) If a notice under subsection (1) is notified, the commissioner must, within 2 days after the day it is notified under the *Legislation Act 2001* or, if it is not practicable to do so within the 2 days, as soon as practicable afterwards, either—
- (a) give a copy of the notice to each person who, to the commissioner's knowledge, supplies goods to which the notice relates; or
  - (b) publish a copy of the notice in a daily newspaper.
- (5) Any failure to comply with subsection (4) in relation to a notice does not invalidate the notice.
- (6) The product safety advisory committee may allow further time for the lodging of a request for a conference and shall—
- (a) if no request for a conference has been lodged—inform the Minister accordingly; or
  - (b) if a request for a conference has been lodged—notify the Minister and each supplier who has duly requested the conference, of the time and place for the holding of the conference, being a time not later than 14 days after the expiration of the time for lodging a request for the conference.

- (7) If a conference is held—
- (a) the product safety advisory committee shall be represented by a member nominated by the chairperson; and
  - (b) each supplier who has requested the conference, and any other person whose presence at the conference is considered by the product safety advisory committee to be appropriate, is entitled to be present or be represented; and
  - (c) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present.
- (8) A person in attendance at the conference may—
- (a) inspect documents in the possession of the member representing the product safety advisory committee that relate to the goods to which the order or draft order relates (other than documents specifying a secret formula or process); and
  - (b) be heard by, and make submissions to, the member representing the product safety advisory committee with respect to the order or draft order.
- (9) The member representing the product safety advisory committee shall keep a record of proceedings at a conference under this section.
- (10) After a conference is held, the product safety advisory committee shall—
- (a) if the conference related to a draft order—make a written recommendation to the Minister as to whether the Minister should—
    - (i) publish an order in terms of the draft order; or
    - (ii) publish an order in terms of the draft order with amendments; or



- (iii) refrain from publishing an order affecting the goods to which the draft order relates; or
  - (b) if the conference related to an order under section 37—make a written recommendation to the Minister as to whether the order should remain in force, be varied or be revoked.
- (11) The product safety advisory committee shall cause a copy of a recommendation made under subsection (10) to be given to each supplier who was present or represented at the conference.
- (12) The Minister is not bound by a recommendation under subsection (10) but, if the Minister decides not to act in accordance with the recommendation, the Minister must prepare a written notice stating the reasons for that decision.
- (13) A notice under subsection (12) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **39 Certain amounts recoverable as debt or damages**

- (1) If a supplier fails to carry out an undertaking given under section 37 to refund the price of goods, the amount that should have been refunded is recoverable as a debt due by the supplier to the person to whom the undertaking was given.
- (2) If a supplier fails to carry out an undertaking under section 37 to repair or replace goods, the supplier is taken to have given instead an undertaking, notified under section 37, to refund the price of the goods within the period specified for the repair or replacement of the goods.
- (3) If—
  - (a) a person fails to comply with any requirement of an order made under section 37 or supplies goods in contravention of such an order disclosing a defect in, or dangerous characteristic of, the goods; and

- (b) another person suffers loss or damage because of a defect in, or a dangerous characteristic of, the goods or by not having particular information as to a characteristic of the goods;

the person who suffered the loss or damage is taken, for this Act, to have suffered it because of the failure or contravention.

**40 Certain action not to affect insurance contracts**

The liability of an insurer under a contract of insurance with a person, being a contract relating to the recall of goods supplied or proposed to be supplied by the person or to the liability of the person with respect to possible defects in goods supplied or proposed to be supplied by the person, shall not be affected only because the person gives to the Minister, to the product safety advisory committee or to an officer information relating to any goods supplied or proposed to be supplied by the person.

## Part 6                      Miscellaneous

### 41                      Certificate evidence

- (1) A certificate that appears to be signed by the commissioner, and states any of the following matters, is evidence of the matter:
  - (a) that a stated investigation made, or being made, by the commissioner or another stated person was made, or being made, under part 3;
  - (b) that on a stated date, or during a stated period, a stated person was an investigator.
- (2) A court must accept a certificate under this section as proof of the matters stated in it if there is no evidence to the contrary.

### 41A                      Public warning statements

- (1) The Minister or the commissioner may make or issue a public statement identifying and giving warnings or information about any of the following:
  - (a) goods that the Minister or commissioner reasonably considers are unsatisfactory or dangerous and people who supply the goods;
  - (b) services that the Minister or commissioner reasonably considers are supplied in an unsatisfactory way and people who supply the services;
  - (c) commercial practices that the Minister or commissioner reasonably considers are unfair and people who engage in the practices;
  - (d) anything else that the Minister or commissioner reasonably considers adversely affects or may adversely affect the

interests of people in relation to the acquisition by them of goods or services from suppliers.

- (2) The statement may identify particular goods, services, business practices and people.
- (3) The Minister or the commissioner may make or issue a statement under this section only if satisfied that it is in the public interest to do so.

#### **42 Immunity from liability for certain statements**

- (1) The Territory, the Minister, a member of an advisory committee or the product safety advisory committee, the commissioner, an investigator or a person acting under the direction or control of the commissioner is not civilly liable for a statement, notice or report made or issued honestly by a person in the exercise of functions under this Act.
- (2) This section does not deprive a person of any defence the person might have relied on apart from this section.
- (3) To remove any doubt, a statement, notice or report made or issued by the Minister, an advisory committee, the product safety advisory committee or the commissioner for the information of the public is a **public document** for the *Civil Law (Wrongs) Act 2002*, section 61 (Publication of public document) and the *Defamation (Criminal Proceedings) Act 2001*, section 31.

#### **43 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may create offences for contraventions of the regulations and fix maximum penalties of not more than 20 penalty units for offences against the regulations.

**44 References to Consumer Affairs Act**

In an Act or document, a reference to the *Consumer Affairs Act 1973* is a reference to this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

**45 References to director of consumer affairs etc**

- (1) In relation to anything done or to be done after the commencement of this section, a reference in an Act or document to the director of consumer affairs or director of fair trading is a reference to the commissioner.
- (2) In relation to anything done or to be done after the commencement of this section, a reference in an Act or document to the consumer affairs bureau or office of fair trading is a reference to the commissioner.

## Schedule 1 Reviewable decisions

(see div 4.3)

column 1 item	column 2 section	column 3 decision	column 4 Is decision notifiable?
1	26 (3)	make, amend or repeal interim safety order	
2	26 (3)	refuse to make interim safety order	yes
3	26 (7)	extend period of effect of interim safety order	
4	27 (1)	make, amend or repeal consumer product safety order	
5	27 (1)	refuse to make consumer product safety order	yes
6	29	make, amend or repeal consumer product safety order	
7	29	refuse to make consumer product safety order	yes

---

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- Commonwealth
- Corporations Act
- daily newspaper
- entity
- Minister (see s 162)
- reviewable decision notice
- State.

***acquire***—see the *Fair Trading Act 1992*, dictionary.

***advisory committee*** means a consumer affairs advisory committee appointed by the Minister under this Act.

***business premises***, for division 3.2 (Investigations)—see section 8A.

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

***connected***, for division 3.2 (Investigations)—see section 8A.

***consumer***—see the *Fair Trading Act 1992*, section 6.

***consumer product information standard***, in relation to goods, means a standard established under section 28 in relation to those goods.

***consumer product safety order*** means an order under section 27 or section 29.

***consumer product safety standard*** in relation to goods, means a standard established under section 25 in relation to those goods.

**corporation**—see the Corporations Act.

**court** includes any tribunal or person having authority under a law, or by consent of parties, to receive evidence.

**dwelling house** means premises that are used, or intended to be used, for the purpose of residence, and includes the premises of a lodging house or boarding house.

**fair trading legislation** means—

- (a) the *Agents Act 2003*; or
- (b) the *Fair Trading Act 1992*; or
- (c) the *Fair Trading (Consumer Affairs) Act 1973*; or
- (d) the *Security Industry Act 2003*.

**goods**—see the *Fair Trading Act 1992*, dictionary.

**identity card** means an identity card issued to an investigator under section 10.

**interest in land** means—

- (a) a legal or equitable estate or interest in land; or
- (b) a right of occupancy of land or of a building erected on land, being a right that arises by virtue of holding shares, or a contract to purchase shares, in a corporation that is the owner of the land or the land where the building is situated; or
- (c) a right, power or privilege over, or in connection with, land.

**interim safety order** means an order made by the Minister under section 26.

**investigation** means an investigation under part 3.

**investigator** means the commissioner or a person who is authorised by the commissioner under section 9.



**occupier**, of premises, for division 3.2 (Investigations)—see section 8A.

**offence**, for division 3.2 (Investigations)—see section 8A.

**owner** means—

- (a) for land held under a lease from the Commonwealth for a term of years—the person who is the lessee of the land; and
- (b) for land held in fee simple—the person in whom the fee simple is vested.

**reviewable decision**, for division 4.3 (Notification and review of decisions)—see section 35.

**services**—see the *Fair Trading Act 1992*, dictionary.

**supply**—see the *Fair Trading Act 1992*, dictionary.

## Endnotes

1 About the endnotes

---

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Consumer Affairs Ordinance 1973* No 17 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

The Act was renamed as the *Fair Trading (Consumer Affairs) Act 1973* by the *Law Reform (Miscellaneous Provisions) Act 1999* (see sch 3).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **Fair Trading (Consumer Affairs) Act 1973 No 17**

notified 31 May 1973

commenced 31 May 1973

as amended by

##### **Consumer Affairs Ordinance (No 2) 1973 No 53**

notified 19 December 1973

commenced 19 December 1973

##### **Consumer Affairs (Amendment) Ordinance 1976 No 49**

notified 12 October 1976

commenced 12 October 1976

##### **Ordinances Revision (Remuneration) Ordinance 1976 No 61**

notified 16 November 1976

commenced 16 November 1976

## Endnotes

3 Legislation history

---

**Consumer Affairs (Amendment) Ordinance 1979 No 42**

notified 18 December 1979  
commenced 18 December 1979

**Consumer Affairs (Amendment) Ordinance 1981 No 26**

notified 17 September 1981  
commenced 17 September 1981

**Ordinances Revision (Companies Amendments) Ordinance 1982  
No 38 sch 4**

notified 30 June 1982  
commenced 1 July 1982 (s 2)

**Consumer Affairs (Amendment) Ordinance 1982 No 100**

notified 31 December 1982  
commenced 31 December 1982

**Limitation Ordinance 1985 No 66**

notified 19 December 1985  
commenced 19 December 1985

**Consumer Affairs (Amendment) Ordinance 1986 No 23**

notified 25 July 1986  
commenced 25 July 1986

**Self-Government (Consequential Amendments) Ordinance 1989  
No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989  
No S164)

**Remuneration (Miscellaneous Amendments) Ordinance 1989 No 50  
sch**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
commenced 10 May 1989

---

**Legislation after becoming Territory enactment****Consumer Affairs (Amendment) Act 1990 No 44**

notified 8 November 1990 (Gaz 1990 No S75)  
s 1, s 2 commenced 8 November 1990 (s 2 (1))  
remainder commenced 5 December 1990 (s 2 (2) and Gaz 1990  
No S88)

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23  
sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
sch 1 commenced 4 June 1992

**Consumer Affairs (Amendment) Act 1992 No 73**

notified 8 December 1992 (Gaz 1992 No S218)  
ss 1-3 commenced 8 December 1992 (s 2 (1))  
remainder commenced 1 January 1993 (s 2 (2) and Gaz 1992 No  
S245)

**Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)  
sch 2 commenced 27 August 1993 (s 2)

**Administrative Appeals (Consequential Amendments) Act 1994 No 60  
sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No  
S293)

## Endnotes

3 Legislation history

---

**Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch**

notified 5 September 1995 (Gaz 1995 No S212)  
commenced 5 September 1995 (s 2)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
amds commenced 18 December 1995 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
sch 3 commenced 10 November 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
sch 1 commenced 1 June 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 139**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 139 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Fair Trading Legislation Amendment Act 2001 No 77 pt 3**

notified LR 14 September 2001  
s 1, s 2 commenced 14 September 2001 (LA s 75)  
pt 3 commenced 14 March 2002 (LA s 79)

**Legislation Amendment Act 2002 No 11 pt 2.20**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.20 commenced 28 May 2002 (s 2 (2))

**Criminal Code 2002 No 51 pt 1.9**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

pt 1.9 commenced 1 January 2003 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2003  
A2003-2 pt 5**

notified LR 3 March 2003

s 1, s 2 commenced 3 March 2003 (LA s 75 (1))

pt 5 commenced 31 March 2003

**Security Industry Act 2003 A2003-4 sch pt 1.2**

notified LR 3 March 2003

s 1, s 2 commenced 3 March 2003 (LA s 75 (1))

pt 1.2 commenced 3 September 2003 (s 2 and LA s 79)

**Agents Act 2003 A2003-20 sch 3 pt 3.1**

notified LR 19 May 2003

s 1, s 2 commenced 19 May 2003 (LA s 75 (1))

sch 3 pt 3.1 commenced 1 November 2003 (s 2 and CN2003-12)

**Justice and Community Safety Legislation Amendment Act 2003  
(No 2) A2003-47 pt 6**

notified LR 31 October 2003

s 1, s 2 commenced 31 October 2003 (LA s 75 (1))

pt 6 commenced 1 November 2003 (s 2)

**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.34**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.34 commenced 9 April 2004 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2006  
A2006-40 sch 1 pt 1.6**

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 1 pt 1.6 commenced 29 September 2006 (s 2 (1))

## Endnotes

4 Amendment history

---

### **Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.41**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.41 commenced 12 April 2007 (s 2 (1))

### **Justice and Community Safety Legislation Amendment Act 2008 A2008-7 sch 1 pt 1.9**

notified LR 16 April 2008

s 1, s 2 commenced 16 April 2008 (LA s 75 (1))

sch 1 pt 1.9 commenced 7 May 2008 (s 2)

### **ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.23**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.23 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

### **ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.40**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.40 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

### **Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.30**

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.30 commenced 22 September 2009 (s 2)

## 4 Amendment history

### **Title**

title am 1990 No 44 s 4  
sub 1999 No 66 sch 3; 2000 No 17 sch 1

### **Name of Act**

s 1 sub 1976 No 49 s 3; 1999 No 66 sch 3



**Dictionary**

s 2

**orig s 2**

om 1976 No 49 s 3

**pres s 2**

(prev s 3) am 1986 No 23 s 3; 1992 No 73 s 4; 1994 No 97 sch pt 1

renum as s 2 R6 LRA (see 2000 No 17 sch 1)

defs reloc to dict A2007-3 amdt 3.214

sub A2007-3 amdt 3.215

def **director** ins 1990 No 44 s 5

sub 1994 No 97 sch pt 1

am 1999 No 66 sch 3

om 2000 No 17 sch 1

def **investigating officer** ins 1976 No 49 s 4

om 2000 No 17 sch 1

def **Legislative Assembly** ins 1976 No 49 s 4

om 1989 No 38 sch 1

def **member** om 1990 No 44 s 5def **office** ins 1999 No 66 sch 3

om 2000 No 17 sch 1

def **the bureau** om 1999 No 66 sch 3def **the chairman** om 1990 No 44 s 5def **the council** om 1990 No 44 s 5def **the director** om 1994 No 97 sch pt 1def **tribunal** ins 1989 No 38 sch 1

om 1994 No 60 sch 1

**Notes**

s 2A

ins A2007-3 amdt 3.215

**Fair trading advisory committees**

pt 2 hdg

sub 1990 No 44 s 6

am 1999 No 66 sch 3

**Appointment of committees**

s 3

(prev s 4) sub 1990 No 44 s 6

renum R6 LRA (2000 No 17 sch 1)

am A2007-3 amdt 3.216

**Position of Crown**

s 3A

ins 1992 No 73 s 5

om 1993 No 44 sch 1

**Functions of committees**

s 4

orig s 4 renum as s 3

(prev s 5) am 1976 No 49 s 5; 1989 No 38 sch 2

sub 1990 No 44 s 6; 2000 No 17 sch 1

renum R6 LRA (see 2000 No 17 sch 1)

## Endnotes

### 4 Amendment history

---

#### **Expenses**

s 5 orig s 5 renum as s 4  
(prev s 6) sub 1990 No 44 s 6  
am 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)

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

pt 3 hdg am 1999 No 66 sch 3  
sub 2000 No 17 sch 1

#### **Administration**

div 3.1 hdg (prev pt 3 div 1 hdg) ins 1976 No 49 s 8  
renum R6 LRA (see 2000 No 17 sch 1)

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

s 6 orig s 6 renum as s 5  
(prev s 12) am 1989 No 38 sch 1; 1994 No 97 sch pt 1  
sub 1999 No 66 sch 3; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
sub A2007-3 amdt 3.217  
(2)-(4) exp 12 April 2008 (s 6 (4) (LA s 88 declaration applies))

#### **Functions of commissioner**

s 7 sub 1976 No 61; 1989 No 50 sch  
om 1990 No 44  
(prev s 13) am 1989 No 38 sch 1  
sub 1992 No 23 sch 1; 1994 No 97 sch pt 1; 1999 No 66 sch  
3; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2003-4 amdt 1.4; A2003-20 amdts 3.1-3.3, 3.5; pars  
renum R13 LA (see A2003-20 amdt 3.4); A2006-40  
amdt 1.16, amdt 1.17

#### **Delegation by commissioner**

s 8 am 1976 No 49 s 6; 1989 No 38 sch 1  
om 1990 No 44  
(prev s 14) am 1976 No 49 s 9; 1992 No 73 s 14  
sub 1999 No 66 sch 3; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2003-20 amdt 3.6  
sub A2006-40 amdt 1.18  
am A2007-3 amdt 3.218; A2008-36 amdt 1.265 ; pars renum  
R19 LA

**Definitions for div 3.2**

s 8A ins 2001 No 77 s 16  
 def **business premises** ins 2001 No 77 s 16  
 def **connected** ins 2001 No 77 s 16  
 def **fair trading legislation** ins 2001 No 77 s 16  
 am A2003-4 amdt 1.5; A2003-20 amdt 3.7  
 om A2006-40 amdt 1.19  
 def **occupier** ins 2001 No 77 s 16  
 def **offence** ins 2001 No 77 s 16

**Investigations**

div 3.2 hdg (prev pt 3 div 2 hdg) ins 1976 No 49 s 11  
 renum R6 LRA (see 2000 No 17 sch 1)

**Investigators**

s 9 om 1990 No 44  
 (prev s 14A) ins 2000 No 17 sch 1  
 renum R6 LRA (see 2000 No 17 sch 1)  
 am A2003-20 amdt 3.8  
 sub A2007-3 amdt 3.219

**Identity cards**

s 10 am 1976 No 49 s 7  
 om 1990 No 44  
 (prev s 15) am 1976 No 49 s 10; 1989 No 38 sch 1; 1990  
 No 44 s 7; 1999 No 66 sch 3  
 sub 2000 No 17 sch 1  
 renum R6 LRA (see 2000 No 17 sch 1)

**Power not to be exercised before identity card shown**

s 11 am 1982 No 100 s 4  
 om 1990 No 44  
 (prev s 15A) ins 1976 No 49 s 11  
 am 1999 No 66 sch 3  
 sub 2000 No 17 sch 1  
 renum R6 LRA (see 2000 No 17 sch 1)

**Disclosure of pecuniary interest**

s 11A ins 1982 No 100 s 5  
 om 1990 No 44

**Power of investigator to enter premises**

s 12 hdg (prev s 15B hdg) am 2000 No 17 sch 1  
 s 12 orig s 12 renum as s 6  
 (prev s 15B) ins 1976 No 49 s 11  
 am 1992 No 73 sch ; 1994 No 81 sch; 1999 No 66 sch 3; 2000  
 No 17 sch 1  
 renum R6 LRA (see 2000 No 17 sch 1)  
 sub 2001 No 77 s 17

## Endnotes

4 Amendment history

---

### **Consent to entry**

s 12A ins 2001 No 77 s 17

### **Warrants**

s 12B ins 2001 No 77 s 17

### **Warrants—application made other than in person**

s 12C ins 2001 No 77 s 17

### **General powers on entry to premises**

s 12D ins 2001 No 77 s 17

### **Inspection of records of agents**

s 12DA ins A2003-20 amdt 3.9

### **Power to seize evidence**

s 12E ins 2001 No 77 s 17

### **Receipt for things seized**

s 12F ins 2001 No 77 s 17

### **Access to things seized**

s 12G ins 2001 No 77 s 17

### **Return of things seized**

s 12H ins 2001 No 77 s 17

### **Selfincrimination etc**

s 12I ins 2001 No 77 s 17  
am 2002 No 11 amdt 2.40; 2002 No 51 amdt 1.20; A2004-15  
amdt 2.73

### **Legal professional privilege**

s 12J ins 2001 No 77 s 17  
om 2002 No 11 amdt 2.41

### **Providing false or misleading information**

s 12K ins 2001 No 77 s 17  
om A2004-15 amdt 2.74

### **Providing false or misleading documents**

s 12L ins 2001 No 77 s 17  
om A2004-15 amdt 2.74

### **Damage etc to be minimised**

s 12M ins 2001 No 77 s 17

### **Compensation**

s 12N ins 2001 No 77 s 17

**Investigator may require giving of information and producing of documents**

s 13 hdg (prev s 15C hdg) am 2000 No 17 sch 1  
 s 13 orig s 13 renum as s 7  
 (prev s 15C) ins 1976 No 49 s 11  
 am 1979 No 42 s 4; 1992 No 73 sch; 1994 No 81 sch; 1997  
 No 96 sch 1; 2000 No 17 sch 1  
 renum R6 LRA (see 2000 No 17 sch 1)  
 am 2001 No 77 s 12; ss renum R8 LA (see 2001 No 77 s 19)

**Copying of documents produced under s 13**

s 14 orig s 14 renum as s 8  
 (prev s 15D) ins 1976 No 49 s 11  
 am 1979 No 42 s 5; 1992 No 73 sch; 2000 No 17 sch 1  
 renum R6 LRA (see 2000 No 17 sch 1)

**Investigators**

s 14A renum as s 9

**Secrecy**

s 15 orig s 15 renum as s 10  
 (prev s 15E) ins 1976 No 49 s 11  
 am 1979 No 42 s 6; 1981 No 26; 1986 No 23 s 4; 1990 No 44  
 s 8; 1992 No 73 sch; 1994 No 81 sch; 1999 No 66 sch 3;  
 2000 No 17 sch 1  
 renum R6 LRA (see 2000 No 17 sch 1)

**Power not to be exercised before identity card shown**

s 15A renum as s 11

**Power of investigator to enter premises**

s 15B renum as s 12

**Investigating officer may require giving of information and producing of documents**

s 15C renum as s 13

**Copying of documents produced under s 15C**

s 15D renum as s 14

**Secrecy**

s 15E renum as s 15

**Director's power to institute or defend legal proceedings on behalf of consumers**

s 15F renum as s 16

**Consumer product safety orders and standards**

pt 3A hdg renum as pt 4 hdg

**Product safety advisory committee**

pt 3A div 1 hdg renum as div 4.1 hdg

## Endnotes

4 Amendment history

---

### **Product safety advisory committee**

s 15FAA renum as s 17

### **Appointment and tenure of office of members**

s 15FAB renum as s 18

### **Deputies of members**

s 15FAC renum as s 19

### **Coopted members**

s 15FAD renum as s 20

### **General procedure**

s 15FAE renum as s 21

### **Voting**

s 15FAF renum as s 22

### **Minutes**

s 15FAG renum as s 23

### **Orders and standards**

pt 3A div 2 hdg renum as div 4.2 hdg

### **Advice about consumer product safety orders or standards**

s 15FA renum as s 24

### **Consumer product safety standards**

s 15FBA renum as s 25

### **Interim safety orders**

s 15FB renum as s 26

### **Consumer product safety orders**

s 15FC renum as s 27

### **Consumer product information standards**

s 15FCA renum as s 28

### **Orders made by commissioner**

s 15FD renum as s 29

### **Offences**

s 15FE renum as s 30

### **Recovery of amount of loss or damage**

s 15FF renum as s 31

### **Recovery of amount paid for goods**

s 15FG renum as s 32

### **Finding in proceedings to be evidence**

s 15FH renum as s 33

**Contracting out**

s 15FI renum as s 34

**Notification of decisions**

s 15FJ renum as s 35

**Appeals**

s 15FK renum as s 36

**Product recall**

pt 3B hdg renum as pt 5 hdg

**Recall etc of goods**

s 15FKA renum as s 37

**Conferences relating to compulsory product recall**

s 15FKB renum as s 38

**Certain amounts recoverable as debt or damages**

s 15FKC renum as s 39

**Certain action not to affect insurance contracts**

s 15FKD renum as s 40

**Certificate evidence**

s 15G renum as s 41

**Penalties for offences**

s 15H ins 1976 No 49 s 12  
am 1990 No 44 s 12  
om 1994 No 81 sch

**Commissioner's power to institute or defend legal proceedings on behalf of consumers**

s 16 hdg (prev s 15F hdg) am 2000 No 17 sch 1  
s 16 orig s 16 renum as s 42  
(prev s 15F) ins 1976 No 49 s 11  
am 1989 No 38 sch 1; 1992 No 73 sch; 1999 No 66 sch 3;  
2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)

**Consumer product safety orders and standards**

pt 4 hdg orig pt 4 hdg renum as pt 6 hdg  
(prev pt 3A hdg) ins 1982 No 100 s 6  
renum R6 LRA (see 2000 No 17 sch 1)

**Product safety advisory committee**

div 4.1 hdg (prev pt 4 div 1 hdg) ins 1992 No 73 s 7  
renum R6 LRA (see 2000 No 17 sch 1)

## Endnotes

### 4 Amendment history

---

#### **Product safety advisory committee**

s 17 am 1989 No 38 sch 1; 1990 No 44 s 14  
om 1995 No 25 sch  
(prev s 15FAA) ins 1992 No 73 s 7  
am 1999 No 66 sch 3; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2007-3 amdt 3.220, amdt 3.221

#### **Appointment and tenure of office of members**

s 18 (prev s 15FAB) ins 1992 No 73 s 7  
am 1999 No 66 sch 3; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2007-3 amdt 3.222, amdt 3.223; ss renum R16 LA

#### **Deputies of members**

s 19 orig s 19 renum as s 44  
(prev s 15FAC) ins 1992 No 73 s 7  
renum R6 LRA (see 2000 No 17 sch 1)  
om A2007-3 amdt 3.224

#### **Coopted members**

s 20 orig s 20 renum as s 45  
(prev s 15FAD) ins 1992 No 73 s 7  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2007-3 amdt 3.225

#### **General procedure**

s 21 orig s 21 renum as s 46  
(prev s 15FAE) ins 1992 No 73 s 7  
renum R6 LRA (see 2000 No 17 sch 1)  
sub A2007-3 amdt 3.226

#### **Voting at product safety advisory committee meetings**

s 22 orig s 22 renum as s 47  
(prev s 15FAF) ins 1992 No 73 s 7  
renum R6 LRA (see 2000 No 17 sch 1)  
sub A2007-3 amdt 3.226

#### **Product safety advisory committees to keep minutes**

s 23 orig s 23 renum as s 48  
(prev s 15FAG) ins 1992 No 73 s 7  
renum R6 LRA (see 2000 No 17 sch 1)  
sub A2007-3 amdt 3.226

#### **Orders and standards**

div 4.2 hdg (prev pt 4 div 2 hdg) ins 1992 No 73 s 7  
renum R6 LRA (see 2000 No 17 sch 1)



**Advice about consumer product safety orders or standards**

s 24 orig s 24 renum as s 49  
(prev s 15FA) ins 1982 No 100 s 6  
am 1989 No 38 sch 1  
sub 1990 No 44 s 9  
am 1992 No 73 s 8; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)

**Consumer product safety standards**

s 25 orig s 25 renum as s 50  
(prev s 15FBA) ins 1992 No 73 s 9  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2003-47 s 22

**Interim safety orders**

s 26 orig s 25 renum as s 51  
(prev s 15FB) ins 1982 No 100 s 6  
sub 1990 No 44 s 9  
am 1992 No 73 s 10; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdts 1.1590-1.1592; A2008-7 amdt 1.51,  
amdt 1.52

**Consumer product safety orders**

s 27 (prev s 15FC) ins 1982 No 100 s 6  
sub 1990 No 44 s 9  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdts 1.1593-1.1595  
sub A2008-7 amdt 1.53

**Consumer product information standards**

s 28 (prev s 15FCA) ins 1992 No 73 s 11  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdt 1.1596, amdt 1.1597

**Orders by commissioner**

s 29 hdg (prev s 15FD hdg) am 2000 No 17 sch 1  
s 29 (prev s 15FD) ins 1982 No 100 s 6  
am 1990 No 44 s 10; 1992 No 73 sch; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdts 1.1598-1.1602  
sub A2003-2 s 37  
am A2008-7 amdt 1.54; A2008-37 amdt 1.169; ss renum  
R19 LA

**Offences**

s 30 (prev s 15FE) ins 1982 No 100 s 6  
am 1990 No 44 s 11; 1992 No 73 s 12, sch; 1994 No 81 sch  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2007-3 amdt 3.227

## Endnotes

4 Amendment history

---

### **Recovery of amount of loss or damage**

s 31 (prev s 15FF) ins 1982 No 100 s 6  
am 1985 No 66  
renum R6 LRA (see 2000 No 17 sch 1)

### **Recovery of amount paid for goods**

s 32 (prev s 15FG) ins 1982 No 100 s 6  
am 1992 No 73 sch; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)

### **Finding in proceedings to be evidence**

s 33 (prev s 15FH) ins 1982 No 100 s 6  
am 1990 No 44 s 12  
renum R6 LRA (see 2000 No 17 sch 1)

### **Contracting out**

s 34 (prev s 15FI) ins 1982 No 100 s 6  
renum R6 LRA (see 2000 No 17 sch 1)

### **Notification and review of decisions**

div 4.3 hdg ins A2008-37 amdt 1.170

### **Meaning of *reviewable decision*—div 4.3**

s 35 (prev s 15FJ) ins 1982 No 100 s 6  
am 1989 No 38 sch 1; 1994 No 60 sch 1; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
sub 2001 No 44 amdt 1.1603  
am A2003-2 ss 38-40  
sub A2008-37 amdt 1.170

### **Reviewable decision notices**

s 36 (prev s 15FK) ins 1982 No 100 s 6  
am 1989 No 38 sch 1; 1994 No 60 sch 1; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
sub 2001 No 44 amdt 1.1603  
am A2003-2 s 41  
sub A2008-37 amdt 1.170

### **Applications for review**

s 36A ins A2008-37 amdt 1.170

### **Product recall**

pt 5 hdg orig pt 5 hdg renum as pt 7 hdg  
(prev pt 3B hdg) ins 1992 No 73 s 13  
renum R6 LRA (see 2000 No 17 sch 1)

**Recall etc of goods**

s 37 (prev s 15FKA) ins 1992 No 73 s 13  
am 1994 No 81 sch; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdts 1.1604-1.1606; ss and pars renum R7  
LA (see 2001 No 44 amdt 1.1607)

**Conferences relating to compulsory product recall**

s 38 (prev s 15FKB) ins 1992 No 73 s 13  
am 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdts 1.1608-1.1611; ss renum R7 LA (see  
2001 No 44 amdt 1.1612); A2009-20 amdt 3.73

**Certain amounts recoverable as debt or damages**

s 39 (prev s 15FKC) ins 1992 No 73 s 13  
renum R6 LRA (see 2000 No 17 sch 1)  
am A2007-3 amdt 3.228

**Certain action not to affect insurance contracts**

s 40 (prev s 15FKD) ins 1992 No 73 s 13  
renum R6 LRA (see 2000 No 17 sch 1)

**Miscellaneous**

pt 6 hdg (prev pt 4 hdg) renum R6 LRA (see 2000 No 17 sch 1)

**Certificate evidence**

s 41 (prev s 15G) ins 1976 No 49 s 12  
am 1999 No 66 sch 3  
sub 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)

**Public warning statements**

s 41A ins A2003-47 s 23

**Immunity from liability for certain statements**

s 42 (prev s 16) am 1973 No 53 s 13  
sub 1976 No 49 s 13; 1979 No 42 s 7  
am 1990 No 44 s 13; 1992 No 73 s 14, sch; 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
sub A2003-47 s 23

**Regulation-making power**

s 43 (prev s 18) am 1982 No 100 s 7; 1989 No 38 sch 1; 1992  
No 73 s 15  
renum R6 LRA (see 2000 No 17 sch 1)  
sub 2001 No 44 amdt 1.1613  
am A2003-47 s 24, s 25

## Endnotes

4 Amendment history

---

### References to Consumer Affairs Act

s 44 (prev s 19) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdt 1.1614, amdt 1.1615

### References to director of consumer affairs etc

s 45 (prev s 20) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
am 2001 No 44 amdt 1.1614

### Transitional

pt 7 hdg (prev pt 5 hdg) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
exp 1 June 2001 (s 50 (1))

### Existing complaints and investigations etc

s 46 (prev s 21) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
exp 1 June 2001 (s 50 (1))

### Actions of director of consumer affairs etc

s 47 (prev s 22) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
exp 1 June 2001 (s 50 (1))

### Transitional regulations

s 48 (prev s 23) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
exp 1 June 2001 (s 50 (1))

### Modification of part's operation

s 49 (prev s 24) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
exp 1 June 2001 (s 50 (1))

### Expiry of part

s 50 (prev s 25) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
exp 1 June 2001 (s 50 (1))

### Renumbering

s 51 (prev s 26) ins 2000 No 17 sch 1  
renum R6 LRA (see 2000 No 17 sch 1)  
om R6 LRA

### Reviewable decisions

sch 1 ins 1976 No 49 s 14  
om 1979 No 42 s 8  
ins A2008-37 amdt 1.171

**Dictionary**  
dict

- ins A2007-3 amdt 3.229  
am A2008-37 amdt 1.172, amdt 1.173; A2009-20 amdt 3.74
- def **acquire** ins 1986 No 23 s 3  
sub 1992 No 73 s 4; A2007-3 amdt 3.208  
reloc from s 2 A2007-3 amdt 3.214
- def **advisory committee** ins 1990 No 44 s 5  
reloc from s 2 A2007-3 amdt 3.214
- def **business premises** ins A2007-3 amdt 3.229
- def **certificate of identification** ins 1976 No 49 s 4  
reloc from s 2 A2007-3 amdt 3.214  
om A2008-36 amdt 1.266
- def **commissioner** ins 2000 No 17 sch 1  
reloc from s 2 A2007-3 amdt 3.214
- def **connected** ins A2007-3 amdt 3.229
- def **consumer** ins 1992 No 73 s 4  
sub A2007-3 amdt 3.209  
reloc from s 2 A2007-3 amdt 3.214
- def **consumer product information standard** ins 1992 No 73 s 4  
reloc from s 2 A2007-3 amdt 3.214
- def **consumer product safety order** ins 1982 No 100 s 3  
sub A2007-3 amdt 3.210  
reloc from s 2 A2007-3 amdt 3.214
- def **consumer product safety standard** ins 1982 No 100 s 3  
sub 1992 No 73 s 4  
reloc from s 2 A2007-3 amdt 3.214
- def **corporation** ins 1976 No 49 s 4  
am 1982 No 38 sch 4; 1995 No 46 sch  
reloc from s 2 A2007-3 amdt 3.214
- def **court** ins 1979 No 42 s 3  
reloc from s 2 A2007-3 amdt 3.214
- def **dwelling house** ins 1976 No 49 s 4  
reloc from s 2 A2007-3 amdt 3.214
- def **fair trading legislation** ins A2006-40 amdt 1.15  
reloc from s 2 A2007-3 amdt 3.214
- def **goods** sub 1992 No 73 s 4; A2007-3 amdt 3.211  
reloc from s 2 A2007-3 amdt 3.214
- def **identity card** ins A2008-36 amdt 1.267
- def **interest in land** ins 1986 No 23 s 3  
reloc from s 2 A2007-3 amdt 3.214
- def **interim safety order** ins 1982 No 100 s 3  
reloc from s 2 A2007-3 amdt 3.214
- def **investigation** ins 1976 No 49 s 4  
reloc from s 2 A2007-3 amdt 3.214
- def **investigator** ins 2000 No 17 sch 1  
reloc from s 2 A2007-3 amdt 3.214

## Endnotes

### 5 Earlier republications

---

def **occupier** ins A2007-3 amdt 3.229  
def **offence** ins A2007-3 amdt 3.229  
def **owner** ins 1986 No 23 s 3  
reloc from s 2 A2007-3 amdt 3.214  
def **reviewable decisions** ins A2008-37 amdt 1.174  
def **services** ins 1976 No 49 s 4  
am 1986 No 23 s 3  
sub 1992 No 73 s 4; A2007-3 amdt 3.212  
reloc from s 2 A2007-3 amdt 3.214  
def **supply** ins 1982 No 100 s 3  
sub 1992 No 73 s 4; A2007-3 amdt 3.213  
reloc from s 2 A2007-3 amdt 3.214

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1990 No 44	31 March 1991
2	Act 1992 No 73	1 January 1993
3	Act 1993 No 44	31 January 1994
4	Act 1994 No 97	31 January 1995
5	Act 1995 No 46	30 November 1996
6	Act 2000 No 17	31 July 2000
7	Act 2001 No 44	12 September 2001
8	Act 2001 No 77	14 March 2002
9	Act 2002 No 11	29 May 2002
9 (RI)	Act 2002 No 11 ‡	23 October 2002
10	Act 2002 No 51	1 January 2003
11	A2003-2	31 March 2003
12	<u>A2003-20</u>	3 September 2003

---

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
13 *	A2003-47	1 November 2003
14	A2004-15	9 April 2004
15	A2006-40	29 September 2006
16	A2007-3	12 April 2007
17	A2007-3	13 April 2008
18	A2008-7	7 May 2008
19	A2008-37	2 February 2009

‡ includes retrospective amendments by Act 2002 No 11

© Australian Capital Territory 2009