



AUSTRALIAN CAPITAL TERRITORY

Justice and Community Safety Legislation Amendment Act 2000 (No 3)

No 17 of 2000

An Act to amend the law relating to justice and community safety, and for other purposes

[Notified in ACT Gazette No. 22: 1 June 2000]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2000 (No 3)*.

2 Commencement

This Act commences on the day it is notified in the Gazette.

3 Acts amended—Schedule 1

This Act amends the Acts mentioned in Schedule 1.

4 Regulations amended—Schedule 2

This Act amends the regulations mentioned in Schedule 2.

SCHEDULE 1

(See s 3)

AMENDMENT OF ACTS

Commercial Arbitration Act 1986

Subsection 20A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Consumer Credit Act 1995

Section 8—

Omit “Director of Fair Trading for the Australian Capital Territory”, substitute “commissioner for fair trading”.

Consumer Credit (Administration) Act 1996

Section 3 (definitions of *director, investigating officer and office*)—

Omit the definitions.

Section 3—

Insert the following definitions:

“*commissioner* means the commissioner for fair trading.

investigator means the commissioner or a person who is authorised by the commissioner under section 117.”.

Heading to Part 7—

Omit the heading, substitute the following heading:

“PART 7—ROLE OF COMMISSIONER”.

Section 117—

Repeal the section, substitute the following section:

“117 Investigators

“(1) An investigation for paragraph 109 (a) or (b) may be made by the commissioner or a person authorised, in writing, by the commissioner (an *investigator*).

“(2) The commissioner must issue an identity card under section 15 of the *Fair Trading (Consumer Affairs) Act 1973* to each investigator.”.

SCHEDULE 1—continued

Subsections 118 (1) and (2)—

Omit “investigating officer”, substitute “investigator”.

Subsection 118 (3)—

Omit the subsection, substitute the following subsection:

“(3) An investigator who enters premises under subsection (1) 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.”.

Subsection 118 (4)—

Omit “investigating officer”, substitute “investigator”.

Subsection 119 (1)—

Omit the subsection, substitute the following subsection:

“(1) Before obtaining the consent of a person to enter premises for subparagraph 118 (1) (a) (ii), an investigator must—

- (a) show the person his or her identity card; and
- (b) tell the person that the person may refuse to give consent.”.

Subsection 119 (2)—

- (a) Omit “investigating officer”, substitute “investigator”.
- (b) Omit “officer” (second occurring), substitute “investigator”.

Subsections 119 (3) and 120 (1)—

Omit “investigating officer”, substitute “investigator”.

Subsection 121 (1)—

- (a) Omit “investigating officer”, substitute “investigator”.
- (b) Omit “officer” (second, third and last occurring), substitute “investigator”.

Subsection 121 (3)—

Omit “investigating officer”, substitute “investigator”.

Section 122—

Omit “investigating officer”, substitute “investigator”.

SCHEDULE 1—continued

Paragraph 123 (a)—

Omit “investigating officer”, substitute “investigator”.

Paragraph 130 (2) (a)—

Omit “Director’s”, substitute “commissioner’s”.

New sections 143 and 144—

After section 142 insert the following sections:

“143 Existing complaints and investigations etc

“(1) If a complaint received by the director of consumer affairs or director of fair trading had not been finally dealt with before the commencement of this section, it may be dealt with as if it had been received by the commissioner.

“(2) If the investigation of a complaint received by the director of consumer affairs or director of fair trading had not been finally dealt with before the commencement of this section, the investigation may be continued (and completed) as if the complaint had been received by the commissioner.

“(3) Any other investigation under this Act that had not been finally dealt with before the commencement of this section may be continued (and completed) by the commissioner.

“(4) If a person was an investigating officer under section 117 immediately before the commencement of this section, the person is taken, on the commencement, to be authorised by the commissioner under section 117.

“(5) A certificate issued to the person under subsection 117 (2) before the commencement of this section is taken, after the commencement, to be an identity card issued to the person under section 15 of the *Fair Trading (Consumer Affairs) Act 1973*.

“(6) A proceeding taken or defended by the director of consumer affairs or director of fair trading under section 112 that had not been completed before the commencement of this section is taken, after the commencement, to have been taken or defended by the commissioner.

“144 Expiry of Part

“(1) This Part expires 1 year after it commences.

SCHEDULE 1—continued

“(2) To remove any doubt, it is declared that section 42 (Repeal does not end transitional or validating effect etc) of the *Interpretation Act 1967* applies to this Part.”.

Further amendments—

The following provisions are amended by omitting “Director” and substituting “commissioner”:

Section 3 (definition of *premises*, paragraph (c)), subsections 11 (1) and (5), 12 (1), (2) and (4) and 13 (1) and (2), section 14, subsections 16 (1), (2) and (4), paragraph 16 (8) (b), subsections 17 (1) and (2), 18 (1), (2) and (3), 19 (1), (2) and (3) and 20 (1), (2), (3) and (4), paragraph 21 (b), subparagraph 21 (c) (ii), section 22, subsection 23 (1), paragraph 23 (2) (a), subsections 23 (3), 24 (1), (4) and (5) and 25 (1), paragraph 25 (2) (a), subsections 25 (3) and (4) and 26 (1) and (2), section 27, subsections 42 (1) and (5), 43 (1), (2) and (4) and 44 (1) and (2), section 45, subsections 47 (1), (2) and (4), paragraph 47 (8) (b), subsections 48 (1) and (2), 49 (1), (2) and (3), 50 (1), (2) and (3) and 51 (1), (2), (3) and (4), paragraph 52 (b), subparagraph 52 (c) (ii), section 53, subsection 54 (1), paragraph 54 (2) (a), subsections 54 (3), 55 (1), (4) and (5) and 56 (1), paragraph 56 (2) (a), subsections 56 (3) and (4) and 57 (1) and (2), sections 58 and 76, subsections 105 (1), (2) and (4), 106 (1), (2) and (3) and 107 (5), sections 109 and 110, subsections 111 (1) and (2), 112 (1) and (2), 113 (1), (2), (3) and (4) and 114 (1), (2) and (3), sections 115 and 116, sections 128 and 129, subsections 130 (1), 131 (1) and 132 (1) and (2), paragraph 134 (1) (b), sections 137 and 138.

Coroners Act 1997

Subsection 42A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Credit Act 1985

Subsection 5 (1) (definitions of *director* and *office*)—

Omit the definitions.

Subsection 5 (1)—

Insert the following definition:

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

SCHEDULE 1—continued

Further amendments—

The following provisions are amended by omitting “Director” and substituting “commissioner”:

Subsections 74 (2) and (3) and 102 (4), paragraph 112 (1) (b), subsections 116 (4), (5) and (12), paragraph 121 (7) (a), subsections 139 (3), (4) and (9), 151 (2), (3), (4) and (9), 152 (2), (3), (4) and (8).

Director of Public Prosecutions Act 1990

Paragraphs 6 (1) (fa) and (g)—

Omit the paragraphs, substitute the following paragraphs:

- “(fa) making applications for orders to review under section 219C of the *Magistrates Court Act 1930*, and conducting such proceedings;
- (fb) for prosecutions or other proceedings mentioned in paragraphs (a) to (fa)—causing the proceedings to be brought to an end;
- (g) for appeals in relation to matters mentioned in paragraphs (a) to (fb)—
 - (i) instituting or responding to appeals (including appeals against sentence);
 - (ii) conducting appeals (including appeals against sentence) as appellant or respondent, whether instituted or responded to by the director or not;”.

Paragraph 6 (1) (h)—

Omit the paragraph, substitute the following paragraph:

- “(h) functions given to the director under another provision of this Act or any other Territory law;”.

Subsection 6 (3)—

Omit the subsection.

Subsection 10 (3) (definition of *right of appeal*, paragraph (b))—

Omit “rehearing”, substitute “rehearing; and”.

Subsection 10 (3) (definition of *right of appeal*)—

After paragraph (b), add the following paragraph:

- “(c) a right to appeal against sentence.”.

SCHEDULE 1—continued

Section 16A—

Repeal the section, substitute the following section:

“16A Commonwealth prosecutions by director and staff of office

“(1) This section applies to the director, or a member of the staff of the office who is a legal practitioner, if the director or member is authorised to prosecute offences against Commonwealth laws under—

- (a) a Commonwealth law; or
- (b) an instrument issued by or on behalf of the Commonwealth under an agreement between the Territory and the Commonwealth; or
- (c) an agreement with the Commonwealth director.

“(2) The director or member may institute or conduct prosecutions against Commonwealth laws in accordance with the Commonwealth law, instrument or agreement.

“(3) Without limiting subsection (2), the director or member may do any of the following in relation to offences against Commonwealth laws:

- (a) make applications for orders to review under section 219C of the *Magistrates Court Act 1930*, and conduct such proceedings;
- (b) cause prosecutions and other proceedings to be brought to an end;
- (c) institute or respond to appeals (including appeals against sentence);
- (d) conduct appeals (including appeals against sentence) as appellant or respondent, whether instituted or responded to by the director or member or not.

“(4) In this section—

prosecution includes a proceeding for the commitment of a person for trial for an indictable offence.”.

Discrimination Act 1991

Subsection 96A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Evidence Act 1971

Part 12AA—

Repeal the Part.

SCHEDULE 1—continued

Evidence (Closed-Circuit Television) Act 1991

Title—

Omit the title, substitute the following title:
“An Act about evidence”.

Section 1—

Repeal the section, substitute the following Part and Part heading:

“PART 1—PRELIMINARY

“1 Name of Act

This Act is the *Evidence (Miscellaneous Provisions) Act 1991*.

**“PART 2—GIVING OF EVIDENCE ABOUT SEXUAL OFFENCES
BY CHILDREN”.**

Section 2, heading—

Omit the heading, substitute the following heading:

“2 Definitions for pt 2”.

Subsection 2 (1)—

Omit “(1) In this Act, unless the contrary intention appears—”, substitute “In this Part, the following definitions apply:”.

Subsection 2 (1) (definition of *child*)—

Omit the definition.

Subsection 2 (1)—

Insert the following definition:

Magistrates Court includes the Childrens Court.

Subsection 2 (2)—

Omit the subsection.

SCHEDULE 1—continued

New Parts 3 and 4—

After section 11, add the following Parts:

“PART 3—USE OF AUDIOVISUAL LINKS AND AUDIO LINKS

“Division 3.1—Preliminary

“14 Definitions for pt 3

In this Part, the following definitions apply:

audio link means a system of 2-way communication linking different places so that a person speaking at any of them can be heard at the other places.

audiovisual link means a system of 2-way communication linking different places so that a person at any of them can be seen and heard at the other places.

participating State means another State where provisions of an Act in terms substantially corresponding to this Part are in force.

recognised court means a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to this Part to direct that evidence be taken or a submission made by audiovisual link or audio link from the Territory.

State includes Territory.

Territory court means—

- (a) a court constituted under a Territory law; or
- (b) a royal commission under the *Royal Commissions Act 1994*; or
- (c) a judicial commission under the *Judicial Commissions Act 1994*; or
- (d) a tribunal of the Territory; or
- (e) an arbitrator or umpire conducting proceedings under the *Commercial Arbitration Act 1986*.

tribunal, in relation to a State, means a person or body authorised under the law of the State to take evidence on oath or affirmation.

SCHEDULE 1—continued

“15 Application of pt 3

This Part applies in relation to all proceedings, including—

- (a) proceedings pending at the commencement of this Part; and
- (b) proceedings begun after the commencement of this Part that arise from circumstances, matters or events that arose or happened before that commencement.

“16 Operation of other Acts

This Part is not intended to exclude or limit the operation of any Territory law that makes provision for the taking of evidence or making of a submission outside the Territory for a proceeding in the Territory.

“Division 3.2—Use of interstate audiovisual links or audio links in proceedings before Territory courts

“17 Application of div 3.2

This Division applies to any proceeding before a Territory court.

“18 Territory courts may take evidence and submissions from outside the Territory

“(1) A Territory court may, on the application of a party to a proceeding before the court or on its own initiative, direct that evidence be taken or a submission made by audiovisual link or audio link, from a participating State.

“(2) The court may make the direction only if satisfied that—

- (a) the necessary facilities are available or can reasonably be made available; and
- (b) the evidence or submission can more conveniently be given or made from the participating State; and
- (c) the making of the direction is not unfair to a party opposing the making of the direction.

“(3) The court may exercise in the participating State, in relation to taking evidence or receiving a submission by audiovisual link or audio link, any of its powers that the court is permitted, under the law of the participating State, to exercise in the participating State.

“(4) The court may at any time vary or revoke a direction under this Division, either on the application of a party to the proceeding or on its own initiative.

SCHEDULE 1—continued

“19 Legal practitioners entitled to practise

A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a legal practitioner—

- (a) in relation to the examination-in-chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audiovisual link or audio link in a proceeding before a Territory court; and
- (b) in relation to the making of a submission by audiovisual link or audio link from the participating State in a proceeding before a Territory court.

“Division 3.3—Use of interstate audiovisual links or audio links in proceedings in participating States

“20 Application of div 3.3

This Division applies to any proceeding before a recognised court.

“21 Recognised courts may take evidence or receive submissions from people in the Territory

A recognised court may, for a proceeding before it, take evidence or receive a submission by audiovisual link or audio link from a person in the Territory.

“22 Powers of recognised courts

“(1) The recognised court may, for the proceeding, exercise in the Territory, in relation to taking evidence or receiving a submission by audiovisual link or audio link, any of its powers except its powers—

- (a) to punish for contempt; and
- (b) to enforce or execute its judgments or process.

“(2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by operation of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving a submission by audiovisual link or audio link from a person in the Territory.

“(3) For the exercise by the recognised court of its powers, the place in the Territory where evidence is given or a submission is made is taken to be part of the court.

SCHEDULE 1—continued

“23 Orders made by recognised court

Without limiting section 22, the recognised court may, by order—

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private; or
- (b) require a person to leave a place in the Territory where the giving of evidence or the making of a submission is taking place or is going to take place; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

“24 Enforcement of order

“(1) Subject to rules of court, an order under section 23 may be enforced by the Supreme Court as if the order were an order of that court.

“(2) Without limiting subsection (1), a person who contravenes the order—

- (a) is taken to be in contempt of the Supreme Court; and
- (b) is punishable accordingly;

unless the person establishes that the contravention should be excused.

“25 Privileges, protection and immunity of participants in proceedings in courts of participating States

“(1) A judge or other person presiding at or otherwise taking part in a proceeding before a recognised court has, in relation to evidence being taken or a submission being received by audiovisual link or audio link from a person in the Territory, the same privileges, protection and immunity as a judge of the Supreme Court.

“(2) A person appearing as a legal practitioner in a proceeding before a recognised court has, in relation to evidence being taken or a submission being received by audiovisual link or audio link from a person in the Territory, the same protection and immunity as a barrister has in appearing for a party in a proceeding before the Supreme Court.

“(3) A person appearing as a witness in a proceeding before a recognised court by audiovisual link or audio link from the Territory has the same protection as a witness in a proceeding before the Supreme Court.

SCHEDULE 1—continued

“26 Recognised court may administer oath in the Territory

“(1) A recognised court may, for the purpose of obtaining in a proceeding, by audiovisual link or audio link, the testimony of a person in the Territory, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.

“(2) Evidence given by a person on oath or affirmation so administered is, for the law of the Territory, testimony given in a judicial proceeding.

“27 Assistance to recognised court

An officer of a Territory court may, at the request of a recognised court—

- (a) attend at the place in the Territory where evidence is to be or is being taken, or a submission is to be or is being made, in the proceeding; and
- (b) take such action as the recognised court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognised court of an oath or affirmation.

“28 Contempt of recognised courts

A person must not, while evidence is being given, or a submission is being made, in the Territory by audiovisual link or audio link, in a proceeding in a recognised court—

- (a) assault—
 - (i) a person appearing in the proceeding as a legal practitioner; or
 - (ii) a witness appearing in the proceeding; or
 - (iii) an officer of a Territory court giving assistance under section 27; or
- (b) threaten, intimidate or wilfully insult—
 - (i) a judge or other person presiding at or otherwise taking part in the proceeding; or
 - (ii) a master, registrar, deputy registrar or other officer of the court who is taking part in or assisting in the proceeding; or
 - (iii) a person appearing in the proceeding as a legal practitioner; or

SCHEDULE 1—continued

- (iv) a witness in the proceeding; or
- (v) a juror in the proceeding; or
- (c) wilfully interrupt or obstruct the proceeding; or
- (d) wilfully and without lawful excuse disobey an order or direction of the court.

Maximum penalty: Imprisonment for 3 months.

“Division 3.4—Use of audiovisual links or audio links between Territory courts and places in the Territory

“29 Application of div 3.4

This Division applies to any proceeding before a Territory court.

“30 Use of link in proceedings

“(1) Subject to any Act or rules of court, a Territory court may, on the application of a party to a proceeding before it or on its own initiative, direct that a person, whether or not a party to the proceeding, appear before, or give evidence or make a submission to, the court by audiovisual link or audio link from a place in the Territory that is outside the courtroom or other place where the court is sitting.

“(2) The court may make the direction only if satisfied that—

- (a) the necessary facilities are available or can reasonably be made available; and
- (b) the evidence or submission can more conveniently be given or made from the place that is outside the courtroom or other place where the court is sitting; and
- (c) the making of the direction is not unfair to any party opposing the making of the direction.

“(3) The court may at any time vary or revoke a direction made under this Division, either on the application of a party to the proceeding or its own initiative.

“Division 3.5—Protection of certain communications and documents in criminal proceedings

“31 Application of div 3.5

This Division applies to a communication made, and a document transmitted, by audiovisual link or audio link between an accused person and

SCHEDULE 1—continued

his or her legal representative during the course of a proceeding in relation to which, or to a part of which, an audiovisual or audio link has been used under this Part or a provision of another Territory law.

“32 Protection of confidentiality

Without limiting any other protection that applies to it, a communication or document to which this Division applies is as confidential and inadmissible in any proceeding as it would be if it had been made or produced while the accused person and his or her legal representative were in each other’s presence.

“33 Application of Listening Devices Act

The *Listening Devices Act 1992* applies to a communication or document to which this Division applies as if—

- (a) for a communication—the communication were a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and
- (b) for a document—
 - (i) any data, text or visual images in the transmitted document were words spoken to or by a person in a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and
 - (ii) a reference in that Act to the use of a listening device to overhear, record, monitor or listen to a private conversation included a reference to reading the document.

“Division 3.6—Costs and expenses

“34 Power to order payment of costs

A Territory court that directs evidence to be taken, or a submission to be made, by audiovisual link or audio link under section 18 or 30 may make such orders as it considers just for the payment of the costs and expenses incurred in relation to taking the evidence or making the submission, including any amounts prescribed under the regulations.

SCHEDULE 1—continued

“PART 4—MISCELLANEOUS

“35 Regulation-making power

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

“(2) The regulations may prescribe the amounts, or the way of calculating amounts, payable to a Territory court in relation to the cost of, or incidental to, the provision of an audiovisual link or audio link and ancillary equipment for Part 3.”.

Further amendments—

The following provisions are amended by omitting “Act” and substituting “Part”:

Subsection 2 (1) (definition of *proceedings*), sections 3, 3A and 4, subsections 8A (1) and (2), heading to section 10 and subsections 10 (1) and (2).

Renumbering—

In the next republication of the *Evidence (Miscellaneous Provisions) Act 1991*, the provisions of that Act must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.

Fair Trading Act 1992

Subsection 5 (1) (definition of *director*)—

Omit the definition.

Subsection 5 (1)—

Insert the following definition:

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

Further amendments—

The following provisions are amended by omitting “director” and substituting “commissioner”:

Subsections 33 (1), (2) and (3), paragraph 35 (3) (b), section 35A, subsections 36 (1) and (2) and 37 (1) and (2), section 38, subsections 39 (1) and (2), paragraph 42 (1) (b), section 43, subsections 44 (1) and (7), section 45, subsections 50 (2) and (3) and 51 (1).

SCHEDULE 1—continued

Fair Trading (Consumer Affairs) Act 1973

Long title—

Omit the title, substitute the following title:

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

Section 3 (definitions of *Director, investigating officer and office*)—

Omit the definitions.

Section 3—

Insert the following definitions:

“commissioner means the Commissioner for Fair Trading of the Australian Capital Territory.

investigator means the commissioner or a person who is authorised by the commissioner under section 14A.”.

Section 5—

Repeal the section, substitute the following section:

“5 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.”.

Heading to Part 3—

Omit the heading, substitute the following heading:

“PART 3—COMMISSIONER FOR FAIR TRADING”.

Sections 12, 13, 14 and 15—

Repeal the sections, substitute the following sections:

SCHEDULE 1—continued

“12 Commissioner for Fair Trading

“(1) There is to be a Commissioner for Fair Trading of the Australian Capital Territory.

“(2) The chief executive must establish an office in the public service the duties of which include exercising the functions of the commissioner.

“(3) The commissioner is the public servant for the time being occupying the public service office mentioned in subsection (2).

“13 Functions of commissioner

“(1) The commissioner may—

- (a) receive complaints about conduct (including fraudulent or unfair practices) connected with the supply of—
 - (i) goods or services; or
 - (ii) 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) make information available to, and provide guidance to, the public about consumer and fair trading issues and practices and about related laws; and
- (e) be responsible for any other function given to the commissioner by the Minister or chief executive.

“(2) In carrying out his or her functions, the commissioner may collaborate or consult with advisory committees, members of the public, and other entities.

“14 Powers of commissioner

“(1) The commissioner has power to do everything necessary or convenient to be done in relation to carrying out his or her functions.

“(2) The commissioner may delegate, in writing, all or any of the commissioner’s powers to a person.”.

Section 15A—

Repeal the section, substitute the following sections:

SCHEDULE 1—continued

“14A Investigators

An investigation for paragraph 13 (1) (b) or (c) may be made by the commissioner or a person authorised, in writing, by the commissioner (an *investigator*).

“15 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.

“15A 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.”.

Heading to section 15B—

Omit “**investigating officer**”, substitute “**investigator**”.

Subsection 15B (1)—

Omit “an officer of the office”, substitute “a person”.

Subsection 15B (5)—

Omit “an officer”, substitute “a person”.

SCHEDULE 1—continued

Heading to section 15C—

Omit “**Investigating officer**”, substitute “**Investigator**”.

Paragraphs 15C (1) (a) and (b)—

Omit “investigating officer”, substitute “investigator”.

Subsection 15C (5)—

Omit the subsection, substitute the following subsection:

“(5) An investigator who enters premises under section 15B 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.”.

Subsection 15E (1)—

Omit “from the Director in pursuance of the powers of the Director under subsection 15 (3)”, substitute “from the commissioner under subsection 13 (2)”.

Subsection 15E (5)—

Omit “office”, substitute “commissioner”.

Heading to section 15F—

Omit “**Director’s**”, substitute “**Commissioner’s**”.

Subsection 15F (1)—

Omit “office”, substitute “commissioner”.

Paragraph 15FAA (2) (b)—

Omit “employed in the office”.

Subsection 15FAB (5)—

Omit “employed in the office”.

Heading to section 15FD—

Omit “**Director**”, substitute “**Commissioner**”.

Section 15G—

Repeal the section, substitute the following section:

SCHEDULE 1—continued

“15G 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.”.

Subsection 16 (1)—

Omit “investigating officer”, substitute “investigator”.

New sections and Part—

After Part 4 insert the following sections and Part:

“19 References to Consumer Affairs Act

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

“20 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, instrument under 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, instrument under an Act or document to the consumer affairs bureau or office of fair trading is a reference to the commissioner.

“PART 5—TRANSITIONAL

“21 Existing complaints and investigations etc

“(1) If a complaint received by the consumer affairs bureau or office of fair trading had not been finally dealt with before the commencement of this section, it may be dealt with as if it had been received by the commissioner.

SCHEDULE 1—continued

“(2) If the investigation of a complaint received by the consumer affairs bureau or office of fair trading had not been finally dealt with before the commencement of this section, the investigation may be continued (and completed) as if the complaint had been received by the commissioner.

“(3) Any other investigation under this Act that had not been finally dealt with before the commencement of this section may be continued (and completed) by the commissioner.

“(4) If a person was an investigating officer under section 15A immediately before the commencement of this section, the person is taken, on the commencement, to be authorised by the commissioner under section 14A.

“(5) A certificate issued to the person under subsection 15A (2) before the commencement of this section is taken, after the commencement, to be an identity card issued to the person under section 15.

“(6) In relation to an investigation of a complaint that had begun or was completed before the commencement of this section, subsection 15E (5) applies as if the reference in that subsection to the commissioner included the consumer affairs bureau or office of fair trading.

“(7) A proceeding instituted or defended by the director of consumer affairs or director of fair trading under section 15F that had not been completed before the commencement of this section is taken, after the commencement, to have been instituted or defended by the commissioner.

“(8) In relation to an investigation that had begun or was completed before the commencement of this section, paragraph 15G (1) (a) applies as if the reference in that paragraph to the commissioner included the director of consumer affairs or director of fair trading.

“(9) In relation to an investigation that had begun or was completed before the commencement of this section, paragraph 15G (1) (b) applies as if the reference in that paragraph to a person authorised by the commissioner included a person authorised by the director of consumer affairs or director of fair trading.

“22 **Actions of director of consumer affairs etc**

“(1) Anything done before the commencement of this section by the director of consumer affairs or director of fair trading under any Territory law has effect after the commencement as if it had been done by the commissioner.

SCHEDULE 1—continued

“(2) Anything that was done or had effect in relation to the director of consumer affairs, director of fair trading, consumer affairs bureau or office of fair trading under any Territory law before the commencement of this section is taken, after the commencement, also to have been done or had effect under that law in relation to the commissioner.

“(3) This section is additional to, and does not limit—

- (a) any other provision of this Part; or
- (b) any provision of Part 10 of the *Consumer Credit (Administration) Act 1996*.

“23 **Transitional regulations**

“(1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the amendments of this Act, any other Act or any regulations made by the *Justice and Community Safety Legislation Amendment Act 2000 (No 3)*.

“(2) This section is additional to, and does not limit, section 24.

“24 **Modification of Part’s operation**

The regulations may modify the operation of this Part (whether in relation to this Act or any other Territory law) to make provision with respect to any matter that is not, or not adequately, dealt with in this Part.

“25 **Expiry of Part**

“(1) This Part, other than section 26, expires 1 year after it commences.

“(2) To avoid any doubt, it is declared that section 42 (Repeal does not end transitional or validating effect etc) of the *Interpretation Act 1967* applies to this Part.

“26 **Renumbering**

In the next republication of the *Fair Trading (Consumer Affairs) Act 1973*, the provisions of the *Fair Trading (Consumer Affairs) Act 1973* must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.”.

Further amendments—

The following provisions are amended by omitting “Director” and substituting “commissioner”:

Subsections 4 (2), 6 (2), 15B (1), (5), 15D (4) (definition of *prescribed person*), 15F (1), (2), (3), (4), (6), (7), (8), (9), (10) and (12),

SCHEDULE 1—continued

15FAB (3), 15FA (1), (2), (3) and (4), 15FB (1), (2), (3) and (5), 15FD (1), (3), (4), (5) and (6) (definition of *prescribed authority*), 15FJ (3) and (4), 15FK (2), 15FKA (8) and (9), 15FKB (3), 16 (1) and (2).

Fair Trading (Fuel Prices) Act 1993

Subsection 2 (1) (definition of *director*)—

Omit the definition.

Subsection 2 (1)—

Insert the following definition:

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

Further amendments—

The following provisions are amended by omitting “Director” and substituting “commissioner”:

Subsection 2 (1) (definition of *recommendation*), section 3 (heading), and subsections 3 (1) and (2), 4 (1), 6 (1) and 7 (1).

Guardianship and Management of Property Act 1991

Subsection 36A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Interpretation Act 1967

Dictionary, definition of *director of fair trading*—

Omit the definition.

Dictionary—

Insert the following definition:

“*commissioner for fair trading* means the Commissioner for Fair Trading of the Australian Capital Territory.

Note The *Fair Trading (Consumer Affairs) Act 1973* provides for the office of the commissioner.”.

SCHEDULE 1—continued

Judicial Commissions Act 1994

Subsection 43A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Magistrates Court Act 1930

Paragraph 54A (2) (a)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Subsection 72A (3) (definition of *audio visual link*)—

Omit the definition, substitute the following definition:

“***audiovisual link***—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 14.”

Subsection 254B (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Magistrates Court (Civil Jurisdiction) Act 1982

Subsections 187 (7A) and 482 (6)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Mental Health (Treatment and Care) Act 1994

Paragraph 90 (5) (ca)—

Omit “85AQ (1) of the *Evidence Act 1971*”, substitute “30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Subsection 91A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Residential Tenancies Act 1997

Subsection 3 (1) (definition of *director*)—

Omit the definition.

SCHEDULE 1—continued

Subsection 3 (1)—

Insert the following definition:

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

Paragraph 28 (2) (e)—

Omit “Director”, substitute “commissioner”.

Paragraph 88 (c)—

Omit “Director”, substitute “commissioner”.

Heading to section 89—

Omit “**Director**”, substitute “**commissioner**”.

Subsections 89 (1) and (2)—

Omit “Director”, substitute “commissioner”.

Subsection 96A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Schedule, clause 13—

Omit “director”, substitute “commissioner”.

Royal Commissions Act 1991

Subsection 34A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Supreme Court Act 1933

Subsection 55A (4)—

Omit the subsection, substitute the following subsection:

“(4) In this section—

audiovisual link—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 14.”.

Tenancy Tribunal Act 1994

Section 3 (definition of *director*)—

Omit the definition.

SCHEDULE 1—continued

Section 3—

Insert the following definition:

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

Subsection 27A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Paragraph 33 (b)—

Omit “Director”, substitute “commissioner”.

Heading to section 34—

Omit “**Director**”, substitute “**commissioner**”.

Subsections 34 (1) and (2)—

Omit “Director”, substitute “commissioner”.

Subsection 43A (1)—

Omit “85AE (1) or 85AQ (1) of the *Evidence Act 1971*”, substitute “18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*”.

Subsections 77 (1) and (2)—

Omit “Director”, substitute “commissioner”.

Trade Measurement (Administration) Act 1991

Subsection 3 (1) (definitions of *the Measurement Act* and *the trade measurement legislation*)—

Omit the definitions, substitute the following definitions:

“*Measurement Act* means the *Trade Measurement Act 1991*.

trade measurement legislation means—

(a) this Act or the regulations under this Act; or

(b) the Measurement Act or the regulations under that Act.”.

Subsection 3 (1) (definition of *superintendent*)—

Omit the definition.

Subsection 3 (1)—

Insert the following definition:

SCHEDULE 1—continued

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

Sections 5, 5A and 5B—

Repeal the sections.

Section 6—

Omit “Superintendent”, substitute “commissioner”.

Subsections 7 (1), (2) and (3)—

Omit “Superintendent”, substitute “commissioner”.

Section 8—

Repeal the section, substitute the following sections:

“8 **Commissioner and inspectors may hold Commonwealth appointments**

“(1) The commissioner may—

- (a) with the approval of the chief executive, hold an appointment under the *National Measurement Regulations* (Cwlth); and
- (b) exercise any function given to the holder of such an appointment.

“(2) An inspector may—

- (a) with the approval of the commissioner, hold an appointment under the *National Measurement Regulations* (Cwlth); and
- (b) exercise any function given to the holder of such an appointment.

“8A **Identity cards**

“(1) The commissioner must issue an identity card to each inspector.

“(2) The identity card must state that the person is an inspector for this Act.

“(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 date of issue of the card; and
 - (iii) a date of expiry for the card; and
- (c) include anything else prescribed under the regulations.

SCHEDULE 1—continued

“(4) A person who ceases to be an inspector must return his or her identity card to the commissioner as soon as practicable, but within 21 days, after ceasing to be an inspector.

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

“8B Power not to be exercised before identity card shown

An inspector may exercise a power under a Territory law in relation to a person only if the inspector first shows the person his or her identity card.”.

Subsection 10 (2)—

Omit “Superintendent”, substitute “commissioner”.

Section 17—

Repeal the section.

SCHEDULE 2

(See s 4)

AMENDMENT OF REGULATIONS

Credit Regulations

Regulation 1—

Repeal the regulation, substitute the following regulation:

“1 Name of regulations

These regulations are the *Credit Regulations 1985*.”.

Schedule 3 (item 9, Column 2), Schedule 4 (item 7, Column 2), Schedule 5 (item 6, Column 2) and Schedule 6 (item 9, Column 2)—

Omit “The Director or the Bureau”, substitute “The commissioner”.

Door-to-Door Trading Regulations

Schedule, form 1, (foot of the form)—

Omit “**Office of Fair Trading**”, substitute “**Commissioner for Fair Trading**”.

Schedule, form 2, (foot of the form)—

Omit “**Office of Fair Trading**”, substitute “**Commissioner for Fair Trading**”.

Endnote

Penalty units

1. Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 25 November 1999]