



Australian Capital Territory

Fair Trading Legislation Amendment Act 2001

No 77 of 2001

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Australian Capital Territory

Fair Trading Legislation Amendment Act 2001

No 77 of 2001

An Act to amend the *Fair Trading Act 1992*, the *Fair Trading (Consumer Affairs) Act 1973*, the *Magistrates Court Act 1930*, the *Sale of Goods Act 1954* and for other purposes

Notified under the Legislation Act 2001 on 14 September 2001
(see www.legislation.act.gov.au)

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

Part 1 Preliminary

1 Name of Act

This Act is the *Fair Trading Legislation Amendment Act 2001*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

Note 1 The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

Part 2 Amendments of Fair Trading Act 1992

3 Act amended in pt 2

This part amends the *Fair Trading Act 1992*.

4 False or misleading representations Section 14

omit

A

substitute

(1) A

5 New section 14 (2)

insert

- (2) A person does not contravene subsection (1) (i) if the person makes a representation about the country of origin of goods and the person complies with the *Trade Practices Act 1974* (Cwlth), part 5 (Consumer protection), division 1AA (Country of origin representations).

6 New section 32A

insert

32A Prescribed provisions

The regulations may prescribe provisions that are taken to be part of each code.

**7 Codes of practice—amendment
Section 35 (3) (b)**

omit

required.

substitute

required; or

8 New section 35 (3) (c)

insert

- (c) the commissioner has certified in writing that the amendment is consequential on a provision taken to be part of a code by regulations made for section 32A (Prescribed provisions).

9 New section 35 (5)

insert

- (5) This section does not apply to a provision taken to be part of a code by regulations made for section 32A.

**10 Undertakings following contravention of code
New section 36 (3)**

insert

- (3) This section does not limit section 51A (Enforcement of undertakings).

**11 Defences
Section 49 (1) (a) and (b)**

substitute

- (a) that the contravention was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person; or

12 Section 49 (1) (c)

renumber as section 49 (1) (b)

13 Section 49 (2)

substitute

(2) In subsection (1)—

another person does not include a person who was, at the time of the contravention—

- (a) an employee or agent of the defendant; or
- (b) if the defendant is a corporation—an officer, employee or agent of the defendant.

officer, of a corporation—see the Corporations Act, section 9 (Dictionary).

14 New sections 51A and 51B

insert in part 4

51A Enforcement of undertakings

- (1) The commissioner may accept a written undertaking given by a person for this section in relation to a matter.
- (2) The person may withdraw or amend the undertaking at any time, but only with the commissioner's consent.
- (3) The commissioner's consent is required even if the undertaking purports to authorise a withdrawal or amendment of the undertaking without that consent.
- (4) If the commissioner considers that the person who gave the undertaking has breached any of its terms, the commissioner may apply to the Magistrates Court for an order under subsection (5).

- (5) If the Magistrates Court is satisfied that the person has breached a term of the undertaking, the court may make all or any of the following orders:
- (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay to the Territory an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate anyone else who has suffered loss or damage because of the breach;
 - (d) any other order that the court considers appropriate.

51B Substantiation of claims

- (1) This section applies to a person who publishes a statement promoting, or apparently intended to promote, the supply of goods or services or the sale or letting of premises by the person.
- (2) The commissioner may, by written notice, ask the person to give the commissioner, within the period stated in the notice, proof of any claim or representation made in the statement.
- (3) A person on whom a notice under this section is served commits an offence if the person—
 - (a) fails to provide proof sufficient to support the claim or representation; or
 - (b) fails to provide that proof by the time stated in the notice.

Maximum penalty: 50 penalty units.

Part 3 Amendments of Fair Trading (Consumer Affairs) Act 1973

15 Act amended in pt 3

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

16 New section 8A

insert in division 3.2

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.

fair trading legislation means—

- (a) the *Fair Trading Act 1992*; or
- (b) the *Fair Trading (Consumer Affairs) Act 1973*.

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.

17 Power of investigator to enter etc

Section 12

substitute

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.

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 section 12K (Providing false or misleading information) or section 12L (Providing false or misleading documents); or
- (b) any other offence in relation to the falsity or misleading nature of the information or document; or
- (c) an offence against the *Crimes Act 1900*, part 8 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to an offence mentioned in paragraph (a) or (b).

12J Legal professional privilege

In response to a requirement under this division, a person does not have to—

- (a) make available information or a document; or
- (b) answer a question;

if the person is entitled to claim, and does claim, legal professional privilege in relation to the requirement.

12K Providing false or misleading information

A person must not, in purported compliance with a requirement under this division, knowingly give information that is false or misleading in a material particular.

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

12L Providing false or misleading documents

A person must not, in purported compliance with a requirement under this division, produce a document (or a copy of a document) that the person knows is false or misleading in a material particular.

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

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.

**18 Investigator may require furnishing of information and production of documents
Section 13 (3) and (4)**

omit

19 Section 13

renumber subsections when Act next republished under Legislation Act 2001

Part 4 Amendment of Magistrates Court Act 1930

20 Act amended in pt 4

This part amends the *Magistrates Court Act 1930*.

21 New part 8

insert

Part 8 Infringement notices for certain offences

Division 8.1 Preliminary

117 Definitions for pt 8

In this part:

administering authority, for an infringement notice offence, means the entity that, under the regulations, is the administering authority for the offence.

authorised person means—

- (a) for an infringement notice for an infringement notice offence—
 - (i) the administering authority; or
 - (ii) a person who is authorised, in writing, by the administering authority to serve an infringement notice for the offence; or
 - (iii) anyone else who, under the regulations, may serve an infringement notice for the offence; or
- (b) for a reminder notice for an infringement notice offence—

- (i) the administering authority; or
- (ii) a person who is authorised, in writing, by the administering authority to serve a reminder notice for the offence; or
- (iii) anyone else who, under the regulations, may serve a reminder notice for the offence.

date of service, of an infringement notice or reminder notice that has been, or is to be, served on a person, means the date the notice is served on the person.

infringement notice means a notice under section 120 (Service of infringement notices).

infringement notice offence means an offence declared under the regulations to be an offence to which this part applies.

infringement notice penalty, for a person for an infringement notice offence, means—

- (a) the amount prescribed under the regulations as the penalty payable by the person for the offence under an infringement notice for the offence; or
- (b) if a reminder notice has also been served on the person for the offence—the total of the amount mentioned in paragraph (a) and the amount prescribed under the regulations as the amount payable by the person for the cost of serving the reminder notice.

reminder notice means a notice under section 129 (Reminder notices).

118 Purpose and effect of pt 8

- (1) The purpose of this part is to create a system of infringement notices for certain offences as an alternative to prosecution.
- (2) This part does not—

- (a) require an infringement or reminder notice to be served on a person; or
- (b) affect the liability of a person to be prosecuted for an offence if—
 - (i) an infringement or reminder notice is not served on the person for the offence; or
 - (ii) the person does not comply with an infringement or reminder notice served on the person for the offence; or
 - (iii) an infringement notice served on the person for the offence is withdrawn; or
- (c) prevent the service of 2 or more infringement notices on a person for an offence; or
- (d) limit or otherwise affect the penalty that may be imposed by a court on a person for an offence.

119 Regulations about infringement notice offences

- (1) The regulations may prescribe an offence, other than an offence for which a penalty of imprisonment may be imposed, for the definition of infringement notice offence in section 117 (Definitions for pt 8) by—
 - (a) stating the offence; or
 - (b) referring to the provision creating the offence; or
 - (c) providing that all offences, or all offences except for stated offences, against an Act or subordinate law are infringement notice offences.
- (2) Subsection (1) does not limit the ways that the regulations may prescribe an offence for that definition.
- (3) The regulations may, for the definition of infringement notice penalty in section 117, prescribe—

- (a) an amount as the penalty payable by anyone for an offence if it is dealt with under this part; or
 - (b) different amounts as the penalties payable for different offences if they are dealt with under this part; or
 - (c) different amounts as the penalties payable for the same kind of offence committed by different people or in different circumstances if the offence is dealt with under this part.
- (4) However, an infringement notice penalty prescribed for a person for an offence must not exceed the maximum fine that could be imposed by a court on the person for the offence.
- (5) Subsection (3) does not limit the ways that the regulations may prescribe an amount for that definition.

Division 8.2 Infringement and reminder notices

120 Service of infringement notices

If an authorised person believes, on reasonable grounds, that a person has committed an infringement notice offence, the authorised person may serve a notice (an *infringement notice*) on the person for the offence.

121 Contents of infringement notices

- (1) An infringement notice served on a person by an authorised person for an infringement notice offence must—
- (a) be identified by a unique number; and
 - (b) state the date of service of the notice; and
 - (c) state—
 - (i) the full name, or surname and initials, and address of the person on whom the notice is served; or
 - (ii) the particulars that are, under the regulations, identifying particulars for the person; and

- (d) give brief details of the offence, including the Act or subordinate law, and the provision of it, contravened by the person, and—
 - (i) if the offence took place over a period—the period, or approximate period, when the offence was committed; or
 - (ii) in any other case—the place where the offence was committed and the date and approximate time of the offence; and
 - (e) state the infringement notice penalty payable by the person for the offence; and
 - (f) contain the information required by section 122 (Additional information in infringement notices); and
 - (g) identify the authorised person in accordance with the regulations; and
 - (h) include any other information required under the regulations and any additional information that the administering authority considers appropriate.
- (2) The regulations may provide that subsection (1) (c) does not apply to an infringement notice.

122 Additional information in infringement notices

- (1) The infringement notice must also tell the person on whom it is served that—
- (a) the person may pay the infringement notice penalty for the offence or dispute liability for the offence within 28 days after the day when the notice is served on the person (the *date of service* of the notice); and
 - (b) the person may apply to the administering authority for additional time in which to pay the penalty or dispute liability for the offence; and

- (c) the notice may be withdrawn before or after the penalty is paid; and
 - (d) if the person pays the penalty within the 28 days (or any additional time allowed by the administering authority), then, unless the infringement notice is withdrawn and any penalty refunded—
 - (i) any liability of the person for the offence is discharged; and
 - (ii) the person will not be prosecuted in court for the offence; and
 - (iii) the person will not be taken to have been convicted of the offence; and
 - (e) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and
 - (f) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and
 - (g) if the person does not pay the infringement notice penalty, or disputes liability for the offence, within the 28 days (or any additional time allowed by the administering authority), a reminder notice may be served on the person for the offence or the person may be prosecuted in court for the offence; and
 - (h) if a reminder notice is served on the person, the infringement notice penalty is increased by the amount payable by the person for the cost of serving the reminder notice.
- (2) In addition, the infringement notice must—
- (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and

- (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

123 Time for payment of infringement notice penalty

The infringement notice penalty payable by a person under an infringement notice or reminder notice is payable—

- (a) within 28 days after the date of service of the notice; or
- (b) if the person applies to the administering authority within the 28 days for additional time to pay and the additional time is allowed—within the additional time allowed by the administering authority; or
- (c) if the person applies to the administering authority within the 28 days for additional time to pay and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service of the notice, whichever is later.

124 Extension of time to pay penalty

- (1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the administering authority, within 28 days after the date of service of the notice, for a stated additional time (of not longer than 6 months) in which to pay the infringement notice penalty.
- (2) The administering authority must—
 - (a) allow or refuse to allow the additional time; and
 - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

125 Effect of payment of infringement notice penalty

- (1) This section applies if—

- (a) an infringement notice has been served on a person for an infringement notice offence; and
- (b) the person pays the infringement notice penalty for the offence in accordance with this part; and
- (c) when the payment is made, the infringement notice had not been withdrawn and an information had not been laid in the Magistrates Court against the person for the offence.

Note Section 127 (Withdrawal of infringement notice) provides for the withdrawal at any time of an infringement notice that has been served on a person. If section 125 applied to the infringement notice offence, it ceases to apply, and is taken never to have applied, on the withdrawal of the notice (see s 127 (4)).

- (2) If this section applies—
 - (a) any liability of the person for the offence is discharged; and
 - (b) the person must not be prosecuted in a court for the offence; and
 - (c) the person is not taken to have been convicted of the offence.
- (3) If 2 or more infringement notices were served on the person for the offence, then, unless all the infringement notices have been withdrawn, subsection (2) applies to the person in relation to the offence if the person pays, in accordance with this part, the infringement notice penalty in relation to any of the notices (together with any costs and disbursements payable under this part in relation to the notice).

126 Application for withdrawal of infringement notice

- (1) The person on whom an infringement notice for an infringement notice offence is served may apply to the administering authority, in writing, for the withdrawal of the notice within 28 days after the day when the infringement notice, or a reminder notice for the offence, is served on the person (or any additional time allowed by the administering authority).

- (2) The administering authority must—
 - (a) withdraw the notice or refuse to withdraw the notice; and
 - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

127 Withdrawal of infringement notice

- (1) This section applies to an infringement notice that has been served on a person for an infringement notice offence.
- (2) The administering authority may, by notice served on the person, withdraw the infringement notice, whether or not—
 - (a) the person has made an application for the withdrawal of the infringement notice; or
 - (b) the infringement notice penalty (or part of it) has been paid for the offence; or
 - (c) the person has disputed liability for the infringement notice offence.
- (3) The notice must—
 - (a) include the number of the infringement notice and the date of service of the infringement notice; and
 - (b) tell the person that the infringement notice is withdrawn and, in general terms, about subsection (4).
- (4) On service of the notice—
 - (a) this part ceases to apply to the infringement notice; and
 - (b) if the infringement notice penalty (or part of it) has been paid—the amount paid must be repaid by the administering authority; and
 - (c) if section 125 (Effect of payment of infringement notice penalty) applies to the offence—the section ceases to apply, and is taken never to have applied, to the offence; and

- (d) a proceeding for the offence may be taken in a court against anyone (including the person) as if the infringement notice had not been served on the person.

128 Guidelines about withdrawal of infringement notices

- (1) The Minister may, in writing, issue guidelines about the exercise of an administering authority's functions under section 126 (Application for withdrawal of infringement notice), section 127 (Withdrawal of infringement notice) or section 133 (Extension of time to dispute liability).
- (2) The administering authority for an infringement notice offence must comply with any guidelines applying to the offence.
- (3) Guidelines are a disallowable instrument.

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

129 Reminder notices

An authorised person may serve a notice (a *reminder notice*) on a person if—

- (a) an infringement notice has been served on the person for an infringement notice offence; and
- (b) the infringement notice has not been withdrawn; and
- (c) the infringement notice penalty has not been paid to the administering authority within the time for payment under this part; and
- (d) written notice disputing liability has not been given to the administering authority in accordance with this part; and
- (e) a reminder notice has not previously been served on the person for the offence.

130 Contents of reminder notices

A reminder notice served on a person by an authorised person for an infringement notice offence must—

- (a) be identified by a unique number; and
- (b) include the following information:
 - (i) the Act or subordinate law, and the provision of it, contravened by the person;
 - (ii) the number of the infringement notice served on the person for the offence;
 - (iii) the date of service of the infringement notice; and
- (c) state the date of service of the reminder notice; and
- (d) state the infringement notice penalty that is now payable by the person for the offence; and
- (e) contain the information required by section 131 (Additional information in reminder notices); and
- (f) identify the authorised person in accordance with the regulations; and
- (g) include any other information required under the regulations and any additional information that the administering authority considers appropriate.

131 Additional information in reminder notices

- (1) The reminder notice must also tell the person on whom it is served that—
 - (a) the infringement notice penalty for the offence has not been paid; and
 - (b) the infringement notice has not been withdrawn; and
 - (c) written notice disputing liability has not been received by the administering authority from the person for the offence; and

- (d) the infringement notice penalty for the offence has been increased by the amount payable by the person for the cost of serving the reminder notice; and
- (e) the person may pay the infringement notice penalty that is now payable by the person for the offence or dispute liability for the offence within 28 days after the day when the reminder notice is served on the person (the *date of service* of the notice); and
- (f) the person may apply to the administering authority for additional time in which to pay the penalty or dispute liability for the offence; and
- (g) the infringement notice may be withdrawn before or after the penalty is paid; and
- (h) if the person pays the penalty within the 28 days (or any additional time allowed by the administering authority), then, unless the infringement notice is withdrawn and any penalty refunded—
 - (i) any liability of the person for the offence is discharged; and
 - (ii) the person will not be prosecuted in court for the offence; and
 - (iii) the person will not be taken to have been convicted of the offence; and
- (i) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and
- (j) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and
- (k) if the person does not pay the infringement notice penalty, or dispute liability for the offence, within the 28 days (or any

additional time allowed by the administering authority), the person may be prosecuted in court for the offence.

- (2) In addition, the reminder notice must—
- (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and
 - (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

Division 8.3 Disputing liability

132 Disputing liability for infringement notice offence

- (1) A person on whom an infringement notice or reminder notice has been served for an infringement notice offence may dispute liability for the offence by written notice given to the administering authority.
- (2) The notice must set out the grounds on which the person relies.
- (3) The notice must be given to the administering authority—
- (a) within 28 days after the date of service of the infringement notice or reminder notice; or
 - (b) if the person applies to the administering authority within the 28 days for additional time to dispute liability for the offence and the additional time is allowed—within the additional time allowed by the administering authority; or
 - (c) if the person applies to the administering authority within the 28 days for additional time to dispute liability for the offence and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service of the infringement notice or reminder notice, whichever is later.

133 Extension of time to dispute liability

- (1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the administering authority, within 28 days after the date of service of the notice, for a stated additional time in which to dispute liability for the offence.
- (2) The administering authority must—
 - (a) allow or refuse to allow the additional time; and
 - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

134 Procedure if liability disputed

- (1) This section applies if a person disputes liability for an infringement notice offence by giving the administering authority a notice in accordance with section 132 (Disputing liability for infringement notice offence).
- (2) The administering authority may lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice.
- (3) The administering authority must discontinue a proceeding brought against the person for the offence if, before the hearing of the proceeding, the person pays the total of—
 - (a) the infringement notice penalty; and
 - (b) the costs (if any) prescribed under the regulations for beginning the proceeding; and
 - (c) the disbursements (if any) incurred by the administering authority up to the day payment is made.
- (4) If subsection (3) applies, section 125 (Effect of payment of infringement notice penalty) also applies to the person in relation to the offence, even though the person paid the infringement notice penalty for the offence after an information had been laid in the Magistrates Court against the person for the offence.

- (5) If the administering authority does not lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice, the administering authority must—
- (a) tell the person, in writing, that no further action will be taken against the person for the offence; and
 - (b) take no further action against the person for the offence.

Division 8.4 Miscellaneous

135 Delegation of administering authority's functions

- (1) The administering authority for an infringement notice offence may delegate, in writing, all or any of the administering authority's functions under this part to an authorised person or a person prescribed under the regulations.
- (2) A person prescribed under the regulations for subsection (1) may delegate, in writing, all or any of the functions delegated to the person under that subsection to anyone else.

136 Evidentiary certificates

- (1) This section applies to a proceeding for an infringement notice offence.
- (2) A certificate that appears to be signed by or on behalf of the administering authority, and states any matter relevant to anything done or not done under this part in relation to the offence, is evidence of the matter.
- (3) Without limiting subsection (2), a certificate given under that subsection may state any of the following:
 - (a) a stated infringement notice or reminder notice was served by a stated authorised person in a stated way on a stated person on a stated date for a stated infringement notice offence;

- (b) the administering authority did not allow additional time, or allowed stated additional time, for payment of the infringement notice penalty or to dispute liability for the offence;
 - (c) the infringement notice penalty was not paid within the time in which it was required to be paid under this part;
 - (d) the infringement notice has not been withdrawn or was withdrawn on a stated date;
 - (e) a stated address was, on a stated date, the latest business, home or email address, or fax number, of a stated person recorded in a register or other record kept by the administering authority;
 - (f) an infringement notice penalty has not been paid by, or a penalty has not been imposed on, a stated person or anyone for the offence.
- (4) A court must accept a certificate given under this section as proof of the matters stated in it if there is no evidence to the contrary.

Part 5 **Amendments of Sale of Goods Act 1954**

22 Act amended in pt 5

This part amends the *Sale of Goods Act 1954*.

23 When condition to be treated as warranty Section 16 (4)

omit

24 Section 16

renumber subsections when Act next republished under Legislation Act 2001

25 Implied conditions as to quality and fitness Section 19 (1)

omit

26 Section 19

renumber subsections when Act next republished under Legislation Act 2001

27 Exclusion of implied terms and conditions Section 58

omit

Part 6 Repeal

28 **Repeal—Law Reform (Manufacturers Warranties) Act 1977**

The *Law Reform (Manufacturers Warranties) Act 1977* No 12 is repealed.

Endnote

Penalty units

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

[Presentation speech made in Assembly on 21 June 2001]

I certify that the above is a true copy of the Fair Trading Legislation Amendment Bill 2001 which was passed by the Legislative Assembly on 23 August 2001.

M J McRae
Clerk of the Legislative Assembly

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