NORTHERN TERRITORY OF AUSTRALIA

YEAR 2000 INFORMATION DISCLOSURE ACT

As in force at 1 January 2011

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 January 2011. Any amendments that commence after that date are not included.

YEAR 2000 INFORMATION DISCLOSURE ACT

An Act to encourage the voluntary disclosure and exchange of information about Year 2000 computer problems and remediation efforts, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Year 2000 Information Disclosure Act*.

2 Commencement

(1) This Act comes into operation of the date fixed by the Administrator by notice in the *Gazette*.

(2) A notice under subsection (1) may, if the notice provides, have retrospective effect from the day on which the Commonwealth Act came into operation.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

Commonwealth Act means the *Year 2000 Information Disclosure Act 1999* of the Commonwealth.

corresponding law means a law of the Commonwealth, a State or another Territory of the Commonwealth that corresponds to this Act.

original Year 2000 disclosure statement has the meaning given by section 6.

republished Year 2000 disclosure statement has the meaning given by section 7.

Year 2000 disclosure statement has the meaning given by section 5.

(2) Words and expressions used in the Commonwealth Act and in this Act have the same respective meanings in this Act as they have in the Commonwealth Act except to the extent that the context or subject matter otherwise indicates or requires.

4 Crown to be bound

This Act binds the Crown in right of the Territory and also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 2 Year 2000 disclosure statements

5 Year 2000 disclosure statements

For the purposes of this Act, a Year 2000 disclosure statement is:

(a) an original Year 2000 disclosure statement (*see* section 6); or

(b) a republished Year 2000 disclosure statement (*see* section 7).

6 Original Year 2000 disclosure statements

(1) For the purposes of this Act, an original Year 2000 disclosure statement is a statement that:

(a) relates solely to any or all of the following:

(i) Year 2000 processing;

(ii) the detection of problems relating to Year 2000 processing;

(iii) the prevention of problems relating to Year 2000 processing;

(iv) the remediation of problems relating to Year 2000 processing;

(v) the consequences or implications, for the supply of goods or services, of problems relating to Year 2000 processing;

(vi) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in subparagraph (v);

(vii) the consequences or implications, for the activities or capabilities of a person, of problems relating to Year 2000 processing;

(viii) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in subparagraph (vii);

(b) includes words to the effect that the statement is a Year 2000 disclosure statement for the purposes of this Act or a corresponding law;

(c) includes words to the effect that a person may be protected by this Act or a corresponding law from liability for the statement in certain circumstances;

(d) is made after the commencement of this section and before 1 July 2001;

(e) identifies the person who authorised the statement; and

(f) satisfies one of the following conditions:

(i) the statement is made in writing;

(ii) the statement is made in a data storage device and is capable of being reproduced in writing from that device (with or without the aid of any other article or device);

(iii) the statement is made by way of an electronic communication of writing.

(2) The subparagraphs of subsection (1)(a) do not limit each other.

(3) A statement is taken to comply with subsection (1)(b) and (c) if the statement includes the following words:

This statement is a Year 2000 disclosure statement for the purposes of the *Year 2000 Information Disclosure Act 1999*. A person may be protected by that Act from liability for this statement in certain circumstances.

7 Republished Year 2000 disclosure statements

For the purposes of this Act, a republished Year 2000 disclosure statement is a statement that:

(a) consists of the republication, retransmission, reproduction, recital or reading aloud of the whole of an original Year 2000 disclosure statement;

(b) is made after the commencement of this section and before 1 July 2001; and

(c) is made:

(i) orally;

(ii) in writing;

(iii) in a data storage device;

(iv) by way of an electronic communication of writing; or

(v) by way of an electronic communication of speech.

Part 3 Protection from civil liability

8 Protection from civil actions

(1) No civil action lies against a person for or in relation to any matter or thing arising out of, or incidental to, the making of a Year 2000 disclosure statement.

(2) A Year 2000 disclosure statement is not admissible as evidence against a person in a civil action to which the person is a party.

9 Exceptions

(1) The rules in section 8 do not apply to a person (the ***first person***) if:

(a) the Year 2000 disclosure statement is false or misleading in a material particular and the first person:

(i) knew that the statement was false or misleading in a material particular; or

(ii) was reckless as to whether the statement was false or misleading in a material particular; or

(b) all of the following conditions are satisfied:

(i) the Year 2000 disclosure statement was made to another person (otherwise than in the other person's capacity as a member of the public or of a section of the public) in connection with the formation of a contract;

(ii) the other person, or a representative of the other person, is a party to the civil action;

(iii) the civil action relates to the contract.

(2) The rules in section 8 do not apply to a Year 2000 disclosure statement if:

(a) the Year 2000 disclosure statement was made in fulfilment of an obligation imposed under a contract; or

(b) the Year 2000 disclosure statement was made in fulfilment of an obligation imposed under a law of the Commonwealth, a State or a Territory.

(3) The rules in section 8 do not apply to a civil action if:

(a) all of the following conditions are satisfied:

(i) the Year 2000 disclosure statement was made for the sole or dominant purpose of inducing persons to acquire goods or services identified in the statement;

(ii) any of those persons acquired the goods or services as a consumer;

(iii) the consumer concerned, or a representative of the consumer concerned, is a party to the civil action;

(iv) the civil action relates to the goods or services acquired by the consumer; or

(b) all of the following conditions are satisfied:

(i) the Year 2000 disclosure statement was made for the sole or dominant purpose of inducing a particular consumer to acquire goods or services identified in the statement;

(ii) the consumer acquired the goods or services;

(iii) the consumer, or a representative of the consumer, is a party to the civil action;

(iv) the civil action relates to the goods or services acquired by the consumer.

(4) The rules in section 8 do not apply to a civil action to the extent to which:

(a) the civil action consists of proceedings for a restraining injunction or for declaratory relief;

(b) the civil action consists of proceedings instituted by a person or body under a law of the Commonwealth, a State or a Territory:

(i) in the performance of a regulatory or enforcement function conferred on the person or body by such a law; or

(ii) in the exercise of a regulatory or enforcement power conferred on the person or body by such a law; or

(c) the civil action is an action for infringement of copyright, a trade mark, a design or a patent.

(5) The paragraphs of subsections (1), (2), (3) and (4) do not limit each other.

(6) Section 4B of the *Competition and Consumer Act 2010* (Cth) applies for the purposes of subsection (3)(a) and (b) of this section in a corresponding way to the way in which it applies for the purposes of the *Competition and Consumer Act 2010* (Cth).

(7) For the purposes of subsection (6), it is to be assumed that a reference in section 4B of the *Competition and Consumer Act 2010* (Cth) to services does not include a reference to financial services (within the meaning of that Act).

(8) Section 12BC of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth applies for the purposes of subsection (3)(a) and (b) of this section in a corresponding way to the way in which it applies for the purposes of Division 2 of Part 2 of that Act.

10 False or misleading statement exception – explanatory statement to be given

(1) If a civil action is instituted against a person (the ***first person***) by another person (the ***second person***), the first person is not entitled to plead or otherwise rely on the rule in section 8(1) unless:

(a) the first person gives the second person a statement (the ***explanatory statement***) to the effect that the first person believes that the exception set out in section 9(1)(a) is not applicable;

(b) the explanatory statement sets out the grounds for that belief; and

(c) the explanatory statement satisfies one of the following conditions:

(i) the explanatory statement is made in writing;

(ii) the explanatory statement is made in a data storage device and is capable of being reproduced in writing from that device (with or without the aid of any other article or device);

(iii) the explanatory statement is made by way of an electronic communication of writing.

(2) If the first person gives the second person an explanatory statement as mentioned in subsection (1), the explanatory statement is not admissible in any civil action except for the purposes of determining whether subsection (1) has been complied with.

(3) The second person may waive compliance with subsection (1).

11 False or misleading statement exception – imputed knowledge

(1) If, in any proceedings arising out of section 9(1)(a), it is necessary to establish:

(a) whether a corporation knew that a Year 2000 disclosure statement was false or misleading in a material particular; or

(b) whether a corporation was reckless as to whether a Year 2000 disclosure statement was false or misleading in a material particular,

it is sufficient to show that:

(c) a director, employee or agent of the corporation engaged in conduct in relation to the Year 2000 disclosure statement;

(d) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and

(e) the director, employee or agent:

(i) knew that the Year 2000 disclosure statement was false or misleading in a material particular; or

(ii) was reckless as to whether the Year 2000 disclosure statement was false or misleading in a material particular,

as the case may be.

(2) If, in any proceedings arising out of section 9(1)(a), it is necessary to establish:

(a) whether a person other than a corporation knew that a Year 2000 disclosure statement was false or misleading in a material particular; or

(b) whether a person other than a corporation was reckless as to whether a Year 2000 disclosure statement was false or misleading in a material particular,

it is sufficient to show that:

(c) an employee or agent of the person engaged in conduct in relation to the Year 2000 disclosure statement;

(d) the employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and

(e) the employee or agent:

(i) knew that the Year 2000 disclosure statement was false or misleading in a material particular; or

(ii) was reckless as to whether the Year 2000 disclosure statement was false or misleading in a material particular,

as the case may be.

(3) A reference in this section to a director includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Part 4 Presumption against amendment of contracts

12 Presumption against amendment of contracts

(1) The making of a Year 2000 disclosure statement is taken not to amend, alter or vary a contract unless:

(a) both:

(i) the parties to the contract have expressly agreed to the amendment, alteration or variation; and

(ii) that agreement satisfies one of the conditions set out in subsection (2); or

(b) the contract expressly provides for the amendment, alteration or variation by way of the making of a Year 2000 disclosure statement.

(2) The conditions referred to in subsection (1)(a)(ii) are as follows:

(a) the agreement is made in writing;

(b) the agreement is embodied in a data storage device and is capable of being reproduced in writing from that device (with or without the aid of any other article or device);

(c) the agreement is made by way of one or more electronic communications of writing.

Part 5 Exemption from section 45 of Competition Code

13 Exemption from section 45 of Competition Code

(1) Section 45 of the Competition Code of the Territory does not apply in relation to:

(a) a contract or arrangement made:

(i) after the commencement of this section; and

(ii) before 1 July 2001; or

(b) an understanding arrived at:

(i) after the commencement of this section; and

(ii) before 1 July 2001,

to the extent to which the contract, arrangement or understanding provides for the disclosure and/or exchange of information, by any or all of the parties to the contract, arrangement or understanding, for the sole purpose of facilitating any or all of the following:

(c) the detection of problems relating to Year 2000 processing;

(d) the prevention of problems relating to Year 2000 processing;

(e) the remediation of problems relating to Year 2000 processing;

(f) awareness of the consequences or implications, for the supply of goods or services, of problems relating to Year 2000 processing;

(g) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (f);

(h) awareness of the consequences or implications, for the activities or capabilities of a person, of problems relating to Year 2000 processing;

(j) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (h).

(2) Section 45 of the Competition Code of the Territory does not apply in relation to:

(a) a contract or arrangement proposed to be made:

(i) after the commencement of this section; and

(ii) before 1 July 2001; or

(b) an understanding proposed to be arrived at:

(i) after the commencement of this section; and

(ii) before 1 July 2001,

to the extent to which the proposed contract, arrangement or understanding would provide for the disclosure and/or exchange of information, by any or all of the parties to the proposed contract, arrangement or understanding, for the sole purpose of facilitating any or all of the following:

(c) the detection of problems relating to Year 2000 processing;

(d) the prevention of problems relating to Year 2000 processing;

(e) the remediation of problems relating to Year 2000 processing;

(f) awareness of the consequences or implications, for the supply of goods or services, of problems relating to Year 2000 processing;

(g) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (f);

(h) awareness of the consequences or implications, for the activities or capabilities of a person, of problems relating to Year 2000 processing;

(j) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (h).

Part 6 Regulations

14 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

Year 2000 Information Disclosure Act 1999 (Act No. 24, 1999)

Assent date	19 May 1999
Commenced	27 February 1999 (*Gaz* G24, 23 June 1999, p 3)

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)

3 LIST OF AMENDMENTS

s 9 amd No. 41, 2010, s 30