



STATUTES AMENDMENT (CONSUMER AFFAIRS) ACT 1998

No. 21 of 1998

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ANNO QUADRAGESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1998

No. 21 of 1998

An Act to amend the Building Work Contractors Act 1995, the Business Names Act 1996, the Consumer Transactions Act 1972, the Conveyancers Act 1994, the Land Agents Act 1994, the Land Valuers Act 1994, the Plumbers, Gas Fitters and Electricians Act 1995, the Residential Tenancies Act 1995, the Retirement Villages Act 1987, the Second-hand Vehicle Dealers Act 1995, the Security and Investigation Agents Act 1995 and the Travel Agents Act 1986.

[Assented to 2 April 1998]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Consumer Affairs) Act 1998*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF BUILDING WORK CONTRACTORS ACT 1995**

Amendment of s. 3—Interpretation

4. Section 3 of the principal act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) For the purposes of Part 5, if a building work contractor and a person make an arrangement under which domestic building work at a site is to be performed in stages by the contractor under separate contracts, the contracts to which the arrangement relates will be taken to be a single domestic building work contract.

Amendment of s. 24—Participation of assessors in disciplinary proceedings

5. Section 24 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of s. 39—Participation of assessors in proceedings

6. Section 39 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a judicial officer of the Court".

Amendment of Sched. 1—Appointment and Selection of Assessors for District Court Proceedings under Part 4

7. Schedule 1 of the principal Act is amended by striking out from subclause (4) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 2—Appointment and Selection of Assessors for Magistrates Court or District Court Proceedings under Part 5

8. Schedule 2 of the principal Act is amended by striking out from subclause (4) "the judicial officer who is to preside at the proceedings" and substituting "a judicial officer of the Court".

Amendment of Sched. 3—Repeal and Transitional Provisions

9. Schedule 3 of the principal Act is amended by inserting after subclause (6) of clause 2 the following subclauses:

(6a) If a person—

- (a) who was disqualified from being licensed or registered under the repealed Act immediately before the commencement of this Act; and
- (b) who remains disqualified at the commencement of this subclause,

is employed or otherwise engaged in the business of a building work contractor during the period of that disqualification, both that person and the building work contractor are guilty of an offence.

Maximum penalty: \$5 000.

(6b) Subclause (6a) applies after its commencement, whether the contract of employment or other engagement was entered into before or after its commencement.

PART 3**AMENDMENT OF BUSINESS NAMES ACT 1996****Amendment of s. 11—Register and inspection of register**

10. Section 11 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) The Commission may include further information on the register at the request or with the consent of the person to whom the information relates.

PART 4**AMENDMENT OF CONSUMER TRANSACTIONS ACT 1972****Repeal of s. 4**

11. Section 4 (previously section 6AA) of the principal Act is repealed.

PART 5
AMENDMENT OF CONVEYANCERS ACT 1994

Amendment of s. 7—Entitlement to be registered

12. Section 7 of the principal Act is amended by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

- (a) has—
 - (i) the qualifications required by regulation; or
 - (ii) subject to the regulations, the qualifications that the Commissioner considers appropriate; and.

Insertion of s. 7A

13. The following section is inserted after section 7 of the principal Act:

Appeals

7A. (1) An applicant for registration may appeal to the Court against a decision of the Commissioner refusing the application.

(2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against or such longer period as the Court may allow.

(3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.

(4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

(5) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court determines, by affidavit.

(6) The Court may, on the hearing of an appeal—

- (a) affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate; and
- (b) make any other order that the case requires (including an order for costs).

Amendment of s. 48—Participation of assessors in disciplinary proceedings

14. Section 48 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 1—Appointment and Selection of Assessors for Court

15. Schedule 1 of the principal Act is amended by striking out from subclause (5) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

PART 6
AMENDMENT OF LAND AGENTS ACT 1994

Amendment of s. 8—Entitlement to be registered

16. Section 8 of the principal Act is amended by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

- (a) has—
 - (i) the qualifications required by regulation; or
 - (ii) subject to the regulations, the qualifications that the Commissioner considers appropriate; and.

Insertion of s. 8A

17. The following section is inserted after section 8 of the principal Act:

Appeals

8A. (1) An applicant for registration may appeal to the Court against a decision of the Commissioner refusing the application.

(2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against or such longer period as the Court may allow.

(3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.

(4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

(5) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court determines, by affidavit.

(6) The Court may, on the hearing of an appeal—

- (a) affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate; and
- (b) make any other order that the case requires (including an order for costs).

Amendment of s. 46—Participation of assessors in disciplinary proceedings

18. Section 46 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 1—Appointment and Selection of Assessors for Court

19. Schedule 1 of the principal Act is amended by striking out from subclause (5) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

**PART 7
AMENDMENT OF LAND VALUERS ACT 1994**

Amendment of s. 10—Participation of assessors in disciplinary proceedings

20. Section 10 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 1—Appointment and Selection of Assessors for Court

21. Schedule 1 of the principal Act is amended by striking out from subclause (5) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

**PART 8
AMENDMENT OF PLUMBERS, GAS FITTERS AND ELECTRICIANS ACT 1995**

Amendment of s. 23—Participation of assessors in disciplinary proceedings

22. Section 23 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 1—Appointment and Selection of Assessors for Court

23. Schedule 1 of the principal Act is amended by striking out from subclause (5) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

**PART 9
AMENDMENT OF RESIDENTIAL TENANCIES ACT 1995**

Amendment of s. 36—Enforcement of orders

24. Section 36 of the principal Act is amended—

(a) by striking out from subsection (1) "the Magistrates Court and enforced as an order of that Court" and substituting "the appropriate court and enforced as an order of that court";

(b) by inserting after subsection (2) the following subsection:

(3) In this section—

"appropriate court" means—

(a) if the order of the Tribunal is for a monetary amount above the jurisdictional limit of the Magistrates Court for a monetary claim founded on contract—the District Court;

(b) in any other case—the Magistrates Court.

Insertion of s. 105A

25. The following section is inserted in Part 7 after section 105 of the principal Act:

Implied terms

105A. The regulations may prescribe provisions that will be taken to be terms of all rooming house agreements.

Amendment of s. 119—Tribunal may exempt agreement or premises from provision of Act

26. Section 119 of the principal Act is amended by striking out from subsection (1) "a residential tenancy agreement or prospective residential tenancy agreement" and substituting "an agreement or prospective agreement".

PART 10**AMENDMENT OF RETIREMENT VILLAGES ACT 1987****Amendment of s. 9—Contractual rights of residents**

27. Section 9 of the principal Act is amended by striking out from subsection (4a) "The charge" and substituting "Despite the *Real Property Act 1886*, the charge".

PART 11**AMENDMENT OF SECOND-HAND VEHICLE DEALERS ACT 1995****Amendment of s. 23—Duty to repair**

28. Section 23 of the principal Act is amended—

(a) by striking out paragraph (c) of subsection (3);

(b) by inserting after paragraph (a) of subsection (7) the following paragraph:

(ab) a defect in a vehicle sold—

- (i) if the year of first registration of the vehicle was more than 15 years before the year in which the sale was made; or
- (ii) if the vehicle had been driven more than 200 000 kilometres before the sale; or.

Amendment of s. 25—Participation of assessors in proceedings

29. Section 25 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a magistrate".

Amendment of s. 30—Participation of assessors in disciplinary proceedings

30. Section 30 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 1—Appointment and Selection of Assessors for Magistrates Court

31. Schedule 1 of the principal Act is amended by striking out from subclause (4) "the judicial officer who is to preside at the proceedings" and substituting "a magistrate".

Amendment of Sched. 2—Appointment and Selection of Assessors for District Court

32. Schedule 2 of the principal Act is amended by striking out from subclause (4) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

PART 12
AMENDMENT OF SECURITY AND INVESTIGATION AGENTS ACT 1995

Insertion of s. 12A

33. The following section is inserted in Part 3 of the principal Act before section 13:

Employment of agents

12A. A person (whether licensed under this Act or not) must not employ another as an agent under a contract of service to perform functions of a particular kind unless that other person holds a licence authorising him or her to personally perform functions of that kind.

Maximum penalty: \$20 000.

Amendment of s. 28—Participation of assessors in disciplinary proceedings

34. Section 28 of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 1—Appointment and Selection of Assessors for Court

35. Schedule 1 of the principal Act is amended by striking out from subclause (5) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched. 2—Repeal and Transitional Provisions

36. Schedule 2 of the principal Act is amended by inserting after subclause (3) of clause 2 the following subclauses:

(4) If a person—

(a) who was disqualified from being licensed under the repealed Act immediately before the commencement of this Act; and

(b) who remains disqualified at the commencement of this subclause,

is employed or otherwise engaged in the business of an agent during the period of that disqualification, both that person and the agent are guilty of an offence.

Maximum penalty: \$5 000.

(5) Subclause (4) applies after its commencement, whether the contract of employment or other engagement was entered into before or after its commencement.

PART 13
AMENDMENT OF TRAVEL AGENTS ACT 1986

Amendment of s. 18A—Participation of assessors in disciplinary proceedings

37. Section 18A of the principal Act is amended by striking out "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

Amendment of Sched.—Appointment and Selection of Assessors for District Court

38. The Schedule of the principal Act is amended by striking out from subclause (4) "the judicial officer who is to preside at the proceedings" and substituting "a Judge of the Court".

SCHEDULE
Further Amendments

Provision Amended	How Amended
1. Building Work Contractors Act 1995	
Section 25(1)(b)	Strike out "\$8 000" and substitute "\$20 000".
Section 48	Strike out the penalty provision and substitute: Maximum penalty: (a) If the person made the statement knowing that it was false or misleading—\$10 000. (b) In any other case—\$2 500.
Section 58(1)	Strike out this subsection and substitute: (1) Proceedings for an offence against this Act must be commenced— (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the <i>Summary Procedure Act 1921</i> ; (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
2. Consumer Transaction Act 1972	
Section 14 (previously section 45(2))	Strike out this section.
3. Conveyancers Act 1994	
Section 5	In each case, strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 10	
Section 11	
Section 12	
Section 15(1)	
Section 15(2)	
Section 15(3)	
Section 18(4)	
Section 18(5)	
Section 23(1)	
Section 23(2)	
Section 23(3)	
Section 23(4)	
Section 24(3)	
Section 26(2)	
Section 26(3)	
Section 27	
Section 28(1)	
Section 28(2)	
Section 30	

Section 49(1)(b)	Strike out "\$8 000" and substitute "\$20 000".
Section 50(1)	In each case, strike out the penalty provision and substitute: Maximum penalty: \$35 000 or imprisonment for 6 months.
Section 50(2)	
Section 56	Strike out the penalty provision and substitute: Maximum penalty: (a) If the person made the statement knowing that it was false or misleading—\$10 000. (b) In any other case—\$2 500.
Section 63(1)	Strike out this subsection and substitute: (1) Proceedings for an offence against this Act must be commenced— (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the <i>Summary Procedure Act 1921</i> ; (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
Section 67(2)(e)	Strike out "a division 7 fine" and substitute "\$2 500".
Section 67(2)(f)	Strike out " a division 7 fee" and substitute "\$210".
4. Land Agents Act 1994	
Section 6(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 10	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 11(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 11(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 13(1)	In each case, strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 13(2)	
Section 13(3)	
Section 16(4)	
Section 16(5)	
Section 21(1)	
Section 21(2)	
Section 21(3)	
Section 21(4)	
Section 22(3)	
Section 24(2)	
Section 24(3)	
Section 25	
Section 26(1)	
Section 26(2)	
Section 28	
Section 47(1)(b)	Strike out "\$8 000" and substitute "\$20 000".
Section 48(1)	In each case, strike out the penalty provision and substitute: Maximum penalty: \$35 000 or imprisonment for 6 months.
Section 48(2)	

Section 54	Strike out the penalty provision and substitute: Maximum penalty: (a) If the person made the statement knowing that it was false or misleading—\$10 000. (b) In any other case—\$2 500.
Section 61(1)	Strike out this subsection and substitute: (1) Proceedings for an offence against this Act must be commenced— (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the <i>Summary Procedure Act 1921</i> ; (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
Section 65(2)(f)	Strike out "a division 7 fine" and substitute "\$2 500".
Section 65(2)(g)	Strike out "a division 7 fee" and substitute "\$210".
5. Land Valuers Act 1994	
Section 5	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 6	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 11(1)(b)	Strike out "\$8 000" and substitute "\$20 000".
Section 12(1)	Strike out the penalty provision and substitute: Maximum penalty: \$35 000 or imprisonment for 6 months.
Section 12(2)	Strike out the penalty provision and substitute: Maximum penalty: \$35 000 or imprisonment for 6 months.
Section 24(2)(c)	Strike out "a division 7 fine" and substitute "\$2 500".
6. Plumbers, Gas Fitters and Electricians Act 1995	
Section 6(1)	In each case, strike out the penalty provision and substitute:
Section 12	Maximum penalty: \$20 000.
Section 13	Strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 24(1)(b)	Strike out "\$8 000" and substitute "\$20 000".
Section 25	Strike out the penalty provision and substitute: Maximum penalty: \$35 000 or imprisonment for 6 months.
Section 32	Strike out the penalty provision and substitute: Maximum penalty: (a) If the person made the statement knowing that it was false or misleading—\$10 000. (b) In any other case—\$2 500.
Section 33	Strike out the penalty provision and the expiation fee and substitute: Maximum penalty: \$2 500. Expiation fee: \$80.

Section 40(1)	Strike out this subsection and substitute: (1) Proceedings for an offence against this Act must be commenced— (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the <i>Summary Procedure Act 1921</i> ; (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
Section 44(2)(d)	Strike out "a division 7 fine" and substitute "\$2 500".
Section 44(2)(e)	Strike out " a division 7 fee" and substitute "\$210".
7. Retirement Villages Act 1987	
Section 4(4)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 6(6)	Strike out the penalty provision and substitute: Maximum penalty: \$35 000.
Section 7(8)	In each case, strike out the penalty provision and substitute:
Section 8(3)	Maximum penalty: \$10 000.
Section 8(5)	Strike out the penalty provision and substitute: Maximum penalty: \$35 000.
Section 10(11)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 10AA(3)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 12(1)	In each case, strike out the penalty provision and substitute:
Section 12(2)	Maximum penalty: \$2 500.
Section 13(7)	
Section 13(8)	
Section 13(10)	
Section 14(10)	
Section 15(2)	Strike out the penalty provision and substitute: Maximum penalty: \$35 000.
Section 16(4)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 18(1)	Strike out the penalty provision and substitute: Maximum penalty: \$35 000.
Section 21A(3)	Strike out "a division 7 fine" and insert "a fine not exceeding \$2 500".
Section 22(1)	Strike out this subsection.
Section 23(2)(c)	Strike out "a division 7 fine" and substitute "\$2 500".
Schedule 3, clause 5(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Schedule 3, clause 6(6)	Strike out the penalty provision and substitute: Maximum penalty: \$750.

8. Second-hand Vehicle Dealers Act 1995

Section 7(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 13	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 14(1)	In each case, strike out the penalty provision and the expiation fee and substitute: Maximum penalty: \$2 500. Expiation fee: \$105.
Section 14(5)	
Section 16(1)	
Section 16(5)	In each case, strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 16(6)	
Section 16(7)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 17(3)	Strike out the penalty provision and the expiation fee and substitute: Maximum penalty: \$2 500. Expiation fee: \$105.
Section 17(4)	In each case, strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 17(5)	
Section 17(6)	
Section 18	
Section 20(1)	
Section 20(3)	Strike out the penalty provision and the expiation fee and substitute: Maximum penalty: \$2 500. Expiation fee: \$105.
Section 20(5)	
Section 20(6)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 21	In each case, strike out the penalty provision and the expiation fee and substitute: Maximum penalty: \$2 500. Expiation fee: \$105.
Section 22(1)	
Section 22(2)	
Section 31(1)(b)	Strike out "\$8 000" and substitute "\$20 000".
Section 32(1)	In each case, strike out the penalty provision and substitute: Maximum penalty: \$35 000 or imprisonment for 6 months.
Section 32(2)	
Section 33(3)	In each case, strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 33(4)	
Section 33(5)	
Section 34(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 41	Strike out the penalty provision and substitute: Maximum penalty: (a) If the person made the statement knowing that it was false or misleading—\$10 000. (b) In any other case—\$2 500.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor