

5. Interpretation (TPA s. 4²)

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires —

“**acquire**” includes —

- (a) in relation to goods — acquire by purchase or exchange or by taking on lease, on hire or on hire-purchase;
- (b) in relation to services — accept; and
- (c) in relation to an interest in land — acquire by purchase or exchange or by taking on lease, or in any other manner in which an interest in land may be acquired for valuable consideration;

“**authorised person**” means a person authorised by the Commissioner;

“**banning order**” means an order in force under section 23Q or 23R of the *Consumer Affairs Act 1971* prohibiting or restricting the supply of goods;

“**business**” includes —

- (a) a business not carried on for profit; and
- (b) a trade or profession;

“**Commercial Tribunal**” means the Commercial Tribunal of Western Australia established under the *Commercial Tribunal Act 1984*;

“**Commissioner**” means the person holding or acting in the office of Commissioner for Fair Trading under section 15 of the *Consumer Affairs Act 1971*;

“**component part**” in relation to any goods includes an accessory to those goods;

“**consumer**” has the meaning given by section 6;

“**Consumer Products Safety Committee**” means the Consumer Products Safety Committee established under section 23E of the *Consumer Affairs Act 1971*;

“**dangerous**”, in relation to goods, means likely to cause death or to cause injury to the body or health of a person, whether the death or injury is likely to be caused directly or indirectly and whether or not because of —

- (a) a failure to include with or on the goods any instructions for their use;
- (b) the inclusion with or on the goods of instructions for the use of the goods that are inaccurate or inadequate;
- (c) a failure of the goods to function in the manner represented by the manufacturer or supplier;
- (d) the goods not being of the quality represented by the manufacturer or supplier; or
- (e) the necessity for, or possibility of, the use of the goods with other goods;

“**Department**” means the department³ of the Government or other authority that, under the Minister⁴, is concerned with the administration of this Act;

“disposal”, in relation to an interest in land, means disposal by sale, exchange or lease or by any other method by which an interest in land may be disposed of for valuable consideration;

“document” means —

- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; or
- (b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced,

and includes any source of information, whether or not the information is available only after the source is subjected to electronic or other process;

“false representation” has the meaning given by section 13;

“give effect to”, in relation to a provision of a contract, arrangement or understanding, includes do an act or thing in pursuance of or in accordance with or enforce or purport to enforce;

“goods” includes —

- (a) ships, aircraft and other vehicles;
- (b) animals, including fish;
- (c) minerals, trees and crops, whether on, under or attached to land or not;
- (d) gas and electricity; and
- (e) any component part of, or accessory to, goods;

“information” includes —

- (a) in relation to goods, information that would be taken by any reasonable person as referring directly or indirectly to any of the following matters with respect to the goods or any component part of the goods —
 - (i) compliance with a standard under this Act or a standard specified or recognized by any person;
 - (ii) quality, grade, composition, style, model, class, purity, nature, number, quantity, gauge, size, measure, mass, age, or any physical characteristic;
 - (iii) history or previous ownership or use;
 - (iv) fitness for purpose, strength, accuracy, safety, running costs, durability, benefits to be derived, or any characteristic of performance;
 - (v) testing by any person or results of tests;
 - (vi) sponsorship or approval by, of affiliation with, any person, or conformity with or similarity to, a type sponsored or approved by any person;
 - (vii) price, change in price, comparative or relative price, recommended price or relation to recommended price;
 - (viii) suitability of method of caring for, washing, cleaning or maintaining the goods;

- (ix) availability of maintenance or repair services or spare parts;
- (x) method or manner of manufacture, packaging, distribution, supply, selection, classification or grading;
- (xi) place or date of manufacture, packaging, distribution, supply or origin;
- (xii) person by whom manufactured, packaged, distributed, supplied, selected, classified or graded; or
- (xiii) in the case of goods that are printed, recorded or filmed matter, the contents or authorship;

and

- (b) in relation to services, information that would be taken by any reasonable person as referring directly or indirectly to any of the following matters with respect to the services —
 - (i) compliance with a standard specified or recognized by any person;
 - (ii) quality or nature;
 - (iii) nature or amount of goods or materials used in the course of providing the services;
 - (iv) nature of equipment or machinery used in the course of providing the services;
 - (v) duration of or time at or within which the services are to be provided;
 - (vi) results or effect of services or benefits to be derived therefrom;
 - (vii) sponsorship or approval by, or affiliation with any person;
 - (viii) price, change in price, comparative or relative price, recommended price, or relation to recommended price;
 - (ix) standing, capabilities, competence, professional or technical qualifications of persons by whom provided;
 - (x) place at which services provided; or
 - (xi) amenities or facilities available;

“interest”, in relation to land, means —

- (a) a legal or equitable estate or interest in the land;

(TPA s. 53A(2))

- (b) a right of occupancy of the land, or of a building or part of a building erected on the land, conferred by shares, or by virtue of a contract to purchase shares, in a corporation that owns the land or the building; or

- (c) a right, power or privilege over, or in connection with, the land;

“investigator” means an officer appointed under section 23X of the *Consumer Affairs Act 1971* to carry out investigations;

“label” means affix, append, or annex information to, mark information on, or incorporate information with, anything;

“manufacture” includes assemble, process or recondition;

“materially inaccurate” has the meaning given by section 13(2);

“officer” means —

- (a) the Commissioner; or
- (b) a person appointed and employed under Part 3 of the *Public Sector Management Act 1994*, or whose services are used, in accordance with the *Consumer Affairs Act 1971* to assist the Commissioner in carrying out his functions under any Act the administration of which is for the time being committed to the Minister by the Governor;

“package” in relation to any goods means —

- (a) wholly or partly enclose the goods in any form of covering or container for supply to any person; or
- (b) authorise, direct, cause, suffer or permit the Act referred to in paragraph (a);

“packaging standard” means a standard prescribed by regulations referred to in section 66;

“price” includes a charge of any description and the price of goods or services acquired by a person (whether or not by purchase) is the amount paid or payable for them or, if such an amount is not specified because acquisition of the goods or services is part only of a transaction for which a total amount is paid or payable, is —

- (a) the lowest amount for which the goods or services could reasonably have been acquired from the supplier at the time of the transaction or, if not from the supplier, from another supplier; or
- (b) if they could not reasonably have been acquired separately from any supplier — their value at the time of the transaction;

“product information standard” means a standard prescribed by regulations referred to in section 58;

“product quality standard” means a standard prescribed by regulations referred to in section 64;

“product safety standard” means a standard prescribed by regulations referred to in section 50;

“provide” in relation to information in respect of goods or services or an interest in land includes authorise, direct, cause, suffer or permit information to be provided in respect of the goods, services or interest;

“provision”, in relation to an understanding, means any matter forming part of the understanding;

“public authority” means a public authority or local government constituted by an Act (whether or not a statutory body representing the Crown), a Government department or an administrative office;

“published”, in relation to a statement or information, includes —

- (a) inserted in a newspaper or other publication printed or published in the State;
- (b) publicly exhibited —
 - (i) in, on, over or under a building, vehicle, aircraft or ship, or in any other place (whether or not a public place and whether on land or water); or
 - (ii) in the air,

in view of persons who are, or are passing, in or on a street or public place;

- (c) contained in a document sent or given to a person or thrown or left upon, or at, premises occupied by a person;
- (d) broadcast by radio or television or otherwise publicly announced by means of transmission of light or sound; or
- (e) reproduced electronically;
- (f) made verbally; or
- (g) appended to or stamped upon an article in the form of a label or impressed stamp denoting that such article complies with the requirements of —
 - (i) the Standards Association of Australia⁵; or
 - (ii) any other reference to quality or make indicated by a label or stamp;

“regulations” means the regulations made under section 84;

“re-supply” in relation to goods acquired from a person includes —

- (a) a supply of the goods to another person in an altered form or condition; and
- (b) a supply to another person of goods in which the first-mentioned goods have been incorporated;

“send” includes deliver;

“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 and 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;
 - (ii) a contract for, or involving, the provision of gas or electricity or the provision of any other form of energy;
 - (iii) the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or
 - (iv) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance;
- (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) a contract for or in relation to the lending of money, but does not include rights or benefits being the supply of goods or the performance of work under a contract of service;

“shares” includes stock;

“statement” includes a representation of any kind, whether made by means of —

- (a) a comment, word, map, plan or drawing; or
 - (b) a pictorial representation or design,
- or by any combination of those means;

“supplier” means a person who, in the course of a business, supplies goods or services;

“supply” includes —

- (a) in relation to goods —
 - (i) supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
 - (ii) exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade;
- (b) in relation to services — provide, grant or render for valuable consideration; and
- (c) in relation both to goods and to services — donate for promotional purposes;

“this Act” includes the regulations;

“trade or commerce” includes any business or professional activity;

“unsolicited goods” means goods sent to a person without any request for the goods being made by, or by the authority of, the person;

“unsolicited services” means services supplied to a person without any request for the services being made by, or by the authority of, the person.

(TPA s. 4C)

(2) In this Act, unless the contrary intention appears —

- (a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods;
- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods upon a supply of the goods;
- (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services;
- (d) 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;
- (e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods or other property or other services;
- (f) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods or services;
- (g) a reference to goods or services includes a reference to goods and services; and

- (h) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether or not the agreement is in writing or evidenced by writing.

(TPA s. 4B(d))

- (3) For the purposes of 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 the goods or services is increased because credit was obtained is the price of the services represented by the obtaining of credit.

(TPA s. 4B(2))

- (4) In this Act —
 - (a) a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act, including —
 - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or
 - (ii) the arriving at, or the giving effect to a provision of, an understanding;
 - (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), shall be read as a reference to the doing of or the refusing to do any act, including —
 - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or
 - (ii) the arriving at, or the giving effect to a provision of an understanding;
 - (c) a reference to refusing to do an act includes —
 - (i) a reference to refraining (otherwise than inadvertently) from doing the act; and
 - (ii) a reference to making it known that the act will not be done;and
 - (d) 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 known a willingness to accept applications, offers or proposals for the person to do the act or to do that act on the condition.
- (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.
- (6) In this Act, a reference to the making of a representation includes a reference to the publishing of a statement.

- (7) Except as expressly provided by this Act, nothing in this Act shall be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Act had not been enacted.

(TPA s. 4L)

- (8) If the making of a contract contravenes this Act by reason of the inclusion of a particular provision in the contract, then, subject to subsection (9) and to any order made under section 77 or 78, nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision in so far as that provision is severable.
- (9) This Act has effect notwithstanding any stipulation in any contract or agreement to the contrary.
- (10) Where a provision of this Act is inconsistent with a provision of an Act specified in the Schedule to the *Consumer Affairs Act 1971* or prescribed for the purposes of this subsection, or a provision of an instrument made under an Act so specified or prescribed, the provision of the Act so specified or prescribed, or of the instrument, prevails.

[Section 5 amended by No. 32 of 1994 s. 3(2); No. 14 of 1996 s. 4; No. 57 of 1997 s. 39(10).]