**NORTHERN TERRITORY OF AUSTRALIA**

**CONSUMER AFFAIRS AND FAIR TRADING ACT 1990**

As in force at 27 November 2023

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# NORTHERN TERRITORY OF AUSTRALIA

As in force at 27 November 2023

## CONSUMER AFFAIRS AND FAIR TRADING ACT 1990

**An Act to make provision with respect to consumer protection and certain unfair or undesirable trade practices, to apply the Australian Consumer Law as a law of the Territory, and for related purposes**

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Consumer Affairs and Fair Trading Act 1990*.

### 2 Commencement

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

### 3 Extent to which Crown bound

(1) Subject to subsections (2) and (3) and Part 4, Division 4, this Act binds the Crown not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly so permits, in all its other capacities.

(3) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

### 4 Interpretation

(1) In this Act:

***acquire*** includes:

(a) in relation to goods – acquire by purchase or exchange or by taking on lease, on hire or on hire-purchase; and

(b) in relation to services – accept.

***application law***, for Part 4, see section 25(1).

***approved form*** means a form approved under section 9(5) or 17A(7).

***Australian Consumer Law***, for Part 4, see section 25(1).

***Australian Consumer Law (NT)*** means the provisions applying because of Part 4 of this Act.

***Australian Consumer Law text***, for Part 4, see section 25(1).

***authorised officer*** means a person who is, in accordance with section 18, an authorised officer for the purposes of all or any of Parts 4 to 14.

***biodiesel***, for Part 11, see section 185.

***business*** includes:

(a) a business not carried on for profit; and

(b) a trade or profession.

***code of practice*** means a code of practice for the time being prescribed pursuant to section 239.

***Commissioner*** means the Commissioner of Consumer Affairs appointed under section 6, and includes any person for the time being acting in, or performing the duties of, the office of Commissioner.

***consumer***, see section 5.

***Deputy Commissioner*** means the person holding or occupying the office of Deputy Commissioner of Consumer Affairs mentioned in section 9A.

***diesel fuel***, for Part 11, see section 185.

***director***, in relation to a body corporate, includes any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position.

***Director*** means the person holding or occupying the office of Director mentioned in section 13.

***discounted fuel price***, for Part 11, see section 185.

***document*** includes any record of information, whether or not the information is available only after the record is subjected to electronic or other process.

***enactment*** includes regulations made under an Act.

***fuel retailer***, for Part 11, see section 185.

***goods*** includes:

(a) ships, aircraft and other vehicles; and

(b) animals, including fish; and

(c) minerals, trees and crops, whether on, under or attached to land or not; and

(d) gas and electricity.

***instrument***, for Part 4, see section 25(1).

***Intergovernmental Agreement***, for Part 4, see section 25(1).

***jurisdiction***, for Part 4, see section 25(1).

***law***, for Part 4, see section 25(1).

***liquefied petroleum gas***, for Part 11, see section 185.

***modifications***, for Part 4, see section 25(1).

***month***, for Part 4, see section 25(1).

***normal fuel price***, for Part 11, see section 185.

***officer***, in relation to a body corporate, see section 9 of the Corporations Act 2001.

***participating jurisdiction***, for Part 4, see section 25(1).

***petrol***, for Part 11, see section 185.

***prescribed fuel***, for Part 11, see section 185.

***price*** includes a charge of any description.

***price board***, for Part 11, see section 185.

***send*** includes deliver.

***service station***, for Part 11, see section 185.

***services*** includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

(a) a contract for or in relation to:

(i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or

(ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or

(iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or

(b) a contract of insurance; or

(c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or

(d) any contract for or in relation to the lending of moneys;

but does not include rights or benefits consisting in the supply of goods or the performance of work under a contract of service.

***State***, for Part 4, see section 25(1).

***state of mind***, of a person, includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the person's intention, opinion, belief or purpose.

***supplier*** means a person who, in the course of a business, supplies goods or services.

***supply*** includes:

(a) in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services – provide, grant or confer for valuable consideration.

***Territory***, for Part 4, see section 25(1).

***this jurisdiction***, for Part 4, see section 25(1).

***trade or commerce*** includes any business or professional activity.

*Note for section 4(1)*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

(2) In this Act:

(a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in consequence of a supply of the goods; and

(b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services; and

(c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both; and

(d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and

(e) a reference to the re-supply of goods acquired from a person includes a reference to:

(i) a supply of the goods to another person in an altered form or condition; and

(ii) a supply to another person of goods in which the first-mentioned goods have been incorporated.

(3) For this Act:

(a) the obtaining of credit by a person in connection with the acquisition of goods or services by the person is an acquisition by the person of services; and

(b) any amount by which the price of goods or services is increased because credit was obtained is the price of the services represented by the obtaining of credit.

(4) In this Act:

(a) a reference to conduct is a reference to the doing of any act, or the refusing to do any act, including an act that constitutes (or would but for the refusal constitute) making or giving effect to a provision of a contract or arrangement, arriving at or giving effect to a provision of an understanding, or requiring or entering into a covenant; and

(b) a reference to refusing to do an act includes a reference to:

(i) refraining (otherwise than inadvertently) from doing that act; or

(ii) making it known that that act will not be done; and

(c) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

(5) In this Act:

(a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and

(b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

**5 Meaning of *consumer***

(1) A ***consumer*** is a person who acquires goods or services from a supplier.

(2) In subsection (1), ***goods*** does not include goods which are acquired, or are held out as being acquired:

(a) for the purpose of re-supply; or

(b) for the purpose of using them up or transforming them, in the course of a business, in or in connection with a process of manufacture or production.

**5A Interpretation provisions do not apply to Australian Consumer Law (NT)**

Sections 4 and 5 do not apply for the interpretation or operation of the Australian Consumer Law (NT).

### 5B Reference to this Act includes Australian Consumer Law (NT)

To avoid doubt, a reference in this Act to this Act is taken to include a reference to the Australian Consumer Law (NT).

*Note for section 5B*

*Under section 27, the Australian Consumer Law (NT) is a part of this Act.*

# Part 2 Consumer Affairs Commissioner

## Division 1 Commissioner of Consumer Affairs and Director

### 6 Appointment of Commissioner

The Minister shall appoint a person to be Commissioner of Consumer Affairs.

### 7 Functions of Commissioner

(1) The functions of the Commissioner are:

(a) to promote the interests of consumers, and to assist consumers to a greater awareness in relation to their assessment and use of goods and services; and

(b) without prejudice to the generality of paragraph (a), to promote the maintenance of fair trading practices and of product safety; and

(ba) to administer the Australian Consumer Law (NT); and

(c) to receive complaints from consumers concerning matters touching their interests as consumers, to investigate those complaints, and to take such action in respect thereof as seems proper to the Commissioner; and

(d) to receive complaints of fraudulent, misleading, deceptive or unfair practices in relation to matters which affect, or are likely to affect, the interests of consumers or of traders, and to take such action as seems proper to the Commissioner; and

(e) to advise and assist consumers who seek from the Commissioner information or guidance on matters affecting their interests as consumers; and

(f) to collect, collate and disseminate information in respect of matters affecting the interests of consumers; and

(g) to encourage and undertake the dissemination of information concerning consumer affairs (and in particular, the maintenance of fair trading practices and of product safety) to producers, manufacturers, traders and suppliers of goods or services; and

(h) to carry out consumer education programs; and

(j) to issue consumer guidelines to the public; and

(k) to perform such other functions as are conferred on the Commissioner by or under this or any other Act.

(2) The Commissioner shall:

(a) keep under critical examination, and from time to time report to the Minister on, the laws in force relating to the interests of consumers; and

(b) keep under review market-place trends and other matters affecting the interests of consumers and, where that appears desirable, make recommendations to the Minister with respect to responses thereto; and

(c) report to the Minister on any matter that is referred to the Commissioner by the Minister as relating to the interests of consumers;

and, for those purposes, may conduct research and make investigations.

(5) Nothing in this section is to be construed as requiring the Commissioner, or any person under the Commissioner's direction or control, to give, or to hold him or herself out as ready or competent to give, advice to a consumer concerning the consumer's rights and liabilities in law in respect of any matter.

**8 Power of Commissioner to obtain information**

(1) The Commissioner may, for the purpose of, or in connection with, the performance of any function conferred on the Commissioner by or under this or any other Act, require any person to furnish the Commissioner with such information as the Commissioner requires or to answer any question put by the Commissioner.

(2) The Commissioner may under subsection (1) require that information be given, or a question answered:

(a) orally, at a place and time specified by the Commissioner; or

(b) in writing, within a period specified by the Commissioner;

and, in a case falling within paragraph (a), may further require that the information or question be furnished or answered on oath.

(3) A person is not excused from furnishing any information or answering any question pursuant to a requirement under subsection (1) on the ground that the information or answer might tend to incriminate the person, or to make the person liable to a penalty, but information so furnished or an answer so given is not admissible against the person in any criminal proceedings other than proceedings for an offence against this Act.

(4) A person who:

(a) fails to furnish information, or to answer a question, pursuant to a requirement under subsection (1); or

(b) pursuant to such a requirement, furnishes information or gives an answer which is false or misleading in any material particular;

is (subject, in a case falling within paragraph (a), to subsection (5)) guilty of an offence.

Maximum penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

(5) A person is not guilty of an offence by reason of a failure mentioned in subsection (4)(a) unless, before the failure, the Commissioner warned the person that it is an offence not to comply with a requirement under subsection (1).

(6) Where a person is found guilty of an offence falling within subsection (4)(a), the court may order that person to furnish the information or answer the question which was the subject of the offence.

**9 Other powers of Commissioner**

(1) The Commissioner may, with the approval of the Minister and on terms and conditions approved by the Commissioner for Public Employment, arrange with a department or statutory corporation, or a council constituted under the *Local Government Act 2019*, for the use of the services of any staff, or the use of any facilities, of the department, corporation or council.

(2) With the approval of the Minister, and on such terms and conditions as the Minister thinks fit, the Commissioner may, for a particular purpose and otherwise than under a contract of service, appoint and employ any person, body or organisation considered to be capable of providing information, services or advice that would assist in the performance of the Commissioner's functions.

(3) The Commissioner may, at the Commissioner's sole discretion, institute and defend proceedings in a court of competent jurisdiction for or on behalf of a consumer or class of consumers.

(4) Where a dispute arises concerning a consumer, the Commissioner may:

(a) if the dispute is governed by an arbitration agreement which appoints the Commissioner as arbitrator or empowers the Commissioner to appoint an arbitrator – act as arbitrator or, as the case may be, appoint an arbitrator; and

(b) in the absence of an arbitration agreement, with the consent in writing of all the parties to the dispute – act as arbitrator in the dispute or nominate a person to act as arbitrator.

(5) The Commissioner may approve forms for this Act.

**9A Deputy Commissioner**

(1) The Minister may appoint a public sector employee to be the Deputy Commissioner of Consumer Affairs.

(2) Subject to the direction and control of the Commissioner, the Deputy Commissioner may exercise the powers and perform the functions of the Commissioner.

**10 Advisory committees**

(1) The Minister may appoint committees for the purpose of advising the Commissioner with respect to matters arising under section 7(2).

(2) An advisory committee:

(a) shall consist of such number of persons as the Minister thinks fit; and

(b) may include one or more public sector employees; and

(c) has such functions in relation to the provision of advice as the Minister directs; and

(d) subject to any directions given by the Minister, may regulate its own procedure for the calling of meetings and the conduct of business at meetings.

(3) The Minister may at any time terminate a person's appointment as a member of an advisory committee or dissolve an advisory committee.

(4) A member of an advisory committee is entitled to receive:

(a) such travelling expenses as are fixed by the Minister; and

(b) unless the member is a public sector employee, such fees as are fixed by the Minister for attending meetings and transacting business of the committee.

### 11 Delegation

The Commissioner may, in writing, delegate any function or power conferred on the Commissioner by or under this or any other Act:

(a) to a public sector employee; or

(b) with the consent of the Minister, to any other person.

### 12 Annual report

(1) The Commissioner must give to the Minister annually a report on the Commissioner's activities.

(3) The Commissioner must not, unless satisfied that it is in the public interest to do so, disclose in any report furnished pursuant to this section:

(a) information with respect to any plant, equipment or process used in a business carried on by a person; or

(b) information with respect to a person's financial affairs.

(4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

## Division 2 Director

### 13 Director

(1) The Minister must, in writing, appoint a public sector employee to be the Director.

(2) The Minister may, in writing, determine that the Director be known by another name.

(3) If the Minister determines under subsection (2) that the Director be known by another name, a reference in this Act to the Director is taken to be a reference to that name.

(4) For subsection (1), the Minister may appoint:

(a) a public sector employee by name; or

(b) a public sector employee by reference to the office, position or designation held or occupied by the employee; or

(c) a public sector employee from time to time holding, acting in or performing the duties of a named office, position or designation.

**14 Power of Director to obtain information**

(1) The Director may, for the purpose of carrying out the Director's functions under this Act, require a person to give the Director any information the Director requires or to answer any question put by the Director.

(2) The Director may require that the information be given, or the question answered:

(a) orally, at a place and time specified by the Director; or

(b) in writing, within a period specified by the Director.

(3) The Director may require information or an answer that is given orally to be given on oath.

**15 Self-incrimination**

(1) A person is not excused from giving any information or answering any question, if required to do so under section 14, on the ground that the information or answer might tend to incriminate the person or make the person liable to a penalty.

(2) However, the information or answer mentioned in subsection (1) is not admissible in evidence against the person in any criminal proceeding other than a proceeding for an offence against this Act.

### 16 Offence to fail to provide information

(1) A person commits an offence if:

(a) the Director requests information from, or asks a question of, the person under section 14; and

(b) the Director informs the person that it is an offence not to give the requested information or answer the asked question; and

(c) the person fails to give the requested information or answer the asked question.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) If a person is found guilty of an offence under subsection (1), the court may order that the person provide the information, or answer the question, that was the subject of the offence.

### 17 Offence to give misleading information or document

(1) A person commits an offence if:

(a) the Director requests information from, or asks a question of, the person under section 14; and

(b) the person gives the Director information or an answer that is false or misleading in a material particular.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the Director requests information from the person under section 14; and

(b) the person gives the Director a document containing information that is false or misleading in a material particular.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(3) Subsection (2) does not apply if the person, when giving the document to the Director:

(a) draws the misleading aspect of the document to the Director's attention; and

(b) to the extent to which the person can reasonably do so – gives the Director the information necessary to remedy the misleading aspect of the document.

### 17A Other powers of Director

(1) The Director may, with the approval of the Minister, arrange with an Agency, a statutory corporation or a local government council for the use of the services of any staff, or the use of any facilities, of the Agency, corporation or council.

(2) The terms and conditions of an arrangement under subsection (1) must be approved by the Commissioner for Public Employment under the *Public Sector Employment and Management Act 1993*.

(3) The Director may, for a particular purpose and otherwise than under a contract of service, appoint and employ any person, body or organisation considered to be capable of providing information, services or advice that would assist in the performance of the Director's functions.

(4) An arrangement under subsection (3) may only be made:

(a) with the approval of the Minister; and

(b) on terms and conditions determined by the Minister.

(5) The Director may, at the Director's discretion, institute and defend proceedings in a court of competent jurisdiction for or on behalf of a consumer or class of consumers in relation to Part 10 or 14.

(6) If a dispute in relation to Part 10 or 14 arises concerning a consumer, the Director may:

(a) if the dispute is governed by an arbitration agreement that appoints the Director as arbitrator or empowers the Director to appoint an arbitrator – act as arbitrator or appoint an arbitrator; or

(b) in the absence of an arbitration agreement, with the consent in writing of all the parties to the dispute – act as arbitrator in the dispute or nominate a person to act as arbitrator.

(7) The Director may approve forms for Part 10 or 14.

### 17B Delegation

The Director may, in writing, delegate any of the Director's powers and functions under this Act:

(a) to another public sector employee; or

(b) with the consent of the Minister, to any other person.

## Part 3 Authorised officers

### 18 Authorised officers

(1) The Commissioner is an authorised officer for this Act, other than Parts 10 and 14.

(1A) The Director is an authorised officer for Parts 10 and 14.

(2) Every police officer is an authorised officer for Part 10.

(3) The Commissioner may, in writing, appoint a person to be an authorised officer for this Act, other than Parts 10 and 14.

(4) The Director may, in writing, appoint a person to be an authorised officer for Parts 10 and 14.

(5) An authorised officer is, in the exercise of the officer's powers:

(a) if appointed under subsection (3) – subject to the direction of the Commissioner; or

(b) if mentioned in subsection (2) or appointed under subsection (4) – subject to the direction of the Director.

(6) For subsections (3) and (4), the Commissioner or Director, as appropriate, may appoint:

(a) a public sector employee by name; or

(b) a public sector employee by reference to the office, position or designation held or occupied by the employee; or

(c) a public sector employee from time to time holding, acting in or performing the duties of a named office, position or designation.

### 19 Issue of identity card

(1) The Commissioner must issue to each person appointed as an authorised officer under section 18(3) an identity card stating the person's name and that the person is an authorised officer.

(2) The Director must issue to each person appointed as an authorised officer under section 18(4) an identity card stating the person's name and that the person is an authorised officer.

(3) The identity card must:

(a) display a recent photograph of the authorised officer; and

(b) state the card's date of issue; and

(c) be signed by the authorised officer.

### 19A Return of identity card

A person who ceases to be an authorised officer (other than a police officer) must return the person's identity card to the Commissioner or Director, as appropriate, within 21 days after the cessation.

Maximum penalty: 20 penalty units.

### 19B Production of identity card

An authorised officer appointed under section 18(3) or (4) who is exercising or proposing to exercise a power under this Act must, on request, produce the officer's identity card for inspection.

### 20 Powers of entry of authorised officers

(1) For ascertaining whether a provision of this Act, of regulations or of a code of practice is being or has been complied with, a person who is an authorised officer for the Part which contains that provision, or of the Part for which the regulations were made or under which the code was prescribed, may at any reasonable time (but subject to subsection (2)) enter as may be appropriate in relation to that provision any place which the officer knows or believes on reasonable grounds to be:

(a) a place where:

(i) goods are produced, manufactured, assembled, prepared, stored or supplied; or

(ii) services are supplied or arranged; or

(iii) documents are kept relating to goods or services supplied or to be supplied; or

(b) a place where a person carries on business as a dealer in motor vehicles within the meaning of Part 10, or where documents relating to any such business are kept; or

(ba) a place where a person carries on a business as a second-hand dealer, or pawnbroker, within the meaning of Part 14, or where documents relating to any such business are kept; or

(d) a place where any activity takes place to which a code of practice applies, or where documents relating to any such activity are kept;

and exercise the powers conferred by section 21 in relation to that place.

(2) An authorised officer is not entitled to enter any place used for residential purposes except:

(a) with the consent of the occupier; or

(b) under the authority of a search warrant.

(3) A justice of the peace who is satisfied on the application of an authorised officer that, for the purpose specified in subsection (1), there is reasonable cause to permit the officer to enter a place referred to in that subsection with a view to exercising the powers conferred by section 21 may issue a warrant directed to the authorised officer to enter the place specified in the warrant for the purpose of exercising those powers.

(4) A warrant issued under subsection (3) is, for a period of one month from its issue, sufficient authority:

(a) to the authorised officer to whom it is directed, and to all persons acting in aid of the authorised officer, to enter the place specified in the warrant; and

(b) to the authorised officer, to exercise in respect of the place specified in the warrant the powers conferred on an authorised officer by section 21.

(5) If it is impracticable for an authorised officer to apply in person for a warrant under subsection (3), the officer may make the application by telephone, and the justice of the peace may issue such a warrant on that application.

(6) If a justice issues a warrant by virtue of subsection (5):

(a) the justice of the peace must complete and sign the warrant, must inform the authorised officer by telephone of its terms, and must record on the warrant the justice of the peace's reasons for issuing it; and

(b) the authorised officer must complete in duplicate a form of warrant in the terms furnished by the justice of the peace, must write on it the name of the justice of the peace and the date and time of its issue, and must forward a copy to the justice of the peace.

(7) On receiving the copy referred to in subsection (6)(b), the justice of the peace must compare it with the warrant signed by the justice of the peace and, if satisfied that they are in substance identical, must note this fact on the warrant and forward both the warrant and the copy to the Commissioner.

(8) A form of warrant prepared by an authorised officer pursuant to subsection (6)(b) has, if it is in accordance with the terms of the warrant signed by the justice of the peace, the like authority as that which the justice of the peace's warrant has by virtue of subsection (4).

(9) If an application has been made to a justice of the peace under subsection (5) and the application has been refused, subject to subsection (10), neither of the following may make a further application under subsection (5) to any justice of the peace in respect of that matter:

(a) the authorised officer who made the application;

(b) any other authorised officer who has any cause to suspect that the application has been made.

(10) If an application under subsection (5) has been made to a justice of the peace and the application has been refused, a further application may be made to a justice of the peace if an authorised officer satisfies the justice of the peace that the officer has, since the time of the original application, received further information or evidence which is material to an application under subsection (5).

**21 Powers exercisable after entry**

(1) The powers exercisable by an authorised officer who has entered a place under or by virtue of section 20 are those specified in subsections (2), (3) and (4) so far as applicable to that place.

(2) In the case of a place falling within section 20(1)(a)(i) or (d), the authorised officer may:

(a) inspect any goods, or partly manufactured or assembled goods, and make such other inspections, and such searches, as the officer considers necessary; and

(b) weigh, or otherwise measure, any goods; and

(c) open any room, container or package which the officer believes on reasonable grounds to contain goods; and

(d) seize without payment, and detain, any goods which the officer believes on reasonable grounds are intended for supply, or have been supplied, in circumstances constituting an offence against section 197(1) of the Australian Consumer Law (NT); and

(e) take (otherwise than by way of seizure under paragraph (d)) any goods, or partly manufactured or assembled goods, for which the officer undertakes on behalf of the Commissioner that a fair price will be paid; and

(f) take a sample of anything from which goods are manufactured or produced in that place.

(3) In the case of a place falling within section 20(1)(b), the authorised officer may inspect any motor vehicle there which is offered or displayed for sale, or which the authorised officer believes on reasonable grounds may be there for the purposes of sale.

(4) In the case of any of the places referred to in section 20(1), the authorised officer may:

(a) ask questions of any person found there; and

(b) require the production of documents; and

(ba) require the production of passwords for the purposes of gaining access to computers or other electronic devices or documents; and

(c) inspect and require explanations of any document; and

(d) take copies of or extracts from any document or, if in the officer's opinion it is not appropriate for copies or extracts to be taken at the place, remove a document for a reasonable time to enable copies or extracts to be taken.

(5) If an authorised officer seizes goods under subsection (2)(d) and:

(a) proceedings for an offence against section 197(1), (2), (3) or (5) of the Australian Consumer Law (NT) in connection with the goods are not instituted within 6 months after their seizure; or

(b) proceedings for such an offence are instituted within that period but the defendant is not on the determination of those proceedings (whether or not within that period) found guilty of an offence;

the person from whom the goods were seized is, on application to the Commissioner, entitled to their return.

(6) If an application for the return of goods is not made within 3 months after the entitlement to their return arises, the Commissioner may dispose of the goods as the Commissioner thinks fit.

(7) If, in proceedings for an offence against section 197(1), (2), (3) or (5) of the Australian Consumer Law (NT), the court finds the offence proved, and to have concerned goods seized under subsection (2)(d), the court may order that the goods be forfeited to the Territory.

**22 Power to obtain information, documents and evidence**

(1) Where a person who is an authorised officer for the purposes of a Part of this Act believes on reasonable grounds that another person is capable of furnishing information, producing documents or giving evidence in relation to a possible contravention of that Part, or of regulations or a code of practice made for the purposes of or prescribed under that Part, he or she may serve on that other person a notice under subsection (2).

(2) A notice under this subsection may require the person on whom it is served:

(a) to furnish in writing to the Commissioner, within the time and in the manner specified in the notice, any information referred to in subsection (1) of which that person has knowledge; or

(b) to produce to the Commissioner, in accordance with the notice, any documents referred to in subsection (1); or

(c) to appear before the Commissioner at a time and place specified in the notice, and give any evidence referred to in subsection (1) and produce any documents so referred to.

(3) Where a document has been produced in response to a notice under subsection (2), the Commissioner may:

(a) inspect the document and take copies of or extracts from it; and

(b) if the person otherwise entitled to possession of the document is supplied as soon as practicable with a copy certified by the Commissioner to be a true copy, retain possession of the document for as long as is necessary for the purposes of this Act.

(4) A certified copy of a document provided under subsection (3)(b) is admissible in all courts as if it were the original.

(5) Until a certified copy of a document is provided under subsection (3)(b), the Commissioner shall, at such times and places as the Commissioner thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and take copies of or extracts from it.

**23 Offences**

(1) A person shall not:

(a) hinder or obstruct an authorised officer in the exercise by the officer of a power conferred by this Part; or

(b) assault, or directly or indirectly threaten, an authorised officer while the officer is exercising a power conferred by this Part; or

(c) impersonate an authorised officer.

Maximum penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

(2) A person who:

(a) fails to answer a question asked by an authorised officer pursuant to section 21(4)(a); or

(b) fails to comply with a requirement of an authorised officer under section 21(4)(b) or (c); or

(c) fails to comply with a notice under section 22(2);

is, to the extent that the person is capable of answering the question or complying with the requirement or notice (but subject, in a case falling within paragraph (a) or (b), to subsection (3)) guilty of an offence.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(3) A person is not guilty of an offence by reason of a failure mentioned in subsection (2)(a) or (b) unless, before the failure, the authorised officer warned the person that it would be an offence for the person not to answer the question or, as the case may be, comply with the requirement.

(4) A person who:

(a) gives to a question asked by an authorised officer pursuant to section 21(4)(a) an answer that the person knows to be false or misleading in a material particular; or

(b) gives pursuant to a requirement of an authorised officer under section 21(4)(c) an explanation that the person knows to be false or misleading in a material particular; or

(c) in purported compliance with a notice under section 22(2), knowingly furnishes information, produces a document or gives evidence that is false or misleading in a material particular;

is guilty of an offence.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

**24 Self-incrimination**

A person is not excused from:

(a) answering a question asked by an authorised officer pursuant to section 21(4)(a); or

(b) producing a document or giving an explanation of a document pursuant to a requirement of an authorised officer under section 21(4)(b) or (c); or

(c) furnishing information, producing a document or giving evidence in response to a notice under section 22(2);

on the ground that the answer, document, explanation, information or evidence may tend to incriminate the person or make the person liable to a penalty, but an answer, document, explanation, information or evidence given, produced or furnished as mentioned in any of paragraphs (a) to (c) is inadmissible against the person in criminal proceedings other than proceedings for an offence against this Act.

# Part 4 Australian Consumer Law

## Division 1 Interpretation

### 25 Interpretation

(1) In this Part:

***application law*** means:

(a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or

(b) any regulations or other legislative instrument made under a law described in paragraph (a); or

(c) the Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications.

***Australian Consumer Law*** means (according to the context):

(a) the Australian Consumer Law text; or

(b) the Australian Consumer Law text, applying as a law of a participating jurisdiction, either with or without modifications.

***Australian Consumer Law text*** means the text described in section 26.

***instrument*** means any document whatever, including the following:

(a) an Act or an instrument made under an Act;

(b) a law of this jurisdiction or an instrument made under such a law;

(c) an award or other industrial determination or order, or an industrial agreement;

(d) any other order (whether executive, judicial or otherwise);

(e) a notice, certificate or licence;

(f) an agreement;

(g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose;

(h) an indictment, presentment, summons or writ;

(i) any other pleading in, or process issued in connection with, a legal or other proceeding.

***Intergovernmental Agreement*** means the Intergovernmental Agreement for the Australian Consumer Law made on 2 July 2009 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

***jurisdiction*** means a State or the Commonwealth.

***law***, in relation to a Territory, means a law of, or in force in, that Territory.

***modifications*** includes additions, omissions and substitutions.

***month*** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

***participating jurisdiction*** means a jurisdiction that is a party to the Intergovernmental Agreement and applies the Australian Consumer Law as a law of the jurisdiction, either with or without modifications.

***State*** includes a Territory.

***Territory*** means the Australian Capital Territory or Northern Territory of Australia.

***this jurisdiction*** means the Territory.

(2) Terms used in this Part and also in the Australian Consumer Law (NT) have the same meanings in this Part as they have in that Law.

(3) For this Part:

(a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and

(b) that corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

## Division 2 Application of Australian Consumer Law

### 26 Australian Consumer Law text

The Australian Consumer Law text consists of:

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Cth); and

(b) the regulations under section 139G of that Act.

### 27 Application of Australian Consumer Law

(1) The Australian Consumer Law text, as in force from time to time:

(a) applies as a law of this jurisdiction; and

(b) as so applying may be referred to as the Australian Consumer Law (NT); and

(c) as so applying is a part of this Act.

(2) This section has effect subject to sections 28, 29 and 30.

### 28 Future modifications of Australian Consumer Law text

(1) A modification made by a Commonwealth law to the Australian Consumer Law text after the commencement of this section does not apply under section 27 if the modification is declared by regulation to be excluded from the operation of that section.

(2) A regulation under subsection (1) has effect only if its making is notified no later than 2 months after the date of the modification.

(3) Subsection (1) ceases to apply to the modification if a further regulation so provides.

(4) For this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is registered under the *Legislative Instruments Act 2003* (Cth).

**29 Meaning of *regulator* in Australian Consumer Law for purposes of this jurisdiction**

In the Australian Consumer Law (NT):

***regulator*** means the following:

(a) for Part 3-3 – the Commissioner or the Australian Competition and Consumer Commission (***ACCC***) established by section 6A of the *Competition and Consumer Act 2010* (Cth);

(b) for Parts 5-1 and 5-2:

(i) in relation to the enforcement of Part 3-3 – the ACCC; or

(ii) otherwise – the Commissioner;

(c) for the remaining provisions – the Commissioner.

**30 Interpretation of Australian Consumer Law**

(1) The *Acts Interpretation Act 1901* (Cth) applies as a law of this jurisdiction to the Australian Consumer Law (NT).

(2) For subsection (1), the Commonwealth Act mentioned in that subsection applies as if:

(a) the statutory provisions in the Australian Consumer Law (NT) were a Commonwealth Act; and

(b) the regulations in the Australian Consumer Law (NT) or instruments under that Law were regulations or instruments under a Commonwealth Act.

(3) The *Interpretation Act 1978* does not apply to:

(a) the Australian Consumer Law (NT); or

(b) any instrument under that Law.

### 31 Application of Australian Consumer Law

(1) The Australian Consumer Law (NT) applies to and in relation to:

(a) persons carrying on business within this jurisdiction; or

(b) bodies corporate incorporated or registered under the law of this jurisdiction; or

(c) persons ordinarily resident in this jurisdiction; or

(d) persons otherwise connected with this jurisdiction.

(2) Subject to subsection (1), the Australian Consumer Law (NT) extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

## Division 3 References to Australian Consumer Law

### 32 References to Australian Consumer Law

(1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.

(2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

### 33 References to Australian Consumer Law of other jurisdictions

(1) This section has effect for an Act, a law of this jurisdiction or an instrument under an Act or such a law.

(2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force from time to time applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.

## Division 4 Application of Australian Consumer Law to Crown

### 34 Division does not apply to Commonwealth

In this Division, ***participating jurisdiction*** or ***other jurisdiction*** does not include the Commonwealth.

### 35 Application law of this jurisdiction

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

### 36 Application law of other jurisdictions

(1) The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.

(2) If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

### 37 Activities that are not business

(1) For sections 35 and 36, the following do not amount to carrying on a business:

(a) imposing or collecting:

(i) taxes; or

(ii) levies; or

(iii) fees for authorisations;

(b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions);

(c) a transaction involving:

(i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of a State); or

(ii) only persons who are all acting for the same authority of a State; or

(iii) only the Crown in right of a State and one or more non-commercial authorities of that State; or

(iv) only non-commercial authorities of the same State;

(d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because:

(i) the body chooses to acquire the products; or

(ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.

(2) Subsection (1) does not limit the things that do not amount to carrying on a business for sections 35 and 36.

(3) In this section:

***acquisition of primary products by a government body under legislation*** includes vesting of ownership of primary products in a government body by legislation.

***authorisation*** means a licence, permit, certificate or other authorisation that allows the holder of the authorisation to supply goods or services.

***government body*** means a State or an authority of a State.

***primary products*** means:

(a) agricultural or horticultural produce; or

(b) crops, whether on or attached to the land or not; or

(c) animals (whether dead or alive); or

(d) the bodily produce (including natural increase) of animals.

(4) For this section, an authority of a State is ***non-commercial*** if:

(a) it is constituted by only one person; and

(b) it is neither a trading corporation nor a financial corporation.

**38 Crown not liable to pecuniary penalty or prosecution**

(1) Nothing in the application law of this jurisdiction makes the Crown in any capacity liable to a pecuniary penalty or to be prosecuted for an offence.

(2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes the Crown in right of this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.

(3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

## Division 5 Miscellaneous matters

### 39 Conferral of functions and powers on certain bodies

(1) The authorities and officers of the Commonwealth referred to in the Australian Consumer Law (NT) have the functions and powers conferred or expressed to be conferred on them under the Australian Consumer Law (NT).

(2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.

### 40 No doubling-up of liabilities

(1) An offender is not liable to be punished for an offence against the Australian Consumer Law (NT) if:

(a) an act or omission is an offence against the Australian Consumer Law (NT) and also an offence against an application law of another participating jurisdiction; and

(b) the offender has been punished for the offence under the application law of the other jurisdiction.

(2) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the Australian Consumer Law (NT) in respect of the same conduct.

# Part 5 Provisions supporting application of Australian Consumer Law in Territory

### 41 Application of Criminal Code

(1) Part IIAA of the Criminal Code applies to an offence against the Australian Consumer Law (NT).

*Note for subsection (1)*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

(2) However, the following provisions of the Criminal Code do not apply to an offence against the Australian Consumer Law (NT):

(a) section 43AX;

(b) Part IIAA, Division 5.

*Note for subsection (2)(a)*

*Section 207 of the Australian Consumer Law (NT) provides a mistake of fact defence for offences under Chapter 4 of that Law.*

**42 Finding in proceedings to be evidence**

(1) In an action against a person under section 236(1) of the Australian Consumer Law (NT), or in proceedings for an order against a person under section 237(1) or 239(1) of the Australian Consumer Law (NT):

(a) a finding of a fact by a court to which subsection (2) applies is evidence of that fact; and

(b) the finding may be proved by production of a document under the seal of the court from which the finding appears.

(2) This subsection applies to a finding of a fact by a court that is made in proceedings under section 228, 232, 246, 247 or 248 of the Australian Consumer Law (NT), or for an offence against a provision of Chapter 4 of the Australian Consumer Law (NT), in which the person has been found:

(a) to have contravened a provision of Chapter 2, 3 or 4 of the Australian Consumer Law (NT); or

(b) to have attempted to contravene such a provision; or

(c) to have aided, abetted, counselled or procured a person to contravene such a provision; or

(d) to have induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or

(e) to have been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) to have conspired with others to contravene such a provision.

### 43 Conduct of directors, employees or agents of bodies corporate

(1) If, in a proceeding under this Part or the Australian Consumer Law (NT), it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, employee or agent had the relevant state of mind.

(2) Any of the following conduct that is engaged in on behalf of a body corporate is taken, for this Part and the Australian Consumer Law (NT), to have been engaged in also by the body corporate:

(a) conduct engaged in by a director, employee or agent of the body corporate within the scope of the actual or apparent authority of the director, employee or agent;

(b) conduct engaged in by any other person if:

(i) the conduct is engaged in at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate; and

(ii) the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent.

### 44 Conduct of employees or agents of persons other than bodies corporate

(1) If, in a proceeding under this Part or the Australian Consumer Law (NT), it is necessary to establish the state of mind of a person other than a body corporate (the ***principal***) in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by an employee or agent of the principal within the scope of his or her actual or apparent authority; and

(b) that the employee or agent had the relevant state of mind.

(2) Any of the following conduct that is engaged in on behalf of a person other than a body corporate (the ***principal***) is taken, for this Part and the Australian Consumer Law (NT), to have been engaged in also by the principal:

(a) conduct engaged in by an employee or agent of the principal within the scope of the actual or apparent authority of the employee or agent;

(b) conduct engaged in by any other person if:

(i) the conduct is engaged in at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the principal; and

(ii) the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent.

(3) However, an individual is not liable to be punished by imprisonment for an offence if:

(a) subsection (1) or (2) applied in relation to the conviction for the offence on the basis that the individual was the principal mentioned in the subsection; and

(b) the individual would not have been convicted of the offence if the subsection had not been enacted.

**45 Court may make orders to preserve money or other property**

(1) A court may, on the application of the Minister or Commissioner, make an order or orders mentioned in subsection (3) if:

(a) proceedings of a kind mentioned in subsection (2) have been taken against a person, or proceedings of a kind mentioned in subsection (2)(d) may be taken against a person; and

(b) the court is satisfied it is necessary or desirable to make the order or orders for the purpose of preserving money or other property held by, or on behalf of, the person if the person is liable, or may become liable, under the Australian Consumer Law (NT):

(i) to pay money by way of a fine, damages, compensation, refund or otherwise; or

(ii) to transfer, sell or refund other property; and

(c) the court is satisfied the making of such an order or orders will not unduly prejudice the rights and interests of any other person.

(2) For subsection (1)(a), the kinds of proceedings taken against the person are:

(a) proceedings against the person for an offence against a provision of Chapter 4 of the Australian Consumer Law (NT); or

(b) an application under section 232 of the Australian Consumer Law (NT) for an injunction against the person in relation to:

(i) a contravention of a provision of Chapter 2, 3 or 4 of the Australian Consumer Law (NT); or

(ii) a term of a consumer contract in relation to which a declaration under section 250 of the Australian Consumer Law (NT) has been made; or

(c) an action under section 236(1) of the Australian Consumer Law (NT) against the person in relation to a contravention of a provision of Part 2-1 or Chapter 3 of the Australian Consumer Law (NT); or

(d) an application for an order under section 237(1) or 239(1) of the Australian Consumer Law (NT) against a person in relation to:

(i) a contravention of a provision of Chapter 2, 3 or 4 of the Australian Consumer Law (NT); or

(ii) a term of a consumer contract in relation to which a declaration under section 250 of the Australian Consumer Law (NT) has been made.

(3) The court may make the following orders under subsection (1) in relation to money or other property held by, or on behalf of, a person (the ***respondent***):

(a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the respondent, or to an associate of the respondent, from making a payment, in total or partial discharge of the debt:

(i) to the respondent; or

(ii) to another person at the direction or request of the respondent;

(b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the respondent, or on behalf of an associate of the respondent:

(i) from paying all or any of the money to the respondent, or to another person at the direction or request of the respondent; or

(ii) from transferring the other property to the respondent, or to another person at the direction or request of the respondent, or otherwise parting with possession of that property;

(c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the respondent, or of an associate of the respondent, to a place outside the Territory;

(d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the respondent, or of an associate of the respondent, to a place outside the Territory;

(e) if the respondent is an individual – an order appointing a receiver or trustee of the property, or part of the property, of the respondent with such powers as are specified in the order.

(4) If the court makes such an order, the order operates:

(a) for the period specified in the order, which must not be longer than 30 days if the order is made in the absence of the person against whom it is sought; or

(b) if proceedings in relation to which the order is made are concluded before the end of that period – until the conclusion of those proceedings.

(5) A person must not engage in conduct that results in a contravention of an order made under this section.

Maximum penalty: 500 penalty units.

(6) This section:

(a) has effect subject to the *Bankruptcy Act 1966* (Cth); and

(b) does not affect any other powers of the court.

(7) In this section:

***associate***, of a person (the ***relevant person***), means:

(a) a person holding money or other property on behalf of the relevant person; or

(b) if the relevant person is a body corporate – a wholly owned subsidiary (as defined in the Corporations Act 2001) of the relevant person.

**46 Application of Australian Consumer Law (NT) to bills for legal services under *Legal Profession Act 2006***

(1) This section applies if:

(a) apart from this section, under section 101 of the Australian Consumer Law (NT) a person is entitled, as a consumer, to request the supplier of legal services to give the consumer an itemised bill, complying with that section, relating to the legal services; and

(b) under section 327 of the *Legal Profession Act 2006*, the person is entitled to request a law practice to give the person an itemised bill relating to the legal services.

(2) Section 101 of the Australian Consumer Law (NT) ceases to apply to the legal services.

**47 Compliance with standard for supply of electrical appliance**

(1) A person must not, in trade or commerce, supply an electrical appliance that is intended to be used, or is likely to be used, by a consumer, unless the person has complied with the standard prescribed by regulation.

Maximum penalty: 500 penalty units.

(2) Subsection (1) does not apply to an electrical appliance that has been used before sale unless the use was only for testing or demonstration purposes.

(3) If an information standard is made under section 134 or 135 of the Australian Consumer Law (NT) for an electrical appliance, this section ceases to apply to the electrical appliance on and from the date the information standard comes into force.

(4) In this section:

***electrical appliance*** means any of the following domestic appliances:

(a) clothes dryers;

(b) dishwashers;

(c) freezers, refrigerators and refrigerator-freezers;

(d) refrigerative airconditioners;

(e) washing machines.

**48 Limitation of liability in relation to supply of recreational services**

(1) A term of a contract for the supply by a person of recreational services is not void under section 64 of the Australian Consumer Law (NT) by reason only that the term excludes, restricts or modifies, or has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of Part 3-2, Division 1, Subdivision B of the Australian Consumer Law (NT) to the supply of the recreational services under the contract; or

(b) the exercise of a right conferred by such a provision in relation to the supply of the recreational services under the contract; or

(c) any liability of the supplier of the recreational services for a failure to comply with a guarantee under that Subdivision in relation to the supply of the recreational services under the contract;

so long as:

(d) the exclusion, restriction or modification is limited to liability for death or personal injury; and

(e) the exclusion, restriction or modification is disclosed to the person entering into the contract for the recreational services in such a manner that the person:

(i) should be aware of the general effect of the exclusion, restriction or modification; and

(ii) has a reasonable opportunity to consider whether or not to enter into the contract on that basis.

(2) For subsection (1)(e), the disclosure may be made:

(a) in writing (whether by prominent signage, written notice handed to the person or other means); or

(b) orally (including, if practicable, an enquiry of the person that he or she understands and accepts the effect of the exclusion, restriction or modification); or

(c) by a combination of writing and orally;

as appropriate in the circumstances.

(3) In this section:

***disease*** includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin.

***injury*** means any physical or mental injury.

***personal injury*** means:

(a) an injury of an individual (including the aggravation, acceleration or recurrence of an injury of the individual); or

(b) the contraction, aggravation, acceleration or recurrence of a disease of an individual; or

(c) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual that is or may be harmful or disadvantageous to, or result in harm or disadvantage to:

(i) the individual; or

(ii) the community.

***recreational services*** means services that consist of participation in:

(a) a sporting activity or a similar leisure-time pursuit; or

(b) any other activity that:

(i) involves a significant degree of physical exertion or physical risk; and

(ii) is undertaken for the purposes of recreation, enjoyment or leisure.

(4) The definition of ***injury*** in subsection (3) does not, by implication, affect the meaning of the expression ***injury*** when used in a provision of this Act other than this section.

# Part 8 Fair reporting

## 114 Interpretation of Part 8

(1) In this Part:

***file*** means any repository or record in which information relating to any person is recorded or retained, in any manner or form, by a reporting agency.

***premises*** includes land.

***prescribed benefit*** means:

(a) a benefit of a commercial nature; or

(b) a benefit in or affecting employment; or

(c) a lease of premises or a licence conferring a right to occupy premises.

***prescribed report*** means a communication made to a trader by a reporting agency or another trader of information relating to a person, not being a communication made with the knowledge of, and of information known to, that person.

***reporting agency*** means a person who carries on the business of providing information relating to other persons.

***trader*** means a person who, in the course of a business, supplies or offers to supply goods or services, or sells or lets or offers to sell or let premises.

(2) For this Part, where a prescribed report consists of a communication by electronic or mechanical means (except by telephone or other means of voice transmission) the report shall be regarded as being written.

## 115 Application of Part 8

This Part applies to and in relation to a reporting agency or trader where:

(a) the reporting agency or trader provides a prescribed report to a person carrying on business or letting premises in the Territory; and

(b) the person to whom the report relates is domiciled or resident in the Territory.

## 116 Procedures in respect of prescribed reports

(1) A reporting agency or trader must adopt all procedures reasonably practicable for ensuring accuracy and fairness in the contents of prescribed reports provided by the agency or trader.

Maximum penalty: 200 penalty units.

(2) A reporting agency or trader must not include in a prescribed report:

(a) any information based on evidence that is not the best evidence reasonably available; or

(b) any unfavourable personal information based on hearsay evidence, unless the agency or trader has made reasonable efforts to substantiate the evidence on which the information is based and, if the information is unsubstantiated, the lack of substantiation is stated in the report in which the information is given.

Maximum penalty: 200 penalty units.

(3) A reporting agency or trader must not include in a prescribed report any information as to the race, colour or religious or political belief or affiliation of any person.

Maximum penalty: 200 penalty units.

(4) Subsection (5) applies to a reporting agency or trader upon whom a notice of objection is served by a person under section 119.

(5) If the reporting agency or trader provides a prescribed report in relation to the person before the agency or trader has determined the matters raised by the person's objection, the agency or trader must include in the report a statement to the effect that those matters are subject to an objection under section 119.

Maximum penalty: 200 penalty units.

(6) Subsection (7) applies to a reporting agency or trader who is a respondent to an application to NTCAT made by a person under section 119A.

(7) If the reporting agency or trader provides a prescribed report in relation to the person before NTCAT has determined the matters raised by the person's application, the agency or trader must include in the report a statement to the effect that those matters are subject to an application under section 119A.

Maximum penalty: 200 penalty units.

**117 Duty of trader to disclose receipt of prescribed report**

Where a trader:

(a) denies a prescribed benefit sought by a person; or

(b) grants a prescribed benefit sought by a person, but on terms less favourable than those on which the trader grants similar benefits to other persons in the course of the trader's business;

and the trader has during the last preceding 6 months received a prescribed report in relation to that person, the trader shall, if that person asks in writing whether such a report has been so received:

(c) inform the person that the trader has received the report; and

(d) give the person the name and address of the reporting agency or trader who provided the report.

Maximum penalty: If the offender is a natural person – 200 penalty units.

If the offender is a body corporate – 1 000 penalty units.

### 118 Duty of disclosure of reporting agencies

(1) A reporting agency shall, on the written application of a person in relation to whom the agency has recorded information, disclose to that person without charge:

(a) all information in its files relating to that person at the time of the request; and

(b) the name and address of every person to whom a prescribed report relating to that person has been provided within the year preceding the date of the request; and

(c) a copy of every such prescribed report that was in writing.

Maximum penalty: If the offender is a natural person – 200 penalty units.

If the offender is a body corporate – 1 000 penalty units.

(2) A reporting agency may require a person seeking disclosure of information under this section to produce reasonable evidence of the person's identity.

(3) A reporting agency shall take reasonable steps to ensure that information to which a person is entitled under this section is disclosed in a form that is readily intelligible to that person and shall permit that person to make a copy of, or take an extract from, the information so disclosed.

Maximum penalty: If the offender is a natural person – 200 penalty units.

If the offender is a body corporate – 1 000 penalty units.

(4) A reporting agency shall not require a person to give any undertaking, or to waive any right that the person may have, as a condition of disclosing information under this section.

Maximum penalty: If the offender is a natural person – 200 penalty units.

If the offender is a body corporate – 1 000 penalty units.

### 119 Correction of errors

(1) A person who disputes the accuracy or completeness of any information compiled by a reporting agency in relation to the person or included in a prescribed report relating to the person provided by a reporting agency or trader may, by written notice served on the agency or trader, object to the inaccuracy or incompleteness of the information.

(2) If a person serves a notice of objection on a reporting agency or trader under subsection (1), the reporting agency or trader must, within a reasonable time, use their best endeavours to verify or supplement the information in accordance with good practice.

Maximum penalty: 200 penalty units.

(3) A reporting agency or trader who is served a notice of objection under subsection (1) must, within 30 days after service of the notice, give the person who made the objection a written response stating:

(a) whether the agency or trader has made any alteration to the information relating to the person by amendment or supplementation to, or deletion from, the information; and

(b) if an alteration to the information has been made by the agency or trader – the nature of the alteration.

Maximum penalty: 200 penalty units.

(4) If information is altered under this section by amendment, supplementation or deletion, the following provisions apply:

(a) if the alteration is made by a reporting agency – the agency must give written notice of the alteration to:

(i) every person provided by the agency with a prescribed report based on the information within 60 days before the making of the alteration; and

(ii) every person provided by the agency with such a prescribed report before the commencement of that period and nominated by the person to whom the information relates;

(b) if the alteration is made by a trader – the trader must give written notice of the alteration to every person provided by the trader with a prescribed report based on the information and nominated by the person to whom the information relates.

Maximum penalty: 200 penalty units.

### 119A Application to NTCAT for alteration to disputed information

(1) A person (an ***aggrieved person***) who has served a notice of objection on a reporting agency or trader (the ***respondent***) under section 119(1) may make an application under subsection (2) if the aggrieved person:

(a) does not receive a response from the respondent to the objection within the period specified in section 119(3); or

(b) is dissatisfied with any alteration to the information relating to the person that was made or not made by the respondent in response to the objection.

(2) An aggrieved person may apply to NTCAT for an order requiring the respondent to make an alteration to the information relating to the aggrieved person (the ***disputed information***).

(3) An application under subsection (2) is a matter within NTCAT's original jurisdiction.

(4) On an application under subsection (2), if NTCAT is satisfied that the disputed information is inaccurate or incomplete, NTCAT may:

(a) order the respondent to alter the disputed information by amendment, supplementation or deletion; and

(b) order the respondent to give written notice of the alteration to the disputed information to:

(i) any person to whom the respondent has provided a prescribed report based on the information; or

(ii) any other person specified by NTCAT in the order; and

(c) make any other order that NTCAT considers appropriate to ensure that the respondent complies with this Part.

(5) Part 5, Division 1 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a decision made by NTCAT under this section.

### 119B Claims of privilege under this Part

(1) In a proceeding before NTCAT on an application under section 119A(2):

(a) sections 71 and 72 of the *Northern Territory Civil and Administrative Tribunal Act 2014* do not apply; and

(b) a person is not excused from giving evidence or producing evidentiary material to NTCAT on the ground that the evidence or evidentiary material may tend to incriminate the person in relation to an offence against this Part.

(2) Any evidence given, or evidentiary material produced, by a person in the proceeding which may tend to incriminate the person in relation to an offence against this Part is not admissible as evidence against the person in a criminal proceeding for an offence against this Part.

### 120 Qualified privilege

(1) Subject to subsection (2), a communication of information relating to the credit-worthiness of any person made:

(a) to a reporting agency or trader; or

(b) to a trader by a reporting agency or another trader;

is protected by qualified privilege.

(2) Subsection (1) does not apply where information is communicated in contravention of an order under this Part.

### 121 Offences

A person who:

(b) contravenes an order made by NTCAT under section 119A(4); or

(c) knowingly provides false or misleading information to another person, being a person who is engaged in compiling information for a prescribed report; or

(d) divulges information relating to another person from the files of a reporting agency without proper authority to do so or except for the purposes of legal proceedings; or

(e) obtains information relating to another person from a reporting agency or trader by false pretences;

is guilty of an offence.

Maximum penalty: 200 penalty units.

**122 Powers of Local Court**

(1) The Local Court may, on the application of the Commissioner or any other person, make such orders against a reporting agency or trader as may be necessary or expedient in the opinion of the Court to ensure that the reporting agency or trader complies with this Part.

(2) Where a reporting agency or trader:

(a) commits an offence against this Part; or

(b) does any act which, in the opinion of the Local Court, shows the agency or trader to be unfit to provide prescribed reports;

the Court may, on the application of the Commissioner, make an order:

(c) prohibiting the agency or trader from providing prescribed reports; or

(d) requiring the agency or trader to comply with conditions specified in the order in relation to the provision of prescribed reports.

(3) An order under subsection (1) or (2) is effective for such period as is specified in the order or until further order of the Court.

(4) A reporting agency or trader that contravenes an order under subsection (1) or (2) is guilty of an offence.

Maximum penalty: If the offender is a natural person –
400 penalty units or imprisonment for 2 years.

If the offender is a body corporate –
2 000 penalty units.

# Part 9 Trading stamps

## 123 Interpretation

(1) In this Part:

***approved third-party trading scheme*** means a third-party trading scheme that has been approved under a corresponding law.

***corresponding law*** means a law declared under subsection (2).

***prohibited third-party trading scheme*** means:

(a) a third-party trading scheme to which a declaration under section 124(2) relates; or

(b) a trading stamp scheme under which a trading stamp is provided or intended to be provided in connection with the sale of, or for the purpose of promoting the sale of, tobacco, cigarettes, cigars or other tobacco products.

***third-party trading scheme*** means a scheme or arrangement under which the acquisition of goods or services by a consumer from a supplier is a condition, or one of a number of conditions, compliance with which gives rise, or apparently gives rise, to an entitlement to a benefit from a third party in the form of goods or services or some discount, concession or advantage in connection with the acquisition of goods or services.

***trading stamp*** means a stamp, coupon, token, voucher, ticket or other thing:

(a) which is provided or intended to be provided in connection with the sale of, or for the purpose of promoting the sale of, goods or services; or

(b) by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit (whether the trading stamp constitutes an absolute entitlement or qualification or a conditional one only).

(2) The Minister may, by *Gazette* notice, declare a law of the Commonwealth, a State or another Territory to be a corresponding law for the purposes of this Part.

### 124 Power of Minister to prohibit third-party trading schemes

(1) The Commissioner may recommend to the Minister that a third-party trading scheme be declared to be a prohibited third-party trading scheme if:

(a) the scheme is not an approved third-party trading scheme; and

(b) the Commissioner is of the opinion that the scheme is not genuine and reasonable or is contrary to the interests of consumers.

(2) The Minister may, on the recommendation of the Commissioner, by *Gazette* notice, declare a third-party trading scheme to be a prohibited third-party trading scheme.

(3) The Minister may, by *Gazette* notice, revoke a declaration under this section.

(4) The Commissioner may make a recommendation under subsection (1), and the Minister may make a declaration under subsection (2), in relation to a third-party trading scheme whether or not the scheme was in existence in the Territory immediately before the commencement of this section.

### 124A Offences

(1) A person must not:

(a) act as a promoter of a prohibited third-party trading scheme; or

(b) as a party to a prohibited third-party trading scheme, supply goods or services; or

(c) publish an advertisement relating to a prohibited third-party trading scheme or cause such an advertisement to be published.

Maximum penalty: If the offender is a natural person – 500 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 500 penalty units.

(2) A person who acts as a promoter of a third-party trading scheme or supplies goods or services as a party to a third-party trading scheme must not breach a condition prescribed for the purposes of

section 124B(1) in relation to a third-party trading scheme of the type for which he or she acts as a promoter or to which he or she is a party.

Maximum penalty: If the offender is a natural person – 500 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 500 penalty units.

### 124B Regulations for the purposes of this Part

(1) Regulations made for the purposes of this Part may specify conditions that are to be complied with by persons who act as promoters of third-party trading schemes or supply goods or services as parties to third-party trading schemes.

(2) Regulations made for the purposes of subsection (1) may specify different conditions in relation to different third-party trading schemes.

(3) Regulations made for the purposes of subsection (1) do not apply in relation to a third-party trading scheme that was in existence in the Territory immediately before the commencement of this section.

# Part 10 Motor vehicle dealers

## Division 1 Preliminary matters

### 125 Definitions for Part 10

(1) In this Part:

***accessories*** includes car radios, sound reproducing equipment, air conditioning units, and spare wheels and tools usually carried on motor vehicles.

***body number***, in relation to a motor vehicle, means the figures, letters or other symbols (if any) recorded on the body of the vehicle by its manufacturer as a means of identifying the vehicle.

***commercial vehicle*** is to be construed in accordance with subsections (2) and (3).

***consignor***, in relation to a dealer, means a person from whom the dealer receives a motor vehicle for sale on consignment.

***dealer*** means a person who buys, sells, offers for sale or exchanges motor vehicles as a business (whether alone or in partnership, and whether or not as the person's sole business) but does not include:

(a) a person whose business consists exclusively of buying motor vehicles for the purpose of demolishing or dismantling them; or

(b) a financier; or

(c) an exempt trader.

***dealings register*** means a dealings register kept by a licensed dealer under section 157.

***demonstration vehicle*** means a motor vehicle which has only been used for the purposes of a dealer's business as such, and which is the subject of an unexpired manufacturer's warranty.

***exempt trader*** means a person (other than a financier) who carries on the business of buying, selling or exchanging motor vehicles, but does not (otherwise than by an agent who is a licensed dealer) offer or display motor vehicles for sale to the public or hold themselves out as ready to purchase vehicles from the public.

***financier*** is to be construed in accordance with subsections (4) and (5).

***hire-purchase agreement***, in relation to a motor vehicle, includes:

(a) a letting of the vehicle with an option to purchase; and

(b) an agreement the object of which is the sale and purchase of the vehicle by instalments (whether described as rent, hire or in any other manner), not being an agreement under which the property in the vehicle passes at the time of the agreement or at any time before delivery of the vehicle.

***licence*** means a licence under this Part.

***licensed dealer*** means a person holding a current licence under this Part.

***manufacturer*** means a person who carries on the business of making or assembling motor vehicles.

***model designation***, in relation to a motor vehicle of a particular model, means the words, figures, letters or other symbols (if any) applied by its manufacturer to describe or identify a vehicle of that model.

***motor vehicle*** means any motor car, motor cycle or other vehicle used on land which is propelled wholly or partly by any volatile spirit, by steam, gas, oil, hydrocarbon or electricity, or by any means other than human or animal power (whether the vehicle is new or used, and whether or not it is in working condition or complete) but does not include:

(a) a vehicle used on a railway or tramway; or

(b) a vehicle included in a class or description of vehicles declared by regulation not to be motor vehicles for this Part;

***odometer*** means an instrument or device which measures and records the distance travelled by a motor vehicle, but does not include one that is designed so as to permit, as part of its normal functioning, manual alteration of the distance so recorded.

***owner***, in relation to a motor vehicle, includes a person who:

(a) is a joint owner or part owner of the vehicle; or

(b) has possession of the vehicle under or subject to a hire-purchase agreement, bill of sale or similar instrument; or

(c) has possession of the vehicle under a contract of hire or lease;

but does not include a person in whom the property in the vehicle, or an absolute or conditional right to take possession of the vehicle, is vested under or subject to a contract of hire, a hire-purchase agreement, a bill of sale or any similar instrument, but who does not for the time being have possession of the vehicle.

***sale on consignment***, in relation to a motor vehicle, means its sale by a dealer for or on behalf of another person.

***sell*** means to sell as principal or agent.

***trade owner*** means a dealer, a financier or an exempt trader.

***vehicle identification number*** has the same meaning as in the *Motor Vehicles Act 1949*.

(2) Subject to subsection (3), a commercial vehicle is a motor vehicle which is constructed or adapted principally for:

(a) the carriage of goods; or

(b) the carriage of 10 or more adult persons; or

(c) industrial or agricultural use;

but does not include, except where (before a contract for its sale is entered into) the prospective purchaser has, by written notice to the dealer in the approved form, confirmed that the vehicle is to be used principally for commercial purposes:

(d) a vehicle of a kind known as a utility, a station wagon or a panel van; or

(e) a vehicle that is adapted for camping use, or is of a type known as a motor home or mobile home; or

(f) a 4 wheel drive vehicle of a type which is reasonably capable of both commercial use and private recreational and leisure use.

(3) Regulations may provide that a specified motor vehicle, or a motor vehicle of a specified class or description of motor vehicles, is a commercial vehicle for the purposes of this Part or is not a commercial vehicle for those purposes.

(4) Subject to subsection (5), a financier is a person who carries on the business of buying, selling or exchanging motor vehicles only for one or more of the following purposes:

(a) the purpose of hiring motor vehicles under hire-purchase agreements;

(c) the purpose of taking or enforcing securities over motor vehicles;

(d) the purpose of letting out motor vehicles on hire without granting any right to purchase them;

(e) any purpose that is for the time being prescribed;

(f) the purpose of disposing of motor vehicles which the person has acquired in connection with a purpose falling within any of paragraphs (a) to (e).

(5) The following persons are not financiers:

(a) a person who (except by an agent who is a licensed dealer) offers or displays motor vehicles for sale to the public otherwise than for the purpose specified in subsection (4)(f);

(b) a person who holds themselves out as ready to purchase motor vehicles from the public;

(c) a person who is declared by regulations not to be a financier, or who belongs to a class or description of persons declared by regulations not to be financiers.

**126 Other rules for interpreting Part 10**

(1) For the purposes of this Part, a person who sells 4 or more motor vehicles during any period of 12 months is to be presumed until the contrary is proved as having sold them in the course of carrying on a business of selling motor vehicles.

(2) Where:

(a) a motor vehicle is made the subject of a hire-purchase agreement; or

(b) one person enters into an agreement with another for the hire or leasing to that other of a motor vehicle other than a second-hand vehicle;

the motor vehicle is to be treated for the purposes of this Part as having been sold by its owner to the hirer by a sale made at the time when the agreement was entered into, but this does not by itself constitute the owner a dealer for the purposes of this Part.

(3) Where:

(a) a dealer sells a motor vehicle to a financier in the expectation that the vehicle will be sold, or treated by virtue of subsection (2) as having been sold, by the financier to a particular third person; and

(b) the vehicle is so sold or treated as having been so sold;

the dealer shall be treated for the purposes of this Part as having sold the vehicle to that third person.

(4) Where:

(a) a body corporate enters into an agreement with a person for the letting on hire to that person of a motor vehicle other than a second-hand motor vehicle; and

(b) that body corporate is not a dealer, but is, for the purposes of the Corporations Act 2001, to be deemed to be related to another body corporate which is a dealer;

the first-mentioned body corporate is liable to the hirer in all respects as if it were a dealer unless another person who is a dealer is to be treated by virtue of subsection (3) as having sold the vehicle to the hirer.

(5) For the purposes of this Part, a motor vehicle is to be treated as having been sold notwithstanding that all or part of the consideration which passed from the purchaser in respect of the sale is represented by another vehicle or some other thing.

### 127 Application of Part 10 to partnerships

(1) Subject to this Part and regulations made for this Part, if a licensed dealer carries on the business of a dealer in partnership with one or more other licensed dealers, this Part applies to and in relation to each of those dealers as if:

(a) the business were carried on by that dealer alone; and

(b) anything done or omitted to be done in connection with the business by one of the dealers had been done or omitted to be done by each of them.

(2) Nothing in subsection (1) renders a dealer guilty of an offence as a result of the doing of an act by another dealer in the partnership.

## Division 2 Offences of unlicensed dealing, dealing from unlicensed premises and breach of licence

### 128 Unlicensed dealing

Subject to this Part, a person other than a licensed dealer must not:

(a) carry on the business of a dealer; or

(b) hold themselves out as a dealer.

Maximum penalty: 500 penalty units.

### 129 Dealing from unlicensed premises

(1) Subject to subsection (2), a licensed dealer must not:

(a) buy, sell or exchange a motor vehicle in the course of the dealer's business as a dealer, otherwise than at a place of business specified in the licence; or

(b) permit a motor vehicle which is offered for sale, or intended to be offered for sale, in the course of the dealer's business as a dealer, to be on land (including a public place) adjacent to the place of business specified in the licence.

Maximum penalty: 500 penalty units.

(2) Regulations may exempt from subsection (1) (conditionally or unconditionally) transactions of a specified class or description, or transactions taking place in specified circumstances.

### 130 Breach of terms or conditions of licence

A licensed dealer must not contravene any term or condition of the licence.

Maximum penalty: 500 penalty units.

### 131 Forfeiture of vehicles and proceeds for unlicensed dealing

(1) Subject to subsection (9), the court before which a person is found guilty of an offence against section 128 may, in addition to any penalty it may impose, make either or both of the following orders:

(a) an order that any specified motor vehicle to which the offence relates be forfeited to the Territory;

(b) an order that the person pay to the Territory an amount, as assessed by the court, equal to the proceeds derived by the person from the commission of the offence or any other offence against section 128 which the court has taken into account in imposing any such penalty.

(2) Before making an order under this section, the court may require notice to be given to, and may hear, such persons as the court thinks fit.

(3) For the purpose of making an order under subsection (1)(b), the court may:

(a) treat any interest in property (real or personal) which the found guilty person acquired by means of proceeds derived from the commission of an offence as being, to an extent determined by the court, proceeds so derived; and

(b) treat as proceeds derived by the found guilty person from the commission of an offence the equivalent in money terms of any interest in property (real or personal) so derived.

(4) Without affecting any other right of appeal, an order under subsection (1)(a) in relation to a motor vehicle may be appealed by any person who has an interest in the vehicle:

(a) in the case of a person found guilty of the offence – in the same manner as if the order were, or were part of, an order imposing a penalty in respect of the offence; and

(b) in any other case – in the same manner as if the person had been found guilty of an offence against section 128, and the order were, or were part of, an order imposing a penalty in respect of the offence.

(5) Without affecting any other right of appeal, an order under subsection (1)(b) may be appealed in the same manner as if it were, or were part of, an order imposing a penalty in respect of the offence.

(6) The court to which an appeal is made in respect of an order under subsection (1)(a) may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the motor vehicle the subject of the order.

(7) On appeal, an order under this section may be confirmed, revoked or varied.

(8) An order under subsection (1)(b) may be enforced as if it were a judgment in a civil matter given by the Supreme Court.

(9) No order may be made under this section with respect to a vehicle sold by a dealer for or on behalf of another person or with respect to the proceeds derived from the sale.

# Division 3 Licences

## Subdivision A Grant of licence

### 132 Application for licence

(1) A person may apply to the Director for a licence.

(2) An application must be made in accordance with the approved form, giving such details as are indicated by the form, and must be accompanied by the prescribed processing fee.

### 133 Director may require additional information

(1) An applicant for a licence shall, if required to do so by the Director, provide the Director with such particulars additional to those included in the application, and with such documents in relation to those particulars, as the Director requires.

(2) The Director may require the applicant for a licence or, where the applicant is a body corporate, all or any of the directors or other persons concerned in the management of the body corporate, to appear personally before the Director and to furnish such further information as the Director requires in connection with the application.

### 134 Objections to application

(1) On receiving an application for a licence, the Director must send a copy of it to the Commissioner of Police, together with copies of any accompanying documents other than statements relating to the material and financial resources of the applicant.

(2) The Commissioner of Police shall, within 28 days of receiving a copy of an application pursuant to subsection (1)(a), lodge with the Director a notice in writing which either supports the application or objects to the grant of a licence on the grounds that the applicant may not be a fit and proper person.

(2A) A person may, by notice in writing lodged with the Director, object to the granting of a licence on any of the grounds specified in section 136(1) or 137(1).

(3) A notice of objection under subsection (2) or (2A) must state the reasons for the objection.

(4) References in this section to an applicant's not being a fit and proper person are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate not being a fit and proper person.

### 135 Inquiry by Director

Where an objection to the grant of a licence is duly lodged with the Director under section 134, or it otherwise appears to the Director that there may be grounds for refusing to grant a licence, the Director shall hold an inquiry into the matter.

### 136 Grounds for refusal of licence to individual

(1) An application for a licence made by an individual shall be refused if it appears to the Director:

(a) that the applicant has not attained the age of 18 years; or

(b) that the applicant is disqualified from holding a licence; or

(c) that the applicant is taking the benefit of a law for the relief of bankrupt or insolvent debtors, or is a person whose remuneration is for the time being assigned for the benefit of creditors; or

(d) that the applicant does not have, or is not likely to continue to have, sufficient material and financial resources to carry on business as a dealer, having regard to the scope of the business operations which the applicant proposes to engage in as such and the liabilities which the applicant may incur in connection therewith; or

(e) that the applicant is not likely to carry on business as a dealer honestly and fairly; or

(f) that the applicant is in any other way not a fit and proper person to hold a licence; or

(g) that any person with whom, if the licence is granted, the applicant intends to carry on business as a dealer in partnership is a person in respect of whom the Director would be required to refuse an application for the licence if that person were the applicant.

(2) The Director must also refuse an individual's application for a licence if the applicant fails to comply with a requirement of the Director under section 133.

(3) Without affecting the generality of subsection (1)(f), the Director may, in determining whether or not an applicant is a fit and proper person to hold a licence, have regard (if such be the case) to the fact that the applicant, or a person who is associated with the applicant within the meaning of the Corporations Act 2001:

(a) has, during the period of 10 years immediately preceding the making of the application, been found guilty of, or served any part of a term of imprisonment for, an offence (wherever committed) involving fraud, dishonesty or physical violence; or

(b) was, at the time the application was made, bound in relation to such an offence by a recognisance; or

(c) was, at the time the application was made, the subject of a charge in relation to such an offence; or

(d) has at any time been found guilty of an offence against this Act, the regulations, or any other enactment administered by the Minister.

(4) An applicant who proposes to carry on the business of a dealer in partnership with another person or other persons shall not be refused a licence on the grounds specified in subsection (1)(d) if the Director is satisfied that the applicant and the other person or persons together have, and are likely to continue to have, sufficient material and financial resources to carry on the business.

(5) Regulations may prescribe criteria to be taken into account by the Director in assessing the adequacy of an applicant's material and financial resources for the purposes of subsection (1)(d) or (as mentioned in subsection (4)) the adequacy for those purposes of the material and financial resources of the applicant and another person or other persons.

**137 Grounds for refusal of licence to body corporate**

(1) An application for a licence made by a body corporate shall be refused if it appears to the Director:

(a) that a person concerned in the management of the body corporate has not attained the age of 18 years; or

(b) that the body corporate is disqualified from holding a licence; or

(c) that the body corporate does not have, or is not likely to continue to have, sufficient material and financial resources to carry on business as a dealer, having regard to the scope of the business operations which the body corporate proposes to

engage in as such and the liabilities which the body corporate may incur in connection therewith; or

(d) that the body corporate is not likely to carry on business as a dealer honestly and fairly; or

(e) that the reputation of the body corporate is such that it would not be a fit and proper person to hold a licence; or

(f) that a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if the director or person were to apply for a licence personally; or

(g) that any person (other than an officer of the body corporate) who, in the opinion of the Director, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly; or

(h) that any person with whom, if the licence is granted, the body corporate intends to carry on business as a dealer in partnership is a person in respect of whom the Director would be required to refuse an application for the licence if that person were the applicant.

(2) The Director shall also refuse an application for a licence by a body corporate if:

(a) the body corporate fails to provide such banker's or other guarantee (if any) as the Director thinks it desirable to require; or

(b) a director of, or a person concerned in the management of, the body corporate fails to comply with a requirement of the Director under section 133.

(3) Without affecting the generality of subsection (1)(e), (f), (g) or (h), the Director may, in determining any matter referred to in those paragraphs, have regard (if such be the case) to the fact that the body corporate, or a person referred to in any of those paragraphs or associated with such a person within the meaning of the Corporations Act 2001:

(a) has, during the period of 10 years immediately preceding the making of the application, been found guilty of, or served any part of a term of imprisonment for, an offence (wherever committed) involving fraud, dishonesty or physical violence; or

(b) was, at the time the application was made, bound in relation to such an offence by a recognisance; or

(c) was, at the time the application was made, the subject of a charge in relation to such an offence; or

(d) has at any time been found guilty of an offence against this Act, the regulations, or any other enactment administered by the Minister.

(4) A body corporate which proposes to carry on the business of a dealer in partnership with another person or other persons is not to be refused a licence on the grounds specified in subsection (1)(c) if the Director is satisfied that the body corporate and the other person or persons together have, and are likely to continue to have, sufficient material and financial resources to carry on the business.

(5) Regulations may prescribe criteria to be taken into account by the Director in assessing the adequacy of a body corporate's material and financial resources for the purposes of subsection (1)(c) or (as mentioned in subsection (4)) the adequacy for those purposes of the material and financial resources of a body corporate and another person or other persons.

**138 Grant of licence**

(1) The Director must, unless required by section 136 or 137 to refuse the application, grant a licence to an applicant on payment of the prescribed fee.

(2) A licence authorises its holder to carry on business as a dealer at a place or places specified in the licence, and, if it specifies 2 or more places, the licence must state which of them is the holder's principal place of business.

(3) Subject to subsection (4), the Director may grant a licence subject to such terms and conditions as the Director considers necessary or desirable, and any terms or conditions imposed by virtue of this subsection must be endorsed on the licence.

(4) If the Director proposes to grant a licence to an applicant subject to terms or conditions under subsection (3), the Director must first:

(a) give the applicant a written notice setting out the terms or conditions that are proposed to be imposed by the Director; and

(b) give the applicant an opportunity to make submissions regarding the proposed terms or conditions.

### 139 Notification of Director's decision

(1) The Director must give the applicant a written notice setting out the Director's decision on the application.

(2) If the Director decides to refuse the application, or to grant a licence to the applicant subject to terms or conditions, the notice under subsection (1) must include a statement of the fact that the applicant may apply to NTCAT under section 329A(3) for review of the decision.

## Subdivision B Duration and operation of licence, annual fee and return

### 140 Duration of licence

Except while it is suspended by or pursuant to this Part, a dealer's licence continues in force until:

(a) it is cancelled by, or revoked or surrendered pursuant to, this Part; or

(b) the dealer, being an individual, dies (but subject in that event to section 144); or

(c) the dealer, being a body corporate, is dissolved.

### 141 Annual fee and return

(1) A licensed dealer must, not later than the prescribed date in each year:

(a) pay to the Director the prescribed annual licence fee; and

(b) lodge with the Director an annual return in the approved form.

(2) Where a dealer fails to pay the annual licence fee or lodge the annual return in accordance with subsection (1), the Director may, by notice in writing to the dealer, require the dealer to make good the default and, in addition, to pay to the Director the amount (if any) prescribed as a penalty for default.

(3) Where a dealer fails to comply with a notice under subsection (2) within 14 days after service of the notice, the dealer's licence shall, by force of this subsection, be suspended until the dealer complies with the notice.

(4) The Director must cause notice of a suspension under subsection (3) (being notice in the approved form) to be published in a newspaper circulating throughout the Territory.

(5) Where a licence has been suspended by virtue of subsection (3) for a continuous period of 6 months, the licence shall, by force of this subsection, be cancelled.

(6) A dealer shall not in, or in relation to, any information in an annual return lodged pursuant to subsection (1)(b) make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

(7) It is a defence to a prosecution of a person for an offence against subsection (6) if the person proves that, when the information was provided, the person:

(a) believed on reasonable grounds that the false matter was true; or

(b) believed on reasonable grounds that the misleading matter was not misleading; or

(c) in the case of an omission:

(i) believed on reasonable grounds that no material matter had been omitted; or

(ii) did not know that the omitted matter was material.

**142 Licence not transferable**

A licence is not transferable.

**143 Surrender of licence**

A dealer may surrender his or her licence by notice in writing to the Director.

**144 Death of licensed dealer**

(1) If a licensed dealer dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the deceased dealer may, within 28 days after the death or a longer period allowed by the Director, apply to the Director to be allowed to carry on the deceased dealer's business as a dealer during:

(a) the period that commences with the date of the death and ends 6 months later; or

(b) the period that commences with the date of the death and ends immediately before the next anniversary of the date on which the licence was granted;

whichever is the longer.

(2) The Director may grant or refuse an application under subsection (1) and, where the Director grants the application, may impose such conditions as the Director thinks fit, being conditions subject to which the business to which the application relates may be carried on.

(3) A person authorised under this section to carry on the business of a deceased dealer shall, subject to this Part and any conditions imposed under subsection (2), be deemed to be, while so authorised, the holder of the deceased dealer's licence.

(4) Where, under subsection (2), the Director imposes conditions subject to which a person is authorised to carry on the business to which a licence relates, the person shall, on being required by the Director to do so within a specified time, produce the licence to the Director within that time for endorsement of the conditions.

Maximum penalty: 500 penalty units.

## Subdivision C Revocation, suspension and variation of licence

### 145 Powers of Director

Where any of the grounds specified in section 146 exists, the Director has power, subject to and in accordance with this Subdivision:

(a) to revoke a licence; or

(b) to suspend a licence for a specified period; or

(c) to vary any term or condition to which a licence is subject or impose new terms or conditions.

### 146 Grounds for exercise of powers

The grounds referred to in section 145 are:

(a) that the licence was obtained by means of misrepresentation; and

(b) that the holder of the licence is a person who, if that person were (instead of being such a holder) an applicant for a licence under section 132, would be refused a licence pursuant to section 136 or 137; and

(c) that the holder of the licence, being a body corporate, has failed to give notice under section 147(1) of a change in the directors, or persons concerned in the management, of the body corporate.

**147 Changes in management of body corporate**

(1) If a body corporate is a licensed dealer, and a person becomes a director of the body corporate or otherwise concerned in its management in addition to or in the place of an existing director or person so concerned, the body corporate must, not later than 28 days after the date on which the event occurs, give to the Director a notice complying with subsection (2).

(2) A notice under subsection (1) must:

(a) state the full name, date of birth and present residential address of the person who has become a director of the body corporate or otherwise concerned in its management; and

(b) give the date on which the event in question occurred; and

(c) state any other addresses at which the person has resided during the period of 3 years immediately preceding the date of the notice; and

(d) where the person has (whether in the Territory or elsewhere) previously carried on business as a dealer or been employed by a dealer, give particulars of that business or employment; and

(e) be accompanied by a certificate signed by 2 others to the effect that the person would be a fit and proper person to hold a licence.

(3) If a body corporate gives to the Director a notice under subsection (1), the Director must send a copy of the notice to the Commissioner of Police, who must, within 14 days of receiving it, lodge with the Director a notice in writing which either:

(a) objects to the continuation in force of the licence held by the body corporate on the grounds that the person who has become a director, or otherwise concerned in its management, would not be a fit and proper person to hold a licence; or

(b) states that nothing is known about that person which warrants such an objection.

### 148 Director's discretion

The Director is not required to exercise a power conferred by section 145 if it appears to the Director that, in the circumstances of a particular case, this is not necessary in the public interest.

### 149 Inquiry before exercise of power

(1) The Director shall not exercise a power conferred by section 145 without first holding an inquiry under this section.

(2) Where the Director proposes to hold an inquiry under this section, the Director shall give written notice of that fact to the holder of the licence, and must in the notice:

(a) state the ground or grounds which the Director considers may authorise the exercise of a power conferred by section 145; and

(b) afford the holder of the licence not less than 7 clear days after the date on which it is given in which to make to the Director written submissions with respect to the matter; and

(c) specify a date after the expiry of the period allowed under paragraph (b) on which the Director will be prepared to hear oral submissions from the holder.

(3) Where it appears to the Director that the exercise of a power conferred by section 145 may also affect a person or persons other than the holder of the licence in respect of which the power is exercised, the Director shall give to that person or each of those persons a like notice to that required by subsection (2), inviting the recipient of the notice to make written and oral submissions.

(4) The Director may, by a notice under subsection (2), suspend the holder's licence from the date on which the notice is given until the giving of a notice under section 150(1) or (2).

### 150 Result of inquiry

(1) If after holding an inquiry under section 149 the Director decides to take no further action in the matter, the Director must give written notice to that effect to the holder of the licence.

(2) If after holding such an inquiry the Director decides to exercise a power conferred by section 145, the Director must do so by giving written notice to the holder of the licence, and the notice must:

(a) state the ground or grounds on which the power is exercised; and

(b) include a statement of the fact that the holder of the licence may apply to NTCAT under section 329A(3) for review of the decision; and

(c) if it varies a term or condition of a licence, or imposes new terms or conditions, require the holder, within the time specified in the notice, to produce the licence to the Director for endorsement accordingly.

(3) A person who fails to produce a licence to the Director in accordance with a requirement in a notice under subsection (2) is guilty of an offence.

Maximum penalty: 100 penalty units.

## Subdivision D General

### 152 Application for variation of licence

The Director may, on an application by the holder of a licence and on payment of the prescribed fee:

(a) vary any of the terms or conditions endorsed on the licence; or

(b) amend the licence with respect to the place or places at which the holder is authorised to carry on business as a dealer, or the place which is the holder's principal place of business.

### 153 Licence to be displayed

(1) A licensed dealer must display the licence held by the dealer at all times in a conspicuous position:

(a) at the place where the licence authorises the dealer to carry on business; or

(b) if there are 2 or more such places, at the place stated in the licence as the holder's principal place of business.

Maximum penalty: 100 penalty units.

(2) Where:

(a) the Director has:

(i) by a notice under section 150(2), varied a term or condition of a licence or imposed new terms or conditions on a licence; or

(ii) imposed under section 144(2) conditions subject to which a person may carry on the business to which the licence of a deceased dealer related; and

(b) the licence has not been produced for endorsement pursuant to a requirement in the notice or, as the case may be, a requirement of the Director under section 144(4);

subsection (1) is not complied with unless a copy of the notice or, as the case may require, of the conditions imposed under section 144(2) is exhibited with the licence.

### 154 Issue of duplicate licence

Where the Director is satisfied that a licence has been lost, defaced or destroyed, the Director may, on payment of the prescribed fee, issue to the holder of the licence a duplicate licence which shall be of the same force and effect as the original licence.

### 154A Licence not transferable

A licence is not transferable by the licensee.

## Division 4 Register of Motor Vehicle Dealers

### 155 Register of Motor Vehicle Dealers

The Director must keep a register of licensed dealers, in the form the Director considers appropriate, to be known as the Register of Motor Vehicles.

### 156 Register to be open to public

A person may, on payment of the prescribed fee, inspect and take extracts from the Register of Motor Vehicle Dealers.

## Division 5 Dealings in motor vehicles

## Subdivision A Dealings registers

### 157 Duty of dealer to maintain dealings register

(1) Subject to subsection (2), a licensed dealer must keep and maintain a dealings register in the manner or form the Director considers appropriate:

(a) if the dealer carries on business at one place only – at that place; or

(b) if the dealer has 2 or more places of business:

(i) at the dealer's principal place of business, in respect of that place and any other place of business which is within a radius of 20 km (or other distance for the time being prescribed) of that place; and

(ii) at each place of business not falling within subparagraph (i).

Maximum penalty: 200 penalty units.

(2) For 2 or more licensed dealers who carry on business in partnership, subsection (1) is complied with if the partners keep and maintain one dealings register at each place at which that subsection would require a register to be kept if all of the places at which members of the partnership carry on business were places of business of a sole licensed dealer.

(3) A dealings register remains the property of the Director, and must be returned to the Director if:

(a) the licence of the dealer by whom the register is kept or, as the case may be, of any of the partners by whom the register is kept, is revoked or suspended or expires without renewal; or

(b) the dealer by whom the register is kept ceases to carry on business as a dealer or, as the case may be, the partners by whom the register is kept cease to carry on the business of a dealer in partnership.

Maximum penalty: 20 penalty units.

### 158 Details to be entered in dealings register

(1) A licensed dealer must:

(a) within 2 working days after coming into possession of a second-hand motor vehicle which the dealer has purchased or otherwise acquired for the purposes of disposal in the course of the dealer's business (or, if the dealer disposes of a second-hand motor vehicle so purchased or acquired before it comes into the dealer's possession, within 2 working days after the disposal) enter in the dealings register the particulars specified in subsection (2); and

(b) within 2 working days after coming into possession of a motor vehicle that the dealer is authorised to sell in accordance with section 172, enter in the dealings register the particulars specified or mentioned in subsection (3); and

(c) within 2 working days after selling or otherwise disposing of a motor vehicle otherwise than in a demolished or dismantled condition, enter in the dealings register the particulars specified in subsection (4); and

(d) within 2 working days after having demolished or permanently dismantled a motor vehicle, enter in the dealings register a notice of the vehicle's demolition or dismantling and of the date on which the demolition or dismantling began.

Maximum penalty: 100 penalty units.

(2) The particulars required by subsection (1)(a) are:

(a) the make, model designation and type, and year of manufacture, of the vehicle; and

(b) the registered number of the vehicle, if any; and

(c) the engine number of the vehicle and, where known, its vehicle identification number or body number; and

(d) where the vehicle is fitted with an odometer, the distance travelled by the vehicle as recorded on the odometer when the vehicle came into the dealer's possession or, if the odometer was not then functioning, a statement to that effect; and

(e) the name and address of the person from whom the dealer purchased or otherwise acquired the vehicle; and

(f) the date on which the dealer purchased or otherwise acquired the vehicle.

(3) The particulars required by subsection (1)(b) are:

(a) those specified in subsection (2)(a), (b), (c) and (d); and

(b) an indication in the approved form that the vehicle is for sale on consignment; and

(c) the date on which the vehicle came into the dealer's possession.

(4) The particulars required by subsection (1)(c) are:

(a) the date on which the dealer sold or otherwise disposed of the vehicle; and

(b) the name and address of the person to whom the dealer sold or otherwise disposed of the vehicle; and

(c) where the vehicle is fitted with an odometer, the distance travelled by the vehicle as recorded on the odometer at the time when the dealer sold or otherwise disposed of it or, if the odometer was not then functioning, a statement to that effect; and

(d) where the vehicle was not in working condition at the time when it was sold or otherwise disposed of, a statement to that effect; and

(e) the cash or other consideration given or agreed to be given, and a description of any such other consideration.

(5) If a licensed dealer has 2 or more places of business, the particulars required by subsection (1) in respect of a motor vehicle are to be entered in the dealings register kept by the dealer at the place at which the dealing in question takes place or, if because of section 157(1)(b)(i) a dealings register in respect of that place is kept at the dealer's principal place of business, in that register.

**159 Seller to supply information to dealer**

(1) A person who disposes of a motor vehicle to a licensed dealer in circumstances such that the dealer is required by section 158(1)(a) to enter particulars concerning the vehicle in a dealings register must, at the request of the dealer, supply the dealer with the prescribed information in respect of the vehicle so far as known to the person.

(2) The prescribed information is the information required by the form approved for this section, and the person required to supply it must, if requested by the dealer, provide the information by completing and signing the approved form.

(3) A person who:

(a) fails to comply with a request under subsection (1) or (2); or

(b) in purported compliance with such a request, gives information which the person knows to be false or misleading in a material particular;

is guilty of an offence.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

## Subdivision B General provisions with respect to dealings

### 160 Contract for sale of second-hand vehicle to be in approved form

(1) A contract by a dealer to sell a second-hand motor vehicle must be made in writing in the approved form, and a dealer who contracts to sell such a vehicle otherwise than in compliance with this requirement is guilty of an offence.

Maximum penalty: If the offender is a natural person – 500 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 2 500 penalty units.

(2) Where a dealer contracts to sell a second-hand motor vehicle otherwise than in writing in the approved form, the purchaser may rescind the contract by giving a written notice of rescission to the dealer not later than 3 months after the date of the contract.

(3) Where a contract is rescinded pursuant to subsection (2):

(a) the dealer shall return or refund to the purchaser any consideration given by the purchaser under the contract, or the value of any such consideration as at the date of the contract; and

(b) the purchaser shall return or refund to the dealer:

(i) the vehicle, or its value as at the date of the contract; and

(ii) any other consideration given by the dealer under the contract, or the value of any other such consideration as at the date of the contract.

(4) A person who returns a vehicle or other thing to another pursuant to subsection (3) is liable to pay compensation to the other in respect of any damage to, or depreciation in the value of, the vehicle or thing which is attributable to his or her failure to take reasonable care of it, but is not liable for any damage or depreciation attributable to normal use of the vehicle or thing or to circumstances beyond his or her control.

(5) The obligations imposed by subsections (3) and (4) may be enforced by action in any court of competent jurisdiction.

(6) A court finding guilty a dealer of an offence against subsection (1) is competent to make orders, on the application of the prosecutor, for the enforcement of obligations imposed by subsections (3) and (4).

(7) A person who fails to comply with an order under subsection (6) is guilty of an offence.

Maximum penalty: If the offender is a natural person – 500 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 2 500 penalty.

(8) Additional requirements in relation to a contract under this section may be prescribed by regulation.

**161 Replacement and alteration of odometers**

(1) A dealer shall not without the consent in writing of the Director offer or display a motor vehicle for sale where the dealer has:

(a) replaced, or caused to be replaced, the vehicle's odometer; or

(b) altered, or caused to be altered, the distance recorded by the vehicle's odometer.

Maximum penalty: 100 penalty units.

(2) A person other than a dealer who replaces a motor vehicle's odometer, or alters the distance recorded on a motor vehicle's odometer, shall not offer to sell the vehicle to a dealer without disclosing the replacement or alteration to the dealer.

Maximum penalty: 100 penalty units.

(3) A dealer who knows that a motor vehicle's odometer has been replaced or altered shall not offer or display the vehicle for sale without disclosing the replacement or alteration to the purchaser or a prospective purchaser of the vehicle.

Maximum penalty: 100 penalty units.

**162 Sale price partly recoverable in case of certain offences**

(1) Where a person has been found guilty of an offence:

(a) consisting of a contravention of section 151 of the Australian Consumer Law (NT) committed by falsely stating the year in which a motor vehicle was manufactured or first registered, or the model designation of the vehicle; or

(b) against section 161;

a person who purchased the motor vehicle in respect of which the offence was committed relying on the statement or, in the case of an offence against section 161, on the reading on the odometer of the vehicle at the time of the purchase may apply to the Commissioner for an order under subsection (2).

(2) Where on an application under subsection (1) the Commissioner is satisfied that the sale price of the vehicle exceeded its fair value at the time of the sale, the Commissioner shall order the person found guilty of the offence to pay the amount of the excess to the purchaser.

(3) An order of the Commissioner under subsection (2) is enforceable as if it were an order for the payment of money made by the Local Court.

### 163 Prohibition of sale of vehicles without vehicle identification number

(1) Subject to subsection (2), a person shall not offer or display for sale a motor vehicle unless the motor vehicle has marked or affixed on it a vehicle identification number which, in pursuance of section 101 of the *Motor Vehicles Act 1949*, would permit the Registrar, within the meaning of that Act, to register or renew the registration of the motor vehicle under that section.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) Subsection (1) does not apply to a person offering or displaying a motor vehicle for sale where the motor vehicle is offered or displayed for sale solely for the purpose of the motor vehicle being used as a source of spare parts for other motor vehicles.

### 164 Prohibition on sale of vehicles registered interstate

A dealer shall not sell, or offer or display for sale, a motor vehicle which:

(a) is currently registered in a place outside the Territory; or

(b) has affixed to it a number plate or number plates issued otherwise than under the *Motor Vehicles Act 1949*.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

### 165 Roadworthiness on sale of vehicle

(1) Subject to subsection (2), it is a condition of the sale of a motor vehicle by a dealer that the vehicle is of a standard fit to meet the requirements of the *Motor Vehicles Act 1949* with respect to registration.

(2) Subsection (1) does not apply to:

(a) a motor vehicle sold for wrecking; or

(b) a motor vehicle sold under a contract in the approved form for this paragraph that excludes its application.

(3) Additional requirements in relation to a contract under this section may be prescribed by regulation.

### 166 Dealings with infants

(1) A licensed dealer must not:

(a) purchase or otherwise acquire a second-hand motor vehicle from a person who is under 18 years old; or

(b) sell or otherwise dispose of a second-hand vehicle to such a person;

without the consent in writing of that person's parent or guardian.

Maximum penalty: 100 penalty units.

(2) In proceedings against a dealer for an offence against subsection (1), it is a defence that the dealer believed, on reasonable grounds, that the person in question had attained the age of 18 years.

### 167 Documents to be complete before signing

A licensed dealer must not, in respect of the sale of a motor vehicle, submit a document to a person for signature unless at the time of submitting the document:

(a) all material particulars in it have been completed; and

(b) any matter in it which is not relevant to the sale has been deleted.

Maximum penalty: 100 penalty units.

## Subdivision C Warranties

### 168 Obligation of dealer to repair certain defects

(1) Where:

(a) a dealer sells a motor vehicle, and a defect in the vehicle (including a defect existing or potentially existing at the time of the sale) subsequently appears or occurs; and

(b) the circumstances fall within Case 1 or 2 in subsection (2);

the dealer is, subject to sections 169 and 171 and regulations referred to in section 170, liable in respect of the defect to the extent specified in subsection (3).

(2) Cases 1 and 2 are as follows:

Case 1 The vehicle was sold:

(i) otherwise than as a second-hand vehicle; or

(ii) as a second-hand vehicle which the dealer represented to the purchaser as being a demonstration vehicle.

The defect appeared or occurred:

(i) where the vehicle was sold subject to an unexpired manufacturer's warranty – before the expiry of the warranty; or

(ii) in any other case – before the vehicle had been driven 5000 km after the sale or (if earlier) the expiry of 3 months after the sale.

Case 2 The vehicle was sold as a second-hand vehicle, and:

(i) the sale was effected not more than 10 years (or in the case of a motor cycle, not more than 5 years) after the date of manufacture of the vehicle; and

(ii) the vehicle had, at the time of the sale, been driven for less than 160 000 km (or, in the case of a motor cycle, less than 30 000 km).

The defect appeared or occurred before the vehicle had been driven 5000 km after the sale or (if earlier) the expiry of 3 months after the date on which the purchaser took possession of the vehicle.

(3) The liability of a dealer in respect of a defect is, at the dealer's own expense, to repair and make good the defect (or cause the defect to be repaired and made good) so as to place the vehicle in a reasonable condition having regard to its age and the distance it has travelled.

(4) The liability imposed on a dealer by this section shall be treated as arising under an express term of the contract of sale relating to the vehicle.

(5) For the purposes of Case 2 in subsection (2), the date of manufacture of a vehicle is the date indicated as such by the manufacturer on the body of the vehicle or, if no date is so indicated, the date specified in the vehicle's certificate plate within the meaning of the *Motor Vehicles Act 1949*.

(6) For the avoidance of doubt, it is hereby declared that:

(a) this section applies to the sale of a motor vehicle by a dealer notwithstanding that it is a sale on consignment; and

(b) nothing in this section derogates from the application of sections 54 and 55 of the Australian Consumer Law (NT) to the sale of a motor vehicle by a dealer.

**169 Exclusions from duty to repair**

(1) Section 168 does not apply:

(a) to defects of a kind described in subsection (2); or

(b) to vehicles, or sales of vehicles, of a kind described in subsection (3); or

(c) where a motor vehicle is purchased under a written contract of sale which provides expressly that the section does not apply to the sale, and the requirements specified in subsection (4) have been met before the contract is signed by the purchaser.

(2) The defects referred to in subsection (1)(a) are:

(a) defects arising from, or incidental to, accidental or malicious damage suffered by the vehicle after the purchaser took delivery of it from the dealer; and

(b) defects arising from misuse of the vehicle after the purchaser took delivery of it from the dealer, from the negligence of a driver of the vehicle after that time, or from the use of the vehicle after that time for motor racing or motor rallying; and

(c) defects arising from superficial damage to the vehicle (whether to its paintwork, its upholstery, or of any other nature) which would have been apparent on a reasonable inspection of the vehicle carried out at the time of its sale or (if earlier) its delivery from the dealer to the purchaser; and

(d) defects in an accessory which was not fitted to or supplied with the vehicle at the time of its manufacture.

(3) The vehicles, and sales of vehicles, mentioned in subsection (1)(b) are:

(a) a commercial vehicle (other than one that, at the time of its sale, is a commercial vehicle or is of a class or description of commercial vehicles to which section 168 applies because of the Regulations); and

(b) a vehicle that, at the time of its sale, is a vehicle or is of a class or description of vehicles to which section 168 does not apply because of the Regulations; and

(c) a used vehicle which has been continuously in the purchaser's possession or under the purchaser's control for a period of not less than 3 months immediately preceding the sale; and

(d) the sale of a vehicle to a trade owner; and

(e) the sale of a vehicle by auction, if the auction is conducted by a licensed auctioneer in accordance with the *Auctioneers Act 1935*.

(4) The requirements referred to in subsection (1)(c) are:

(a) that the purchaser signs a document in the approved form stating that the purchaser:

(i) intends to purchase the motor vehicle under a contract of sale which excludes the application of section 168; and

(ii) understands the effects of the exclusion; and

(b) that the purchaser signs the document referred to in paragraph (a):

(i) otherwise than at a place at which the dealer carries on business as such; and

(ii) in the presence of a person nominated in writing by the Director for the purposes of this subparagraph or a police officer; and

(c) that the person or police officer referred to in paragraph (b)(ii):

(i) before the purchaser signs the document referred to in paragraph (a), reads to the purchaser a prescribed warning about the rights the purchaser is forgoing; and

(ii) after the purchaser has signed the document, witnesses the signature.

(5) Additional requirements in relation to a document under subsection (4)(a) may be prescribed by regulation.

**170 Carrying out of duty to repair**

(1) Regulations may make ancillary provision with respect to the carrying out by a dealer of the dealer's obligation under section 168 in respect of a defect in a motor vehicle, and may in particular (but without limiting the generality of the foregoing) provide that, according to circumstances specified in the regulations:

(a) the obligation is dependent on the person seeking to enforce it delivering the vehicle at that person's expense to a place determined in accordance with the regulations; or

(b) the obligation is dependent on that person delivering the vehicle to a place so determined, but at the dealer's expense; or

(c) the dealer is, for the purpose of carrying out the obligation, under a further obligation to collect, or arrange for the collection of, the vehicle at the dealer's expense.

(2) Where a person delivers a vehicle to a place in accordance with the regulations, and the regulations provide for the delivery to be at the dealer's expense, the person may recover the cost of the delivery from the dealer as a debt due and payable.

**171 Other provisions ancillary to section 168**

(1) For the purpose of calculating in relation to a motor vehicle the period of 3 months referred to in Case 1 or 2 in section 168(2), no account shall be taken of any period during which the vehicle has been in the possession of the dealer, or of a person acting on behalf of the dealer, for the purpose of ascertaining or carrying out the obligations of the dealer under that section.

(2) Subject to subsection (3), the liability of a dealer under Case 1 in section 168(2) subsists for the benefit of the owner from time to time of the vehicle, and, for that purpose, the owner from time to time of the vehicle shall be deemed to have contracted to buy the vehicle from the dealer who is under the liability on the date of the sale giving rise to the liability.

(3) The liability of a dealer under Case 1 in section 168(2) is extinguished if, subsequent to the sale giving rise to the liability, the vehicle is acquired by a dealer as owner or repossessed by a financier.

(4) The liability of a dealer under Case 2 in section 168(2) is a liability only to the person who purchased the vehicle from the dealer.

## Subdivision D Sales on consignment

### 172 Authority required by dealer for sale of motor vehicle on consignment

(1) A dealer must not:

(a) sell a motor vehicle, or an interest in a motor vehicle, for or on behalf of another person; or

(b) offer or display a motor vehicle for sale for or on behalf of another person;

unless the dealer is authorised to do so by the owner of the vehicle or interest by writing in the approved form.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) An authorisation under subsection (1) must be prepared in duplicate, and must:

(a) be signed by the owner and by or on behalf of the dealer; and

(b) bear the date on which it is signed by the owner; and

(c) contain a full statement of the terms of the authorisation; and

(d) sufficiently describe the vehicle; and

(e) state whether or not the vehicle is encumbered, and, if encumbered, to whom and in what respect; and

(f) contain a full statement of the commission or other remuneration to which the dealer is or is to be entitled.

(3) A dealer who is given an authorisation under subsection (1) must:

(a) return one copy to the owner after it has been signed by or on behalf of the dealer; and

(b) where the dealer has effected a sale in reliance on the authorisation, retain the other copy for 3 years after the date of the sale.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(4) An authorisation under subsection (1) may be varied only by agreement of the parties in writing.

(5) An authorisation under subsection (1) ceases to have effect on the expiry of 90 days beginning on the day after that on which it is signed by the owner, or at such earlier time as the parties may have agreed in writing.

(6) A dealer is not entitled to any commission or other remuneration in respect of the sale of a motor vehicle, or an interest in a motor vehicle, effected by the dealer for or on behalf of another person unless:

(a) the sale is effected in accordance with an authorisation complying with this section; and

(b) the dealer has complied with subsection (3)(a).

**173 Period for accounting to consignor**

A dealer shall account to a consignor in respect of the proceeds of the sale on consignment of a motor vehicle within 14 days after the date of sale of the vehicle or, where a different period has been prescribed, within that period.

## Division 6 Miscellaneous matters

### 174 Notice to be displayed by licensed dealer

(1) A licensed dealer must display at all times, at each place of business specified in the dealer's licence and in a position that is easily visible by a person entering the place, a notice complying with subsection (2) and any further requirements that are for the time being prescribed.

Maximum penalty: 20 penalty units.

(2) The notice required by subsection (1) must:

(a) consist of bold black letters on a white background, with the letters being not less than 7 cm high and not less than one centimetre wide; and

(b) state the dealer's name and, if the dealer carries on business as a dealer under a different name, the name under which the business is carried on; and

(c) contain the words "LICENSED MOTOR VEHICLE DEALER NUMBER" or the letters "LMVD", followed in either case by the number of the dealer's licence.

### 175 Advertisements by dealers

A dealer must not publish or permit to be published an advertisement relating to or connected with the business of the dealer unless the advertisement states that the dealer is a licensed dealer, and specifies the dealer's licence number and place of business (or, if the dealer has 2 or more places of business, the dealer's principal place of business).

Maximum penalty: 20 penalty units.

### 176 Dealer's managers to be approved by Director

(1) A licensed dealer must not carry on business as a dealer at a place unless there is present and in charge of the day-to-day conduct of the business at that place:

(a) if the dealer is a body corporate – an individual approved by the Director for this section (***approved individual***); or

(b) if the dealer is an individual – either the dealer or an approved individual.

Maximum penalty: 500 penalty units.

(2) Regulations may:

(a) make provision with respect to applications to the Director for approvals for the purposes of this section; and

(b) require the Director, on an application for approval being duly made, to grant or withhold approval within a specified time; and

(c) specify the grounds on which the Director is to withhold approvals; and

(d) enable the Director to grant approvals subject to conditions or restrictions; and

(e) make provision as to the duration of approvals; and

(f) empower the Director to revoke approvals on specified grounds; and

(g) provide for the payment of application fees and fees for the granting of approvals; and

(h) enable the Director to seek such information and advice as the Director considers necessary for the purpose of dealing with applications in accordance with the regulations.

**177 Disqualifications resulting from revocation, cancellation or suspension of licence**

(1) If a dealer's licence has been revoked by a notice under section 150(2), or cancelled by the operation of section 141(5), or suspended either by a notice under section 150(2) or by the operation of section 141(3), this section applies to the dealer:

(a) in the case of revocation – subject to subsection (2), for a period of 12 months from the service of the notice; and

(b) in the case of cancellation – for a period of 12 months from the date when the cancellation took effect; and

(c) in the case of suspension – until the suspension ends.

(2) This section ceases to apply to a dealer whose licence has been revoked or suspended by a notice under section 150(2) if the Director's decision to revoke or suspend the licence is set aside by NTCAT on review of the decision.

(3) If this section applies to a dealer:

(a) the dealer is disqualified from holding a licence; and

(b) if the dealer becomes employed or otherwise engaged in the business of another dealer, both the dealer and the other dealer are guilty of an offence against this section.

Maximum penalty for an offence against subsection (3):

If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

**178 Director to be notified of dissolution of partnership**

If 2 or more licensed dealers have been carrying on business as dealers in partnership with each other and the partnership is dissolved, each of those dealers must within 14 days after the date of dissolution give written notice of the dissolution to the Director.

Maximum penalty: 100 penalty units.

**179 Dealer not entitled to indemnity by antecedent owner**

(1) Subject to subsection (2), if a licensed dealer incurs any costs or expenses because of the operation of this Part in respect of the sale of a motor vehicle, the dealer is not entitled to be indemnified in respect of those costs or expenses by any previous owner, and any contract or agreement providing directly or indirectly for the licensed dealer to be so indemnified is void to that extent.

(2) Subsection (1) does not apply to a contract or agreement providing for a licensed dealer to be so indemnified if the previous owner is a trade owner, a manufacturer, or a manufacturer's distributor.

**180 Director's certificate as evidence**

(1) A certificate signed by the Director stating that a person specified in the certificate was or was not, on a date or dates or during a period so specified, the holder of a licence so specified is, in all courts and before all persons and bodies authorised to receive evidence, evidence of the matter so stated.

(2) For the purposes of subsection (1), a document that purports to have been signed by the Director shall be taken to have been so signed unless the contrary is proved.

### 181 Contracts not to exclude Part 10

(1) Subject to subsection (2), a term of an agreement which purports to exclude or limit the operation of this Part, or to preclude any right of action or any defence based on or arising out of any failure to comply with this Part, is void.

(2) Subsection (1) does not apply to an agreement the parties to which are a licensed dealer and a body corporate.

### 182 Powers of Director to grant temporary exemptions

The Director may, by *Gazette* notice, exempt a person specified in the notice, for a period not exceeding 12 months so specified and either conditionally or unconditionally, from the application of this Part or of any provision or provisions of this Part so specified.

### 183 Regulatory offences

An offence of contravening section 153(1), 157(1), 160(1), 163, 164, 172(1) or (3) or 174(1) is a regulatory offence.

## Division 7 Vehicle rental businesses

### 184 Certain provisions of Part 10 to apply to vehicle rental businesses

(1) In this section, ***vehicle rental business*** means a business of letting or hiring out motor vehicles without granting any right to purchase them which is, for the greater part, comprised of letting or hiring out motor vehicles for periods not exceeding 4 months or for periods as prescribed.

(2) Subject to subsection (4), the provisions specified in subsection (3) have effect as if the references to licensed dealers and dealers include included references to persons carrying on vehicle rental businesses.

(3) The provisions referred to in subsection (2) are:

(a) section 157; and

(b) section 158, so far as it applies in relation to the disposal of motor vehicles by sale or otherwise; and

(c) section 160; and

(d) section 161(3); and

(e) section 164; and

(f) section 165; and

(g) section 166, so far as it applies in relation to the disposal of second-hand motor vehicles by sale or otherwise; and

(h) section 167; and

(j) sections 168 to 171, and regulations making any such provision as is mentioned in section 170(1).

(4) If regulations so provide, a provision applying to or in relation to persons carrying on vehicle rental businesses by virtue of this section shall do so subject to such adaptations or modifications as are specified in the regulations.

# Part 11 Fuel retailers

## 185 Definitions

In this Part:

***biodiesel*** means a fuel for compression-ignition internal combustion engines obtained by esterification of oil derived from plants or animals.

***diesel fuel*** means a petroleum-based fuel for compression-ignition internal combustion engines that is sold as diesel fuel or a biodiesel blend.

***discounted fuel price***, in relation to a prescribed fuel, means the price per litre at which the prescribed fuel is offered for retail sale to consumers after any discount (whether by a voucher, discount rate, reward scheme or any other means) is applied.

***fuel retailer***, for a service station, means the person who carries on the business of supplying prescribed fuel for retail sale at the service station.

***liquefied petroleum gas*** means a hydrocarbon fluid mainly comprised of any one or more of the following hydrocarbons:

(a) propane;

(b) propylene;

(c) butane;

(d) butylene.

***normal fuel price***, in relation to a prescribed fuel, means the price per litre at which the prescribed fuel is offered for retail sale to consumers without any discount (whether by a voucher, discount rate, reward scheme or any other means) applying.

***petrol*** means a petroleum-based fuel for spark-ignition internal combustion engines that is sold as petrol or a petrol-ethanol blend.

***prescribed fuel*** means the following:

(a) petrol;

(b) diesel fuel;

(c) liquefied petroleum gas;

(d) liquefied natural gas;

(e) biodiesel;

(f) compressed gas;

(g) any fuel specified in paragraphs (a) to (f) that is combined with another such fuel or other substance.

***price board*** means a board, sign or notice at a service station that displays information regarding the price of a prescribed fuel offered for retail sale at the service station.

***service station*** means a building or place where prescribed fuel is offered for retail sale and supplied to motor vehicles, but does not include a building or place used primarily for hiring, leasing or selling motor vehicles.

### 186 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Part.

*Note for section 186*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

### 187 Scheme for publication of service station fuel prices

(1) The regulations may provide for a scheme for the publication of normal fuel prices of prescribed fuel offered for retail sale at service stations, on an ongoing and up-to-date basis.

(2) Without limiting subsection (1), the regulations may require fuel retailers for service stations to:

(a) register service stations for the purposes of the scheme; and

(b) report the normal fuel price of each prescribed fuel offered for retail sale at a service station and the date and time from which the reported price is the normal fuel price of the fuel.

(3) The Commissioner may arrange for information reported under the scheme to be published as the Commissioner thinks fit, including by making it available on a website or through a telecommunication system or by any other means.

**188 Offences in relation to scheme**

(1) The fuel retailer for a service station commits an offence if:

(a) the fuel retailer is required to register the service station for the purposes of the scheme; and

(b) the service station is not registered in accordance with the scheme.

Maximum penalty: 100 penalty units.

(2) The fuel retailer for a service station commits an offence if the fuel retailer:

(a) is required to report the normal fuel price of a prescribed fuel in accordance with the scheme; and

(b) fails to report the normal fuel price in accordance with the scheme.

Maximum penalty: 100 penalty units.

(3) The fuel retailer for a service station commits an offence if the fuel retailer:

(a) reports a normal fuel price for a prescribed fuel in accordance with the scheme; and

(b) offers the prescribed fuel for retail sale at a normal fuel price other than the reported price.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (1), (2) or (3) if the defendant has a reasonable excuse.

(6) In this section:

***scheme*** means the scheme provided for by the regulations under section 187(1).

### 189 Requirements for price boards

(1) The regulations may prescribe requirements in relation to the information displayed on a price board.

(2) The fuel retailer for a service station commits an offence if information is displayed on a price board at the service station other than in accordance with the requirements prescribed under subsection (1).

Maximum penalty: 20 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

## Part 13 Codes of practice

### 238 Preparation of draft codes of practice

(1) The Commissioner may with the approval of the Minister, and shall if the Minister so directs, prepare and submit to the Minister for consideration a draft code of practice for fair dealing:

(a) between a particular class of suppliers and consumers; or

(b) by a particular class of persons in relation to consumers.

(2) For the purpose of preparing a draft code of practice, the Commissioner shall:

(a) arrange for consultation with, and invite submissions from, such persons and organisations as, in the opinion of the Commissioner, would have an interest in the terms of the proposed code; and

(b) give notice in a newspaper circulating in the Territory that a draft code is in course of preparation, and invite members of the public to make written submissions with respect to its terms.

(3) If the Commissioner is satisfied that associated persons in a field of trade or commerce have, in consultation with organisations representing consumers and other interested persons, agreed to abide by a particular code of practice in their dealings with or in relation to consumers, the Commissioner may submit the code to the Minister for consideration, together with any recommendations by the Commissioner with respect to amendments to the code.

**239 Regulations may prescribe code approved by Minister**

Regulations may prescribe a code of practice which has been:

(a) submitted to the Minister in accordance with section 238; and

(b) approved by the Minister with or without amendments.

**240 Undertakings by persons contravening code**

(1) Where it appears to the Commissioner that a person has carried on business in contravention of a code of practice applicable to the person, the Commissioner may request the person to execute within a specified time a deed in terms approved by the Commissioner under which the person gives undertakings as to:

(a) discontinuance of the conduct; and

(b) future compliance with the code of practice; and

(c) the action the person will take to rectify the consequences of the contravention;

or any of those matters.

(2) A person who fails to observe an undertaking given in a deed executed under subsection (1) is guilty of an offence.

Maximum penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

**241 Registers of undertakings**

(1) The Commissioner shall maintain in such form as the Commissioner thinks fit registers of undertakings given pursuant to section 240(1).

(2) Where a person executes a deed containing undertakings pursuant to section 240(1), the Commissioner shall:

(a) retain the deed and enter in a register of undertakings the prescribed particulars with respect to the deed; and

(b) give a copy of the deed to the person who executed it.

(3) A register of undertakings may, at any reasonable time, be inspected by any person free of charge.

**242 Orders by Local Court where undertaking refused or breached**

(1) Where a person fails to comply with a request by the Commissioner for the giving of an undertaking under section 240(1), the Local Court may, on the application of the Commissioner or any other person, and on being satisfied that there were grounds for requesting the undertaking, order the first-mentioned person:

(a) to act in a manner that would have been required; or

(b) to refrain from acting in a manner that would have been prohibited;

by the undertaking if it had been given.

(2) Where, on the application of the Commissioner or any other person, the Local Court is satisfied that a person has failed to observe an undertaking given by that person under section 240(1), the Local Court may make an order under subsection (3).

(3) The Local Court may order the person by whom the undertaking was given:

(a) to observe the undertaking; and

(b) in the case of an undertaking to rectify the consequences of a contravention of a code of practice – to observe the undertaking within a time specified in the order.

(4) Where:

(a) the failure on which an application under subsection (1) or (2) is based is a failure by a body corporate; and

(b) the Local Court is satisfied that the failure occurred with the consent or connivance of a person who, at the time of the failure, was a director of the body corporate or a person otherwise concerned in its management;

the Court may, in addition to any other order, make an order under subsection (5).

(5) The Local Court may, in a case falling within subsection (4), make an order prohibiting the person from:

(a) continuing to consent to, or connive at, the failure; or

(b) consenting to, or conniving at, a like failure by any other body corporate of which the person is a director or in the management of which the person is concerned.

(6) An order under this section may be made subject to such conditions (whether as to the duration of the order of otherwise) as the Court thinks fit including:

(a) conditions as to the future conduct of the person affected; and

(b) conditions specifying the action to be taken by the person to rectify the consequences of the failure the subject of the application under this section.

(7) A person who contravenes an order under this section is guilty of an offence.

Maximum penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

### 243 Variation and discharge of orders

The Local Court may on the application of the Commissioner vary or discharge an order made under section 242.

# Part 14 Pawn-brokers and second-hand dealers

## Division 1 Preliminary matters

### 244 Interpretation

(1) In this Part:

***business premises*** means premises at which, under a licence:

(a) business may be conducted with members of the public; and

(b) goods may be stored.

***lawn sale*** means a sale of goods from a residential dwelling, or from a parcel of land on which a residential dwelling is situated, where the property in the goods was not acquired by the seller through his or her business as a pawnbroker or a second-hand dealer.

***licence*** means a pawnbroker's licence, a pawnbroker/second-hand dealer's licence or a second-hand dealer's licence.

***licensee*** means a person who holds a licence.

***officer***, in relation to a body corporate, includes a director, secretary, executive officer or employee of the body.

***pawnbroker*** means a person conducting the business of:

(a) lending money on the security of pawned goods; or

(b) receiving goods under a contract for sale where the seller has a right to buy back the goods.

***pawn ticket*** means a statement required to be given under section 280.

***redemption period*** means the period referred to in section 288(1)(a)(i) or (ii), whichever applies in the particular case.

***second-hand dealer*** means a person conducting the business of buying, selling or exchanging second-hand goods, whether the goods are bought, sold or exchanged on the person's own behalf or on behalf of another person.

***second-hand goods*** means any goods which have been worn or otherwise used but does not include goods belonging to a class of goods prescribed by the regulations as goods not to be treated as second-hand goods for the purposes of this Act.

***storage premises*** means premises at which, under a licence, goods may be stored.

(2) In this Part a reference to goods in the possession of a person includes a reference to goods under that person's control.

(3) In this Part, unless the contrary appears, a reference to a contract is a reference:

(a) in the case of a pawnbroker, to a contract for the lending of money on the security of pawned goods or for the receiving of goods under a contract of sale where the seller has a right to buy back the goods; and

(b) in the case of a second-hand dealer, to a contract for the purchase or exchange of second-hand goods by the second-hand dealer.

(4) In this Part a reference to the purchase or exchange of goods in relation to a second-hand dealer includes a reference to a purchase or exchange, as the case may be, of goods by the dealer on behalf of another person.

### 245 Application

This Part does not apply to:

(a) an auctioneer within the meaning of the *Auctioneers Act 1935* who is acting in accordance with a licence granted to, or for the benefit of, the auctioneer under that Act; or

(b) a dealer within the meaning of the *Firearms Act 1997* who is acting in accordance with a licence granted in relation to that dealer under that Act; or

(c) a holder of a licence granted under Part 10 of this Act who is acting in accordance with the licence.

### 246 Deeming of loan and interest under *buy back* contracts

In the case of a pawnbroker receiving goods under a contract for sale where the seller has a right to buy back the goods, then for the purposes of this Part:

(a) the price at which the goods are to be sold under the contract is to be taken to be the amount lent; and

(b) the difference between the amount lent and the price at which the goods may be bought back is to be taken to be the interest payable.

## Division 2 Licensing of pawnbrokers and second-hand dealers

## Subdivision 1 Requirement for licences

### 247 Pawnbrokers to be licensed

A person must not act as a pawnbroker except under and in accordance with a pawnbroker's licence or a pawnbroker/second-hand dealer's licence.

Maximum penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

### 248 Second-hand dealers to be licensed

A person must not act as a second-hand dealer except under and in accordance with a second-hand dealer's licence or a pawnbroker/second-hand dealer's licence.

Maximum penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

### 249 Offence of holding out

(1) A person, other than a person who holds a pawnbroker's licence or a pawnbroker/second-hand dealer's licence, must not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is, a pawnbroker.

(2) A person, other than a person who holds a second-hand dealer's licence or a pawnbroker/second-hand dealer's licence, must not hold himself or herself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he or she is, a second-hand dealer.

Maximum penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

### 250 Licence may be granted to person or partnership

(1) The Director may grant a licence to a person or a partnership.

(2) The Director may grant more than one licence to a person or a partnership and any business under that licence may be transacted in the name of the person or partnership.

## Subdivision 2 Licensing

### 251 Application for licence

An application for the grant of a licence is to be:

(a) made in an approved form, which is to contain the prescribed details and other information the Director requires, lodged at a place approved by the Director; and

(b) accompanied by the prescribed fee.

### 252 Director to advise Police Commissioner etc.

(1) If the Director receives an application for a licence under section 251, the Director must send a copy of it to the Commissioner of Police, together with copies of any accompanying documents other than statements relating to the material and financial resources of the applicant.

(2) The Commissioner of Police, within 28 days of receiving a copy of an application under subsection (1), must lodge with the Director a notice in writing which either supports the application or objects to the grant of a licence on the grounds that the applicant may not be a fit and proper person.

(2A) A person may, by notice in writing lodged with the Director, object to the granting of a licence on any of the grounds specified in section 258.

(3) A notice of objection under subsection (2) or (2A) is to state the reasons for the objection.

(4) References in this section to an applicant's not being a fit and proper person are, where the applicant is:

(a) a partnership – references to a partner in the partnership; or

(b) a body corporate – references to a director or other person concerned in the management of the body corporate;

not being a fit and proper person.

### 254 Documentation in support of application for licence

An application for the grant of a licence is to be accompanied by:

(a) where the applicant is a natural person or a partnership – evidence as to the identity of the natural person or each partner in the partnership:

(i) by means of his or her birth certificate; or

(ii) by means of his or her passport, where the passport is either current or has not been expired for more than 24 months; or

(iii) by means of his or her motor driver's licence; or

(iv) by other prescribed means; and

(b) in the case of an application for a licence by a partnership or body corporate:

(i) where relevant, proof of the business name; and

(ii) where relevant, proof of incorporation; and

(iii) written confirmation from one of the other partners or one of the body's directors, as the case requires, that the applicant is authorised by the partnership or the body to make the application; and

(c) other information the Director requires for the proper consideration of a particular application; and

(d) other evidence of a prescribed nature or prescribed form.

### 255 Application for renewal of licence

(1) An application for the renewal of a licence is to be:

(a) made in an approved form lodged at, or sent by post to, a place approved by the Director; and

(b) accompanied by the prescribed fee.

(2) An application for the renewal of a licence is to be made no later than 28 days before the day on which the licence is due to expire or at a later time that the Director, having regard to section 262(2), allows.

### 256 Documentation in support of application for renewal of licence

An application for the renewal of a licence is to be accompanied by evidence of the prescribed type or prescribed form.

### 257 Offences in relation to licence applications

A person must not, in relation to an application for the grant or renewal of a licence, provide information in written or oral form that the person knows to be:

(a) false or misleading in a material particular; or

(b) likely to deceive in a material way.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

### 258 Objections to grant or renewal of licences

(1) A person may object to the grant or renewal of a licence on the ground that the Director should not or should no longer be satisfied in relation to any of the matters referred to in section 259, 260 or 261 that is relevant to the applicant or, where the applicant is a partnership or body corporate, to the partnership and any of the partners or to the body and any of the body's officers, as the case may be.

(2) An objection is to be made in an approved form and is not to be considered unless it is lodged with the Director:

(a) in the case of an application (other than an expedited application under section 253) for the grant of a licence, no later than 28 days after the publication date of the notice under section 252; or

(b) in the case of an application for the renewal of a licence, no later than 28 days before the day the licence is due to expire.

### 259 Grant of licences

The Director may grant a licence if the Director is satisfied:

(a) that, where the applicant is a natural person or a partnership – the person or each partner in the partnership has attained the age of 18 years; and

(b) that there is sufficient evidence as to the identity of the applicant; and

(c) that the applicant has not been convicted of an offence prescribed for the purposes of this paragraph; and

(e) that the time for the lodgement of objections has passed and either:

(i) no objection to the application has been made; or

(ii) each objection has been adequately investigated and that the investigation results justify the grant of the licence; and

(f) that the applicant is of good character and is in all respects a fit and proper person to hold a licence; and

(g) that there will be during the licence period, adequate management, supervision and control of the business operations that are the subject of the application; and

(h) that during the licence period the applicant will be able to comply with:

(i) the provisions of this Part; and

(ii) any condition or restriction to which the licence is likely to be subject; and

(j) that the applicant has, or is able to obtain, the means to provide information in accordance with section 316; and

(k) that the applicant is not:

(i) an insolvent under administration within the meaning of the Corporations Act 2001; or

(ii) subject to a type of external administration referred to in Chapter 5 of the Corporations Act 2001; and

(m) that there is, in relation to the applicant, no charge pending for an offence involving dishonesty, fraud or stealing, an offence of a nature that renders the applicant unsuitable to hold a licence or that is prescribed for the purposes of paragraph (c); and

(n) where the applicant has been found guilty of an offence, that:

(i) the circumstances of the applicant's involvement in the commission of the offence; or

(ii) the period of time between the finding and the application;

do not render the applicant unsuitable to hold a licence; and

(p) that the applicant has not been involved in conduct of a nature that renders the applicant unsuitable to hold a licence; and

(q) in the case of an application for a pawnbroker's licence or a pawnbroker/second-hand dealer's licence, that there are adequate arrangements for the safekeeping of pawned goods; and

(r) that at the time of the application:

(i) the applicant is not disqualified from holding the type of licence applied for; and

(ii) a licence of the type applied for held by the applicant is not suspended; and

(s) of such other matters as may be prescribed; and

(t) that there is no other good reason why the licence should not be granted.

**260 Renewal of licences**

The Director may renew a licence if the Director is satisfied:

(a) in relation to the matters mentioned in section 259(e) to (t) to the extent that those matters apply to the renewal of a licence; and

(b) that the licensee has not contravened:

(i) a provision of this Part; or

(ii) the licence or a condition or restriction to which the licence is subject;

in circumstances rendering the renewal of the licence to be inappropriate; and

(c) that no application to NTCAT for review of a decision made under this Part is pending in respect of the licensee.

### 261 Grant and renewal of licences held by partnerships and bodies corporate

Where an application is made for the grant or renewal of a licence by a partnership or a body corporate, the Director is not to grant or renew the licence unless the Director is satisfied as to each of the matters referred to in section 259 or 260, as the case may be, in relation to each of the following persons who is relevant to the application:

(a) the partnership and the partners;

(b) the body and the body's officers.

### 262 Refusal to grant or renew licences

(1) Where the Director refuses to grant a licence the Director, before 28 days after the decision is made, is to serve the applicant with written notice setting out the decision and the reasons for the decision.

(2) Where the Director refuses to renew a licence the Director, no later than 14 days before the day on which the licence is due to expire, is to serve the applicant with written notice setting out the decision and the reasons for the decision.

### 263 Form of licences

(1) The Director is not to grant or renew a licence without specifying in the licence each business premises and storage premises to which the licence applies.

(2) Subject to subsection (1), a licence is to be in an approved form.

### 264 Conditions and restrictions

(1) The Director may grant or renew a licence subject to conditions and restrictions set out in, or provided with, the licence.

(2) Without limiting subsection (1), a licence may be subject to conditions in relation to ascertaining whether a person who is, or is proposed to be, employed at business premises has been convicted of an offence the nature of which may render the person unsuitable to enter into contracts at the premises or which is prescribed for the purposes of this section.

(3) The Director may:

(a) make an existing licence subject to a new condition or restriction; or

(b) change or remove a condition or restriction to which an existing licence is subject;

but if the Director does so:

(c) the Director, within 14 days after the decision is made, is to serve the licensee with written notice of the decision; and

(d) the decision does not take effect until 21 days after the decision is made, or at a later time specified in the notice.

**265 Licence not transferable**

A licence is not transferable.

**266 Duration of licences**

A licence may be granted or renewed for the period, being not longer than 3 years from the day of grant or renewal of the licence, the Director thinks fit and specifies in the licence document.

**267 Suspension, revocation of licences and disqualification**

(1) Subject to this section, the Director may:

(a) suspend a licence for the period he or she thinks fit; or

(b) revoke a licence; or

(c) disqualify a person from holding a licence for the period the Director thinks fit or permanently.

(2) The Director may exercise a power mentioned in subsection (1):

(a) on the ground that the Director should not or should no longer be satisfied in relation to a matter mentioned in section 259, 260 or 261 that is relevant to the licensee and, if the licence is held by a partnership or body corporate, to the partnership and any of the partners or to the body and any of the body's officers; or

(b) on the ground that a person (other than the Director) mentioned in paragraph (a) has contravened:

(i) a provision of this Part; or

(ii) the licence or a condition or restriction to which the licence is subject.

(3) A suspension or revocation of, or disqualification in relation to, a licence is not effective unless the Director:

(a) has served written notice of the intention to suspend, revoke, or disqualify on the licensee, stating the grounds on which the suspension, revocation or disqualification is intended to be made and allowing the licensee 21 days within which to respond to the notice; and

(b) has had due regard to any response to the notice made within that time; and

(c) has served written notice of the decision to suspend, revoke or disqualify on the licensee at least 14 days before the decision is to take effect, stating the grounds on which the decision has been made.

(4) A person who has received notice under subsection (3)(c) must, within 2 business days of receiving the notice, or another period approved by the Director, return the licence document to the Commissioner.

Maximum penalty: 20 penalty units.

(5) If a licence is suspended under this section it is to be treated as being of no effect during the period of suspension.

(6) A person who under this section is disqualified from holding a licence must not, during the period of disqualification, apply for a licence of that type.

**268 Director to keep register of licences**

(1) The Director is to keep, in an approved form, a register of the following information in relation to each licence granted:

(a) the type of licence;

(b) the name (including, if relevant, the business name) or names of the licensee;

(c) the location of business premises to which the licence applies;

(d) the expiry date;

(e) other prescribed particulars.

(2) The Director is to allow any person to inspect the register on payment of the prescribed fee, if any.

## Subdivision 4 Powers of Court generally in relation to licences

### 272 Court may suspend, revoke licence or disqualify person upon conviction

(1) Where a person is convicted by a court of an offence against this Part, the Court may, in addition to any penalty imposed or order made in respect of the conviction:

(a) order, in relation to a licence applicable to that person:

(i) that the licence be suspended for the period the Court thinks fit; or

(ii) that the licence be revoked; or

(iii) that a person be disqualified from holding a licence for the period the Court thinks fit or permanently;

and that the licence be delivered up to the Court or the Director; or

(b) impose conditions or restrictions in relation to the licence as it thinks fit for the period of time set out in the order.

(2) When making any order under this section the Court may, if it thinks fit, defer the operation of the order pending an appeal.

(3) If a licence is suspended under this section it is to be treated as being of no effect during the period of suspension.

(4) A person who under this Subdivision is disqualified from holding:

(a) a pawnbroker's licence must not, during the period of disqualification, apply for a pawnbroker's licence or a pawnbroker/second-hand dealer's licence; or

(b) a second-hand dealer's licence must not, during the period of disqualification, apply for a second-hand dealer's licence or a pawnbroker/second-hand dealer's licence; or

(c) a pawnbroker/second-hand dealer's licence must not, during the period of disqualification, apply for any licence;

or be the subject of an application for such a licence during the period of disqualification.

### 273 Returns by Court

Where a Court has made an order under section 272 in relation to the suspension or revocation of, or disqualification in relation to, a licence, the Court is to ensure that:

(a) notice of the findings, penalty imposed and orders made in relation to the matter; and

(b) where relevant, any licence that has been delivered up to the Court;

is sent to the Director.

## Subdivision 5 Other requirements in relation to licences

### 274 Sign to be displayed

A licensee must keep displayed in a position that is clearly visible from the outside of the business premises to which the licence applies:

(a) the licensee's name; and

(b) the words "Licensed Pawnbroker", "Licensed Pawnbroker and Second-hand Dealer" or "Licensed Second-hand Dealer";

in legible lettering at least 50mm high.

Maximum penalty: 20 penalty units.

### 275 Certain employee records to be kept and provided to police

(1) If a person is employed at business premises and the person's functions include entering into contracts at the premises, the licensee must ensure that the following are kept in relation to the person:

(a) a record of the person's full name, current residential address and date of birth;

(b) a photograph of the person, certified by the licensee to be a true photograph of the employee;

(c) all records provided by the person by way of:

(i) the person's application for employment at the premises; and

(ii) the licensee's compliance with a condition of the licence.

(2) Records referred to in subsection (1) are to be kept for 12 months after the day the employee ceases to be employed at the premises.

(3) An authorised officer may require a licensee to produce for inspection a record kept under this section and the licensee must not refuse or fail to comply with the request.

Maximum penalty: 100 penalty units.

(4) A person employed at business premises whose functions include entering into contracts at the premises must, at all times while engaged on the business of the licensee, display such identification, if any, as prescribed.

(5) A person employed at business premises must not enter into a contract for the purchase of goods from, or the exchange of goods with, another person unless the employee's employer has permitted the employee to enter into contracts for the purchase or exchange of goods.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(6) Where an employee is found guilty of an offence against subsection (5), his or her employer is guilty of an offence.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

## Division 3 Contracts with pawnbrokers and second-hand dealers

## Subdivision 1 Duties of pawnbrokers and second-hand dealers

### 276 Persons under 18 or affected by alcohol or drugs

A pawnbroker or a second-hand dealer must not enter into a contract with a person who is:

(a) under 18 years of age; or

(b) apparently affected by alcohol or a drug.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

**277 Identification of persons**

(1) Subject to subsection (2), a pawnbroker or a second-hand dealer must not enter into a contract with a person unless the pawnbroker or second-hand dealer:

(a) has ascertained the person's full name and current residential address; and

(b) has verified the person's identity by way of:

(i) the person's passport, where the passport is either current or has not been expired for more than 24 months; or

(ii) the person's current motor driver's licence, but only if it bears a photograph of the person; or

(iii) prescribed means.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) Subsection (1)(b) does not apply to a contract entered into with a person conducting a lawn sale.

**278 Offences in relation to false information**

A person must not provide to a pawnbroker or second-hand dealer information in relation to the person's name, address or age, in written or oral form, that the person knows to be:

(a) false or misleading in a material particular; or

(b) likely to deceive in a material way.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

**279 Records to be made by pawnbrokers**

A pawnbroker must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the pawnbroker:

(a) a distinguishing number for the contract;

(b) the full name and current residential address of the party pawning the goods;

(c) where verification of identity is required under section 277, the form of identification used to verify the identity of the party pawning the goods and the number (if any) of the identification document;

(d) the date and time of the contract;

(e) a description of each of the goods to be pawned including, where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;

(f) the amount lent in respect of each of the pawned goods;

(g) the interest to be paid on the amount lent expressed:

(i) as a percentage rate; and

(ii) as an amount in dollar terms to be paid for each week or month, as the case may be, of the loan;

(h) the types of charges that are, or may become, payable, including those that may become payable in the event of the sale of the goods, and the amount (if known) of the charges;

(j) the redemption period if it is longer than one month;

(k) the name of the person accepting the goods in pawn as, or on behalf of, the pawnbroker;

(m) the amount of any repayment made towards satisfaction of the loan;

(n) the premises where the goods will be located during the redemption period, and if the goods are moved, the name and address of the location of the goods;

(p) if the redemption period is extended, the new redemption period and the date of the agreement to extend the period;

(q) if goods are redeemed, the date of redemption;

(r) if unredeemed goods are sold:

(i) the date of sale; and

(ii) the details referred to in section 296(1);

(s) other prescribed matters.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

**280 Pawn tickets**

(1) Before lending any money under a contract, a pawnbroker must ensure that a written statement under this section and a copy of the statement are signed by, or on behalf of, the pawnbroker and by the other party to the contract and that the statement is given to that other party, without charge.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) The statement is to:

(a) set out the details recorded under section 279(a) to (s) inclusive; and

(b) inform the other party:

(i) of the pawnbroker's obligation under this Part to keep the pawned goods for at least one month or such longer period as the parties may agree; and

(ii) that the goods can be redeemed at any time before the sale of the goods; and

(iii) of the party's right to any surplus on the sale of the goods after deduction of interest and charges.

(3) The pawnbroker must ensure that the statement and the copy each bear the original signature of the persons referred to in subsection 1).

Maximum penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

**281 Records to be made by second-hand dealers**

(1) A second-hand dealer must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the dealer:

(a) a distinguishing number for the contract;

(b) the full name and current residential address of the party offering the goods;

(c) where verification of identity is required under section 277, the form of identification used to verify the identity of the party offering the goods and the number (if any) of the identification document;

(d) the date and time of the contract;

(e) a description of each of the goods accepted by the dealer including where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;

(f) the consideration provided by the dealer for the accepted goods;

(g) the name of the person accepting the goods as, or on behalf of, the dealer;

(h) the premises where the goods will be kept during the period referred to in section 299, and if the goods are moved, the name and address of the location of the goods;

(j) if the goods are disposed of by the dealer, the date of disposal;

(k) such other matters as may be prescribed.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) A second-hand dealer must ensure that the details of matters prescribed for the purposes of subsection (1)(k) are kept in the prescribed form.

**282 Records to be provided by second-hand dealers**

(1) Before accepting goods under a contract a second-hand dealer must ensure that:

(a) the records specified in or prescribed under section 281 that are prescribed for the purposes of this section are provided to the other party to the contract; and

(b) a receipt for the goods and a copy of the receipt are signed by, or on behalf of, the dealer and the other party to the contract, and the receipt is given to the other party.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) The second-hand dealer must ensure that the receipt and the copy each bear the original signature of the persons referred to in subsection (1).

Maximum penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

**283 Keeping of records**

(1) A pawnbroker must ensure that all records required to be made under section 279, a copy of all the pawnbroker's pawn tickets and all affidavits provided to the pawnbroker under section 286 are kept:

(a) for at least one year from the time when the goods are redeemed or sold; and

(b) in the prescribed manner or form.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) A second-hand dealer must ensure that all records required to be made under section 281 and a copy of all receipts given under section 282 are kept:

(a) for at least one year from the time when the goods are disposed of by the dealer; and

(b) in the prescribed manner or form.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(3) A pawnbroker or second-hand dealer must ensure that:

(a) the records required to be kept under section 275, insofar as they relate to a person who is currently employed by the pawnbroker or second-hand dealer; and

(b) all other records required to be kept under this Part that relate to contracts entered into within the previous 12 months; and

(c) all other records kept in the course of carrying on business as a pawnbroker or second-hand dealer within the previous 12 months;

are kept at the business premises nominated in the licence for that purpose.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(4) A pawnbroker or second-hand dealer must ensure that:

(a) the records required to be kept under section 275, insofar as they relate to a person who was, but no longer is, employed by the pawnbroker or second-hand dealer; and

(b) all other records required to be kept under this Part that relate to contracts entered into other than within the previous 12 months; and

(c) all other records kept in the course of carrying on business as a pawnbroker or second-hand dealer, other than such records kept within the previous 12 months;

are kept at a place nominated in the licence for that purpose.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(5) The holder of a pawnbroker/second-hand dealer's licence must keep those records he or she is required under this Part to keep in relation to his or her business as a pawnbroker separate from those records he or she is required under this Part to keep in relation to his or her business as a second-hand dealer.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(6) An authorised officer may require a licensee to produce for inspection a record required to be kept under this Part and the licensee must not refuse or fail to comply with the request:

(a) for records required to be kept at the business premises – immediately; or

(b) otherwise – within the period, being not less than one business day after the day on which the requirement is made, that the authorised officer specifies.

Maximum penalty: 100 penalty units.

### 284 Tampering with records

Where a pawnbroker or second-hand dealer keeps a record for the purposes of this Part, a person must not alter the record in a manner that renders the record false or misleading in a material particular.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

### 285 Goods to carry contract number

(1) A pawnbroker must ensure that all pawned goods are marked or labelled with the distinguishing number of the contract under which the goods were pawned.

Maximum penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

(2) A second-hand dealer must ensure that all second-hand goods obtained by the dealer that are for sale or exchange by the dealer are marked or labelled with the distinguishing number of the contract under which the goods were obtained.

Maximum penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

### 286 Pawn tickets *lost* or *stolen*

(1) A pawnbroker must not replace a pawn ticket alleged by a person to have been lost or stolen unless:

(a) the person provides the pawnbroker with the person's affidavit setting out:

(i) an accurate description of the pawned goods; and

(ii) the circumstances of the loss or theft of the pawn ticket; and

(b) the pawnbroker ascertains the person's name and verifies the person's identity in accordance with section 277; and

(c) the pawnbroker is satisfied on reasonable grounds that the person's claim is lawful.

Maximum penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

(2) A pawnbroker must not charge a person for a replacement pawn ticket.

Maximum penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

## Subdivision 2 Redemption and sale of goods

### 287 Interpretation

In this Subdivision ***pawn ticket*** includes a replacement pawn ticket issued under section 286.

### 288 When goods may be redeemed

(1) Pawned goods may be redeemed:

(a) before the expiration of:

(i) one month; or

(ii) a period longer than one month agreed by the parties;

from the day on which the goods were pawned; and

(b) where the redemption period has expired, before the sale of the goods.

(2) A provision in, or condition of, an agreement or arrangement that purports to reduce the period referred to in subsection (1)(a)(i) has no effect.

(3) An agreement under subsection (1)(a)(ii) may be made at any time before the goods are sold.

### 289 Where pawned goods to be kept

A pawnbroker must ensure that pawned goods are kept at business premises or storage premises to which the pawnbroker's licence applies until the redemption period expires.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

### 290 When goods to be redeemed

Subject to section 291, where pawned goods have not been sold the pawnbroker must deliver the goods to a person who:

(a) produces to the pawnbroker the pawn ticket for the goods; and

(b) requests the redemption of the goods; and

(c) pays the pawnbroker, or tenders to the pawnbroker payment of, all money owing under the contract under which the goods were pawned.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

### 291 When goods not to be redeemed

(1) Section 290 does not apply where:

(a) the pawnbroker has been informed by a credible person or has reason to believe that the person who produces the pawn ticket is not the owner of the goods or pawn ticket or is not acting with the owner's authority; or

(b) the pawnbroker has been informed by the owner of the pawn ticket or some other credible person that the ticket has been lost, stolen or otherwise unlawfully taken; or

(c) the provisions of a notice under section 317 prevent delivery of the goods; or

(d) the goods have been seized by a police officer; or

(e) the goods are not in the possession of the pawnbroker and the pawnbroker had previously reported to a police officer that the goods had been stolen or otherwise unlawfully obtained from the pawnbroker; or

(f) the goods were returned to a person under section 318.

(2) A pawnbroker who does not deliver goods under section 290 in reliance on subsection (1)(a) or (b) must, as soon as is practicable, notify a police officer of the reasons for non-delivery and where the name and address of the person who requested the delivery are known to the pawnbroker, the name and address of that person.

Maximum penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

**292 Redemption only to holder of pawn ticket**

A pawnbroker must not deliver pawned goods in purported redemption of the goods to a person other than the holder of the pawn ticket for the goods.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

**293 Sale of unredeemed goods**

(1) A pawnbroker must not sell pawned goods unless the redemption period has expired.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) If pawned goods have not been redeemed within the redemption period the pawnbroker must sell the goods:

(a) as soon as is practicable after the redemption period has expired; and

(b) so as to receive the best market price reasonably obtainable.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(3) If any question arises as to whether a pawnbroker has complied with subsection (2), the proof of compliance is on the pawnbroker.

**294 Unredeemed goods not to be bought by or on behalf of pawnbroker**

(1) A pawnbroker, or a person acting on behalf of a pawnbroker, must not buy goods that have been pawned to and are being sold by the pawnbroker.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) Where a pawnbroker's licence or a pawnbroker/second-hand dealer's licence is held by a partnership or body corporate, a person who is:

(a) one of the partners; or

(b) the body; or

(c) one of the body's officers; or

(d) acting on behalf of a person referred to in paragraph (a), (b) or (c);

must not buy goods that have been pawned to and are being sold by the pawnbroker.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

**295 Application of proceeds of sale**

(1) Subject to subsection (2), the proceeds of sale of pawned goods are to be applied in settlement of all amounts owing to the pawnbroker under the contract under which the goods were

pawned and the amount of any surplus is a debt due by the pawnbroker to the other party to the contract.

(2) Where the amount of the surplus is less than $50 or such other amount as may be prescribed under section 297, the amount is a debt due and payable by the pawnbroker to the other party to the contract only if the other party has, within 60 days after the sale of the goods, demanded the return of the surplus.

**296 Records to be made on sale of unredeemed goods**

(1) A pawnbroker who sells pawned goods must, as soon as practicable after the sale, calculate:

(a) the charges to be paid by the other party to the contract under which the goods were pawned; and

(b) the surplus (if any) due to the other party;

and record those details with the details recorded under section 279 in relation to the goods.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) Where pawned goods have been sold by a pawnbroker, the pawnbroker must on request allow the other party to the contract under which the goods were pawned to inspect the record relating to the sale.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

**297 Notice as to surplus**

(1) Subject to subsection (2), a pawnbroker who sells pawned goods must, before 14 days after the sale, send by certified mail to the last known address of the other party to the contract under which the goods were pawned, a notice informing the party:

(a) of the amount of any surplus proceeds of sale; and

(b) that the party is entitled to receive that amount from the pawnbroker at the pawnbroker's business premises or in another manner as agreed, within 60 days after the notice is issued.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) Subsection (1) does not apply where:

(a) the other party in writing requested the pawnbroker not to give the party notice under that subsection; or

(b) the surplus is less than $50 or the prescribed amount.

### 298 Payment of surplus on demand

A pawnbroker who sells goods pawned by a person must upon demand pay the amount of any surplus payable to the person under section 295 at the pawnbroker's business premises or in another manner as agreed.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

## Subdivision 3 Retention of second-hand goods

### 299 Second-hand goods to be kept unchanged at least 14 days

A second-hand dealer must, in relation to all second-hand goods obtained in the course of the dealer's business, keep the goods for at least 14 days after the goods were obtained without altering the form of the goods, including by cleaning, repairing or repainting them.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

### 300 Where second-hand goods to be kept

Subject to section 318, a second-hand dealer must ensure, in relation to all second-hand goods obtained in the course of the dealer's business, that the goods are kept at business premises or storage premises to which the dealer's licence applies during the period referred to in section 299.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

## Subdivision 4 Other matters relating to contracts with pawnbrokers and second-hand dealers

### 301 Pawnbroker not to charge establishment fee

(1) A pawnbroker must not require or receive a fee, other than by way of interest, in respect of a person's application to enter into a contract with the pawnbroker.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

(2) A provision in, or condition of:

(a) a contract; or

(b) an agreement or arrangement in relation to entering into a contract;

for a payment other than interest in consideration for entering into a contract with a pawnbroker is of no effect.

### 302 Re-pledging of goods prohibited

A pawnbroker must not pawn any goods that are pawned to the pawnbroker.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

### 303 No contracting out of liability for loss or damage

A provision in, or condition of, an agreement or arrangement in relation to the liability of a pawnbroker for the loss of, or damage to, pawned goods has no effect if it is less favourable to the owner of the goods than the common law.

### 304 Buyer may be compensated

Where a person buys or purports to buy goods from a pawnbroker or second-hand dealer and title to the goods, as a matter of law, either:

(a) does not pass to the buyer; or

(b) having passed to the buyer, revests in a person who was the owner of the goods;

the buyer may recover from the pawnbroker or dealer in a court of competent jurisdiction, the amount paid by the buyer to the pawnbroker or dealer and any other costs reasonably incurred in relation to the acquisition and loss of the goods.

### 305 Certain rights and remedies saved

Except to the extent that this Part expressly provides otherwise, nothing in this Part affects a right or remedy that a person would have had if this Part had not been enacted.

### 306 Civil consequences of breach of breach of section 247

If a pawnbroker's licence or a pawnbroker/second-hand dealer's licence is not held by a person who acts as a pawnbroker, the other party to a contract with that person:

(a) is not liable to repay the money lent to him or her or to pay any interest or any charge in connection with the contract; and

(b) is entitled to recover the goods the subject of the contract; and

(c) if he or she has paid or repaid any amount referred to in paragraph (a), may recover the amount in a court of competent jurisdiction as a debt due to him or her by the person acting as a pawnbroker.

### 307 Civil consequences of breach of section 280

(1) If a pawnbroker lends money under a contract but does not give to the other party to the contract a pawn ticket in accordance with section 280, the other party is not liable to pay any amount for interest or for any charge in connection with the contract.

(2) If the other party has paid an amount referred to in subsection (1) that party may recover the amount in a court of competent jurisdiction as a debt due to him or her by the pawnbroker.

### 308 Criminal liability

(1) Sections 306 and 307 do not affect the criminal liability of a person for a breach of section 247 or 280 respectively.

(2) Where a pawnbroker commits an offence against this Part in relation to a contract, the other party to the contract does not by reason only of being a party to the contract take part in committing the offence.

### 309 Breach does not otherwise vitiate contract

Except as provided by sections 306 and 307, a contract is not illegal, void or unenforceable by reason only that a pawnbroker has contravened this Part in relation to the contract.

### 310 Relief from sections 306 and 307

(1) In this section ***pawnbroker*** includes a person who has acted as a pawnbroker although not under a pawnbroker's licence or a pawnbroker/second-hand dealer's licence held by the person.

(2) A pawnbroker affected by section 306 or 307 may apply to a court of competent jurisdiction for relief from the section.

(3) Where an application is made under subsection (2), the Court after considering the circumstances, including the conduct of the pawnbroker and the other party to the contract and any loss suffered by the other party, may refuse to make an order or may make an order as to the amount (if any) to be paid or recovered by the other party that it thinks fit.

(4) If the other party to the contract has suffered loss as a result of a contravention of section 247 or 280 the Court is to ensure in making an order under subsection (3) that the amount that that party would have been liable to pay but for the contravention is reduced by an amount that is not less than the amount of the loss.

(5) A contract has effect subject to an order, if any, made in relation to it under this section.

(6) An amount payable to a person under an order of the Court under this section is recoverable in a court of competent jurisdiction as a debt.

## Division 4 Enforcement

### 311 Entry to and inspection of licensed premises without warrant

(1) A police officer may without warrant enter premises to which a licence applies and inspect goods and records kept at the premises:

(a) in the case of business premises, at a time when the premises are open for business; and

(b) in the case of storage premises, at a time when business premises to which the licence applies are open for business.

(2) A police officer may, at a time when business premises to which a licence applies are open for business, require a person who is apparently in charge of the premises to open storage premises to which the licence also applies.

(3) A police officer may, without warrant, during an inspection of premises for the purposes of this section:

(a) enter a room, a storage area or another part of the premises; and

(b) require a person on the premises to open or unlock a room, area or part of premises; and

(c) where a person on the premises refuses to, or is unable to, open or unlock a room, area or part of premises, use force reasonably necessary to gain entry to the room, area or part; and

(d) open and examine the contents of:

(i) a package; or

(ii) an unlocked container, cupboard, drawer, chest, trunk, box, cage or other receptacle;

found on the premises; and

(e) require a person on the premises to open or unlock a locked container, cupboard, drawer, chest, trunk, box, cage or other receptacle on the premises; and

(f) where a person on the premises is unwilling or unable to open or unlock an item referred to in paragraph (e), use force reasonably necessary to open or unlock the item.

(4) A person must not refuse or fail to comply with a requirement under this section.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

**312 Assistance in the location of goods at licensed premises**

(1) Where a police officer has lawfully entered premises to which a licence applies, the member may require a person who at the time is apparently in charge of the premises to without delay:

(a) produce for inspection goods kept by the pawnbroker or second-hand dealer; and

(b) identify and locate goods kept by the pawnbroker or second-hand dealer that correspond to a particular record kept by the pawnbroker or dealer under this Part; and

(c) where the goods to be produced, located or identified have been but are no longer kept by the pawnbroker or second-hand dealer, provide:

(i) information as to the current location of the goods; or

(ii) if the current location of the goods is not known, information as to what has happened to the goods.

(2) In this section, a reference to goods or records kept by a pawnbroker or second-hand dealer is a reference to goods or records kept at premises to which the licence held by the pawnbroker or dealer applies.

(3) A person must not refuse or fail to comply with a requirement under this section and must not provide information that is false or misleading.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

**313 Provision of, and assistance in relation to, records etc.**

(1) Where a police officer has lawfully entered premises to which a licence applies, the member may require a person who at the time is apparently in charge of the premises to without delay:

(a) produce for inspection a record kept by the pawnbroker or second-hand dealer under this Part; and

(b) identify and locate records kept by the pawnbroker or second-hand dealer under this Part that correspond to particular goods kept by the pawnbroker or dealer; and

(c) produce for inspection a licence relevant to the business.

(2) In this section, a reference to records or goods kept by a pawnbroker or second-hand dealer is a reference to records or goods kept at premises to which the licence held by the pawnbroker or dealer applies.

(3) Where the production of a record is required under this section and the record is not in a readable format, the requirement to produce the record is to be treated as a requirement to produce:

(a) the record itself; and

(b) the contents of the record in a readable format.

(4) A person must not refuse or fail to comply with a requirement under this section and must not provide information that is false or misleading.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

### 314 Police may seize records for certain purposes

(1) Where a record kept under this Part is produced for inspection a police officer may seize the record for the purpose of making copies or notes of some or all of the record.

(2) If a record is seized under this section, then as soon as practicable:

(a) a receipt is to be issued; and

(b) either the original record is to be returned or a copy of the record is to be given;

to the person from whom the record was seized.

### 315 Police to be informed in certain circumstances

A pawnbroker or second-hand dealer who suspects for any reason that goods:

(a) in the possession of the pawnbroker or dealer may have been stolen or otherwise unlawfully obtained, must without delay inform a police officer of the suspicion and provide a description of the goods; or

(b) which the pawnbroker is offered for pawn or the dealer is offered for exchange or sale may have been stolen or otherwise unlawfully obtained, must without delay inform a police officer of the suspicion and provide a description of the goods and of the person who offered the goods.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

### 316 Information about goods to be given

A pawnbroker or second-hand dealer must:

(a) in the prescribed manner and form (which may include an electronic form); and

(b) at the prescribed time;

provide to prescribed persons such information or records, or such access to information or records, as is prescribed.

Maximum penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

### 317 Notice to stop dealing

(1) A police officer who has reasonable cause to suspect that goods in the possession of a pawnbroker or second-hand dealer have been stolen or otherwise unlawfully obtained may personally serve the pawnbroker or dealer with a notice under this section.

(2) A notice under this section is to:

(a) specify the goods suspected of having been stolen or otherwise unlawfully obtained; and

(b) state that the pawnbroker or second-hand dealer is prohibited from altering the form of the goods, including by cleaning, repairing and repainting them, or disposing of the goods in any way within 21 days after service of the notice and that the goods specified in the notice are to be held separately from other goods for the period of the notice or a shorter period as agreed.

(3) A notice under this section may be reissued once for a further period of 21 days from the day the first period ends.

(4) A pawnbroker or second-hand dealer must not refuse or fail to comply with the provisions of a notice served on the pawnbroker or dealer under this section.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

### 318 Certificate may be issued entitling person to return of goods

(1) Where a person alleges to the Commissioner of Police that goods that the person had possession of otherwise than as a pawnbroker or second-hand dealer:

(a) have been stolen or otherwise unlawfully obtained from the person or have been pawned, sold or exchanged without the person's authority; and

(b) are in the possession of a pawnbroker or second-hand dealer;

the Commissioner of Police may issue to the person a certificate specifying that the goods are the property of the person specified in the certificate.

(2) Where a certificate under subsection (1) is produced to a pawnbroker, a second-hand dealer, or an employee of a pawnbroker or second-hand dealer, in possession of the goods, the pawnbroker, second-hand dealer or employee must, within 7 days after production of the certificate:

(a) deliver the goods to the person specified in the certificate; or

(b) make an application under section 322 in relation to the goods.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

### 319 Seizure of goods suspected stolen

(1) Where a police officer has lawfully entered premises to which a licence applies and has reasonable cause to suspect that goods in the possession of a pawnbroker or second-hand dealer have been stolen or otherwise unlawfully obtained, the member may without warrant seize the goods.

(2) Where goods are seized from a pawnbroker or second-hand dealer a police officer is to:

(a) issue a receipt for the goods as soon as practicable; and

(b) where the record is in a signable format and the person who at the time is apparently in charge of the premises so requests, sign the record made under section 279 or 281, as the case may be.

(3) A pawnbroker or second-hand dealer may request that a police officer, before leaving premises at which goods have been seized under this section, sign a document accurately listing the goods seized, and the member is to comply with the request.

(4) Where it is established to the satisfaction of a police officer that goods seized from a pawnbroker or second-hand dealer have not been stolen or otherwise unlawfully obtained, a member of the Police Force is to return the goods to the pawnbroker or second-hand dealer as soon as practicable.

(5) Where subsection (4) does not apply in relation to goods seized from a pawnbroker or second-hand dealer, a police officer:

(a) is to return the goods to the owner of the goods; or

(b) where the goods are not returned to the owner and competing claims have been made as to rights in respect of the goods, keep the goods in safe custody until the claims have been determined;

and in either case, is to notify the pawnbroker or second-hand dealer of the manner of disposal.

(6) Nothing in subsection (5) affects a right of a pawnbroker or second-hand dealer to take proceedings to recover possession of goods seized from the pawnbroker or dealer but the proceedings are to be commenced within 6 months after the day the goods are seized.

**320 Power of pawnbrokers, dealers and others to arrest**

(1) In this section a reference to a pawnbroker or second-hand dealer is also a reference to a person who at the relevant time is in charge of the premises to which the licence relates.

(2) Where a person offers to pawn, sell, exchange or deliver goods to a pawnbroker or second-hand dealer and the pawnbroker or dealer has reasonable cause to suspect that an offence has been committed by the person in relation to the goods, the pawnbroker or dealer may arrest the person.

### 321 Summary orders if stolen goods pawned, sold or exchanged

(1) A person may apply for an order under this section where goods:

(a) have been stolen or unlawfully obtained from him or her or have been pawned, sold or exchanged without his or her authority; and

(b) are in the possession of a pawnbroker or second-hand dealer.

(2) A copy of an application for an order under subsection (1) is to be served on the pawnbroker or second-hand dealer in relation to whom the application is made.

(3) The Local Court may make an order for:

(a) the delivery of the goods to the owner of the goods; and

(b) the payment by or to the pawnbroker or second-hand dealer of an amount of money as determined by the Court;

at or by the time stated in the order.

(4) Where a pawnbroker or second-hand dealer:

(a) has disposed of goods after notice that the goods were stolen or unlawfully obtained; or

(b) refuses or fails to deliver goods in accordance with an order of the Local Court;

the Court may order that the pawnbroker or dealer pay to the owner of the goods an amount determined by the Court as compensation for the value of the goods.

### 322 Summary order where second-hand dealer or pawnbroker claims goods

(1) A pawnbroker or second-hand dealer may apply to the Local Court for an order under this section where:

(a) a certificate under section 318(2) is produced to the pawnbroker or second-hand dealer, or an employee of the pawnbroker or second-hand dealer, in possession of the goods; or

(b) goods in respect of which the pawnbroker or second-hand dealer has rights have been returned to a person under section 319(5)(a).

(2) Where an application is made under subsection (1), the Court may issue a summons for the production of the goods and the appearance before the Court of each person who appears to the Court to have a claim of ownership of, or rights in respect of, the goods.

(3) The Local Court may:

(a) make an order for the delivery of the goods to the party who appears to be the rightful owner of the goods; or

(b) where the owner cannot be ascertained, make any order with respect to the goods the Court thinks fit;

and may make an order for the payment by or to a party making a claim for the goods of an amount of money as determined by the Court at or by the time stated in the order.

**323 Summary orders where competing claims to goods**

(1) A police officer may apply to the Local Court for an order under this section where the member:

(a) has seized under this Part; or

(b) under any other written law has seized from:

(i) a pawnbroker or second-hand dealer; or

(ii) a person who obtained from a pawnbroker or second-hand dealer;

goods suspected to have been stolen or otherwise unlawfully obtained, and competing claims have been made as to rights in respect of the goods.

(2) A copy of an application for an order under subsection (1) is to be served on each person who, in the opinion of the Local Court, has made a competing claim as to rights in respect of the goods.

(3) The Local Court may:

(a) make an order for the delivery of the goods to the party who appears to be the rightful owner of the goods; or

(b) where the owner cannot be ascertained, make such order with respect to the goods as the Court thinks fit;

and may make an order for the payment by or to a party making a claim for the goods of an amount of money as determined by the Court at or by the time stated in the order.

### 324 Licensee's liability for employees, agents

(1) If an employee or agent of the licensee commits an offence against this Part for which the licensee would have been liable had it been committed by the licensee, the licensee is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the employee or agent.

(2) Proceedings under this section may be taken against a licensee whether or not proceedings are taken against the employee or agent and whether or not the employee or agent was convicted of the offence.

(3) In proceedings for an offence against this section:

(a) it is not a defence that the licensee did not know of, or could not reasonably have been aware of or have prevented, the offence being committed by the employee or agent; and

(b) it is a defence, proof of which is on the licensee, that the licensee had taken reasonable steps to prevent the commission of the offence.

### 325 Liability of partners, bodies corporate and officers

(1) If a licence is held by a partnership or body corporate and the licensee or an employee or agent of the partnership or body commits an offence against this Part:

(a) subject to subsection (2), each of the partners; or

(b) the body corporate;

is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the licensee or employee or agent of the partnership or body.

(2) Subsection (1) does not apply to a partner who proves that:

(a) the offence was committed without the partner's consent or connivance; and

(b) the partner exercised all such due diligence to prevent the commission of the offence as ought to have been exercised, having regard to the nature of the partner's functions and to all the circumstances.

(3) Where a body corporate is treated as having committed an offence against this Part, each of the body's officers may be treated as having committed the offence unless the officer proves that:

(a) the offence was committed without the officer's consent or connivance; and

(b) the officer exercised all such due diligence to prevent the commission of the offence as ought to have been exercised, having regard to the nature of the officer's functions and to all the circumstances.

(4) The reference in subsection (2) to a partner does not include a reference to a partner who is also the licensee and the defence available to an officer under subsection (3) is not available to an officer who is also the licensee.

## Division 5 Miscellaneous matters

### 326 Duty to advise pawn ticket holders where pawn-broking business sold

(1) Where a pawnbroker sells or transfers his or her business to a person (***the purchaser***), the rights and obligations of the pawnbroker in relation to each pawn ticket issued by the pawnbroker are transferred to the purchaser.

(2) The pawnbroker must notify each holder of a pawn ticket of the transfer to the purchaser of the rights and obligations of the pawnbroker in relation to the ticket, unless the purchaser agrees in writing to give the notice.

Maximum penalty: If the offender is a natural person – 20 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 100 penalty units.

(3) Where the purchaser agrees to give notice under subsection (2), he or she must notify each holder of a pawn ticket of the transfer of the rights and obligations of the pawnbroker in relation to the ticket to the purchaser.

Maximum penalty: If the offender is a natural person – 20 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 100 penalty units.

**327 Orders to enable redemption of goods where licence revoked etc.**

(1) If a person who has pawned goods to a pawnbroker is unable to redeem the goods because the pawnbroker's licence has been subsequently suspended, revoked or not renewed, the Local Court may, on the application of any person, make the orders the Court thinks fit in relation to conducting business at the premises for the purpose of redeeming the goods.

(2) Nothing in subsection (1) affects any power of the Director or a court in relation to licences.

(3) A person must not, without reasonable excuse, refuse or fail to comply with an order under this section.

Maximum penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

**328 Secrecy**

(1) Except as provided in this section, a person must not directly or indirectly record, use or divulge any information obtained by reason of any function that person has, or at any time had, in the administration of this Act or the *Pawnbrokers Act 1980* repealed by the *Consumer Affairs and Fair Trading Amendment Act 1997*.

Maximum penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

(2) Subsection (1) does not apply to the recording, use or divulging of information:

(a) in the course of duty; or

(b) under this Part or another law; or

(c) for the purposes of the investigation of a suspected offence or the conduct of proceedings against a person for an offence; or

(d) with the consent of the person to whom the information relates, or each of them if there is more than one.

(3) Subsection (1) does not apply to the recording, use or divulging of statistical or other information that could not reasonably be expected to lead to the identification of a person to whom it relates.

**329 Evidentiary provisions**

In all courts and before all persons and bodies authorised to receive evidence:

(a) goods are to be treated as being in the possession of a pawnbroker or second-hand dealer if the goods are in a place that is occupied by, or under the control of, the pawnbroker or dealer; and

(b) in the absence of evidence to the contrary:

(i) a certificate purporting to be issued by the Director or Director's delegate and stating that a licence is or is not held by or on behalf of a person, the conditions or restrictions to which a licence is subject, or the premises to which a licence applies, on a day or days or during a period mentioned in the certificate, is evidence of the matters so stated; and

(ii) proof is not required of any delegation under this Part or of the appointment, or terms of appointment, of any licensing officer under this Part; and

(c) judicial notice must be taken, for this Part, of:

(i) the fact that a person is the Director ; and

(ii) the signature of the Director or Director's delegate on a certificate purporting to be issued under paragraph (b).

# Part 15 Miscellaneous matters

## 329A Review by NTCAT

(1) NTCAT has jurisdiction to review a decision (a ***reviewable decision***) specified in Schedule 1.

(2) An ***affected person***, for a reviewable decision, is a person specified in Schedule 1 for the decision.

(3) An affected person for a reviewable decision may apply to NTCAT for review of the decision.

(4) Subsection (5) applies in relation to an application made by an affected person for review of a decision made by the Director under Part 14, Division 2.

(5) If the affected person has been or is charged with an offence referred to in section 259(m), NTCAT may adjourn the review of the decision until any proceedings in respect of the charge have been finally determined.

*Note for section 329A*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.*

## 330A Prosecutions

(1) Proceedings for an offence against this Act, other than the Australian Consumer Law (NT), may only be commenced:

(a) within 2 years after the date on which the offence is alleged to have been committed; or

(b) with the authorisation of the Minister, at a later time within 5 years after the date on which the offence is alleged to have been committed.

(2) In any proceedings, an apparently genuine document purporting to be an authorisation under subsection (1) is to be accepted, in the absence of proof to the contrary, as proof of the authorisation.

### 330 Criminal liability of executive officer of body corporate

(1) An executive officer of a body corporate commits an offence if:

(a) the body corporate commits an offence by contravening a declared provision (a ***relevant offence***) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and

(b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

(c) the officer failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

(a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):

(i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;

(ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

(iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

(b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(3) Subsection (2) does not limit the matters the court may consider.

(4) This section does not affect the liability of the body corporate.

(5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.

(6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(7) In this section:

***declared provision*** means:

(a) section 47(1), 124A(1) or (2) or 176(1); or

(b) a provision of the Regulations prescribed by regulation.

***executive officer***, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

**331 Liability for act or default of officer, employee or agent**

For this Act, other than Part 5 and the Australian Consumer Law (NT), an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

**332 Infringement notices**

(1) Regulations made under this Act may:

(a) prescribe the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act or Regulations made under this Act; and

(b) prescribe the service of notices on persons alleged to have infringed this Act or Regulations made in relation to this Act and particulars to be included in such notices.

(2) The Commissioner and the Director are enforcement agencies for the purposes of the *Fines and Penalties (Recovery) Act 2001*.

**333 Allegation that person was a consumer**

If it is alleged in any proceedings under this Act, or in any other proceedings in respect of a matter arising under this Act, that a person was a consumer in relation to particular goods or services, it shall be presumed until the contrary is established that that person was a consumer in relation to those goods or services.

## 334 Service of documents

(1) Where by this Act a notice or other document is required to be given to or served on a person, it may, subject to this Act, be given or served:

(a) to or on an individual – as mentioned in subsection (2); or

(b) to or on a body corporate – as mentioned in subsection (3).

(2) In the case of an individual, the notice or other document may be given or served:

(a) by delivering it to the individual personally; or

(b) by leaving it at the individual's place of residence last known to the person who issued it with a person who apparently resides there and who has, or apparently has, attained the age of 16 years; or

(c) without limiting the other provisions of this subsection, where the individual is the holder of a licence under Part 10, by leaving it at a place at which the holder is authorised to carry on the business to which the licence relates with a person who is apparently employed at that place and who has, or apparently has, attained the age of 16 years; or

(d) by sending it by prepaid post addressed to the individual at the place of residence referred to in paragraph (b) or, where the individual is the holder of a licence under Part 10, a place referred to in paragraph (c).

(3) In the case of a body corporate, the notice or other document may be given or served:

(a) by delivering it to a person who is, or apparently is, concerned in the management of the body corporate; or

(b) by leaving it at the registered office of the body corporate with a person who is apparently employed there and who has, or apparently has, attained the age of 16 years; or

(c) without limiting the other provisions of this subsection, where the body corporate is the holder of a licence under Part 10, by leaving it at a place at which the holder is authorised to carry on the business to which the licence relates with a person who is apparently employed at that place and who has, or apparently has, attained the age of 16 years; or

(d) by sending it by prepaid post addressed to the body corporate at its registered office or, where the body corporate is the holder of a licence under Part 10, a place referred to in paragraph (c).

(4) Nothing in this section affects:

(a) the operation of any other law of the Territory that authorises the service of a document in any other way; or

(b) the power of a court to authorise service of a document in any other way.

**335 Secrecy**

(1) Subject to subsection (2), a person shall not divulge or communicate information which the person acquires by reason of being employed or engaged or otherwise concerned in or in connection with the administration or enforcement of this Act except:

(a) with the consent of the person from whom the information was obtained; or

(b) in connection with the administration or enforcement of this Act; or

(c) to the Commissioner of Police; or

(d) for the purposes of legal proceedings.

Maximum penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

(2) Notwithstanding subsection (1), the Commissioner or the Director or a person authorised by the Commissioner or the Director may communicate to the appropriate Minister or official of the Crown in right of the Commonwealth or of the Territory or of any State or other Territory of the Commonwealth information which the Commissioner or the Director considers should be communicated for the purpose of the administration or enforcement of any law of the Commonwealth, of the Territory, or of any State or other Territory of the Commonwealth.

### 336 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

(a) the Commissioner;

(b) the Deputy Commissioner;

(ba) the Director;

(c) a member of a committee appointed under this Act;

(d) a person otherwise employed or engaged in, or in connection with, the administration or enforcement of this Act.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) This section has effect subject to Part VIIA of the *Police Administration Act 1978* to the extent it relates to the civil liability of a person who is or has been a police officer.

(4) In this section:

***exercise***, of a power, includes the purported exercise of the power.

***performance***, of a function, includes the purported performance of the function.

### 337 Power to grant exemptions

(2) The Minister may, by *Gazette* notice, exempt (conditionally or unconditionally) from the application of a specified provision of this Act:

(a) a specified person or persons of a specified class or description; or

(b) specified goods or goods of a specified class or description; or

(c) specified transactions or transactions of a specified class or description.

(3) The Minister may, by instrument in writing, delegate to a named person or the holder from time to time of a specified designation, office or position, his or her power of exemption under subsection (2).

### 338 Regulations

(1) The Administrator may make regulations under this Act.

(3) A regulation may provide for an offence punishable by a penalty not exceeding 100 penalty units for a natural person or 500 penalty units for a body corporate.

## Part 16 Repeals and transitional matters

### 339 Repeals

The enactments specified in Schedule 2 are repealed.

### 340 Savings and transitional provisions

Schedule 3 has effect.

# Schedule 1 Reviewable decisions

section 329A

| Item | Reviewable decision | Affected person |
|---|---|---|
| 1 | A decision of the Director under section 136 or 137 to refuse an application for a licence | The applicant |
| 2 | A decision of the Director under section 138(1) to grant a licence if a person objected to the grant of the licence under section 134(2) or (2A) | The person who objected |
| 3 | A decision of the Director under section 138(1) and (3) to grant a licence subject to terms or conditions | The applicant for the licence<br><br>If a person objected to the grant of the licence under section 134(2) or (2A) – the person who objected |
| 4 | A decision of the Director under section 150(1) to take no further action in relation to a holder of a licence if a notice of objection was lodged under section 147(3) | The Commissioner of Police |
| 5 | A decision of the Director under section 150(2) to exercise a power conferred by section 145 to revoke or suspend a licence, or to vary a term or condition of a licence | The holder of the licence<br><br>If the Director gave a notice to a person other than the holder of the licence under section 149(3) – the person<br><br>If a notice of objection was lodged under section 147(3) – the Commissioner of Police |
| 6 | A decision of the Director under section 152 to refuse an application | The applicant |
| 7 | A decision of the Director under section 259 to refuse to grant a licence | The applicant for the licence |

| Item | Reviewable decision | Affected person |
|---|---|---|
| 8 | A decision of the Director under section 259 to grant a licence, including any decision made by the Director:<br>(a) under section 263(1) as to the premises to which the licence is, or is not, to apply; or<br>(b) under section 264(1) to grant the licence subject to conditions or restrictions; or<br>(c) under section 266 as to the period for which the licence is granted | The applicant for the licence<br>If a person objected to the grant of the licence under section 252(2) or (2A) or 258 – the person who objected |
| 9 | A decision of the Director under section 260 to refuse to renew a licence | The licensee |
| 10 | A decision of the Director under section 260 to renew a licence, including any decision made by the Director:<br>(a) under section 263(1) as to the premises to which the renewed licence is, or is not, to apply; or<br>(b) under section 264(1) to renew the licence subject to conditions or restrictions; or<br>(c) under section 266 as to the period for which the licence is renewed | The applicant<br>If a person objected to the renewal of the licence under section 258 – the person who objected |
| 11 | A decision of the Director under section 264(3) to:<br>(a) make an existing licence subject to a new condition or restriction; or<br>(b) change or remove a condition or restriction to which an existing licence is subject | The person who holds the licence |
| 12 | A decision of the Director under section 267(1) to suspend or revoke a person's licence, or to disqualify a person from holding a licence | The person |

# Schedule 2 Repeals

section 339

| | | |
|---|---|---|
| 1. | Consumer Protection | |
| | *Consumer Protection Ordinance 1978* | No. 41, 1978 |
| | *Consumer Protection Amendment Act 1983* | No. 17, 1983 |
| 2. | Door-to-Door Sales | |
| | *Door to Door Sales Ordinance 1967* | No. 47, 1967 |
| | *Door to Door Sales Ordinance 1973* | No. 14, 1973 |
| | *Door to Door Sales Ordinance (No. 2) 1973* | No. 62, 1973 |
| 3. | False Advertising | |
| | *False Advertising Ordinance 1970* | No. 58, 1970 |
| 4. | Motor Vehicle Dealers | |
| | *Motor Vehicle Dealers Act 1979* | No. 85, 1979 |
| | *Motor Vehicle Dealers Regulations* (comprising Regulations No. 22, 1980 and No. 4, 1981) | |
| 5. | Unordered Goods and Services | |
| | *Unordered Goods and Services Ordinance 1972* | No. 74, 1972 |
| 6. | Trading Stamps | |
| | *Trading Stamp Act, 1904* of the State of South Australia (No. 859 of 1904) so far as that Act applies to the Territory as a law of the Territory | |

# Schedule 3 Savings and transitional provisions

section 340

## Part 1 Transitional matters for period before *Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010*

### 1 Application of *Interpretation Act 1978*

The provisions of this Part do not prejudice the operation in relation to the repeals effected by this Act of section 12 of the *Interpretation Act 1978* so far as that section is consistent with those provisions.

### 3 Door to Door Sales

Notwithstanding the repeal of the enactments specified in paragraph 2 of Schedule 2, the *Door to Door Sales Ordinance 1967* as amended shall, on and after the day on which the repeal takes effect, continue to have effect in relation to agreements to which it applied immediately before that day.

### 4 Motor Vehicle Dealers

(1) In this paragraph, ***appointed day*** means the day on which the repeal of the enactments specified in paragraph 4 of Schedule 2 takes effect.

(2) If it appears to the Commissioner to be desirable to do so having regard to the length of time between:

(a) the end of the period covered by the report on the operation of the *Motor Vehicle Dealers Act 1979* last submitted to the Minister pursuant to section 45 of that Act; and

(b) the appointed day;

the Commissioner shall, as soon as practicable after the appointed day, submit to the Minister a report on the operation of the Act from the end of that period to the appointed day; and section 12(4) of this Act shall apply to the report as it applies to a report under that section.

(3) Licences of individual dealers in force under the *Motor Vehicle Dealers Act 1979* immediately before the appointed day shall be treated as from that day as having been granted under Part X of this Act (and shall be so treated, and of full force and effect under Part 10, notwithstanding that they do not comply as to form or content with the requirements of that Part); and where, immediately

before the appointed day, a single licence under the Act of 1979 is held by 2 or more dealers carrying on business as such in partnership, each of those dealers shall be treated as from that day as holding a licence granted under Part 10 in the terms of that licence.

(4) The Commissioner may issue to a dealer referred to in subparagraph (3) a licence in a form issued under Part 10 endorsed with the terms to which the licence, by virtue of that subparagraph, is subject.

(5) For the purposes of section 129(1), a place at which a licenced dealer carries on business as such immediately before the appointed day shall be treated as from that day as specified in the dealer's licence as it has effect by virtue of subparagraph (3).

(6) In relation to a licence to which subparagraph (3) applies, section 153 shall have effect as if it required the dealer to cause the licence to be exhibited at all times in a conspicuous position at the place where the dealer carries on business as such or, if the dealer carries on business as such at 2 or more places, at whichever of those is the dealer's principal place of business.

(7) Where subparagraph (3) has effect, section 174 shall have effect as if the reference in subsection (1) to each place of business specified in a dealer's licence were a reference to each place of business at which the dealer carries on business as such.

(8) The Register of Motor Vehicle Dealers kept immediately before the appointed day pursuant to section 6 of the *Motor Vehicle Dealers Act 1979* shall be treated as from that day as the Register of Motor Vehicle Dealers kept pursuant to section 155 of this Act.

(9) As from the appointed day, all authorities given for the purposes of section 21 of the *Motor Vehicle Dealers Act 1979* shall cease to have effect.

**5. Unordered Goods and Services**

Notwithstanding its repeal, the *Unordered Goods and Services Ordinance 1972* as amended shall, on and after the day on which the repeal takes effect, continue to have effect in relation to events and matters to which it applied immediately before that day.

**6 Regulations**

(1) Regulations may make further provision of a savings or transitional nature consequential on the repeal of any of the enactments specified in Schedule 2.

(2) A provision referred to in subparagraph (1) shall, if the regulations so provide, have effect despite any other paragraph of this Schedule.

## Part 2 Transitional matters for *Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010*

### 1 Definitions

In this Part:

***amendment Act*** means the *Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010.*

***commencement*** means the commencement of section 13 of the amendment Act.

***new Act*** means the *Consumer Affairs and Fair Trading Act 1990* as in force immediately after the commencement.

***old Act*** means the *Consumer Affairs and Fair Trading Act 1990* as in force immediately before the commencement.

### 2 *Interpretation Act 1978* not affected

This Part does not limit Part III of the *Interpretation Act 1978*.

### 3 Authorised officers

A person who, immediately before the commencement, was an authorised officer for the purposes of a Part of the old Act is taken to be an authorised officer for the same Part of the new Act.

### 4 Proceedings already commenced

(1) The old Act continues to apply to or in relation to any proceedings under or in relation to the old Act that were commenced, but not concluded, before the commencement.

(2) However, to the extent any such proceedings are proceedings for an injunction under section 89 of the old Act, the proceedings are taken, after the commencement, to be proceedings for an injunction under section 232 of the Australian Consumer Law (NT).

**5 Sale price of motor vehicle partly recoverable if certain offence committed**

(1) This paragraph applies if:

(a) before or after the commencement, a person is found guilty of an offence consisting of a contravention of section 44 of the old Act committed by falsely stating:

(i) the year in which a motor vehicle was manufactured or first registered; or

(ii) the model designation of the vehicle; and

(b) a person (the ***purchaser***) purchased the motor vehicle relying on the statement; and

(c) before the commencement, the purchaser had not made an application under section 162(1).

(2) The purchaser may apply to the Commissioner for an order under section 162(2).

(3) The application must be dealt with as if it were made under section 162(1).

**6 Unfair contract terms**

(1) Part 2-3 of the Australian Consumer Law (NT) applies to a contract entered into on or after the commencement.

(2) If an old contract is renewed on or after the commencement, Part 2-3 of the Australian Consumer Law (NT) applies to the contract on and from the day on which the renewal takes effect, in relation to conduct that occurs on or after that day.

(3) If a term of an old contract (to which subparagraph (2) has not already applied) is varied on or after the commencement:

(a) Part 2-3 of the Australian Consumer Law (NT) applies to the term as varied on and from the day on which the variation takes effect, in relation to conduct that occurs on or after that day; and

(b) sections 23(2) and 27 of the Australian Consumer Law (NT) apply to the contract.

(4) In this paragraph:

***old contract*** means a contract entered into before the commencement.

**7 Requests for itemised bills**

Section 101 of the Australian Consumer Law (NT) does not apply in relation to a supply of services to the extent the services were supplied before the commencement.

**8 Pecuniary penalties – having regard to previous findings**

The reference in section 224(2)(c) of the Australian Consumer Law (NT) to proceedings under Chapter 4 or Part 5-2 of the Australian Consumer Law (NT) includes a reference to proceedings, commenced before the commencement, under or in relation to:

(a) Part 6 of the old Act; or

(b) Part VC or VI of the *Trade Practices Act 1974* (Cth); or

(c) equivalent provisions of a law of a State or another Territory.

**Part 3 Transitional matters for *Statute Law Amendment (Directors' Liability) Act 2015***

**1 Offences – before and after commencement**

(1) Section 330, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new section***) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 4 of that Act (the ***commencement***) only if:

(a) all the conduct constituting the relevant offence occurred after the commencement; and

(b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

(2) Section 330, as in force before the commencement:

(a) continues to apply in relation to offences committed by a body corporate before the commencement; and

(b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subparagraph (1), the new section does not apply.

## Part 4 Transitional matters for *Justice and Licensing Legislation Further Amendment Act 2022*

### 1 Definitions

In this Part:

***amending Act*** means Part 3, Division 3 of the *Justice and Licensing Legislation Further Amendment Act 2022*.

***commencement*** means the commencement of the amending Act.

### 2 Delegations

A delegation by the Commissioner of any of the Commissioner's powers or functions under Part 10 or 14, other than a power or function under section 162, that is in force immediately before the commencement, is taken to be a delegation by the Director made under section 17B.

### 3 Authorised officers

(1) A person who, immediately before the commencement, is an authorised officer for Parts 10 and 14 is taken to have been appointed by the Director in relation to those Parts under section 18(4) as in force after the commencement.

(2) A person who, immediately before the commencement, is an authorised officer for this Act is taken to have been appointed by the Commissioner in relation to this Act, other than Parts 10 and 14, under section 18(3) as in force after the commencement.

### 4 Pending applications

(1) Subparagraph (2) applies in relation to an application if, before the commencement:

(a) the application had been made to the Commissioner under Part 10 or 14 (other than section 162); and

(b) the Commissioner had not made a decision on the application.

(2) The application must be dealt with and decided in accordance with this Act as in force immediately before the commencement.

(3) The decision made by the Commissioner on the application is taken to be a decision made by the Director under this Act.

**5 Pending appeals**

(1) Subparagraph (2) applies in relation to an appeal if, before the commencement:

(a) the appeal had been commenced under this Act; and

(b) a decision on the appeal had not been made.

(2) The appeal must be dealt with in accordance with this Act as in force immediately before the commencement.

**6 Appeals not yet commenced**

(1) Subparagraph (2) applies in relation to a decision if, before the commencement:

(a) the decision had been made by the Commissioner and the period for appealing the decision had not expired; and

(b) an appeal had not been commenced.

(2) A person who would have been entitled to appeal against the decision under this Act as in force immediately before the commencement may do so under this Act as in force after the commencement as if the decision had been made by the Director.

**7 Continuation of ongoing documents and actions**

(1) On the commencement, an ongoing document continues with the same force and effect as if it had been issued by, or given to, the Director.

(2) On the commencement, an ongoing action continues with the same force and effect as if it had been done by, or in relation to, the Director.

(3) This paragraph applies subject to the other provisions of this Part.

(4) In this paragraph, a reference to something done before the commencement includes a reference to something done after the commencement in accordance with this Part as if it had been done before the commencement.

(5) In this paragraph:

***ongoing action*** means an action or thing that:

(a) was done by, or in relation to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the Director; and

(b) immediately before the commencement, had ongoing effect.

***ongoing document*** means a document that:

(a) was issued by, or given to, the Commissioner before the commencement in or for the exercise of a power or performance of a function under this Act that, on the commencement, is conferred on the Director; and

(b) immediately before the commencement, had ongoing effect.

**8 Offence provisions – before and after commencement**

(1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement.

(2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.

(3) For this paragraph, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

(4) In this paragraph:

***offence provisions*** means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

## Part 5 Transitional matters for *Statute Law Amendment (NTCAT Conferral of Jurisdiction) Act 2023*

**1 Definitions**

In this Part:

***amending Act*** means the *Statute Law Amendment (NTCAT Conferral of Jurisdiction) Act 2023.*

***commencement*** means the commencement of Part 8 of the amending Act.

***former Act*** means this Act as in force immediately before the commencement.

***former appeal provisions*** means section 139, 151 or 269 of the former Act.

**2 Fair reporting objections and orders made before commencement**

(1) Section 119 of the former Act continues to apply after the commencement in relation to a notice of objection served on a reporting agency or trader by a person under section 119(1) of the former Act before the commencement.

(2) Section 121 of the former Act continues to apply after the commencement in relation to an order made by the Local Court under section 119(6) of the former Act before the commencement.

**3 Fair reporting appeals not commenced before commencement**

(1) This paragraph applies to a person if, immediately before the commencement, the person:

(a) was entitled to appeal to the Local Court under section 119(5) of the former Act; and

(b) had not yet commenced an appeal.

(2) The person may appeal to the Local Court under section 119(5) of the former Act, as if Part 8 of the amending Act had not commenced.

(3) The Local Court must hear and determine the person's appeal in accordance with section 119(5) and (6) of the former Act, as if Part 8 of the amending Act had not commenced.

(4) Section 119(7) of the former Act continues to apply after the commencement in relation to the person's appeal.

(5) Section 121 of the former Act continues to apply after the commencement in relation to any order that is made by the Local Court under section 119(6) of the former Act on the person's appeal.

**4 Fair reporting appeals not determined before commencement**

(1) This paragraph applies in relation to an appeal to the Local Court that:

(a) was commenced by a person under section 119(5) of the former Act; and

(b) had not been finally determined by the Local Court before the commencement.

(2) The Local Court must continue to hear and determine the person's appeal in accordance with section 119(5) and (6) of the former Act, as if Part 8 of the amending Act had not commenced.

(3) Section 119(7) of the former Act continues to apply after the commencement in relation to the person's appeal.

(4) Section 121 of the former Act continues to apply after the commencement in relation to any order that is made by the Local Court under section 119(6) of the former Act on the person's appeal.

**5 NTCAT review limited to decisions made after commencement**

Section 329A applies only in relation to a reviewable decision that is made after the commencement.

**6 Other appeals not commenced before commencement**

(1) This paragraph applies to a person if, immediately before the commencement, the person:

(a) was entitled to appeal to the Local Court against a decision under the former appeal provisions; and

(b) had not yet commenced an appeal against the decision.

(2) The person may appeal to the Local Court against the decision in accordance with the former appeal provisions, as if Part 8 of the amending Act had not commenced.

(3) The Local Court must hear and determine the person's appeal in accordance with the former appeal provisions, as if Part 8 of the amending Act had not commenced.

**7 Other appeals not determined before commencement**

(1) Subparagraph (2) applies in relation to an appeal to the Local Court that:

(a) was commenced by a person under the former appeal provisions; and

(b) had not been finally determined by the Local Court before the commencement.

(2) The Local Court must continue to hear and determine the person's appeal in accordance with the former appeal provisions, as if Part 8 of the amending Act had not commenced.

# ENDNOTES

## 1 KEY

Key to abbreviations

**amd = amended**
**app = appendix**
**bl = by-law**
**ch = Chapter**
**cl = clause**
**div = Division**
**exp = expires/expired**
**f = forms**
***Gaz* = *Gazette***
**hdg = heading**
**ins = inserted**
**lt = long title**
**nc = not commenced**
**od = order**
**om = omitted**
**pt = Part**
**r = regulation/rule**
**rem = remainder**
**renum = renumbered**
**rep = repealed**
**s = section**
**sch = Schedule**
**sdiv = Subdivision**
**SL = Subordinate Legislation**
**sub = substituted**

## 2 LIST OF LEGISLATION

***Consumer Affairs and Fair Trading Act 1990* (Act No. 49, 1990)**

| | |
|---|---|
| Assent date | 4 October 1990 |
| Commenced | ss 1 to 96, 123, 124, 232, 239 and sch 2 paras 1, 3, 5 and 6: 1 April 1991 (*Gaz* S20, 28 March 1991); ss 226 to 231: 1 April 1992 (*Gaz* G12, 25 March 1992, p 2); ss 97 to 113: 1 July 1992 (*Gaz* G23, 10 June 1992, p 3); sch 2 para 2: 9 September 1992 (*Gaz* G36, 9 September 1992, p 3); ss 125 to 175, 177 to 184, sch 2 para 4: 14 December 1992 (*Gaz* G49, 9 December 1992, p 6); s 176: 26 February 1993 (*Gaz* S19, 26 February 1993); ss 114 to 122: 1 May 1993 (*Gaz* G17, 28 April 1993, p 2); ss 185 to 225: 1 July 1995 (*Gaz* G26, 28 June 1995, p 2) |

***Public Sector Employment and Management (Consequential Amendments) Act 1993* (Act No. 28, 1993)**

| | |
|---|---|
| Assent date | 30 June 1993 |
| Commenced | 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz* S53, 29 June 1993) |

***Consumer Affairs and Fair Trading Amendment Act 1993* (Act No. 43, 1993)**

| | |
|---|---|
| Assent date | 22 September 1993 |
| Commenced | 22 September 1993 |

***Local Government (Consequential Amendments) Act 1993* (Act No. 84, 1993)**

| | |
|---|---|
| Assent date | 31 December 1993 |
| Commenced | 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz* S35, 20 May 1994) |

***Statute Law Revision Act 1994* (Act No. 50, 1994)**

| | |
|---|---|
| Assent date | 20 September 1994 |
| Commenced | 20 September 1994 |

***Consumer Affairs and Fair Trading Amendment Act 1996* (Act No. 9, 1996)**

| | |
|---|---|
| Assent date | 20 March 1996 |
| Commenced | s 15: 1 November 1996 (*Gaz* G35, 28 August 1996, p 2); rem: 17 April 1996 (*Gaz* G16, 17 April 1996, p 5) |

***Sentencing (Consequential Amendments) Act 1996* (Act No. 17, 1996)**

| | |
|---|---|
| Assent date | 19 April 1996 |
| Commenced | s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996) |

***Consumer Affairs and Fair Trading Amendment Act 1997* (Act No. 13, 1997)**

| | |
|---|---|
| Assent date | 11 April 1997 |
| Commenced | 1 July 1998 (*Gaz* G28, 1 July 1998, p 1) |

***Mental Health and Related Services (Consequential Amendments) Act 1999* (Act No. 11, 1999)**

| | |
|---|---|
| Assent date | 25 March 1999 |
| Commenced | 1 February 2000 (s 2, s 2 *Mental Health and Related Services Act 1998* (Act No. 63, 1998) and *Gaz* G3, 26 January 2000, p 2) |

***Statute Law Revision Act 2000* (Act No. 19, 2000)**

| | |
|---|---|
| Assent date | 6 June 2000 |
| Commenced | 12 July 2000 (*Gaz* G27, 12 July 2000, p 2) |

***Corporations Reform (Consequential Amendments NT) Act 2001* (Act No. 17, 2001)**

| | |
|---|---|
| Assent date | 29 June 2001 |
| Commenced | 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth *Gaz* S285, 13 July 2001) |

***Fines and Penalties (Recovery) (Consequential Amendments) Act 2001* (Act No. 60, 2001)**

| | |
|---|---|
| Assent date | 11 December 2001 |
| Commenced | 1 January 2002 (s 2, s 2 *Fines and Penalties (Recovery) Act 2001* (Act No. 59, 2001) and *Gaz* G50, 19 December 2001, p 3) |

***Statute Law Revision Act 2002* (Act No. 18, 2002)**

| | |
|---|---|
| Assent date | 7 June 2002 |
| Commenced | 7 June 2002 |

***Consumer Affairs and Fair Trading Amendment Act 2002* (Act No. 41, 2002)**

| | |
|---|---|
| Assent date | 13 September 2002 |
| Commenced | ss 34 to 36, 59, 60, 83, 84: 1 July 2006 (*Gaz* G20, 17 May 2006, p 6); rem: 1 December 2002 (*Gaz* G47, 27 November 2002, p 2) |

**Amending Legislation**

***Statute Law Revision Act (No. 2) 2003* (Act No. 44, 2003)**

| | |
|---|---|
| Assent date | 7 July 2003 |
| Commenced | 7 July 2003 |

***Statute Law Revision Act 2005* (Act No. 44, 2005)**

| | |
|---|---|
| Assent date | 14 December 2005 |
| Commenced | 14 December 2005 |

***Statute Law Revision Act 2003*** **(Act No. 12, 2003)**

| | |
|---|---|
| Assent date | 18 March 2003 |
| Commenced | 18 March 2003 |

***Consumer Affairs and Fair Trading Amendment Act 2003*** **(Act No. 2, 2003)**

| | |
|---|---|
| Assent date | 18 March 2003 |
| Commenced | 1 May 2003 (*Gaz* G17, 30 April 2003, p 3) |

***Statute Law Revision Act (No. 2) 2003*** **(Act No. 44, 2003)**

| | |
|---|---|
| Assent date | 7 July 2003 |
| Commenced | 7 July 2003 |

***Consumer Affairs and Fair Trading Amendment Act 2004*** **(Act No. 25, 2004)**

| | |
|---|---|
| Assent date | 28 April 2004 |
| Commenced | 28 April 2004 |

***Justice Portfolio (Miscellaneous Amendments) Act 2005*** **(Act No. 20, 2005)**

| | |
|---|---|
| Assent date | 6 May 2005 |
| Commenced | 13 July 2005 (*Gaz* G28, 13 July 2005, p 3) |

***Consumer Affairs and Fair Trading Amendment Act 2006*** **(Act No. 23, 2006)**

| | |
|---|---|
| Assent date | 18 September 2006 |
| Commenced | s 4: 8 November 2006 (*Gaz* G45, 8 November 2006, p 2); ss 18 and 19: 1 January 2011 (s 2, s 2 *Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010* (Act No. 41, 2010) and *Gaz* S71, 20 December 2010); rem: nc (rep by Act No. 41, 2010 before comm) |

**Amending Legislation**

***Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010*** **(Act No. 41, 2010)**

| | |
|---|---|
| Assent date | 8 December 2010 |
| Commenced | 1 January 2011 (*Gaz* S71, 20 December 2010) |

***Statute Law Revision Act 2007*** **(Act No. 4, 2007)**

| | |
|---|---|
| Assent date | 8 March 2007 |
| Commenced | 8 March 2007 |

***Statute Law Revision Act 2008*** **(Act No. 6, 2008)**

| | |
|---|---|
| Assent date | 11 March 2008 |
| Commenced | 11 March 2008 |

***Justice Legislation Amendment Act (No. 2) 2008*** **(Act No. 27, 2008)**

| | |
|---|---|
| Assent date | 17 October 2008 |
| Commenced | pt 2, div 3: 1 January 2006; rem: 17 October 2008 (s 2) |

***Justice Legislation Amendment (Penalties) Act 2010*** **(Act No. 12, 2010)**

| | |
|---|---|
| Assent date | 20 May 2010 |
| Commenced | 1 July 2010 (*Gaz* G24, 16 June 2010, p 2) |

***Consumer Credit (National Uniform Legislation) Implementation Act 2010* (Act No. 14, 2010)**

| | |
|---|---|
| Assent date | 20 May 2010 |
| Commenced | 1 April 2010 (s 2 and s 2 *National Consumer Credit Protection Act 2009* (Cth Act No. 134, 2009)) |

***Statute Law Revision Act 2010* (Act No. 29, 2010)**

| | |
|---|---|
| Assent date | 9 September 2010 |
| Commenced | 13 October 2010 (*Gaz* G41, 13 October 2010, p 2) |

***Personal Property Securities (National Uniform Legislation) Implementation Act 2010* (Act No. 30, 2010)**

| | |
|---|---|
| Assent date | 9 September 2010 |
| Commenced | ss 58 to 60: 30 January 2012 (S2, 24 January 2012); rem: 25 November 2011 (*Gaz*, S68, 25 November 2011) |

***Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010* (Act No. 41, 2010)**

| | |
|---|---|
| Assent date | 8 December 2010 |
| Commenced | 1 January 2011 (*Gaz* S71, 20 December 2010) |

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010* (Act No. 40, 2010)**

| | |
|---|---|
| Assent date | 18 November 2010 |
| Commenced | 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4) |

***Justice and Other Legislation Amendment Act 2011* (Act No. 25, 2011)**

| | |
|---|---|
| Assent date | 31 August 2011 |
| Commenced | 21 September 2011 (*Gaz* G38, 21 September 2011, p 5) |

***Penalties Amendment (Miscellaneous) Act 2013* (Act No. 23, 2013)**

| | |
|---|---|
| Assent date | 12 July 2013 |
| Commenced | 28 August 2013 (*Gaz* G35, 28 August 2013, p 2) |

***Consumer Affairs and Fair Trading Amendment Act 2014* (Act No. 25, 2014)**

| | |
|---|---|
| Assent date | 4 July 2014 |
| Commenced | 4 July 2014 |

***Statute Law Amendment (Directors' Liability) Act 2015* (Act No. 26, 2015)**

| | |
|---|---|
| Assent date | 18 September 2015 |
| Commenced | 14 October 2015 (*Gaz* G41, 14 October 2015, p 3) |

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**

| | |
|---|---|
| Assent date | 6 April 2016 |
| Commenced | 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016) |

***Consumer Affairs and Fair Trading Legislation Amendment Act 2017* (Act No. 11, 2017)**

| | |
|---|---|
| Assent date | 31 May 2017 |
| Commenced | 26 July 2017 (*Gaz* G30, 26 July 2017, p 3) |

***Statute Law Amendment Act 2018* (Act No. 10, 2018)**
Assent date 23 May 2018
Commenced 20 June 2018 (*Gaz* S41, 20 June 2018)s

***Local Government Act 2019* (Act No. 39, 2019)**
Assent date 13 December 2019
Commenced pt 8.6: 1 July 2022; rem: 1 July 2021 (*Gaz* S27, 30 June 2021)

**Amending Legislation**

***Statute Law Revision Act 2020* (Act No. 26, 2020)**
Assent date 19 November 2020
Commenced 20 November 2020 (s 2)

***Local Government Amendment Act 2021* (Act No. 15, 2021)**
Assent date 25 May 2021
Commenced 26 May 2021 (s 2)

***Statute Law Amendment (Territory Economic Reconstruction) Act 2021* (Act No. 19, 2021)**
Assent date 31 August 2021
Commenced pt 6: 2 October 2021; rem: 29 September 2021 (*Gaz* G39, 29 September 2021, p 1)

***Statute Law Amendment (Territory Economic Reconstruction) Act 2022* (Act No. 5, 2022)**
Assent date 14 April 2022
Commenced pt 7: 25 May 2023 (Gaz G11, 25 May 2023, p 2); rem: 25 May 2022 (*Gaz* G21, 25 May 2022, p 1)

***Justice and Licensing Legislation Further Amendment Act 2022* (Act No. 21, 2022)**
Assent date 31 October 2022
Commenced pt 3: 1 February 2023; rem: 21 December 2022 (*Gaz* G50, 21 December 2022, p 1)

***Statute Law Amendment (NTCAT Conferral of Jurisdiction) Act 2023* (Act No. 24, 2023)**
Assent date 21 September 2023
Commenced 27 November 2023 (*Gaz* G24, 23 November 2023, p 2)

## 3 SAVINGS AND TRANSITIONAL PROVISIONS

s 16 *Consumer Affairs and Fair Trading Amendment Act 1996* (Act No. 9, 1996)
s 126 *Consumer Affairs and Fair Trading Amendment Act 2002* (Act No. 41, 2002)
s 4 *Consumer Affairs and Fair Trading Amendment Act 2003* (Act No. 2, 2003)

## 4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 9, 30, 46, 125, 163, 164, 165, 168, 169, 245, 332, 328, 336 and 338 and sch 3.

## 5 LIST OF AMENDMENTS

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| lt | amd No. 9, 1996, s 4; No. 27, 2008, s 4<br>sub No. 41, 2010, s 4 |
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| s 144 | amd No. 41, 2002, s 38; No. 12, 2010, s 3; No. 41, 2010, s 24; No. 10, 2018, s 6; No. 21, 2022, s 35 |
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| s 154 | amd No. 41, 2010, s 24; No. 21, 2022, s 35 |
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