



Australian Capital Territory

Traders (Licensing) Act 2016

A2016-46

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 3
5	Offences against Act—application of Criminal Code etc 3
Part 2	Important concepts
6	Meaning of <i>operational Act</i> 4
7	Meaning of <i>trader</i> 4
8	Meaning of <i>car market operator</i> 4
9	Meaning of <i>motor vehicle dealer</i> 5
10	Meaning of <i>motor vehicle repairer</i> 5
11	Meaning of <i>motor vehicle wholesaler</i> 5

J2015-838

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

	Page
12	5
13	5
14	5
Part 3	Traders licences
Division 3.1	Preliminary
15	6
Division 3.2	About traders licences
16	7
17	7
18	8
19	8
20	9
21	10
Division 3.3	Licensing and licence management
22	10
23	11
24	11
25	12
26	13
27	13
28	14
29	15
30	15
31	17
32	17
33	18
34	18
35	18
36	19
Division 3.4	Licence register
37	19
38	20

	Page
Part 4	Occupational discipline and other disciplinary action
39	Meaning of <i>licensee</i> —pt 4 21
40	Meaning of <i>ground for occupational discipline</i> —pt 4 21
41	Application to ACAT for occupational discipline 22
42	Considerations before making occupational discipline orders 22
43	Information about cancellations etc to be given to corresponding authorities 23
Part 5	Offences
44	Meaning of <i>licensed</i> —pt 5 24
45	Carrying out licensed activity when not licensed 24
46	False or misleading representations 24
47	Failure to meet condition of licence 25
48	Failure to surrender licence 25
Part 6	Notification and review of decisions
49	Meaning of <i>reviewable decision</i> —pt 6 26
50	Reviewable decision notices 26
51	Applications for review 26
Part 7	Miscellaneous
52	Determination of fees 27
53	Regulation-making power 27
54	Operation of Act with other rights etc 28
55	Evidence of licensing 28
Part 8	Repeal and consequential amendments
56	Repeal of Sale of Motor Vehicles Regulation 1977 29
57	Legislation amended—sch 2 29
Part 20	Transitional
150	Definitions—pt 20 30
151	Current trader remains licensed 30
152	Applications under operational Act 31

Contents

	Page
153 Application by former licensee	32
154 Occupational discipline	32
155 Review of decision	32
156 Transitional regulations	33
157 Expiry—pt 20	33
Schedule 1 Reviewable decisions	34
Schedule 2 Consequential amendments	35
Part 2.1 Fair Trading (Australian Consumer Law) Act 1992	35
Part 2.2 Fair Trading (Motor Vehicle Repair Industry) Act 2010	35
Part 2.3 Pawnbrokers Act 1902	38
Part 2.4 Sale of Motor Vehicles Act 1977	40
Part 2.5 Second-hand Dealers Act 1906	43
Part 2.6 Second-hand Dealers Regulation 2002	45
Dictionary	46



Australian Capital Territory

Traders (Licensing) Act 2016

A2016-46

An Act to regulate the licensing of traders, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Traders (Licensing) Act 2016*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

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

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](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 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 in this Act.

For example, the signpost definition ‘*licensee*, for part 4 (Occupational discipline and other disciplinary action)—see section 39.’ means that the term ‘licensee’ is defined in that section for part 4.

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)).

4 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.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Important concepts

6 Meaning of *operational Act*

Each of the following is an *operational Act*:

- (a) the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- (b) the *Pawnbrokers Act 1902*;
- (c) the *Sale of Motor Vehicles Act 1977*;
- (d) the *Second-hand Dealers Act 1906*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

7 Meaning of *trader*

Each of the following (a *trader category*) is a *trader*:

- (a) car market operator;
- (b) motor vehicle dealer;
- (c) motor vehicle repairer;
- (d) motor vehicle wholesaler;
- (e) pawnbroker;
- (f) second-hand dealer.

8 Meaning of *car market operator*

In this Act:

car market operator—see the *Sale of Motor Vehicles Act 1977*, dictionary.

9 Meaning of *motor vehicle dealer*

In this Act:

motor vehicle dealer means a dealer under the [Sale of Motor Vehicles Act 1977](#).

10 Meaning of *motor vehicle repairer*

(1) In this Act:

motor vehicle repairer means an entity that carries on business as a motor vehicle repairer if the entity performs motor vehicle repair work for reward.

(2) In this section:

motor vehicle repair work—see the [Fair Trading \(Motor Vehicle Repair Industry\) Act 2010](#), dictionary.

11 Meaning of *motor vehicle wholesaler*

In this Act:

motor vehicle wholesaler means a wholesaler under the [Sale of Motor Vehicles Act 1977](#).

12 Meaning of *pawnbroker*

In this Act:

pawnbroker—see the [Pawnbrokers Act 1902](#), dictionary.

13 Meaning of *second-hand dealer*

In this Act:

second-hand dealer—see the [Second-hand Dealers Act 1906](#), dictionary.

14 Classes of traders

A regulation may divide a trader category into classes.

Part 3 Traders licences

Division 3.1 Preliminary

15 Definitions—pt 3

(1) In this part:

influential person, for a corporation, means any of the following:

- (a) an executive officer of the corporation;
- (b) a person who may exercise a relevant power in relation to the corporation;
- (c) a related corporation;
- (d) an executive officer of a related corporation.

trading address means the address of the premises where a trader carries on a licensed activity.

trading name means the name under which a trader carries on a licensed activity.

(2) In this section:

related corporation means a related body corporate under the [Corporations Act](#).

relevant power, for a corporation, means a power—

- (a) to take part in a directorial, managerial or executive decision for the corporation; or
- (b) to elect or appoint a person as an executive officer in the corporation; or
- (c) to exercise a significant influence in relation to the conduct of the corporation.

Division 3.2 About traders licences

16 Licensable entity

The following entities may be licensed as a trader:

- (a) an individual;
- (b) a partnership;
- (c) a corporation;
- (d) an association declared under the *Associations Incorporation Act 1991*, section 15 and incorporated under that Act.

17 Eligibility of entity

- (1) A regulation may provide eligibility requirements for an entity to be licensed as a trader, including the qualifications the entity must have to be licensed.
- (2) A regulation may provide for how an entity may, or must, show that the entity satisfies an eligibility requirement.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (3) The Minister may declare that a class of corporation is only eligible to hold a licence if a stated number or percentage of individuals carrying out a licensed activity for the corporation hold individual licences to carry out the activity.
- (4) The Minister may only make a declaration if satisfied on reasonable grounds the declaration is in the public interest.
- (5) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

18 Suitability of entity

In deciding whether an entity is a *suitable entity* to hold a licence, the commissioner—

- (a) must consider the following:
 - (i) suitability information about the entity, and each relevant person for the entity, prescribed by regulation;
 - (ii) any information given to the commissioner under section 32 (Commissioner may request more information); and
- (b) may consider whether the premises where the entity intends to carry out the licensed activity are—
 - (i) suitable premises for carrying out the licensed activity; and
 - (ii) premises that the entity is entitled to use.

19 Traders licence term and form

- (1) A licence may be issued for up to 5 years.
- (2) A licence must state, in writing—
 - (a) a unique identifying number for the licence; and
 - (b) the licensee's name; and
 - (c) the licensee's trading name; and
 - (d) the trader category and trader class (if any) for which the licence is issued; and
 - (e) the date of expiry for the licence; and
 - (f) any condition that applies to the licence.

20 Conditions for traders licence

- (1) A licence is subject to any condition—
 - (a) required under an operational Act; or
 - (b) imposed by the commissioner when issuing the licence or by written notice given to the licensee at any other time; or
 - (c) prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters (see [Legislation Act](#), s 48).

- (2) The commissioner may impose a condition on a licence at any time—
 - (a) if satisfied on reasonable grounds the condition is in the public interest; or
 - (b) for a reason prescribed by regulation.
- (3) The commissioner must give the licensee written notice of the condition.
- (4) A condition on a licence takes effect on the later of—
 - (a) the day stated by the commissioner in the notice; or
 - (b) if the applicant applies to the ACAT for a review of the imposition of the condition and the ACAT upholds the condition—5 working days after the day the ACAT makes the decision; or
 - (c) 5 working days after the day the commissioner gives the licensee notice.

21 Exemption from licensing

- (1) The commissioner may declare that an entity may carry out the activities of a trader in a trader category or trader class without a licence.
- (2) The commissioner may only make a declaration if the commissioner is satisfied that allowing the trader to trade without a licence is in the public interest.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

Division 3.3 Licensing and licence management

22 Licence application

- (1) An entity may apply to the commissioner for a licence as a trader in a trader category or trader class.
- (2) An application may be made for a licence in more than 1 trader category or trader class.
- (3) The application must—
 - (a) be in writing; and
 - (b) state—
 - (i) the applicant's name; and
 - (ii) the applicant's trading name; and
 - (iii) the applicant's proposed trading address or addresses; and
 - (c) include information to show the applicant is eligible to be licensed in the trader category or class; and
 - (d) include any information prescribed by regulation.

Note A fee may be determined under s 52 for this provision.

23 Licence issue

- (1) If an entity applies for a licence, the commissioner must, within the decision-making period—
 - (a) issue the licence; or
 - (b) refuse to issue the licence.

Note A licence may be issued with a condition (see s 20).

- (2) The licence may authorise the entity to carry on business in—
 - (a) more than 1 trader category; and
 - (b) more than 1 trader class.
- (3) The commissioner may issue the licence to the entity only if the commissioner is satisfied—
 - (a) about the identity of each relevant person for the entity; and
 - (b) that the entity—
 - (i) is eligible to hold the licence; and
 - (ii) is a suitable entity to hold the licence.

24 Transfer application

- (1) A licensee may apply to the commissioner to transfer a licence in a prescribed trader category or trader class to another entity (the *transferee*).
- (2) An application must—
 - (a) be in writing; and
 - (b) include evidence to show that the licensee and transferee agree to the transfer; and
 - (c) state—
 - (i) the transferee's name; and
 - (ii) the transferee's trading name; and

- (iii) the transferee's proposed trading address or addresses; and
- (d) include information to show the transferee is eligible to be licensed in the trader category or class; and
- (e) include any information prescribed by regulation.

Note A fee may be determined under s 52 for this provision.

25 Transfer decision

- (1) If a licensee applies to transfer a licence, the commissioner must, within the decision-making period—
 - (a) approve the transfer; or
 - (b) refuse to approve the transfer.
- (2) The commissioner may approve the transfer to the transferee only if the commissioner is satisfied—
 - (a) about the identity of a relevant person for the transferee; and
 - (b) that the transferee—
 - (i) is eligible to hold the licence; and
 - (ii) is a suitable entity to hold the licence.
- (3) A transfer is subject to any condition—
 - (a) required under an operational Act; or
 - (b) if the commissioner is satisfied on reasonable grounds that imposing a condition is in the public interest—imposed by the commissioner when approving the transfer; or
 - (c) prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters (see [Legislation Act](#), s 48).

26 Renewal application

- (1) A licensee may apply, in writing, to the commissioner to renew the licence up to 6 months before the licence expires.
- (2) The application must—
 - (a) be in writing; and
 - (b) include information to show the applicant remains eligible and suitable to be licensed in the trader category or class; and
 - (c) include any information prescribed by regulation.

Note A fee may be determined under s 52 for this provision.

- (3) If a licensee applies to renew a licence, the licence remains in force until the application is decided.

27 Renewal decision

- (1) If a licensee applies to renew a licence, the commissioner must, within the decision-making period—
 - (a) renew the licence; or
 - (b) refuse to renew the licence.
- (2) However, if the commissioner has asked the licensee to do a thing in relation to being a licensee, and the licensee has not yet done the thing, the commissioner must not renew the licence until the thing is done.

Examples—thing not done

- pay a fee
- provide information
- condition of licence met

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) A licence may be renewed for up to 5 years.

- (4) The renewal of a licence—
 - (a) starts immediately after the licence would have expired if it had not been renewed; and
 - (b) if there is a condition imposed on the licence—does not affect the condition.
- (5) A renewal is subject to any condition—
 - (a) required under an operational Act; or
 - (b) if the commissioner is satisfied on reasonable grounds imposing a condition is in the public interest—imposed by the commissioner when approving the renewal; or
 - (c) prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters (see [Legislation Act](#), s 48).

28 Late renewal application

- (1) This section applies if a licensee fails to apply to the commissioner to renew the licence before the day the licence expires (the *expiry day*).
 - (2) Within 1 year after the expiry day the licensee may apply to the commissioner to renew the licence (a *late renewal*).
 - (3) The application must—
 - (a) be in writing; and
 - (b) include information to show the applicant remains eligible and suitable to be licensed in the trader category or class; and
 - (c) include any information prescribed by regulation.
- Note* A fee may be determined under s 52 for this provision.
- (4) If a licensee applies for a late renewal, the licence remains in force but is taken to be suspended for the period between the expiry day and the day the renewal decision is made.

29 Late renewal decision

- (1) If a licensee applies for a late renewal, the commissioner must, within the decision-making period—
 - (a) renew the licence; or
 - (b) refuse to renew the licence.
- (2) However, if the commissioner has asked the licensee to do a thing in relation to being a licensee, and the licensee has not yet done the thing, the commissioner must not renew the licence until the thing is done.
- (3) A licence may be renewed for up to 5 years.
- (4) The renewal of a licence starts on the day the renewal decision is made.
- (5) If a condition is imposed on the licence, late renewal does not affect the condition.

30 Temporary licence following death of licensee

- (1) This section applies if—
 - (a) a licensee dies; and
 - (b) an entity is, is named as, or is otherwise entitled to become, a legal personal representative of the deceased licensee (an *eligible personal legal representative*).
- (2) The entity may apply to the commissioner for authorisation to carry on the business of the deceased licensee for a period of not longer than 6 months.
- (3) The application must—
 - (a) be in writing; and
 - (b) be made within—
 - (i) 28 days after the death of the licensee; or
 - (ii) a longer period agreed by the commissioner; and

- (c) state the applicant's name; and
- (d) include information to show the applicant is eligible to be licensed in the trader category or class; and
- (e) include evidence to show the applicant is an eligible personal legal representative; and
- (f) state the period, not longer than 6 months after the date of death of the deceased licensee, for which the authorisation is sought; and
- (g) include any information prescribed by regulation.

Note A fee may be determined under s 52 for this provision.

- (4) The commissioner may authorise the applicant to carry on the deceased licensee's business only if the commissioner is satisfied the applicant is—
 - (a) eligible and suitable to be licensed in the trader category or class for which the deceased licensee was licensed; and
 - (b) an eligible personal legal representative of the deceased licensee.
- (5) An entity authorised to carry on the business of the deceased licensee—
 - (a) is taken to be the licensee of the deceased licensee's licence for the period for which the authorisation is approved; and
 - (b) must carry on the business with the same trading name and trading address.

31 Amendment of licence

- (1) If the commissioner becomes aware that 1 or more of the following change, the commissioner may amend a licensee's licence to reflect the change:
 - (a) the licensee's name;
 - (b) the licensee's trading name;
 - (c) a trading address for the licensee;
 - (d) a condition that applies to the licence.
- (2) The commissioner may also amend the licence at any time, at the request of the licensee or otherwise, if the commissioner believes on reasonable grounds the amendment is necessary.

32 Commissioner may request more information

- (1) This section applies to—
 - (a) an application for a licence under section 22; and
 - (b) an application to transfer a licence under section 24; and
 - (c) an application to renew a licence under section 26; and
 - (d) an application for a late renewal of a licence under section 28; and
 - (e) an application for a temporary licence under section 30; and
 - (f) a request to amend a licence under section 31.
- (2) The commissioner may ask an applicant to give the commissioner, within a stated reasonable time, information about the applicant or a relevant person for the applicant that the commissioner reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement in the request, the commissioner may refuse to consider the application further.

33 Issue of copy of licence

The commissioner may issue a licensed trader with a copy of the trader's licence if the commissioner is satisfied the licence—

- (a) is in force; and
- (b) has been lost or destroyed.

34 Surrender of licence

- (1) A licensee may surrender the licensee's licence to the commissioner before the licence expires by giving the commissioner—

- (a) a written statement that the licensee surrenders the licence; and
- (b) for a physical licence—the licence.

Note A fee may be determined under s 52 for this provision.

- (2) The licence is cancelled on the day stated by the commissioner after receiving—
- (a) the written statement; and
 - (b) for a physical licence—the licence.
- (3) The commissioner must tell the former licensee, in writing, the day on which the licence is cancelled.

35 Surrender of licence during suspension

- (1) This section applies if a licensee's licence is suspended.
- (2) The licensee must surrender the licensee's licence to the commissioner for the period of the suspension.

Note It is an offence not to surrender the licence within 7 days of the licence being suspended (see s 48(2)).

- (3) The commissioner must return the licensee's licence within 10 business days after the end of the suspension.

36 Cancellation of licence issued by mistake

- (1) This section applies to a licence that was issued by mistake.
- (2) The commissioner may cancel the licence.
- (3) The licence is cancelled on the day stated by the commissioner.
- (4) The commissioner must tell the former licensee, in writing, the day on which the licence is cancelled.

Division 3.4 Licence register

37 Licence register

- (1) The commissioner must keep a register of licences.
- (2) The register may include information about licences given to the commissioner under this Act and any other information the commissioner considers appropriate.
- (3) The register may be kept in any form, including electronically, that the commissioner decides.
- (4) The register may be kept in 1 or more parts, as the commissioner considers appropriate.
- (5) The commissioner must make the following information in the register about a licensee available for public inspection:
 - (a) the licensee's trading name;
 - (b) if the licensee is an individual—the individual's name;
 - (c) if the licensee is a partnership—the name of each partner;
 - (d) the trader category and class (if any) for which the licensee is licensed;
 - (e) if the licensee has an Australian business number (an *ABN*)—the *ABN*;
 - (f) if the licensee has an Australian company number (an *ACN*)—the *ACN*;

- (g) if the licensee is an association—the association’s unique identifying number (if any);
- (h) whether the licensee’s licence is subject to a condition;
- (i) whether the licensee’s licence is suspended;
- (j) the date the licensee’s licence expires;
- (k) information prescribed by regulation.

Note The Commissioner must comply with the Territory privacy principles under the [Information Privacy Act 2014](#).

Example

the information may be available on a website

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

38 Correcting register and keeping it up-to-date

- (1) The commissioner may correct a mistake, error or omission in the register.
- (2) The commissioner may change a detail included in the register to keep the register up-to-date.

Part 4 Occupational discipline and other disciplinary action

39 Meaning of *licensee*—pt 4

In this part:

licensee includes a former licensee.

40 Meaning of *ground for occupational discipline*—pt 4

- (1) For this part, each of the following is a *ground for occupational discipline* in relation to a licensee:
 - (a) the licensee gave information to the commissioner in relation to 1 of the following that was false or misleading in a material particular:
 - (i) an application for a licence under section 22;
 - (ii) an application to transfer a licence under section 24;
 - (iii) an application to renew a licence under section 26;
 - (iv) an application for a late renewal of a licence under section 28;
 - (v) an application for a temporary licence under section 30;
 - (b) the licensee is no longer eligible for the licensee's licence;
 - (c) the licensee, or a relevant person for the licensee, is no longer suitable for the licensee's licence;
 - (d) the licensee has contravened, or is contravening, this Act or an operational Act, whether or not the licensee has been convicted or found guilty of an offence for the contravention;
 - (e) the licensee has contravened, or is contravening, a territory law (other than this Act or an operational Act) or a law of the Commonwealth, a State or another Territory, whether or not the licensee has been convicted or found guilty of an offence for the contravention;

- (f) the licensee has contravened, or is contravening, an order of the ACAT in relation to being a trader;
 - (g) the licensee has contravened, or is contravening a condition of the licence;
 - (h) the licence was obtained by fraud;
 - (i) a ground prescribed by regulation.
- (2) A ground for occupational discipline applies to a former licensee if the ground applied to the licensee while licensed.

41 Application to ACAT for occupational discipline

If the commissioner believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the commissioner may apply to the ACAT for an occupational discipline order in relation to the licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

42 Considerations before making occupational discipline orders

- (1) This section applies if the ACAT is considering an application for occupational discipline in relation to a licensee.
- (2) Without limiting the matters the ACAT must consider in relation to the licensee, the ACAT must consider the following:
 - (a) the degree of responsibility of the licensee for the act or omission that made up the ground for occupational discipline;
 - (b) the extent to which it is necessary to discourage the licensee and others from doing something, or not doing something, that made up the disciplinary ground;
 - (c) whether, and the extent to which, it is necessary to protect the public from the licensee;

- (d) the desirability of making the licensee responsible for the consequences of the licensee's actions or omissions;
- (e) the desirability of maintaining public confidence in the regulatory system set up by this Act.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 (3) sets out other considerations that must be taken into account by the ACAT.

43 Information about cancellations etc to be given to corresponding authorities

- (1) This section applies if the ACAT cancels or suspends a licensee's licence or disqualifies a licensee from applying for a licence.
- (2) The commissioner may give the corresponding authority of each State the following information about the licensee:
 - (a) the name and any other identifying details of the licensee;
 - (b) a short description of the ground for occupational discipline on which the occupational discipline order was based;
 - (c) whether the licence has been cancelled or suspended or the licensee disqualified;
 - (d) if the licence has been suspended—the period of suspension;
 - (e) if the licensee has been disqualified—the period of disqualification.
- (3) This section does not limit any other requirement or power, under this Act or another law in force in the ACT, to give information to an entity in another jurisdiction.
- (4) In this section:

corresponding authority, of a State, means the entity responsible in the State for regulation of the trader category or class equivalent to the trader category or class for which the licensee is, or was, licensed.

Part 5 Offences

44 Meaning of *licensed*—pt 5

For this part, a person is not *licensed* if the person's licence is suspended, cancelled or expired.

45 Carrying out licensed activity when not licensed

- (1) A person commits an offence if the person—
- (a) carries out a licensed activity; and
 - (b) is not licensed to carry out the licensed activity.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person—
- (a) carries out a licensed activity at premises; and
 - (b) does not hold a licence authorising the person to carry out the licensed activity at the premises.

Maximum penalty: 50 penalty units.

- (3) This section does not apply to a trader declared by the commissioner under section 21 to be exempt from holding a licence.

46 False or misleading representations

- (1) A person commits an offence if the person—
- (a) represents that the person is licensed to carry out a licensed activity; and
 - (b) is not licensed to carry out the licensed activity.

Maximum penalty: 50 penalty units.

- (2) This section does not apply to a trader declared by the commissioner under section 21 to be exempt from holding a licence.

47 Failure to meet condition of licence

- (1) A person commits an offence if—
- (a) the person is licensed to carry out a licensed activity; and
 - (b) the licence is subject to a condition; and
 - (c) the person carries out the licensed activity in a way that fails to comply with the condition.

Maximum penalty: 50 penalty units.

- (2) This section does not apply to a trader declared by the commissioner under section 21 to be exempt from holding a licence.

48 Failure to surrender licence

- (1) A person commits an offence if—
- (a) the person's licence is cancelled; and
 - (b) the person fails to surrender the person's licence to the commissioner within 7 days of the cancellation.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person's licence is suspended; and
 - (b) the person fails to surrender the person's licence to the commissioner within 7 days of the suspension.

Maximum penalty: 20 penalty units.

- (3) This section does not apply if the person has a reasonable excuse.

Part 6 Notification and review of decisions

49 Meaning of *reviewable decision*—pt 6

In this part:

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.

50 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

51 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by 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 7 Miscellaneous

52 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

53 Regulation-making power

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

- (2) A regulation may make provision in relation to the following:

- (a) licences;
- (b) the keeping of a register, including the particulars that must or may be entered in the register;
- (c) the supervision of licensees' activities.

- (3) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for offences.

- (4) A regulation may adopt an Australian Standard as in force from time to time.

Note 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](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

- (5) The [Legislation Act](#), section 47 (6) does not apply to an Australian Standard mentioned in subsection (4).

54 Operation of Act with other rights etc

- (1) This Act does not limit or affect a legal right a person would have had if this Act had not been made.
- (2) A term of an agreement, other than an agreement between a licensee and a corporation, that attempts to do 1 or more of the following is void:
 - (a) exclude or limit the operation of this Act;
 - (b) prevent a right of action for failure to comply with this Act;
 - (c) prevent a defence for failure to comply with this Act.

55 Evidence of licensing

A document signed by the commissioner stating the period or periods during which an entity was licensed under this Act is evidence of whether the entity was, or was not, licensed on a day or during a period.

Part 8 Repeal and consequential amendments

56 Repeal of Sale of Motor Vehicles Regulation 1977

The *Sale of Motor Vehicles Regulation 1977* (SL1977-21) is repealed.

57 Legislation amended—sch 2

This Act amends the legislation mentioned in schedule 2.

Part 20 Transitional

150 Definitions—pt 20

In this part:

commencement day means the day this Act, section 3 commences.

operational Act licence, for a trader category, means the following:

- (a) for a car market operator—a car market operator licence under the *Sale of Motor Vehicles Act 1977*;
- (b) for a motor vehicle dealer—a vehicle sale licence under the *Sale of Motor Vehicles Act 1977*;
- (c) for a motor vehicle repairer—a licence under the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;
- (d) for a motor vehicle wholesaler—a vehicle sale licence to carry on business as a wholesaler under the *Sale of Motor Vehicles Act 1977*;
- (e) for a pawnbroker—a licence under the *Pawnbrokers Act 1902*;
- (f) for a second-hand dealer—a licence under the *Second-hand Dealers Act 1906*.

151 Current trader remains licensed

- (1) A person who, immediately before the commencement day, held an operational Act licence for a trader category is taken to be licensed for the trader category under section 23 (Licence issue).
- (2) If the operational Act licence was issued subject to a condition, the condition is taken to be a condition of the licence imposed under section 20 (Conditions for traders licence).

- (3) The licence under this Act expires when the licence would have expired under the operational Act.

Note The repeal of a law does not affect the previous operation of the law or anything done, begun or suffered under the law and does not affect an existing right, privilege or liability acquired, accrued or incurred under the law. An investigation, proceeding or remedy in relation to an existing right, privilege or liability under a repealed law may be started, exercised, continued or completed, and the right, privilege or liability may be enforced and any penalty imposed, as if the repeal had not happened (see [Legislation Act](#), s 84).

152 Applications under operational Act

- (1) This section applies if, before the commencement day—
- (a) a person made an application—
 - (i) under an operational Act—
 - (A) for an operational Act licence for a trader category; or
 - (B) for the transfer of an operational Act licence; or
 - (C) for the renewal of an operational Act licence for a trader category; or
 - (ii) under the [Sale of Motor Vehicles Act 1977](#), section 89A (Temporary revival of licence following death of licensee); and
 - (b) the application had not been decided.
- (2) The application is taken to be—
- (a) for an application for an operational Act licence for a trader category—an application for a licence for the trader category under section 22; and

- (b) for an application for the transfer of an operational Act licence—an application for a transfer under section 24; and
- (c) for an application for the renewal of an operational Act licence for a trader category—an application for the renewal of a licence for the trader category under section 26.

153 Application by former licensee

- (1) This section applies to a person if the person—
 - (a) had an operational Act licence for a trader category that expired not more than 18 months before the commencement day; and
 - (b) applies for a licence for the trader category under section 22.
- (2) The application is taken to be an application for a late renewal of a licence for the trader category under section 29.

154 Occupational discipline

- (1) This section applies if, before the commencement day, an application was made to the ACAT in relation to occupational discipline for a trader or former trader under an operational Act.
- (2) The application is taken to have been made under section 41.
- (3) However, a *ground for occupational discipline* for the application is a ground for occupational discipline under the operational Act immediately before the commencement day.

155 Review of decision

- (1) This section applies if, before the commencement day, an application was made to the ACAT for the review of a reviewable decision under an operational Act.
- (2) The application is taken to have been made under section 51 as if the decision were a decision mentioned in schedule 1, column 3.

156 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

157 Expiry—pt 20

This part expires 2 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Reviewable decisions

(see pt 6)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	20 (2)	imposition of condition	<ul style="list-style-type: none"> • applicant for licence • licensee
2	21 (1)	exemption from holding licence	
3	23 (1) (b)	refuse to issue licence	applicant for licence
4	25 (1) (b)	refuse to approve transfer of licence	<ul style="list-style-type: none"> • licensee • transferee
5	25 (3)	imposition of condition on transfer	transferee
6	27 (1) (b)	refuse to renew licence	licensee
7	29 (1) (b)	refuse to renew licence	licensee
8	30 (4)	refusal to authorise temporary licence	eligible personal legal representative
9	31 (2)	refuse to amend licence	licensee
10	32 (3)	refuse to further consider application	<ul style="list-style-type: none"> • applicant for licence • licensee • transferee

Schedule 2 Consequential amendments

(see s 44)

Part 2.1 Fair Trading (Australian Consumer Law) Act 1992

**[2.1] Section 34 (2), definition of *consumer and trader
legislation*, new paragraph (h)**

insert

(h) the *Traders (Licensing) Act 2016*.

**[2.2] Dictionary, definition of *fair trading legislation*, new
paragraph (ia)**

insert

(ia) the *Traders (Licensing) Act 2016*; or

Part 2.2 Fair Trading (Motor Vehicle Repair Industry) Act 2010

[2.3] Section 6

omit

[2.4] Parts 3 to 5

omit

[2.5] Section 40 (a) (i)

substitute

- (i) the licensing, registration or training of people in the motor vehicle repair industry; and

[2.6] Section 40 (b)

substitute

- (b) advising the Minister about conditions of a licence under the *Traders (Licensing) Act 2016*;

[2.7] Sections 46 and 48

omit

[2.8] Part 8

omit

[2.9] Sections 54 and 55

omit

[2.10] Schedule 1

omit

[2.11] Dictionary, note 2

omit

- Corporations Act

[2.12] Dictionary

omit the definitions of
carries on business as a motor vehicle repairer
corporation
disqualified person
ground for occupational discipline
licence
licence number
licensee

[2.13] Dictionary, definition of *motor vehicle repair work*

substitute
motor vehicle repair work—
(a) means—
(i) any of the following work performed on a motor vehicle, motor vehicle part or motor vehicle system:
(A) examining or assessing condition or performance improvement;
(B) diagnosing and detecting of faults;
(C) overhauling;
(D) dismantling and assembling;
(E) servicing and maintenance;
(F) replacing and adjusting of objects for performance improvement;

- (G) painting and treatment;
 - (H) modifying, altering, installing or fitting work; and
 - (ii) giving advice on any of the work mentioned in subparagraph (i); and
 - (iii) any other work prescribed by regulation to be motor vehicle repair work; but
- (b) does not include any work prescribed by regulation not to be motor vehicle repair work.

[2.14] Dictionary, definitions of *police certificate* and *register*

omit

Part 2.3 Pawnbrokers Act 1902

[2.15] Section 2, note 1

substitute

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 in this Act.

For example, the signpost definition '*redemption period*—see section 13 (1) (Period for sale of pawned articles).' means that the term '*redemption period*' is defined in that section.

[2.16] Part 2

omit

[2.17] Sections 6, 21 to 24, 27 and 28

omit

[2.18] Dictionary, note 2

omit

- commissioner for fair trading
- CrimTrac

substitute

- fail

[2.19] Dictionary

omit the definitions of

commissioner

disqualified

executive officer

licence

[2.20] Dictionary, new definition of *licensed*

insert

licensed means licensed under the *Traders (Licensing) Act 2016*.

[2.21] Dictionary, definition of *licensed pawnbroker*

omit

[2.22] Dictionary, definition of *pawnbroker*, new note

insert

Note A person must not carry on business as a pawnbroker unless the person is licensed as a pawnbroker under the *Traders (Licensing) Act 2016*.

[2.23] Dictionary, definition of *suitable person*

omit

Part 2.4 Sale of Motor Vehicles Act 1977

[2.24] Section 2, note 1

substitute

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 in this Act.

For example, the signpost definition ‘*occupier*, of premises, for part 10A (Enforcement)—see section 70.’ means that the term ‘occupier’ is defined in that section for part 10A.

[2.25] Sections 6 and 6AA

omit

[2.26] Parts 2, 6 and 7

omit

[2.27] Sections 71 to 74

omit

[2.28] Sections 82 and 83

after

this Act

insert

or the *Traders (Licensing) Act 2016*

[2.29] Sections 88 and 89A

omit

[2.30] Schedule 2, items 1 to 10, 12 and 13

omit

[2.31] Dictionary, note 2

omit

- CrimTrac

[2.32] Dictionary, definition of *car market operator*, new note

insert

Note A person must not carry on the activities of a car market operator unless the person is licensed as a motor vehicle dealer under the *Traders (Licensing) Act 2016*.

[2.33] Dictionary, definition of *dealer*

substitute

dealer—

- (a) means a person who—
- (i) buys, sells or exchanges motor vehicles as a business; or
 - (ii) sells more than 6 vehicles in any 12-month period; but
- (b) does not include—
- (i) a person whose business consists exclusively of buying motor vehicles for the purpose of demolishing or dismantling those vehicles; or
 - (ii) a wholesaler; or
 - (iii) a car market operator; or
 - (iv) a financier; or
 - (v) a person who is exempted by the commissioner by written notice.

Note A person must not carry on the activities of a dealer unless the person is licensed as a motor vehicle dealer under the *Traders (Licensing) Act 2016*.

[2.34] Dictionary, definition of *ground for occupational discipline*

omit

[2.35] Dictionary, definition of *licence*

substitute

licence means a licence under the *Traders (Licensing) Act 2016*.

[2.36] Dictionary, new definition of *licensed*

insert

licensed means licensed under the *Traders (Licensing) Act 2016*.

[2.37] Dictionary

omit the definitions of

licensed car market operator

licensed dealer

licensed wholesaler

police certificate

register

suitable person

unsuitable person

vehicle sale licence

[2.38] Dictionary, definition of *wholesaler*, new note

insert

Note A person must not carry on the activities of a wholesaler unless the person is licensed as a motor vehicle dealer under the *Traders (Licensing) Act 2016*.

Part 2.5 Second-hand Dealers Act 1906

[2.39] Section 2, note 1

substitute

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 in this Act.

For example, the signpost definition ‘*carries on business as a second-hand dealer*—see section 2A.’ means that the term ‘carries on business as a second-hand dealer’ is defined in that section.

[2.40] Part 2

omit

[2.41] Section 4

omit

[2.42] New section 10 (5)

insert

(5) In this section:

licence, of a licensed second-hand dealer, means the second-hand dealer’s licence under the *Traders (Licensing) Act 2016*.

[2.43] Sections 11, 12, 14, 15, 17 and 18

omit

[2.44] Dictionary, note 2

substitute

Note 2 In particular, the [Legislation Act](#), dict, pt 1, defines the following terms:

- chief police officer
- home address
- police officer.

[2.45] Dictionary, new definition of *carries on business as a second-hand dealer*

insert

carries on business as a second-hand dealer—see section 2A.

[2.46] Dictionary

omit the definitions of

carrying on business as a second-hand dealer

commissioner

executive officer

licence

[2.47] Dictionary, new definition of *licensed*

insert

licensed means licensed under the *Traders (Licensing) Act 2016*.

[2.48] Dictionary, definition of *licensed second-hand dealer*

omit

[2.49] Dictionary, definition of *second-hand dealer*, new note

insert

Note A person must not carry on business as a second-hand dealer unless the person is licensed as a second-hand dealer under the *Traders (Licensing) Act 2016*.

[2.50] Dictionary, definition of *suitable person*

omit

Part 2.6 **Second-hand Dealers Regulation 2002**

[2.51] Section 5A

omit

[2.52] Dictionary, note 3

substitute

Note 3 Terms used in this regulation have the same meaning that they have in the *Second-hand Dealers Act 1906* (see [Legislation Act](#), s 148.) For example, the following terms are defined in the *Second-hand Dealers Act 1906*, dict:

- licensed
- second-hand dealer.

[2.53] Dictionary, definition of *exempt entity*

substitute

exempt entity means an entity exempt under the *Traders (Licensing) Act 2016*, section 21.

Dictionary

(see s 3)

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
- Australian Standard (see s 164 (1))
- commissioner for fair trading
- Corporations Act
- entity
- fail
- occupational discipline order
- reviewable decision notice
- working day.

car market operator—see section 8.

commissioner means the commissioner for fair trading.

decision-making period means—

- (a) 60 days; or
- (b) if a period is prescribed by regulation for a certain decision—the period prescribed.

executive officer, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

ground for occupational discipline, for part 4 (Occupational discipline and other disciplinary action)—see section 40.

influential person, for a corporation, for part 3 (Traders licences)—see section 15.

licensee, for part 4 (Occupational discipline and other disciplinary action)—see section 39.

licensed, for part 5 (Offences)—see section 44.

motor vehicle dealer—see section 9.

motor vehicle repairer—see section 10.

motor vehicle wholesaler—see section 11.

operational Act—see section 6.

pawnbroker—see section 12.

relevant person, for an entity, means—

- (a) if the entity is an individual—
 - (i) the individual; and
 - (ii) if the individual is also a partner in a partnership—another partner of the partnership; or
- (b) if the entity is a partnership—a partner of the partnership; or
- (c) if the entity is a corporation—an executive officer of the corporation; or
- (d) if the entity is an association—an office bearer for the association.

reviewable decision, for part 6 (Notification and review of decisions)—see section 49.

second-hand dealer—see section 13.

suitable entity, to hold a licence, for part 3 (Traders licences)—see section 18.

trader—see section 7.

trader category—see section 7.

trading address, for part 3 (Traders licences)—see section 15.

trading name, for part 3 (Traders licences)—see section 15.

transferee—see section 24.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 22 August 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Traders (Licensing) Bill 2016, which was passed by the Legislative Assembly on 4 August 2016.

Clerk of the Legislative Assembly

© Australian Capital Territory 2016