

NORTHERN TERRITORY OF AUSTRALIA
CONSUMER AFFAIRS AND FAIR TRADING AMENDMENT ACT 2003

Act No. 2 of 2003

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 2 of 2003

AN ACT

to amend the *Consumer Affairs and Fair Trading Act*

[Assented to 18 March 2003]

[Second reading 20 August 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Consumer Affairs and Fair Trading Amendment Act 2003*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. New section

The *Consumer Affairs and Fair Trading Act* is amended by inserting after section 68 the following:

"68A. 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 68 by reason only that the term excludes, restricts or modifies, or has the effect of excluding, restricting or modifying –

- (a) the application of section 66 to the supply of the recreational services under the contract;

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- (b) the exercise of a right conferred by section 66 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 breach of a warranty implied by section 66 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);
- (b) verbally (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 verbally,

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

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- (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.

4. No retrospective effect

Section 68A of the *Consumer Affairs and Fair Trading Act* as amended by this Act does not apply in relation to a contract entered into before the commencement of this Act.