

1999  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

**Justice and Community Safety Legislation  
Amendment Bill (No 3) 1999**

**A BILL**

FOR

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

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

**1 Name of Act**

This Act is the *Justice and Community Safety Legislation  
5 Amendment Act (No 3) 1999*.

**2 Commencement**

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

**3 Acts amended—Schedule 1**

This Act amends the Acts mentioned in Schedule 1.

---

99067 (1999/234) (T67/1999)

**4 Regulations amended—Schedule 2**

This Act amends the regulations mentioned in Schedule 2.

---

**SCHEDULE 1**

(See s 3)

**AMENDMENT OF ACTS**

***Consumer Credit Act 1995***

**Section 8—**

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

***Consumer Credit (Administration) Act 1996***

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

Omit the definitions.

10 **Section 3—**

Insert the following definitions:

“*commissioner* means the commissioner for fair trading.

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

15 **Heading to Part 7—**

Omit the heading, substitute the following heading:

**“PART 7—ROLE OF COMMISSIONER”.**

**Section 117—**

Repeal the section, substitute the following section:

20 **“117 Investigators**

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

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

**Subsections 118 (1) and (2)—**

Omit “investigating officer”, substitute “investigator”.

**SCHEDULE 1—continued**

**Subsection 118 (3)—**

Omit the subsection, substitute the following subsection:

5 “(3) An investigator who enters premises under subsection (1) is not authorised to remain on the premises if the investigator does not produce his or her identity card for inspection if asked to do so by the occupier or a person apparently in charge of the premises.”

**Subsection 118 (4)—**

Omit “investigating officer”, substitute “investigator”.

**Subsection 119 (1)—**

10 Omit the subsection, substitute the following subsection:

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

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

15 **Subsection 119 (2)—**

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

**Subsections 119 (3) and 120 (1)—**

Omit “investigating officer”, substitute “investigator”.

20 **Subsection 121 (1)—**

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

**Subsection 121 (3)—**

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

**Section 122—**

Omit “investigating officer”, substitute “investigator”.

**Paragraph 123 (a)—**

Omit “investigating officer”, substitute “investigator”.

**SCHEDULE 1—continued**

**Paragraph 130 (2) (a)—**

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

**New sections 143 and 144—**

After section 142 insert the following sections:

- 5    **“143 Existing complaints and investigations etc**  
“**(1)** If a complaint received by the director of consumer affairs or director of fair trading had not been finally dealt with before the commencement of this section, it may be dealt with as if it had been received by the commissioner.
- 10   **“(2)** If the investigation of a complaint received by the director of consumer affairs or director of fair trading had not been finally dealt with before the commencement of this section, the investigation may be continued (and completed) as if the complaint had been received by the commissioner.
- 15   **“(3)** Any other investigation under this Act that had not been finally dealt with before the commencement of this section may be continued (and completed) by the commissioner.
- 20   **“(4)** If a person was an investigating officer under section 117 immediately before the commencement of this section, the person is taken, on the commencement, to be authorised by the commissioner under section 117.
- 25   **“(5)** A certificate issued to the person under subsection 117 (2) before the commencement of this section is taken, after the commencement, to be an identity card issued to the person under section 15 of the *Fair Trading (Consumer Affairs) Act 1973*.
- 30   **“(6)** A proceeding taken or defended by the director of consumer affairs or director of fair trading under section 112 that had not been completed before the commencement of this section is taken, after the commencement, to have been taken or defended by the commissioner.
- 30   **“144 Expiry of Part**  
“**(1)** This Part expires 1 year after it commences.

SCHEDULE 1—continued

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

**Further amendments—**

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

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

25 ***Credit Act 1985***

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

Omit the definitions.

**Subsection 5 (1)—**

Insert the following definition:

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

**Further amendments—**

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

**SCHEDULE 1—continued**

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

***Fair Trading Act 1992***

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

Omit the definition.

**Subsection 5 (1)—**

Insert the following definition:

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

10 **Further amendments—**

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

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

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

**Long title—**

Omit the title, substitute the following title:

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

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

Omit the definitions.

**Section 3—**

25 Insert the following definitions:

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

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

**SCHEDULE 1—continued**

**Section 5—**

Repeal the section, substitute the following section:

**“5 Functions of committees**

5 “(1) The function of an advisory committee is to provide advice to the Minister or the commissioner about issues affecting the interests of consumers and unfair commercial practices affecting traders.

“(2) An advisory committee must provide advice as required by the Minister or the commissioner and may provide advice on its own initiative.

10 “(3) In carrying out its function, an advisory committee may consult with members of the public and with other entities interested in issues affecting the interests of consumers.”.

**Heading to Part 3—**

Omit the heading, substitute the following heading:

**“PART 3—COMMISSIONER FOR FAIR TRADING”.**

15 **Sections 12, 13, 14 and 15—**

Repeal the sections, substitute the following sections:

**“12 Commissioner for Fair Trading**

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

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

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

**“13 Functions of commissioner**

25 “(1) The commissioner may—

(a) receive complaints about conduct (including fraudulent or unfair practices) connected with the supply of—

(i) goods or services; or

(ii) the acquisition of interests in land; and



**SCHEDULE 1—continued**

- (b) deal with the complaints in a way the commissioner considers appropriate, including by investigating them or referring them to the entity the commissioner considers to be best able to take appropriate action; and
- 5 (c) conduct other investigations and research into consumer and fair trading issues and practices; and
- (d) make information available to, and provide guidance to, the public about consumer and fair trading issues and practices and about related laws; and
- 10 (e) be responsible for any other function given to the commissioner by the Minister or chief executive.

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

15 “14 **Powers of commissioner**

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

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

20 **Section 15A—**

Repeal the section, substitute the following sections:

“14A **Investigators**

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

“15 **Identity cards**

“(1) The commissioner must issue an identity card to each investigator under this Act or the *Consumer Credit (Administration) Act 1996*.

“(2) The identity card must state that the person is an investigator.

30 “(3) The identity card must also—

- “(a) include a recent photograph of the person; and  
“(b) state—

**SCHEDULE 1—continued**

- (i) the person's name; and
- (ii) the Acts for which the person is an investigator; and
- (iii) the date of issue of the card; and
- (iv) a date of expiry for the card; and

5 (c) include anything else prescribed under the regulations.

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

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

10 **“15A Power not to be exercised before identity card shown**

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

15 **Heading to section 15B—**

Omit “investigating officer”, substitute “investigator”.

**Subsection 15B (1)—**

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

**Subsection 15B (5)—**

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

**Heading to section 15C—**

Omit “Investigating officer”, substitute “Investigator”.

**Paragraphs 15C (1) (a) and (b)—**

Omit “investigating officer”, substitute “investigator”.

25 **Subsection 15C (5)—**

Omit the subsection, substitute the following subsection:

30 “(5) An investigator who enters premises under section 15B is not authorised to remain on the premises if the investigator does not produce his or her identity card for inspection if asked to do so by the occupier or a person apparently in charge of the premises.”.

**SCHEDULE 1—continued**

**Subsection 15E (1)—**

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

5 **Subsection 15E (5)—**

Omit “office”, substitute “commissioner”.

**Heading to section 15F—**

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

**Subsection 15F (1)—**

10 Omit “office”, substitute “commissioner”.

**Paragraph 15FAA (2) (b)—**

Omit “employed in the office”.

**Subsection 15FAB (5)—**

Omit “employed in the office”.

15 **Heading to section 15FD—**

Omit “Director”, substitute “Commissioner”.

**Section 15G—**

Repeat the section, substitute the following section:

**“15G Certificate evidence**

20 “(1) A certificate that appears to be signed by the commissioner, and states any of the following matters, is evidence of the matter:

(a) that a stated investigation made, or being made, by the commissioner or another stated person was made, or being made, under Part 3;

25 (b) that on a stated date, or during a stated period, a stated person was an investigator.

“(2) A court must accept a certificate under this section as proof of the matters stated in it if there is no evidence to the contrary.”

**SCHEDULE 1—continued**

**Subsection 16 (1)—**

Omit “investigating officer”, substitute “investigator”.

**New sections and Part—**

After Part 4 insert the following sections and Part:

5 “19 **References to Consumer Affairs Act**

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

“20 **References to director of consumer affairs etc**

10 “(1) In relation to anything done or to be done after the commencement of this section, a reference in an Act, instrument under an Act or document to the director of consumer affairs or director of fair trading is a reference to the commissioner.

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

**“PART 5—TRANSITIONAL**

“21 **Existing complaints and investigations etc**

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

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

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

30 “(4) If a person was an investigating officer under section 15A immediately before the commencement of this section, the person is taken,

**SCHEDULE 1—continued**

on the commencement, to be authorised by the commissioner under section 14A.

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

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

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

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

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

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

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

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

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

(a) any other provision of this Part; or

**SCHEDULE 1—continued**

(b) any provision of Part 10 of the *Consumer Credit (Administration) Act 1996*.

**“23 Transitional regulations**

5 “(1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the amendments of this Act, any other Act or any regulations made by the *Justice and Community Safety Legislation Amendment Act (No 3) 1999*.

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

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

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

**“25 Expiry of Part**

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

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

**“26 Renumbering**

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

**Further amendments—**

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

30 Subsections 4 (2), 6 (2), 15B (1), (5), 15D (4) (definition of *prescribed person*), 15F (1), (2), (3), (4), (6), (7), (8), (9), (10) and (12), 15FAB (3), 15FA (1), (2), (3) and (4), 15FB (1), (2), (3) and (5), 15FD (1), (3), (4), (5) and (6) (definition of *prescribed authority*), 15FJ (3) and (4), 15FK (2), 15FKA (8) and (9), 15FKB (3), 16 (1) and (2).

**SCHEDULE 1—continued**

***Fair Trading (Fuel Prices) Act 1993***

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

Omit the definition.

**Subsection 2 (1)—**

5 Insert the following definition:

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

**Further amendments—**

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

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

***Interpretation Act 1967***

**Dictionary, definition of *director of fair trading*—**

Omit the definition.

15 **Dictionary—**

Insert the following definition:

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

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

***Residential Tenancies Act 1997***

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

Omit the definition.

**Subsection 3 (1)—**

25 Insert the following definition:

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

**SCHEDULE 1—continued**

**Paragraph 28 (2) (e)—**

Omit “Director”, substitute “commissioner”.

**Paragraph 88 (c)—**

Omit “Director”, substitute “commissioner”.

5 **Heading to section 89—**

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

**Subsections 89 (1) and (2)—**

Omit “Director”, substitute “commissioner”.

**Schedule, clause 13—**

10 Omit “director”, substitute “commissioner”.

***Tenancy Tribunal Act 1994***

**Section 3 (definition of *director*)—**

Omit the definition.

**Section 3—**

15 Insert the following definition:

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

**Paragraph 33 (b)—**

Omit “Director”, substitute “commissioner”.

**Heading to section 34—**

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

**Subsections 34 (1) and (2)—**

Omit “Director”, substitute “commissioner”.

**Subsections 77 (1) and (2)—**

Omit “Director”, substitute “commissioner”.



SCHEDULE 1—continued

*Trade Measurement (Administration) Act 1991*

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

Omit the definitions, substitute the following definitions:

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

*trade measurement legislation* means—

- (a) this Act or the regulations under this Act; or
- (b) the Measurement Act or the regulations under that Act.”.

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

10 Omit the definition.

**Subsection 3 (1)—**

Insert the following definition:

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

**Sections 5, 5A and 5B—**

15 Repeal the sections.

**Section 6—**

Omit “Superintendent”, substitute “commissioner”.

**Subsections 7 (1), (2) and (3)—**

Omit “Superintendent”, substitute “commissioner”.

20 **Section 8—**

Repeal the section, substitute the following sections:

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

25 “(1) The commissioner may—

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

“(2) An inspector may—

**SCHEDULE 1—continued**

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

**“8A Identity cards**

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

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

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

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

**Subsection 10 (2)—**

Omit “Superintendent”, substitute “commissioner”.

25 **Section 17—**

Repeal the section.

**SCHEDULE 2**

(See s 4)

**AMENDMENT OF REGULATIONS**

***Credit Regulations***

**Regulation 1—**

5 Repeal the regulation, substitute the following regulation:

**“1 Name of regulations**

These regulations are the *Credit Regulations 1985*.”

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

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

***Door-to-Door Trading Regulations***

**Schedule, form 1, (foot of the form)—**

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

15 **Schedule, form 2, (foot of the form)—**

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

---

**Endnote**

**Penalty units**

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