

South Australia

# **Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Bill 2020**

A BILL FOR

An Act to amend the *Fair Trading Act 1987*.

---

## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### **Part 2—Amendment of *Fair Trading Act 1987***

- 4 Insertion of Part 6C

#### **Part 6C—Regulation of Small Amount Credit Contracts and Consumer Leases**

##### **Division 1—Preliminary**

- 45G Preliminary
- 45H Liability under Part extends to other authorised persons

##### **Division 2—Regulation of Small Amount Credit Contracts**

- 45I Licensee not to make unsolicited small amount credit contract invitations
- 45J Loss of charges
- 45K Recording preliminary assessment for small amount credit contract
- 45L Recording assessment for small amount credit contract
- 45M Licensee must not enter into a small amount credit contract if repayments are not equal
- 45N Licensee must not enter into small amount credit contract if repayments exceed 10% of net income
- 45O Prohibition on early termination fees

##### **Division 3—Regulation of Consumer Leases**

- 45P Disclosures in consumer leases
- 45Q Canvassing of consumer leases at home
- 45R Loss of charges
- 45S Certain information must be obtained and considered before providing credit assistance for certain consumer leases
- 45T Certain information must be obtained and considered before providing certain consumer leases
- 45U Records of preliminary assessment for consumer lease relating to household goods
- 45V Records of assessment for consumer lease relating to household goods
- 45W Licensee must not enter into consumer lease for household goods if repayments exceed 10% of net income
- 45X Cap on fees and charges for consumer leases

##### **Division 4—General**

- 45Y Restriction on use or disclosure of account statements
- 45Z Prosecutions to be commenced within 3 years
- 45ZA Pecuniary penalties

**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Fair Trading (Small Amount Credit Contracts and Consumer Leases) Amendment Act 2020*.

### **2—Commencement**

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

### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Fair Trading Act 1987***

### **4—Insertion of Part 6C**

After Part 6B insert:

## **Part 6C—Regulation of Small Amount Credit Contracts and Consumer Leases**

### **Division 1—Preliminary**

#### **45G—Preliminary**

- (1) This Part applies in addition to, and without derogating from, the Commonwealth Act or the National Credit Code.
- (2) Unless the context otherwise requires, terms and expressions used in this Part and—
  - (a) the Commonwealth Act have the same meaning in this Part as they have in the Commonwealth Act; and
  - (b) the National Credit Code have the same meaning in this Part as they have in the National Credit Code.
- (3) In this Part—

*agreed purchase price*, in relation to goods hired under a consumer lease—see subsection (6);

*base price*, in relation to goods hired under a consumer lease—see subsections (4) and (5);

*Commonwealth Act* means the *National Consumer Credit Protection Act 2009* of the Commonwealth;

*consumer lease for household goods* means a consumer lease where any of the goods hired under the lease are household goods;

*household goods* means goods of a kind ordinarily acquired for personal, domestic or household use, but does not include motor vehicles;

*licensee* means a person who holds an Australian Credit licence issued under the Commonwealth Act.

(4) In relation to goods hired under a consumer lease that are new, the *base price* of the goods is—

(a) where the recommended retail price of the goods is known at the time the consumer lease is entered into, the lesser of the following amounts:

(i) the recommended retail price (excluding any amount on account of any goods and services tax) at the time the consumer lease is entered into;

(ii) the agreed purchase price; or

(b) where the recommended retail price of the goods is not known at the time the consumer lease is entered into, the lesser of the following amounts:

(i) the market value of the goods at the time that the consumer lease is entered into (excluding any amount on account of any goods and services tax);

(ii) the agreed purchase price.

(5) In relation to goods hired under a consumer lease that are not new, the *base price* of the goods is the lesser of the agreed purchase price and—

(a) where the date of manufacture and the recommended retail price of the goods at the date of manufacture is known at the time the consumer lease is entered into—the recommended retail price for the goods (excluding any amount on account of any goods and services tax) at the date of manufacture depreciated by 10% for each year or part of a year between the date of manufacture and the date that the consumer lease is entered into to a maximum depreciation of 30%; or

(b) in any other case—the market value of the goods at the time the consumer lease is entered into (excluding any amount on account of any goods and services tax).

(6) An *agreed purchase price* is the amount for the goods to be hired under the consumer lease that is agreed, before or at the time the consumer lease is entered into, by the lessee and any 1 of the following:

(a) the lessor;

(b) the seller of the goods;

- (c) another person who facilitates the entry into the consumer lease.

#### **45H—Liability under Part extends to other authorised persons**

5 A person who is authorised to act on behalf of a licensee may be prosecuted for, and found guilty of, an offence against this Part, or have a pecuniary penalty imposed on them under section 45ZA, as if they were the licensee.

### **Division 2—Regulation of Small Amount Credit Contracts**

#### **45I—Licensee not to make unsolicited small amount credit contract invitations**

- 10 (1) A licensee must not make an unsolicited small amount credit contract invitation.

Maximum penalty:

- 15 (a) in the case of a body corporate—\$500 000;  
(b) in the case of a natural person—\$220 000.

- (2) A licensee makes an *unsolicited small amount credit contract invitation* if—

- (a) the licensee makes any form of direct communication to a consumer; and

- 20 (b) 1 or more of the following conditions is satisfied in relation to the communication:

- 25 (i) the communication offers to enter into a small amount credit contract with the consumer;  
(ii) the communication invites the consumer to apply for a small amount credit contract;  
30 (iii) the communication is about a small amount credit contract and a reasonable person would conclude that the licensee made the communication to the consumer for the purpose (or for purposes including the purpose) of encouraging the consumer to consider applying for a small amount credit contract.

- 35 (3) The regulations may make provisions that apply to determining whether a communication is an unsolicited small amount credit contract invitation.

- (4) A licensee must not make an unsolicited small amount credit contract invitation in contravention of this section.

#### **Note—**

40 A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

**45J—Loss of charges**

- (1) This section applies to a small amount credit contract that was entered between a consumer who is the debtor under the contract and a licensee where—
- 5           (a) before the contract was entered into, the licensee had made an unsolicited small amount credit contract invitation to the consumer in contravention of section 45I; and
- (b) a reasonable person would conclude that the consumer entered into that contract as a result of that invitation.
- 10       (2) Each provision (the *void provisions*) of a contract to which this section applies that imposes a monetary liability to pay a fee or charge of the kind described in section 31A(1)(a) or (b) of the National Credit Code (whether or not that liability is imposed consistently with the National Credit Code) is void to the extent that
- 15       the provision relates to the liability.
- (3) The debtor may recover as a debt due to the debtor any amount paid to the credit provider under the void provisions to the extent that the amount relates to the liability.

**45K—Recording preliminary assessment for small amount credit contract**

- 20       (1) A licensee must—
- (a) record in writing a preliminary assessment required to be made for the purposes of sections 115 and 116 of the Commonwealth Act; and
- 25           (b) comply with any requirements for that written assessment determined by the Commissioner for Consumer Affairs.
- Maximum penalty:
- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.

- 30       (2) A licensee must comply with the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

**45L—Recording assessment for small amount credit contract**

- 35       (1) A licensee must—
- (a) record in writing an assessment required to be made for the purposes of sections 128 and 129 of the Commonwealth Act; and
- (b) comply with any requirements for that written assessment determined by the Commissioner for Consumer Affairs.
- 40

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.

(2) A licensee must comply with the requirements of this section.

Note—

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

**45M—Licensee must not enter into a small amount credit contract if repayments are not equal**

(1) Without limiting the requirements specified in section 133CC of the Commonwealth Act, a licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract under which any of the following applies:

- (a) repayments required under the contract are not equal;
- (b) the interval between the date on which credit is first provided under the contract and the first payment date is longer than the interval between payment dates;
- (c) the intervals between payment dates are not equal.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.

(2) For the purposes of subsection (1)(a), repayments required under a small amount credit contract will be equal if—

- (a) each repayment is of the same amount; or
- (b) each repayment except the last repayment is of the same amount and the difference between the amount of the last repayment and each other repayment is not more than 5% less than the amount of each other repayment; or
- (c) the repayments meet any conditions determined by the Commissioner for Consumer Affairs.

(3) A *payment date* is the date on or by which a repayment is required to be made under the contract.

(4) For the purposes of subsection (1)(c)—

- (a) if a small amount credit contract provides that repayments are required to be made on a fixed day of each week, fortnight or month; and
- (b) that fixed day falls on a day that is not a business day, the repayment is required on the immediately preceding or succeeding business day,

the intervals between payment dates will be taken to be equal.

- (5) A licensee must not enter into, or offer to enter into, a small amount credit contract in contravention of the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

**45N—Licensee must not enter into small amount credit contract if repayments exceed 10% of net income**

- (1) A licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if the total amount of the repayments required to be paid under each small amount credit contract entered into between the licensee and the consumer, including the proposed contract, during the term of the proposed contract would exceed 10% of the consumer's likely net income during that same period.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
  - (b) in the case of a natural person—\$220 000.
- (2) If a licensee contravenes or fails to comply with subsection (1)—
- (a) the debtor is not liable (and is taken never to have been liable) to make the payment to the licensee; and
  - (b) the debtor may recover as a debt due to the debtor the amount of any payment made by the debtor to the licensee.
- (3) A licensee must not enter into, or offer to enter into, a small amount credit contract in contravention of the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

**45O—Prohibition on early termination fees**

- (1) A licensee must not enter into, or offer to enter into, a small amount credit contract that requires the debtor under the contract to pay a fee or charge for early termination of the contract.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
  - (b) in the case of a natural person—\$220 000.
- (2) If a licensee enters into a small amount credit contract in contravention of subsection (1) then—
- (a) each provision (the *void provisions*) of the small amount credit contract that imposes a fee or charge of the kind described in subsection (1) is void to the extent that the provision relates to the liability; and

(b) the debtor may recover as a debt due to the debtor any amount paid to the licensee under the void provisions to the extent that the amount relates to the liability.

(3) A licensee must not enter into, or offer to enter into, a small amount credit contract in contravention of the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

### **Division 3—Regulation of Consumer Leases**

#### **45P—Disclosures in consumer leases**

(1) Without limiting the requirements imposed by section 174 of the National Credit Code, a consumer lease must disclose, in accordance with any requirements of the Commissioner for Consumer Affairs—

(a) the base price of the goods hired under the consumer lease; and

(b) the difference between the base price of the goods hired under the consumer lease and the total amount payable by the lessee under the lease; and

(c) any other information required by the Commissioner for Consumer Affairs.

(2) A consumer lease is taken to comply with this section despite any omission or other error if the court is satisfied that the omission or error is not of such a nature as to mislead the lessee to his or her disadvantage.

(3) A licensee must not enter into a consumer lease that contravenes a requirement of this section.

**Maximum penalty:**

(a) in the case of a body corporate—\$500 000;

(b) in the case of a natural person—\$220 000.

(4) A licensee must not enter into a consumer lease in contravention of the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

#### **45Q—Canvassing of consumer leases at home**

(1) A licensee must not visit a place of residence for the purpose of inducing a person who resides there to apply for or obtain a consumer lease relating to household goods, except by prior arrangement by the licensee with a person who resides there.

- (2) A licensee who contravenes or fails to comply with subsection (1) is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;  
(b) in the case of a natural person—\$220 000.

- (3) A licensee must comply with the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

#### **45R—Loss of charges**

- (1) This section applies to a consumer lease that was entered into between a lessee and a licensee where—

- (a) before the consumer lease was entered into, a licensee had visited the lessee's place of residence in contravention of section 45Q; and  
(b) a reasonable person would conclude the consumer entered into the consumer lease as a result of that visit.

- (2) Each provision (the *void provisions*) of a consumer lease to which this section applies that imposes a monetary liability on the lessee in excess of the base price of the goods hired under the consumer lease (whether or not the liability is imposed consistently with this Code) is void to the extent that the provision relates to the liability.

- (3) The lessee, in relation to any amount paid to the licensee under the void provisions to the extent that the amount relates to the liability, may do either or both of the following:

- (a) recover the amount as a debt due to the lessee;  
(b) retain the goods hired under the consumer lease as owner of the goods.

#### **45S—Certain information must be obtained and considered before providing credit assistance for certain consumer leases**

- (1) This section applies to a consumer lease if—

- (a) the goods to be hired under the consumer lease are household goods; and  
(b) the consumer holds (whether alone or jointly with another person) an account with an ADI into which income payable to the consumer is credited.

(2) Without limiting the requirements of sections 138, 139 and 140 of the Commonwealth Act, a licensee must not provide credit assistance to a consumer on a day (the *assistance day*) by—

- (a) suggesting that the consumer apply for a particular consumer lease with a particular lessor; or
- (b) assisting the consumer to apply for a particular consumer lease with a particular lessor,

unless the licensee has, within 90 days (or such other period as may be prescribed by the regulations) before the assistance day, obtained and considered account statements that cover at least the period of 90 days immediately preceding the assistance day.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.

(3) A licensee must not provide credit assistance to a consumer in contravention of the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

#### **45T—Certain information must be obtained and considered before providing certain consumer leases**

(1) This section applies to a consumer lease if—

- (a) the goods to be hired under the consumer lease are household goods; and
- (b) the consumer holds (whether alone or jointly with another person) an account with an ADI into which income payable to the consumer is credited.

(2) Without limiting the requirements of sections 151, 152 and 153 of the Commonwealth Act, a licensee must not—

- (a) enter a consumer lease with a consumer who will be the lessee under the lease; or
- (b) make an unconditional representation to a consumer that the licensee considers that the consumer is eligible to enter a consumer lease with the licensee,

on a day (the *lease day*) unless the licensee has, within 90 days (or other period prescribed by the regulations) before the lease day obtained and considered account statements that cover at least the period of 90 days immediately preceding the lease day.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.

- (3) A licensee must comply with the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

5                   **45U—Records of preliminary assessment for consumer lease  
                          relating to household goods**

- (1) A licensee must—
- 10                   (a) record in writing the preliminary assessment made for the purposes of sections 138 and 139 of the Commonwealth Act; and
  - (b) comply with any requirements for that written assessment determined by the Commissioner for Consumer Affairs.

Maximum penalty:

- 15                   (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.

- (2) A licensee must comply with the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

20                   **45V—Records of assessment for consumer lease relating to  
                          household goods**

- (1) A licensee must—
- 25                   (a) record in writing the assessment made for the purposes of sections 151 and 152 of the Commonwealth Act; and
  - (b) comply with any requirements for that written assessment determined by the Commissioner for Consumer Affairs.

Maximum penalty:

- 30                   (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.

- (2) A licensee must comply with the requirements of this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

**45W—Licensee must not enter into consumer lease for household goods if repayments exceed 10% of net income**

- 5 (1) A licensee must not enter into, or offer to enter into, a consumer lease for household goods with a consumer who will be the lessee under the lease if the total amount that would be required to be paid under each such lease entered into between the licensee and the consumer, including the proposed lease, during the term of the proposed lease would exceed 10% of the consumer's likely net income during that same period.

10 Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.
- (2) If a licensee contravenes or fails to comply with subsection (1)—
- 15 (a) the lessee is not liable (and is taken never to have been liable) to make the payment to the licensee; and
- (b) the lessee may recover as a debt due to the lessee the amount of any payment made by the lessee to the licensee.
- (3) A licensee must not enter into, or offer to enter into, a consumer lease for household goods in contravention of the requirements of
- 20 this section.

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

**45X—Cap on fees and charges for consumer leases**

- 25 (1) A licensee must not enter into a consumer lease if the sum of the following 2 amounts is more than the permitted cap:
- (a) the total amount payable by the lessee under the consumer lease including all applicable taxes; and
- (b) any add on fees payable by the lessee.

30 Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of a natural person—\$220 000.
- (2) A licensee must not enter into a consumer lease in contravention of the requirements of subsection (1).

35 **Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

- (3) A licensee, or a person prescribed by the regulations, must not require or accept payment in relation to a consumer lease by the lessee of an amount referred to in subsection (1)(a) or (b).

40 Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
  - (b) in the case of a natural person—\$220 000.
- (4) A licensee, or a person prescribed by the regulations, must comply with the requirements of subsection (3).

5

**Note—**

A pecuniary penalty may be imposed for contravention of this subsection—see section 45ZA.

- (5) If a licensee or person contravenes subsection (3)—
- (a) the lessee is not liable (and is taken never to have been liable) to make the payment to the licensee or person; and
  - (b) the lessee may recover as a debt due to the lessee the amount of any payment made by the lessee to the licensee or person.

10

- (6) For the purposes of subsection (1), the following amounts are not included in the total amount payable by the lessee under the consumer lease:

15

- (a) a permitted delivery fee;
- (b) a permitted installation fee;
- (c) enforcement expenses of an amount not exceeding the amount which could be recovered by the lessor pursuant to section 179R of the National Credit Code.

20

- (7) The *permitted cap* is the sum of the following amounts:

- (a) the base price of the goods hired under the consumer lease;
- (b) the amount worked out by—
  - (i) in the case of a consumer lease for a fixed term, multiplying the base price of the goods hired under the consumer lease by 0.04 for each whole month of the consumer lease to a maximum of 48 months; or
  - (ii) in the case of a consumer lease for an indefinite period, multiplying the base price of the goods hired under the consumer lease by 1.92.

25

30

- (8) An *add-on fee* is any fee or charge that—

- (a) either—
  - (i) the lessee is liable to pay to the licensee; or
  - (ii) the lessee is liable to pay to another person under an agreement facilitated by or on behalf of the lessee; and
- (b) relates to a service or product which either—
  - (i) facilitates or complements the lessee's use of the goods hired under the consumer lease; or

35

(ii) is marketed by the licensee or another person as being necessary or desirable to complement the lessee's use of the goods hired under the consumer lease.

(9) A fee or charge is a *permitted delivery fee* if it—

- (a) is for the delivery to the lessee of the goods hired under the consumer lease; and
- (b) is limited to the reasonable cost of delivery of the goods to the lessee.

(10) The Commissioner for Consumer Affairs may, by notice in the Gazette, declare that specified fees which relate to installation of particular kinds of goods are permitted installation fees.

(11) The Commissioner for Consumer Affairs may, by further notice in the Gazette, vary or revoke a declaration under subsection (10).

## Division 4—General

### 45Y—Restriction on use or disclosure of account statements

(1) This section applies to—

- (a) a licensee who has received an account statement from a consumer in connection with—
  - (i) a proposed small amount credit contract; or
  - (ii) a proposed consumer lease relating to household goods; or
  - (iii) a small amount credit contract; or
  - (iv) a consumer lease relating to household goods; and
- (b) a person who has received an account statement from a person referred to in paragraph (a).

(2) A person to whom this section applies may use or disclose an account statement or information contained in an account statement—

- (a) if the use or disclosure is necessary for the person to comply with their obligations under the Commonwealth Act or the National Credit Code; or
- (b) if the use or disclosure is required or authorised by or under an Act or law or an order of a court or tribunal; or
- (c) for the purposes of considering a hardship notice.

(3) A person to whom this section applies must not use or disclose an account statement or information contained in an account statement unless the use or disclosure is permitted under subsection (2).

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;

(b) in the case of a natural person—\$220 000.

(4) A person to whom this section applies must comply with the requirements of subsection (3).

**Note—**

5 A pecuniary penalty may be imposed for contravention of this section—see section 45ZA.

**45Z—Prosecutions to be commenced within 3 years**

(1) Despite section 87, proceedings for an offence against this Part may be commenced—

10 (a) within 3 years of 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 of that date.

15 (2) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of proceedings for an offence against this Part will be accepted, in the absence of proof to the contrary, as proof of the authorisation.

**45ZA—Pecuniary penalties**

(1) If a court is satisfied that a person—

20 (a) has contravened any of the following provisions:

(i) section 45I(4);

(ii) section 45K(2);

(iii) section 45L(2);

(iv) section 45M(5);

25 (v) section 45N(3);

(vi) section 45O(3);

(vii) section 45P(4);

(viii) section 45Q(3);

(ix) section 45S(3);

30 (x) section 45T(3);

(xi) section 45U(2);

(xii) section 45V(2);

(xiii) section 45W(3);

(xiv) section 45X(2);

35 (xv) section 45X(4);

(xvi) section 45Y(4); or

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

- (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
- (d) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision,

the court may order the person to pay to the Commissioner for Consumer Affairs such pecuniary penalty, in respect of each act or omission by the person by which this section applies, as the court determines appropriate.

(2) The pecuniary penalty payable for each act or omission to which this section applies is not to exceed—

- (a) if the person is a body corporate—\$500 000; or
- (b) if the person is a natural person—\$220 000.

(3) Proceedings for a pecuniary penalty may be commenced by the Commissioner for Consumer Affairs by application to a court made within 3 years after the date of the alleged act or omission.

(4) If, in proceedings for a pecuniary penalty against a person, the person establishes facts and circumstances that would have amounted to a defence under section 88 had the person been charged with an offence in respect of the act or omission, the person is not liable to a pecuniary penalty.

(5) If, in proceedings for a pecuniary penalty against a natural person, the court is satisfied that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the court may relieve the person either wholly or partly from liability to a pecuniary penalty.

(6) The court may, in proceedings for a pecuniary penalty, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

(7) Proceedings may not be brought against a person for a pecuniary penalty relating to an act or omission if the person has been found guilty of an offence constituted of the act or omission.

(8) Proceedings under this section relating to an act or omission are stayed if criminal proceedings are started or have already been started against the person for an offence constituted of the same act or omission.

(9) Proceedings referred to in subsection (8) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.

- 5
- (10) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
- (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings for the recovery of a pecuniary penalty; and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that is the subject of the proceedings for the pecuniary penalty.
- 10
- (11) However, subsection (10) does not apply to criminal proceedings in respect of the making of a false or misleading statement.