Western Australia

Fair Trading Act 2010

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Western Australia

Fair Trading Act 2010

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Defined Terms

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Western Australia

Fair Trading Act 2010

An Act to —

- **promote and encourage fair trading practices and a competitive and fair market, and protect the interests of consumers, by applying the Australian Consumer Law (with modifications) as a law of Western Australia, and providing for codes of practice; and**
- **provide for the powers and functions of a Commissioner, including powers to carry out investigations into alleged breaches of this Act; and**
- **provide for the repeal of the *Consumer Affairs Act 1971*, *Fair Trading Act 1987* and *Door to Door Trading Act 1987*; and**
- **make consequential amendments to various Acts,**

and for related purposes.

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Part 1 — Preliminary

1. Short title

This is the *Fair Trading Act 2010*.

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Object

The object of this Act is to improve consumer well-being through consumer empowerment and protection, to foster effective competition, and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

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Part 2 — Interpretation and application

Division 1 — General interpretation

4. Application of interpretation legislation to certain provisions of this Act

Section 23 deals with the application of the *Acts Interpretation Act 1901* (Commonwealth) and the *Interpretation Act 1984* of Western Australia to the *Australian Consumer Law (WA).*

5. Application of this Division

(1) Sections 6 to 9 apply to this Act other than Part 3 and the *Australian Consumer Law (WA)*.

(2) Section 17 applies to the interpretation of terms used in Part 3 and the *Australian Consumer Law (WA).*

6. Terms used

In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

acquire includes —

(a) in relation to goods — acquire by purchase or exchange or by taking on lease, on hire or on hire-purchase; and

(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;

Australian Consumer Law (WA) has the meaning given in section 17;

business includes —

(a) a business not carried on for profit; and

(b) a trade or profession;

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Commissioner means the person for the time being designated as the Commissioner under section 55;

consumer has the meaning given in section 7;

Department means the department of the Public Service principally assisting the Minister in 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 has the meaning given in the *Australian Consumer Law (WA)* section 2(1);

goods has the meaning given in the *Australian Consumer Law (WA)* section 2(1);

interest has the meaning given in the *Australian Consumer Law (WA)* section 2(1);

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

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;

services has the meaning given in section 8;

supplier means a person who, in the course of 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

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(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;

and

(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;

trade or commerce includes any business or professional activity (whether or not carried on for profit).

7. Meaning of consumer

(1) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

consumer means —

(a) a person who purchases or takes on hire or lease, or is a potential purchaser or hirer or lessee of, or borrows money for the purpose of purchasing, goods otherwise than for resale or letting on hire or leasing; or

(b) a person who uses or is a potential user of, or borrows money for the purpose of using, any service rendered for fee or reward; or

(c) a person who purchases or is the potential purchaser of, or borrows money for the purpose of purchasing, an estate or interest in any land or building otherwise than for resale, letting or leasing; or

(d) a person who becomes a tenant or lessee of, or is a potential tenant or lessee of, any land or building or part of a building otherwise than for assignment or underletting.

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(2) However, a person who carries on a trade or business is not a consumer for the purposes of subsection (1) in respect of or in relation to —

(a) goods purchased or taken on hire or lease by that person, or of which that person is a potential purchaser, hirer or lessee, in the course of or for the purpose of the carrying on of that trade or business;

(b) a service used by that person, or of which the person is a potential user, in the course of or for the purpose of the carrying on of that trade or business;

(c) an estate or interest in land or a building purchased by that person, or of which the person is a potential purchaser, in the course of or for the purpose of the carrying on of that trade or business;

(d) any land or building or part of a building of which the person becomes the tenant or lessee, or is a potential tenant or lessee, in the course of or for the purpose of the carrying on of that trade or business.

(3) A person who carries on an agricultural, apicultural, pastoral, horticultural, orcharding, viticultural or other farming undertaking does not carry on a trade or business for the purposes of subsection (2).

8. Meaning of services

(1) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

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.

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(2) Without limiting the generality of subsection (1), the definition of ***services*** 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; or

(ii) the provision of gas or electricity or the provision of any other form of energy; or

(iii) the provision for reward of lodging or accommodation; or

(iv) the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or

(v) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

or

(b) a contract of insurance; or

(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.

(3) The definition of ***services*** does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

(4) Legal services as defined in the *Legal Profession Act 2008* section 3 are not services for the purposes of this section.

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9. Further provisions relating to interpretation

(1) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*), 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; and

(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; and

(c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services; and

(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; and

(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; and

(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; and

(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.

(2) For the purposes of this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

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(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.

(3) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

(a) a reference to engaging in conduct is to 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;

and

(b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is to 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;

and

(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

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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.

(4) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

(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.

(5) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*), a reference to the making of a representation includes a reference to the publishing of a statement.

Division 2 — Application

10. Act binds Crown

(1) This Act binds the Crown not only in right of Western Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) This Act applies to and in respect of the Crown in any of its capacities to the same extent as if the Crown were, in that capacity, a body corporate.

(3) Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

(4) The protection in subsection (3) does not apply to an authority of the Crown.

(5) This section is subject to Part 3 Division 4.

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11. Territorial application of Act

(1) This Act applies to and in respect of an acquisition or supply or the proposed acquisition or supply of goods or services, or the disposal or proposed disposal of an interest in land —

(a) if the person by or to whom the goods or services are or are proposed to be acquired or supplied signs in Western Australia a document relating to the acquisition or supply or the proposed acquisition or supply; or

(b) if the person by or to whom the interest in land is or is proposed to be disposed of signs in Western Australia a document relating to the disposal or the proposed disposal of that interest; or

(c) if that person does not so sign such a document, if the goods or services are or are proposed to be delivered or supplied, or that land is situated, in Western Australia.

(2) Subsection (1) applies —

(a) despite anything to the contrary in any other Act or law; but

(b) except as otherwise expressly provided in or under this Act.

(3) This Act applies to and in relation to —

(a) persons carrying on business within this jurisdiction; or

(b) bodies corporate incorporated or registered under the law of this jurisdiction; or

(c) persons ordinarily resident in this jurisdiction; or

(d) persons otherwise connected with this jurisdiction.

(4) Subject to subsection (3), this Act extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

(5) This Act applies to a contract in the following circumstances, despite the terms of the contract —

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(a) if the proper law of a contract for the supply of goods or services to a consumer would, but for a term that it should be the law of some other place or a term to the like effect, be the law of Western Australia;

(b) if a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country or of another State or of a Territory for all or any of the provisions of this Act.

(6) This section is subject to section 24.

12. Concurrent operation of laws of other jurisdictions not limited

This Act is not intended to exclude or limit the concurrent operation of any law of the Commonwealth or of another State or a Territory.

13. No contracting out

(1) This Act has effect despite any stipulation in any contract or agreement to the contrary.

(2) If the making of a contract contravenes this Act because the contract includes a particular provision, nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision, so far as that provision is severable.

(3) Subsection (2) is subject to subsection (1) and to any order made under section 105 or 106.

14. Relationship with other Acts and rules of law

(1) This Act is to be read and construed as being in addition to, and not in derogation of or in substitution for, any other Act or rule of law for the time being in force in this State that relates to the

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duty or liability of persons with respect to goods or services supplied to a consumer.

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

15. Inconsistencies with other enactments

(1) This section applies if a provision of this Act or a regulation made under this Act is inconsistent with —

(a) a provision of an Act specified in Schedule 1; or

(b) a provision of an instrument made under an Act so specified.

(2) If this section applies, the provision of the Act so specified, or of the instrument, prevails.

(3) This section is subject to section 34.

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Part 3 — The Australian Consumer Law

Division 1 — Object and interpretation

16. Object of this Part

The object of this Part is to apply (with modifications) the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) as a law of Western Australia.

17. Definitions

(1) In this Part, unless the contrary intention appears —

application law means —

(a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or

(b) any regulations or other legislative instrument made under a law described in paragraph (a); or

(c) the Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications;

Australian Consumer Law means (according to the context) —

(a) the Australian Consumer Law text; or

(b) the Australian Consumer Law text, applying as a law of a participating jurisdiction, either with or without modifications;

Australian Consumer Law text means the text described in section 18;

Australian Consumer Law (WA) means the provisions applying in this jurisdiction because of section 19;

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instrument means any document whatever, including the following —

(a) an Act or an instrument made under an Act;

(b) a law of this jurisdiction or an instrument made under such a law;

(c) an award or other industrial determination or order, or an industrial agreement;

(d) any other order (whether executive, judicial or otherwise);

(e) a notice, certificate or licence;

(f) an agreement;

(g) an application made, prosecution notice lodged, information or complaint laid, affidavit sworn, or warrant issued, for any purpose;

(h) an indictment, presentment, summons or writ;

(i) any other pleading in, or process issued in connection with, a legal or other proceeding;

Intergovernmental Agreement means the Intergovernmental Agreement for the Australian Consumer Law made on 2 July 2009 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being;

jurisdiction means a State or the Commonwealth;

law, in relation to a Territory, means a law of, or in force in, that Territory;

modifications includes additions, omissions and substitutions;

participating jurisdiction means a jurisdiction that is a party to the Intergovernmental Agreement and applies the Australian Consumer Law as a law of the jurisdiction, either with or without modifications;

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State includes a Territory;

Territory means the Australian Capital Territory or the Northern Territory of Australia;

this jurisdiction means Western Australia.

(2) Terms used in this Part and also in the *Australian Consumer Law (WA)* have the same meanings in this Part as they have in that Law.

(3) For the purposes of this Part —

(a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and

(b) the corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

Division 2 — Application of Australian Consumer Law

18. The Australian Consumer Law text

The Australian Consumer Law text consists of —

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth); and

(b) the regulations made under section 139G of that Act.

19. Application of Australian Consumer Law

(1) For the purposes of this section, the Australian Consumer Law text consists of —

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth), as in force on the commencement of this section (but as modified by section 36); and

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(b) the regulations made under section 139G of that Act, as those regulations are in force from time to time.

(2) The Australian Consumer Law text —

(a) applies as a law of this jurisdiction; and

(b) as so applying, may be referred to as the *Australian Consumer Law (WA)*; and

(c) in so far as it constitutes Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth), is part of this Act; and

(d) in so far as it constitutes regulations made under section 139G of the *Competition and Consumer Act 2010* (Commonwealth), is subsidiary legislation for the purposes of this Act.

(3) This section has effect subject to sections 20, 21, 22, 23 and 116(3).

20. Amendments to Australian Consumer Law

The Governor may amend the *Australian Consumer Law (WA)* (as described in section 19(1)(a)) by bill.

21. Publication and disallowance of regulations and instruments under *Australian Consumer Law (WA)*

(1) This section applies to the following instruments —

(a) regulations made under the *Competition and Consumer Act 2010* (Commonwealth) section 139G;

(b) a determination under the *Australian Consumer Law (WA)* section 66(1) (display notices);

(c) a notice under the *Australian Consumer Law (WA)* section 104(1) or 105(1) (safety standards);

(d) a notice under the *Australian Consumer Law (WA)* section 114(1) or (2) (permanent bans);

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(e) a notice under the *Australian Consumer Law (WA)* section 117 (revocation of permanent bans);

(f) a notice under the *Australian Consumer Law (WA)* section 122(1) (recall notices) by a responsible Minister of this jurisdiction;

(g) a notice under the *Australian Consumer Law (WA)* section 134(1) or 135(1) (information standards).

(2) Where an instrument to which this section applies is made, a copy of the instrument must be published in the *Gazette* not later than 28 days after the instrument is made.

(3) If a copy of an instrument is not published in the *Gazette* in accordance with subsection (2) —

(a) the instrument ceases to have effect in this jurisdiction on the expiry of the 28th day after the instrument is made, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime; but

(b) if a copy of the instrument is subsequently published in the *Gazette*, the instrument again has effect on and from the day after the day of publication of a copy of the instrument.

(4) Where a copy of an instrument to which this section applies is published in the *Gazette*, the *Interpretation Act 1984* section 42 applies to that instrument as if it were a regulation published in the *Gazette*.

22. Meaning of generic term in Australian Consumer Law for purposes of this jurisdiction

In the *Australian Consumer Law (WA)* —

regulator means the Commissioner (as defined in section 6).

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23. Interpretation of Australian Consumer Law

(1) The *Acts Interpretation Act 1901* (Commonwealth) applies as a law of this jurisdiction to the *Australian Consumer Law (WA).*

(2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if —

(a) the statutory provisions in the *Australian Consumer Law (WA)* were a Commonwealth Act; and

(b) the regulations in the *Australian Consumer Law (WA)* or instruments under that Law were regulations or instruments under a Commonwealth Act.

(3) The *Interpretation Act 1984* of Western Australia does not apply to —

(a) the *Australian Consumer Law (WA)*; or

(b) any instrument under that Law.

(4) Subsection (3) is subject to section 21.

24. Application of Australian Consumer Law

(1) The *Australian Consumer Law (WA)* applies to and in relation to —

(a) persons carrying on business within this jurisdiction; or

(b) bodies corporate incorporated or registered under the law of this jurisdiction; or

(c) persons ordinarily resident in this jurisdiction; or

(d) persons otherwise connected with this jurisdiction.

(2) Subject to subsection (1), the *Australian Consumer Law (WA)* extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

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Division 3 — References to Australian Consumer Law

25. References to Australian Consumer Law

(1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.

(2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

26. References to Australian Consumer Law of other jurisdictions

(1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.

(2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.

Division 4 — Application of Australian Consumer Law to Crown

27. Division does not apply to Commonwealth

In this Division —

participating jurisdiction or ***other jurisdiction*** does not include the Commonwealth.

28. Application law of this jurisdiction

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the

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Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

29. Application law of other jurisdictions

(1) The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.

(2) If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

30. Crown not liable to pecuniary penalty or prosecution

(1) Nothing in the application law of this jurisdiction makes the Crown in any capacity liable to a pecuniary penalty or to be prosecuted for an offence.

(2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes the Crown in right of this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.

(3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

Division 5 — Miscellaneous

31. No doubling-up of liabilities

(1) For the purposes of this section, a person is convicted of an offence if a court finds the person guilty of the offence, or accepts a plea of guilty of the offence, whether or not a conviction is recorded.

(2) If —

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(a) an act or omission is an offence against the *Australian Consumer Law (WA)* and is also an offence against the application law of another participating jurisdiction; and

(b) the offender has been acquitted or convicted of the offence with which the offender is charged, or has already been convicted or acquitted of an offence of which the offender might be convicted upon the indictment or prosecution notice on which the offender has been charged, under the application law of the other participating jurisdiction,

the offender is not liable to be prosecuted or punished for the offence against the *Australian Consumer Law (WA)*.

(3) Nothing in subsection (2) prevents the Commissioner from making or issuing a statement under section 57.

(4) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the *Australian Consumer Law (WA)* in respect of the same conduct.

32. Offences against *Australian Consumer Law (WA)* to be crimes

A person who commits an offence against the *Australian Consumer Law (WA)* is guilty of a crime.

Penalty: the penalty set out in the *Australian Consumer Law (WA)*.

Summary conviction penalty: the lesser of a fine of $36 000 or the maximum penalty provided by the *Australian Consumer Law (WA)* for the offence.

33. Civil evidence and procedure rules apply to proceedings for pecuniary penalty

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a pecuniary penalty under the *Australian Consumer Law (WA)* section 224.

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34. Relationship with certain provisions of *Health Act 1911*

Where any provision of the *Australian Consumer Law (WA)* is inconsistent with the *Health Act 1911* section 338B or 338C, the provisions of the *Australian Consumer Law (WA)* prevail.

35. Relationship with *Sale of Goods Act 1895*

(1) Where a provision of the *Australian Consumer Law (WA)* Part 3-2 Division 1 is, in its application to any circumstance, matter or thing, inconsistent with a provision of the *Sale of Goods Act 1895* in its application to the same circumstance, matter or thing —

(a) the provision of the *Australian Consumer Law (WA)* Part 3-2 Division 1 prevails; and

(b) the provision of the *Sale of Goods Act 1895* is inoperative to the extent of the inconsistency.

(2) This section applies despite —

(a) any rule of law or construction to the contrary; and

(b) an agreement that provides otherwise.

36. Modifications to *Australian Consumer Law (WA)*

(1) This section makes the modifications to the text of Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth), as in force on the commencement of section 19, that, together with the regulations referred to in section 19(1)(b), result in the text that section 19(2) applies as the *Australian Consumer Law (WA)*.

(2) In section 73(1) delete paragraphs (b) and (c) and insert:

(b) on a Saturday:

(i) between midnight and 9 am; or

(ii) between 5 pm and midnight; or

(c) on any other day:

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(i) between midnight and 9 am; or

(ii) between 8 pm and midnight.

(3) In section 170(1) delete paragraphs (b) and (c) and insert:

(b) on a Saturday:

(i) between midnight and 9 am; or

(ii) between 5 pm and midnight; or

(c) on any other day:

(i) between midnight and 9 am; or

(ii) between 8 pm and midnight.

Division 6 — Transitional

37. Proceedings for an injunction already commenced

(1) To the extent that any proceedings to which the *Fair Trading Act 1987* section 3C(2)(c) applies are proceedings for an injunction under section 74 or 75 of that Act, the proceedings are taken, after the commencement of this section, to be proceedings for an injunction under the *Australian Consumer Law (WA)* section 232.

(2) This section overrides the *Fair Trading Act 1987* section 3C(2)(c).

38. Unfair contract terms

(1) The *Australian Consumer Law (WA)* Part 2-3 applies to a contract entered into on or after the commencement of this section.

(2) That Part does not apply to a contract entered into before that commencement. However —

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(a) if the contract is renewed on or after that commencement — that Part applies to the contract as renewed, on and from the day (the ***renewal day***) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or

(b) if a term of the contract is varied on or after that commencement, and paragraph (a) has not already applied in relation to the contract — that Part applies to the term as varied, on and from the day (the ***variation day***) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.

(3) If subsection (2)(b) applies to a term of a contract, sections 23(2) and 27 of the *Australian Consumer Law (WA)* apply to the contract.

39. Unsolicited consumer agreements

(1) The *Australian Consumer Law (WA)* Part 3-2 Division 2 does not apply to any contract made before the commencement of this section.

(2) The *Australian Consumer Law (WA)* Part 3-2 Division 2 applies to a contract made on or after the commencement of this section even though negotiations leading to the formation of the contract may have taken place before the commencement of this section.

(3) The *Door to Door Trading Act 1987* section 3C relates to the application of that Act to contracts made before the commencement of this section.

40. Requests for itemised bills

The *Australian Consumer Law (WA)* section 101 does not apply in relation to a supply of services to the extent that the services were supplied before the commencement of this section.

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41. Pecuniary penalties — having regard to previous findings

The reference in the *Australian Consumer Law (WA)* section 224(2)(c) to proceedings under Chapter 4 or Part 5-2 of that Law includes a reference to proceedings, commenced before the commencement of this section, under or in relation to —

(a) Part VC or VI of the *Trade Practices Act 1974* (Commonwealth); or

(b) Part II, V, VI or VII of the *Fair Trading Act 1987*.

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Part 4 — Codes of practice

Division 1 — Preliminary

42. Outline

(1) This Part provides for the making of regulations prescribing a code of practice for fair dealing between a particular class of suppliers and consumers, or by a particular class of persons in relation to consumers.

(2) If a person carries on business in contravention of a prescribed code of practice applying to them, the Commissioner can apply to the State Administrative Tribunal for an order requiring the person to comply with the code and rectify the consequence of the contravention of the code.

(3) This section is intended only as a guide to the general scheme and effect of this Part, and does not limit the other provisions of this Part.

43. Term used: code of practice

In this Part —

code of practice means a code of practice for fair dealing —

(a) between a particular class of suppliers and consumers; or

(b) by a particular class of persons in relation to consumers; or

(c) in relation to the supply of a particular kind of goods or services.

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Division 2 — Development and implementation of codes of practice

44. Preparation of draft code of practice by Commissioner

(1) The Commissioner may, with the approval of the Minister, prepare a draft code of practice for submission to the Minister for consideration.

(2) The Commissioner must, if the Minister directs, prepare a draft code of practice for submission to the Minister for consideration.

(3) For the purpose of preparing a draft code of practice, the Commissioner must arrange for consultation with, and invite submissions from, persons and organisations that the Commissioner considers would have an interest in the terms of the proposed draft code.

(4) Without limiting subsection (3), the Commissioner must consult with, and invite submissions from, the following —

(a) principal organisations that represent those suppliers that are likely to be affected by the terms of the draft code of practice;

(b) principal organisations representing consumers.

45. Regulations prescribing code of practice

(1) The regulations may prescribe a code of practice that —

(a) has been submitted to the Minister in accordance with section 44; and

(b) has been approved by the Minister with or without amendments.

(2) Regulations prescribing a code of practice must provide that the regulations expire on a date specified in the regulations, which must be a date that is not later than the last day of the period of

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3 years after the date on which the code of practice first takes effect.

(3) Regulations prescribing a code of practice may be amended to remove the expiry date of the regulations if —

(a) the Commissioner undertakes a review of the code of practice before the regulations expire; and

(b) in undertaking the review, the Commissioner follows the consultation procedures set out in section 44.

46. Interim code of practice

(1) The regulations may prescribe a code of practice even though the procedures set out in section 44 have not been followed or completed.

(2) A code of practice prescribed under this section is an interim code of practice, and may have effect for a period (not exceeding 6 months) specified in the regulations.

Division 3 — Enforcement of codes of practice

47. State Administrative Tribunal may enforce compliance with code of practice

(1) Where it appears to the Commissioner that a person has carried on business in contravention of a prescribed code of practice applicable to that person, the Commissioner may apply to the State Administrative Tribunal for an order under this section.

(2) Where, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a person has carried on business in contravention of a prescribed code of practice applicable to that person, the Tribunal may make either or both of the following orders —

(a) an order that the person cease contravening the code;

(b) an order that the person rectify any consequence of that contravention.

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(3) The State Administrative Tribunal may make an order under subsection (2) in relation to a person with that person's consent, without being satisfied that there are grounds for making the order.

(4) Where the contravention is by a body corporate, and the Tribunal is satisfied that it occurred with the consent or connivance of a person who, at the time of the contravention, was a director of the body corporate or a person concerned in its management, the Tribunal may make the following additional orders —

(a) an order prohibiting the person from continuing to consent to, or connive at, the contravention;

(b) an order prohibiting the person from consenting to, or conniving at, a similar contravention by any other body corporate of which the person is a director or in whose management the person is concerned.

(5) An order under this section may be made subject to any conditions (whether as to the duration of the order or otherwise) the State Administrative Tribunal thinks fit, including —

(a) conditions relating to the future conduct of the person affected; and

(b) conditions specifying the action to be taken by the person to rectify the consequences of the contravention that is the subject of the order.

(6) A person who fails to comply with an order of the State Administrative Tribunal under this section commits an offence.

Penalty: a fine of $50 000.

48. Commissioner may take or defend proceedings relating to contravention of code of practice

(1) This section applies where —

(a) a person (other than a body corporate) has made a complaint to the Commissioner in respect of a matter

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arising under a code of practice or in relation to a contravention or suspected contravention of a code of practice; and

(b) the Commissioner, after investigating the complaint, is satisfied —

(i) that the complainant may, with respect to the matter, have a right to take proceedings before a court or the State Administrative Tribunal, or a defence to proceedings taken before a court or the State Administrative Tribunal by another person against the complainant in respect of the matter; and

(ii) that it is in the public interest that the Commissioner take or, as the case requires, defend those proceedings on behalf of the complainant.

(2) If this section applies, the Commissioner may take or defend those proceedings on behalf of, and in the name of, the complainant.

(3) The Commissioner must not take or defend any proceedings under this section without first obtaining —

(a) the written consent of the complainant, which once given cannot be revoked unless the Commissioner consents to the revocation; and

(b) the written consent of the Minister, which may be given subject to any conditions the Minister thinks fit.

49. Provisions applying to proceedings instituted or defended by Commissioner

(1) The following provisions apply in relation to any proceedings instituted or defended by the Commissioner under section 48 on behalf of a complainant —

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(a) the Commissioner has, on behalf of the complainant, in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the complainant would have had in the conduct of those proceedings;

(b) the Commissioner may, without consulting or seeking the consent of the complainant, conduct the proceedings in whatever manner the Commissioner thinks appropriate and proper;

(c) any moneys (excluding costs) recovered by the Commissioner belong and must be paid to the complainant without deduction, and any amount awarded against the complainant must be paid by and is recoverable from the complainant;

(d) in all cases the costs of the proceedings must be borne by or paid to and retained by the Commissioner as the case may require;

(e) if any party to the proceedings files a counterclaim, or if the complainant on whose behalf the proceedings are being defended is entitled to file a counterclaim, and that counterclaim is not related to the cause of action, the court or, as the case requires, the State Administrative Tribunal hearing the proceedings —

(i) must, on the application of the Commissioner, order that the counterclaim be heard separately and that the consumer be a party to the counterclaim in the complainant's own right; and

(ii) may make any other orders or give any directions in that behalf the court or Tribunal thinks fit.

(2) Any money that the Commissioner becomes liable to pay by virtue of this section is to be charged to the Consolidated Account, and this Act, without any further appropriation, is sufficient authority for the payment of the money.

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50. No doubling-up of liabilities

(1) For the purposes of this section, a person is convicted of an offence if a court finds the person guilty of the offence, or accepts a plea of guilty of the offence, whether or not a conviction is recorded.

(2) If an act or omission is a contravention of a prescribed code of practice and is also an offence against the *Australian Consumer Law (WA)*, and an order is made under section 47 in respect of that contravention, the offender is not liable to be punished for the offence against the *Australian Consumer Law (WA)*.

(3) If an act or omission is a contravention of a prescribed code of practice and is also an offence against the *Australian Consumer Law (WA)*, and the offender has been convicted of the offence under the *Australian Consumer Law (WA)*, the offender is not liable to have an order made against them under section 47.

51. Action taken for breach of code of practice doesn't preclude other civil action

(1) The fact that the Commissioner has made an application under section 47 in respect of a matter that is alleged to be a contravention of a prescribed code of practice, or that the State Administrative Tribunal has made an order under that section in respect of that matter, does not prevent any other person from taking proceedings before a court or the State Administrative Tribunal in respect of the matter.

(2) Nothing in this section permits a person other than the Commissioner to make an application under section 47.

52. Transitional provision relating to existing codes of practice

(1) Regulations made under the *Fair Trading Act 1987* section 84 prescribing a code of practice in accordance with section 43(1) of that Act and that were in force immediately before the commencement of this section continue in force after that

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commencement as if they were made under section 45, but nothing in section 45(2) and (3) applies in relation to those regulations.

(2) However, in the case of regulations prescribing a code of practice that first took effect at least 3 years before the commencement of this section, those regulations do not continue in force under subsection (1) unless, within the period of 3 years beginning on the date on which that code of practice first took effect, a review, in accordance with the *Fair Trading Act 1987* section 42, has been undertaken.

(3) Where regulations (other than regulations to which subsection (2) applies) continue in force under subsection (1), the regulations expire at the close of the last day of the period of 3 years beginning on the date on which the code of practice prescribed by the regulations first took effect unless, within that period —

(a) the Commissioner undertakes a review of the code of practice; and

(b) in undertaking the review, the Commissioner follows the consultation procedures set out in section 44.

(4) Regulations made under the *Fair Trading Act 1987* section 84 prescribing an interim code of practice in accordance with section 43(2) of that Act and that were in force immediately before the commencement of this section continue in force after that commencement as if they were made under section 46.

53. Transitional provisions relating to undertakings under *Fair Trading Act 1987* section 44

(1) The following provisions apply to a deed executed under the *Fair Trading Act 1987* section 44 and that was in force immediately before the commencement of this section —

(a) the deed continues in force after that commencement;

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(b) a person must observe undertakings given by the person in the deed;

(c) if, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a person has failed to observe an undertaking given by the person in the deed, the State Administrative Tribunal may order the person —

(i) to observe the undertaking; and

(ii) in the case of an undertaking to rectify the consequence of a contravention of a code of practice — to observe the undertaking within a time specified by the State Administrative Tribunal in the order.

(2) A person who contravenes subsection (1)(b) commits an offence.

Penalty: a fine of $10 000.

(3) A prosecution for an offence under subsection (2) can be instituted only by the Commissioner, and only with leave of the State Administrative Tribunal given when making an order under subsection (1)(c).

(4) Section 47(3) to (6) apply in relation to proceedings under subsection (1)(c) as if they were proceedings for an order under that section.

54. Transitional provision relating to contravention of existing code of practice

(1) This section applies if —

(a) before the commencement of section 52, a person has carried on business in contravention of a prescribed code of practice applicable to the person; and

(b) the code of practice continues in force under section 52; and

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(c) the person did not execute a deed under the *Fair Trading Act 1987* section 44 in relation to the contravention of the code of practice before the commencement of this section.

(2) If this section applies —

(a) the Commissioner can make an application under section 47 in respect of the contravention of the code of practice, as long as the application is made not later than 6 months after the commencement of this section; and

(b) the State Administrative Tribunal can deal with the application under that section accordingly.

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Part 5 — Administrative provisions

Division 1 — Commissioner

55. Commissioner

(1) In this section —

executive officer has the meaning given by the *Public Sector Management Act 1994* section 3(1).

(2) The Minister must, by notice published in the *Gazette*, designate an executive officer of the Department as the Commissioner for the purposes of this Act.

(3) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.

56. General functions of Commissioner

(1) The functions of the Commissioner include the following —

(a) to promote the interests of consumers and assist them to a greater awareness in relation to their assessment and use of goods and services;

(b) to collect, collate and disseminate information in respect of matters affecting the interests of consumers;

(c) to receive complaints from consumers concerning matters affecting their interests as consumers, to consider and, if the Commissioner considers it warranted, to investigate those complaints and to take whatever action in respect of those complaints as seems proper to the Commissioner;

(d) to receive complaints of fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers, and to make whatever investigations and inquiries and to take whatever other action in respect of those complaints as seems proper to the Commissioner;

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(e) to advise and assist consumers who seek from the Commissioner information or guidance on matters affecting their interests as consumers;

(f) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services;

(g) to perform any other functions that are conferred or imposed on the Commissioner by this Act or any other Act.

(2) Without limiting the generality of subsection (1), the Commissioner is to —

(a) make whatever recommendations to the Minister the Commissioner considers necessary or desirable in the interests of consumers and, in particular, investigate and make recommendations to the Minister in relation to any matters that concern the need for, or desirability of, legislative or administrative action in the interests of consumers;

(b) advise the Minister on any matters affecting the interests of consumers that the Minister may refer to the Commissioner;

(c) make recommendations to the Minister for the establishment and maintenance of means by which —

(i) matters that affect the interests of consumers and of persons engaged in the production, manufacture, preparation or supply of goods or in commerce or in the provision of services may receive adequate consideration; and

(ii) information concerning those matters and considerations may be widely disseminated.

(3) The Commissioner may cooperate, associate or consult with organisations that have the power to make investigations of the nature referred to in subsection (2)(a).

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57. Commissioner may issue warnings or information

(1) The Commissioner may publish (in any form) a statement identifying and giving warnings or information about any of the following —

(a) goods that are unsatisfactory or dangerous and persons who supply or are likely to supply those goods;

(b) services supplied in an unsatisfactory or dangerous manner and persons who supply or are likely to supply those services;

(c) unfair business practices and persons who engage or are likely to engage in those practices;

(d) any other matter that adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of goods or services.

(2) A statement under subsection (1) may identify particular goods, services, business practices, persons, corporate names, business names and trading names.

(3) The Commissioner must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.

58. Instituting or defending legal proceedings on behalf of consumers or businesses

(1) This section applies where —

(a) after a complaint or matter has been made or referred to the Department, the Commissioner is satisfied —

(i) that a consumer has a cause of action or a good defence to an action; and

(ii) that it is in the public interest or proper to institute or defend legal proceedings on behalf of the consumer;

or

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(b) the Commissioner is satisfied that it is proper to institute or defend legal proceedings on behalf of a business in relation to the supply or possible supply of goods or services in trade or commerce because a matter of public interest is involved.

(2) If this section applies, the Commissioner may —

(a) where subsection (1)(a) applies, on behalf of the consumer, institute legal proceedings against any other person, or defend any proceedings brought against the consumer, with a view to enforcing or protecting the rights of the consumer in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of any Act or any other law relating to the interests of consumers; or

(b) where subsection (1)(b) applies, on behalf of the business, institute legal proceedings against any other person, or defend any proceedings brought against the business.

(3) The Commissioner must not institute or defend any proceedings under this section —

(a) unless either —

(i) the amount claimed or involved in either case does not exceed $100 000 or such greater amount as is prescribed for the purposes of this paragraph; or

(ii) an order for specific performance of a contract, or an order in the nature of an order for specific performance of a contract, is the only remedy sought in the proceedings;

and

(b) without first obtaining —

(i) the written consent of the consumer or, as the case requires, the business, which once given

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cannot be revoked unless the Commissioner consents to the revocation; and

(ii) the written consent of the Minister, which may be given subject to any conditions the Minister thinks fit.

(4) The Commissioner may make any investigation or inquiry under Part 6 that the Commissioner considers necessary or desirable for the purposes of —

(a) satisfying himself or herself that it is proper to institute or defend legal proceedings on behalf of a business under subsection (1)(b); and

(b) instituting or defending those proceedings; and

(c) conducting those proceedings.

(5) Nothing in subsection (4) limits Part 6.

59. Provisions applying to proceedings instituted or defended by Commissioner

(1) The following provisions apply in relation to any proceedings instituted or defended by the Commissioner under section 58 on behalf of a consumer or business —

(a) the Commissioner has, on behalf of the consumer or business, in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the consumer or business would have had in the conduct of those proceedings;

(b) the Commissioner may, without consulting or seeking the consent of the consumer or business, conduct the proceedings in whatever manner the Commissioner thinks appropriate and proper;

(c) any moneys (excluding costs) recovered by the Commissioner belong and must be paid to the consumer or business without deduction, and any amount awarded

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against the consumer or business must be paid by and is recoverable from the consumer or business;

(d) in all cases the costs of the proceedings must be borne by or paid to and retained by the Commissioner as the case may require;

(e) if any party to the proceedings files a counterclaim, or if the consumer or business on whose behalf the proceedings are being defended is entitled to file a counterclaim, and that counterclaim is not related to the cause of action and in no way relates to the interests of the consumer as a consumer or, as the case requires, the interests of the business as a business, the court hearing the proceedings —

(i) must, on the application of the Commissioner, order that the counterclaim be heard separately and that the consumer or business be a party to the counterclaim in the consumer's or business's own right; and

(ii) may make any other orders or give any directions in that behalf the court thinks fit.

(2) Any money that the Commissioner becomes liable to pay by virtue of this section is to be charged to the Consolidated Account, and this Act, without any further appropriation, is sufficient authority for the payment of the money.

60. Delegation by Commissioner

(1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under a provision of this or any other Act.

(2) The delegation must be in writing signed by the Commissioner.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

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(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

61. Judicial notice

All courts, judges and persons acting judicially must take judicial notice of —

(a) the official signature of every person who is for the time being, and every person who has at any time been, the Commissioner; and

(b) the fact that the person holds or has held that office.

Division 2 — Offence

62. Advertisements not to imply approval by consumer affairs authority

(1) In this section —

consumer affairs authority —

(a) means —

(i) the Department or the chief executive officer or the Commissioner; or

(ii) any person, or statutory body or authority, appointed or constituted under any law of the Commonwealth or of any State or Territory of the Commonwealth and having powers, functions and duties under the laws of the Commonwealth or that State or Territory similar to those of the Department or the chief executive officer or the Commissioner under the laws of this State;

and

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(b) includes —

(i) any officer of the Department; and

(ii) any officer or employee of a statutory body or authority referred to in paragraph (a)(ii) of this definition;

publish includes —

(a) include in a newspaper or other publication published in this State;

(b) disseminate by the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound;

(c) broadcast by radio or for television;

(d) include on an internet website or otherwise publicly disseminate by means of the internet;

(e) publicly exhibit in, on, over or under any building, vehicle or place, or in the air, in view of persons in or on any street or public place;

(f) include in a document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or left on a vehicle;

(g) make verbally to any person.

(2) A person must not publish or cause to be published any statement —

(a) that is intended or is apparently intended to promote the sale, hiring or leasing of goods, or the sale of an estate or interest in any land or building, or the letting or leasing of any land or building or part of a building, or the use of a service rendered for fee or reward; and

(b) that states, either expressly or by implication, that any consumer affairs authority has approved, or has refrained from disapproving, the statement or any material particular in the statement or any claim made in

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the statement or any goods or services depicted or described, whether by a trade name or otherwise, in the statement.

Penalty: a fine of $10 000.

(3) It is a defence in any proceedings for an offence under subsection (2) if the accused satisfies the court that, before the publication of the statement, the Minister consented in writing to its publication.

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Part 6 — Investigation and enforcement

Division 1 — Interpretation

63. Terms used

In this Part —

authorised person means —

(a) the Commissioner; and

(b) in relation to a power of the Commissioner under a provision of this Act or any other Act, a person to whom that power is delegated under section 60; and

(c) an investigator;

investigator means a person designated under section 64 as an investigator;

motor vehicle has the meaning given in the *Road Traffic Act 1974* section 5(1).

Division 2 — Investigators

64. Appointment of investigators

The Commissioner may designate any of the following persons as an investigator for the purposes of this Part —

(a) any person employed in the Department;

(b) any person who —

(i) is an officer of a Public Sector agency that provides services to the Department; and

(ii) assists in the exercise of the Commissioner's functions under this Act;

(c) any person engaged by the chief executive officer to assist in the exercise of the Commissioner's functions under this Act.

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65. Certificate of appointment as investigator

(1) The Commissioner is to provide each investigator with a document, signed by the Commissioner, certifying that the person is entitled to exercise the powers of an investigator.

(2) A person to whom a document is provided under this section and who ceases to be an investigator must return the document to the Commissioner as soon as practicable.

(3) A person who contravenes subsection (2) without reasonable excuse, the onus of proving which is on the person, commits an offence.

Penalty: a fine of $1 000.

66. Investigators to produce certificate of appointment on demand

An investigator must produce the document provided under section 65 when demanded by a person in respect of whom the investigator performs, has performed, or is proposing to perform any function under this Act or another Act.

67. Persons assisting investigators

(1) Where an investigator is exercising any of the investigator's powers under this Part, a person (the ***assistant***), including an interpreter, may accompany the investigator to assist the investigator if the investigator considers the assistance is necessary.

(2) The assistant —

(a) may do such things and in such manner as the investigator reasonably requires to assist the investigator to exercise the investigator's powers; but

(b) must not do anything that the investigator does not have power to do, except as permitted under a warrant under Division 3.

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(3) Anything done lawfully by the assistant is taken for all purposes to have been done by the investigator.

Division 3 — General powers

68. Investigation and inquiry by Commissioner

(1) The Commissioner may, of the Commissioner's own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for the purposes of carrying out the Commissioner's functions under this Act or any other Act.

(2) An authorised person may make an investigation or inquiry under this section on behalf of the Commissioner.

69. Power of Commissioner to investigate, inquire and obtain information

(1) For the purposes of carrying out any investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or any other Act, an authorised person may —

(a) require any person —

(i) to give whatever information the authorised person requires in relation to any matter the subject of an investigation or inquiry; and

(ii) to answer any question put to the person in relation to any matter the subject of an investigation or inquiry;

and

(b) require any person to produce any document or thing relating to an investigation or inquiry; and

(c) enter at all reasonable times and search any premises or motor vehicle named in a warrant obtained in accordance with this Division and exercise the powers set out in the warrant; and

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(d) make a copy or abstract of any document produced or inspected under this section, or of any entry made in the document.

(2) A requirement made under subsection (1)(a) —

(a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case requires; and

(b) must specify the time at or within which the information is to be given or the question is to be answered, as the case requires; and

(c) may, by its terms, require that the information or answer required —

(i) be given orally or in writing; and

(ii) be given at or sent or delivered to any place specified in the requirement; and

(iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and

(iv) be given on oath or affirmation or by statutory declaration.

(3) An authorised person may administer an oath or affirmation or witness a statutory declaration for the purposes of subsection (2)(c)(iv).

(4) A requirement made under subsection (1)(b) —

(a) must be made by notice in writing served on the person required to produce a document or thing, unless the circumstances require the authorised person to have immediate access to the document or thing, in which case the requirement may be given orally; and

(b) must specify the time at or within which the document or thing is to be produced; and

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(c) may, by its terms, require that the document or thing required be produced —

(i) at any place specified in the requirement; and

(ii) by any means specified in the requirement.

(5) Where, under subsection (1)(a) or (b), an authorised person orally requires a person to give any information, answer any question or produce any document or thing, the authorised person must inform the other person that the other person is required, under this Act or another Act, to give the information, answer the question or produce the document or thing, as the case requires.

(6) Where, under subsection (1)(a) or (b), a person is required by notice in writing to give any information, answer any question or produce any document or thing, the notice must state that the person is required, under this Act or another Act, to give the information, answer the question or produce the document or thing, as the case requires.

70. Conduct of interviews

(1) An interview conducted by an authorised person under section 69(1)(a) must be conducted in private if —

(a) the authorised person considers it appropriate; or

(b) the person being interviewed so requests.

(2) Subsection (1) does not limit the operation of section 67 or prevent a representative of the person being interviewed from being present at the interview.

(3) Subsection (1) may be invoked during an interview by —

(a) the authorised person; or

(b) the person being interviewed.

(4) If subsection (1) is invoked during an interview, the subsection applies to the remainder of the interview.

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71. Warrant to enter premises or motor vehicle

(1) If an authorised person considers in a particular case that there are reasonable grounds for believing that entry to premises or a motor vehicle is necessary for the purposes of carrying out any investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or any other Act, the authorised person may apply to a magistrate or justice of the peace for a warrant to be issued in respect of those premises or that motor vehicle.

(2) An application for a warrant must —

(a) be in writing; and

(b) be accompanied by a notice in writing from the authorised person stating that the person considers in the particular case that there are reasonable grounds for believing that entry to premises or a motor vehicle is necessary for the purposes of carrying out an investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or another Act; and

(c) set out the grounds for seeking the warrant; and

(d) describe the premises or motor vehicle that are to be entered.

(3) A magistrate or justice of the peace to whom an application is made under this section must refuse it if —

(a) the application does not comply with the requirements of this Act; or

(b) when required to do so by the magistrate or justice of the peace, the applicant does not give to the magistrate or justice of the peace more information about the application.

(4) The information in an application or given to a magistrate or justice of the peace under this section must be verified before the magistrate or justice of the peace on oath or affirmation or

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by affidavit, and the magistrate or justice of the peace may for that purpose administer an oath or affirmation or take an affidavit.

72. Warrants by telephone, fax or other electronic means

(1) If an authorised person requires a warrant urgently, or a magistrate or justice of the peace is not available within a reasonable distance of the authorised person, the authorised person may apply to a magistrate or justice of the peace by telephone, fax or other electronic means for a warrant under section 71.

(2) The magistrate or justice of the peace may —

(a) require communication by voice to the extent that it is practicable in the circumstances; and

(b) make a recording of the whole or any part of any such communication by voice.

(3) Before applying for the warrant, the authorised person must prepare an affidavit that sets out the grounds on which the warrant is sought.

(4) If it is necessary to do so, the authorised person may apply for the warrant before the affidavit is sworn or affirmed.

(5) The magistrate or justice of the peace may complete and sign the same warrant that the magistrate or justice of the peace would issue under section 74 if the application had been made under section 71 if the magistrate or justice of the peace is satisfied that there are reasonable grounds for issuing the warrant, after having —

(a) considered the terms of the affidavit; and

(b) received such further information (if any) as the magistrate or justice of the peace requires concerning the grounds on which the issue of the warrant is sought.

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73. Further provisions relating to warrants by telephone etc.

(1) If a magistrate or justice of the peace completes and signs a warrant under section 72(5) —

(a) the magistrate or justice of the peace must —

(i) tell the authorised person what the terms of the warrant are; and

(ii) tell the authorised person the day on which and the time at which the warrant was signed; and

(iii) tell the authorised person the day (not more than one week after the magistrate or justice of the peace completes and signs the warrant) on which the warrant ceases to have effect; and

(iv) record on the warrant the reasons for issuing the warrant;

and

(b) the authorised person must —

(i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate or justice of the peace; and

(ii) write on the form the name of the magistrate or justice of the peace and the day on which and the time at which the warrant was signed.

(2) The authorised person must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate or justice of the peace —

(a) the form of warrant completed by the authorised person; and

(b) the affidavit referred to in section 72(3), which must have been duly sworn or affirmed.

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(3) When the magistrate or justice of the peace receives those documents, the magistrate or justice of the peace must —

(a) attach them to the warrant that the magistrate or justice of the peace completed and signed; and

(b) deal with them in the way in which the magistrate or justice of the peace would have dealt with them if the application had been made under section 71.

(4) A form of warrant duly completed under subsection (1)(b) is authority for the same powers as are authorised by the warrant signed by the magistrate or justice of the peace.

(5) If a magistrate or justice of the peace completes and signs a warrant under section 72(5), in any proceedings a court must assume, unless the contrary is proved, that the exercise of a power was not authorised by the warrant if —

(a) it is material, in those proceedings, for the court to be satisfied that the exercise of the power was authorised by this section; and

(b) the warrant is not produced in evidence.

74. Issue of warrant

(1) A magistrate or justice of the peace to whom an application is made under section 71 may issue a warrant if satisfied that the authorised person has reasonable grounds for believing that entry and inspection of the premises or motor vehicle are necessary for the purposes of carrying out an investigation or inquiry under this Act or another Act.

(2) A warrant under subsection (1) authorises the person to whom the warrant is issued —

(a) to enter the premises or motor vehicle named in the warrant and search the premises or motor vehicle and any thing that is found on the premises or in or on the motor vehicle; and

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(b) to inspect documents and other things, and take copies or extracts from documents found on the premises or in or on the motor vehicle; and

(c) to inspect, examine, take measurements of, or conduct tests on, any thing found on the premises, or in or on the motor vehicle, that is relevant to the investigation or inquiry; and

(d) to take and remove for examination, analysis or testing a sample of any thing found on the premises, or in or on the motor vehicle, that is relevant to the investigation or inquiry, without paying for the sample; and

(e) to inspect any service carried on in the premises or from the motor vehicle; and

(f) to take measurements or recordings of any sort; and

(g) to take photographs, sound and video recordings and drawings of the premises or motor vehicle searched, and of any thing found in those premises or in or on that motor vehicle, if the person exercising the power has reasonable grounds for believing that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search; and

(h) to seize things that may be seized under section 79.

(3) The warrant must state —

(a) the purpose for which the warrant is issued; and

(b) the name of the person to whom the warrant is issued; and

(c) a description of the premises or motor vehicle that may be entered.

(4) The magistrate or justice of the peace who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate or justice of the peace has relied on to justify the issue of the warrant.

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75. Person with knowledge of computer or computer network or other data storage devices to assist access

(1) In this section —

access information includes access codes, passwords, and encryption keys, and any related information that enables access to a computer or other data storage device;

specified person means a person who —

(a) is the owner or lessee of the computer or other data storage device, or is in possession or control of the computer or other data storage device, an employee of any of the above, or any service provider who provides service to the above and holds access information; and

(b) has relevant knowledge of —

(i) the computer or a computer network of which the computer or other data storage device forms a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or other data storage device.

(2) A person executing a warrant under section 74 may require a specified person to provide access information and other information or assistance that is reasonable and necessary to allow the person executing the warrant to access data held in, or accessible from —

(a) a computer that is on the premises or in or on the motor vehicle named in the warrant; or

(b) any other data storage device that is on the premises or in or on the motor vehicle named in the warrant.

76. Further powers conferred by warrant

(1) A warrant under section 74 also authorises the person to whom the warrant is issued —

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(a) to bring and use in the premises or in or on the motor vehicle named in the warrant any equipment, to use any equipment found in the premises or in or on the motor vehicle, and to extract any electricity or other form of energy from the premises or vehicle to operate the equipment that it is reasonable to use in the circumstances, for the purposes of executing the warrant; and

(b) to access and copy intangible material from computers and other data storage devices located at or accessible from the premises or vehicle named in the warrant (including copying by means of previewing, cloning, or other forensic methods either before or after removal for examination); and

(c) to use any reasonable measures to —

(i) gain access to any computer or other data storage device that is at the premises or in or on the vehicle named in the warrant, or that can be accessed from a computer or other data storage device that is at those premises or in or on that vehicle; and

(ii) create a forensic copy of any material in such a computer or other data storage device.

(2) This section does not limit section 74, 75 or 78.

77. Compensation for damage to equipment or data

(1) This section applies where —

(a) either —

(i) damage is caused to equipment as a result of it being operated as mentioned in section 76; or

(ii) the data recorded on or accessible from the equipment is damaged;

and

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(b) the damage was caused as a result of —

(i) insufficient care being exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care being exercised by the person operating the equipment.

(2) Where this section applies, the owner of the equipment or the user of data recorded on or accessible from the equipment is entitled to compensation for the damage.

(3) For the purposes of subsection (1), damage to data includes damage by erasure of data or addition of other data.

(4) An application for compensation is to be made to the Commissioner.

(5) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises (or the person in charge of the motor vehicle, as the case requires) and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

(6) Any compensation that is payable under this section is to be charged to the Consolidated Account, and this Act, without further appropriation, is sufficient authority for the payment of the compensation.

78. Execution of warrant

(1) Entry authorised by a warrant under section 74 may be made with whatever assistance and equipment is reasonably necessary for the purpose for which entry is required.

(2) A person executing a warrant under section 74, and a person assisting that person, may use any force that is reasonably necessary for the execution of the warrant.

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(3) A warrant authorising the entry and search of a motor vehicle authorises the person executing the warrant to enter any place where the person has reasonable grounds to believe that the vehicle is, for the purpose of locating it and searching it.

(4) Before entering any premises or motor vehicle under a warrant, the person executing the warrant must show the person, if any, who gives the person entry to the premises or motor vehicle —

(a) in the case of the Commissioner, a document signed by the Minister and certifying that the person is the Commissioner; and

(b) in the case of an authorised person other than the Commissioner, a document signed by the Commissioner and certifying that that person is an authorised person.

(5) The person executing the warrant must produce it for inspection if asked by —

(a) the occupier or a person in charge of the premises; or

(b) a person in charge of the motor vehicle.

(6) When executing a warrant, an authorised person may require any person who has the control of any premises, motor vehicle or thing that the authorised person is authorised to enter or inspect to furnish reasonable access to it and to give other reasonable assistance.

(7) A warrant ceases to have effect on the earliest of the following —

(a) at the end of the period of one month after its issue;

(b) if it is withdrawn by the magistrate or justice of the peace who issued it;

(c) when it is executed.

79. Seizure

(1) An authorised person may seize a document or other thing that is produced or given in response to a requirement under this

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Division, or that is found as the result of executing a warrant under this Division.

(2) However, a document or other thing cannot be seized unless the authorised person reasonably suspects that the document or thing —

(a) is being, or has been, used to commit a breach of this Act or another Act that confers functions on the Commissioner; or

(b) may provide evidence of the commission of a breach of this Act or another Act that confers functions on the Commissioner.

(3) As soon as practicable after the document or other thing is seized, the authorised person must give a receipt for it to the person from whom it was seized.

(4) The receipt must clearly describe the document or thing seized and its condition.

(5) If, for any reason, it is not practicable to comply with subsection (3), the authorised person must —

(a) leave the receipt at the place of seizure; and

(b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

80. Copies of seized things to be provided

(1) This section applies if the person executing a warrant relating to premises seizes, under section 79 —

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device, the information in which can be readily copied.

(2) Where this section applies, the person executing the warrant must, if requested to do so by the occupier of the premises or

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another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.

(3) Subsection (2) does not apply if possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

81. Access to things seized

(1) Until a thing seized under section 79 is forfeited or returned, the person in whose custody the seized thing is must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

82. Return of seized things

(1) Where a document or other thing is seized under section 79, an authorised person may retain the document or other thing for as long as is reasonably necessary for the purposes of —

(a) the investigation to which the document or other thing is relevant; and

(b) any proceedings to which the document or other thing is relevant.

(2) When the retention of the document or other thing ceases to be reasonably necessary for those purposes, the authorised person must ensure that the document or other thing is delivered to the person who appears to the authorised person to be entitled to possession of it.

83. SAT review: seizure

(1) A person aggrieved by the seizure of any thing under section 79 may apply to the State Administrative Tribunal for a review of the decision to seize the thing.

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(2) In dealing with an application under subsection (1), the State Administrative Tribunal may determine whether the thing seized must be destroyed, disposed of, forfeited to the State, restored to the person from whom it was seized or otherwise dealt with.

(3) Subsection (2) does not limit the powers that the *State Administrative Tribunal Act 2004* gives the State Administrative Tribunal.

84. Forfeiture of seized thing

(1) The Commissioner may determine that a thing seized under section 79 is forfeited to the State if the authorised person who seized the thing —

(a) cannot find its owner, after making reasonable inquiries; or

(b) cannot return the thing to the owner or other person entitled to possession of the thing, after making reasonable efforts.

(2) In applying subsection (1) —

(a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and

(b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to the owner or other person entitled to possession of the thing.

(3) Regard must be had to a thing's nature, condition and value in deciding —

(a) whether it is reasonable to make inquiries or efforts; and

(b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

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85. Dealing with forfeited things

(1) On the forfeiture of a thing to the State under section 84, the thing becomes the property of the State, and may be dealt with as the chief executive officer considers appropriate.

(2) Without limiting subsection (1), the chief executive officer may cause the thing to be destroyed, sold or disposed of.

86. Privilege against self-incrimination doesn't apply

(1) Where under section 69 a person is required to give any information, or answer any question or produce any document or thing —

(a) that person cannot refuse to comply with that requirement on the ground that the information, answer, document or thing may tend to incriminate the person or render the person liable to any penalty; but

(b) the information or answer given, or document or thing produced, by the person is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 88(1)(b).

(2) This section is without prejudice to the provisions of the *Evidence Act 1906* section 11.

87. Information

(1) Information concerning the affairs of a person that is obtained under this Division by an authorised person may (for the purposes of section 112 (which relates to the confidentiality of information officially obtained)) be recorded, used or disclosed on the basis that it has been acquired by the authorised person for the purposes of this Act.

(2) Where an authorised person copies a document under section 69(1)(d) or when executing a warrant —

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(a) the authorised person may certify the copy as being a true and accurate copy of the document; and

(b) in the absence of proof to the contrary, the certified copy is to be accepted by any court or tribunal as evidence of, and as having equal validity as, the original.

Division 4 — Offences

88. Failure to cooperate with investigation

(1) A person commits an offence who, without reasonable excuse (proof of which lies on the person), when required under Division 3 to give any information, answer any question or produce any document or thing —

(a) fails to give that information or answer that question at or within the time specified in the requirement; or

(b) gives any information or answer that is false or misleading in any material particular; or

(c) fails to produce that document or thing at or within the time specified in the requirement.

Penalty: a fine of $10 000.

(2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —

(a) that, in the case of an alleged offence arising out of a requirement made orally under section 69, the authorised person did not, when making the requirement, inform the accused that he or she was required under this Act or the other Act that is relevant to give the information, answer the question or produce the document or thing, as the case requires; or

(b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 69, the notice did not state that the accused was required under this Act or the other Act that is relevant to give the

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information, answer the question or produce the document or thing, as the case requires; or

(c) that the time specified in the requirement did not give the accused sufficient notice to enable him or her to comply with the requirement; or

(d) that, in any case, the authorised person did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation or inquiry being carried out.

89. Obstructing authorised person

(1) A person must not prevent or attempt to prevent an authorised person from entering premises or a motor vehicle in the exercise of the authorised person's powers under section 69.

Penalty: a fine of $2 000.

(2) A person must not obstruct or impede an authorised person in the exercise of the authorised person's powers under section 69.

Penalty: a fine of $2 000.

(3) A person must comply with a requirement to assist an authorised person executing a warrant under section 74 when requested to do so under section 75(2).

Penalty: a fine of $2 000.

(4) A person must comply with a requirement to furnish reasonable access to a place or motor vehicle, or to give other reasonable assistance to an authorised person under section 78(6).

Penalty: a fine of $2 000.

(5) For the purposes of this section, a reference to an authorised person includes an assistant accompanying an investigator in accordance with section 67.

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Part 7 — Criminal and civil proceedings

Division 1 — Preliminary

90. Term used: person involved in contravention

A reference in this Division to a person involved in a contravention of a provision of this Act is to be read as a reference to a person who —

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention; or

(e) has attempted to contravene the provision, or to do any act of a kind referred to in paragraph (a), (b), (c) or (d).

Division 2 — Criminal proceedings

91. Time limit for commencing proceedings

Proceedings for an offence against this Act may be commenced within 3 years after the alleged commission of the offence.

92. Who may institute criminal proceedings

(1) Prosecutions for offences against this Act may be instituted by the Commissioner or by a person authorised in writing by the Commissioner.

(2) No other person may institute a prosecution for an offence against this Act unless written consent to the institution of the prosecution is given by —

(a) the Commissioner; or

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(b) a person authorised in writing by the Commissioner to give consents under this section.

(3) In proceedings for an offence against this Act, a document giving consent to the institution of a prosecution and purporting to have been signed by the Commissioner, or by an authorised person, is evidence of that consent without proof of the signature.

93. Court of summary jurisdiction to be constituted by magistrate

A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

94. Other powers of courts in criminal proceedings

(1) Where proceedings in the Supreme Court or the District Court are taken against a person for contravening, or being involved in a contravention of, a provision of this Act, the Court, in addition to dealing with the offence charged, may —

(a) grant an injunction under section 99 or 100 against the person in relation to —

(i) the conduct that constitutes, or is alleged to constitute, the contravention; or

(ii) other conduct of that kind;

and

(b) make an order under section 105 in relation to the contravention.

(2) If a person is convicted of an offence against this Act, the court by which the conviction was effected may order the offender to reimburse the Department for the cost of purchasing or testing any goods to which the conviction relates.

(3) Where a person is, by any conviction or order of a court, adjudged to pay a fine, or costs or other sum of money in

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respect of an offence against this Act, the court by which the conviction or order was effected or made may —

(a) exercise any power that the court has apart from this section; or

(b) on the application of the Minister or the Commissioner, order that the amount unpaid be recoverable as if it were a judgment debt payable by the defaulter to the Crown under a judgment entered up in the court.

95. Offences by directors, employers, and vicarious liability

(1) Where a corporation within the meaning of the *Corporations Act 2001* (Commonwealth) or any other body of persons, corporate or unincorporate, is convicted of an offence against this Act, each person who, at the time of the commission of that offence, was a director of the corporation or was the manager, secretary or other similar officer of that body, or who purported to act in any of those capacities, is also guilty of an offence unless the person proves —

(a) that the offence was committed without the person's knowledge, or that the person did not authorise or permit the commission of the offence; and

(b) that the person was not in a position to influence the conduct of that corporation or body or, being in such a position, could not by the exercise of reasonable diligence have prevented the commission of the offence.

(2) A person who is guilty of an offence by virtue of subsection (1) is liable to a penalty not exceeding the penalty prescribed for the offence of which the corporation or body was convicted.

(3) Where the affairs of a body of persons are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's function of management as if the person were the manager of that body.

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(4) Where the employee or agent of a person (***person A***) is convicted of an offence against this Act, each person (***person B***) who, at the time of the commission of the offence, was person A's employer or principal —

(a) is also guilty of an offence, unless person B proves that person B could not by the exercise of reasonable diligence have prevented the commission of the offence of which person A was convicted; and

(b) is liable to a penalty not exceeding the penalty prescribed for the offence of which person A was convicted.

(5) Where a person has committed an offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3), or would have committed an offence but for the fact that the person could establish a defence under section 96 or 97, and the contravention, or what would have constituted the contravention, was due to the act or default of another person —

(a) that other person —

(i) is also guilty of an offence and liable to the same penalty as is provided for the offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3); and

(ii) may be charged and convicted of the offence, whether or not proceedings are taken against the first-mentioned person for the offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3);

and

(b) the first-mentioned person is a competent and compellable witness in any proceedings taken against that other person in respect of the offence.

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96. Defence: reasonable mistake

(1) In a prosecution under this Part for an offence against this Act, it is a defence if the accused establishes that the contravention in respect of which the proceeding was instituted was due to reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.

(2) However, subsection (1) does not apply in relation to information relied upon by the accused that was supplied to the accused by another person who was, at the time when the contravention occurred —

(a) an employee or agent of the accused; or

(b) if the accused is a body corporate, a director, employee or agent of the accused.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the accused is not entitled to rely on that defence unless —

(a) the court gives leave; or

(b) the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a notice in writing giving whatever information the accused then had that would identify or assist in identifying the other person.

97. Defence: act or default of another person etc.

(1) In a prosecution under this Part for an offence against this Act, it is a defence if the accused establishes that —

(a) the contravention in respect of which the proceeding was instituted was due to —

(i) the act or default of another person; or

(ii) an accident; or

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(iii) some other cause beyond the accused's control;

and

(b) the accused took reasonable precautions and could not by the exercise of due diligence have prevented the commission of the offence.

(2) However, subsection (1) does not apply in relation to the act or default of another person who was, at the time when the contravention occurred —

(a) an employee or agent of the accused; or

(b) if the accused is a body corporate, a director, employee or agent of the accused.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to the act or default of another person, the accused is not entitled to rely on that defence unless —

(a) the court gives leave; or

(b) the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a notice in writing giving whatever information the accused then had that would identify or assist in identifying the other person.

98. Defence: publication of advertisements in ordinary course of business

In a proceeding under this Part in relation to a contravention of this Act committed by the publication of an advertisement, it is a defence if it is established —

(a) that the accused is a person whose business it is to publish or arrange for the publication of advertisements; and

(b) that the accused received the advertisement for publication in the ordinary course of business; and

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(c) that the accused did not know and had no reason to suspect that its publication would amount to a contravention of this Act.

Division 3 — Civil proceedings

99. Injunctions in restraint of conduct

(1) The Supreme Court or the District Court, on the application of the Minister, the Commissioner or any other person, may grant an injunction in whatever terms the Court determines to be appropriate where the Court is satisfied that a person —

(a) has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of a provision of this Act; or

(b) is involved in a contravention of a provision of this Act.

(2) The power of the Court to grant an injunction restraining a person (***person A***) from engaging in conduct may be exercised —

(a) whether or not it appears to the Court that person A intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not person A has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if person A engages in conduct of that kind.

100. Other injunctions

(1) The Supreme Court or the District Court, on the application of the Commissioner, may grant an injunction in whatever terms the Court determines to be appropriate where the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes, or would constitute, or is involved in, a contravention of —

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(a) an interim ban or a permanent ban under the *Australian Consumer Law (WA)* Part 3-3 Division 2; or

(b) a provision of any other legislation administered by the Minister or of an order made under any such legislation, being a provision relevant to the alleged contravention; or

(c) a provision of a prescribed code of practice in force under Part 4 in respect of which the Commissioner has applied to the State Administrative Tribunal under section 47; or

(d) a provision of an order of the State Administrative Tribunal under section 47.

(2) If the Court is satisfied, on the application of the Commissioner, that a person has engaged in conduct constituting, or is involved in, a contravention of a provision of this Act, the Court may grant an injunction requiring that person to take specified action to remedy any adverse consequence of that conduct, including —

(a) an order requiring that person or a person involved in the contravention to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or

(b) an order requiring the person or a person involved in the contravention to publish, at the person's own expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

101. Injunctions generally

(1) An injunction granted under this Division may be, or include, an injunction restraining a person from carrying on a business of supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business) —

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(a) for a specified period; or

(b) except on specified terms and conditions.

(2) The power of the Court to grant an injunction under this Division requiring a person to do an act or thing may be exercised —

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

102. Interim injunctions

(1) An interim injunction may be granted under this Division pending final determination of the application.

(2) Where the Minister or the Commissioner makes an application to the Court for the grant of an injunction under this Division, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages or costs.

(3) If, in a case to which subsection (2) does not apply, the Court would, but for this subsection, require a person to give an undertaking as to damages or costs, then —

(a) if the Minister gives the undertaking, the Court must accept the undertaking by the Minister; and

(b) the Court must not require a further undertaking from any other person.

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103. Final injunction by consent

A final injunction may, by consent of the parties, be granted under this Division without proof that proper grounds for the injunction exist.

104. Injunction may be rescinded or varied

An injunction under this Division may be rescinded or varied at any time.

105. Other orders

(1) Without limiting the generality of section 99 or 100, if, in a proceeding instituted under this Part, or for an offence against this Act, the Supreme Court or the District Court is satisfied that a person has suffered, or is likely to suffer, loss or damage by reason of conduct of another person that contravened a provision of this Act, the Court may make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention for the purpose of compensating the first-mentioned person wholly or in part for the loss or damage or of preventing or reducing the extent of the loss or damage.

(2) The Court may make an order under this section whether or not an injunction under this Division or any other relief is granted or any other order is made in the proceedings.

(3) Whether or not other proceedings have been instituted under this Act in relation to a contravention, the Court may make orders under this section —

(a) on the application of a person who has suffered, or is likely to suffer, loss or damage by reason of the contravention; or

(b) on the application of the Commissioner on behalf of one or more such persons made with the written consent of each such person.

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(4) The orders that may be made under this section include the following —

(a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void from its beginning or at all times on and after such date, before the date on which the order is made, as is specified in the order;

(b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified;

(c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;

(d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage;

(e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;

(f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage;

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(g) an order, in relation to an instrument creating or transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that —

(i) varies, or has the effect of varying, the first-mentioned instrument; or

(ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.

(5) The powers conferred on the Supreme Court and the District Court under this section in relation to a contract or arrangement do not affect any powers that any other court may have in relation to the contract or arrangement in proceedings instituted in that other court in respect of the contract or arrangement.

106. Power of Supreme Court and District Court to prohibit payment or transfer of money or other property

(1) In this section, a person (the ***first person***) is an associate of another person if —

(a) the first person holds money or other property on behalf of the other person; or

(b) if the other person is a body corporate, the first person is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001* (Commonwealth)) of the other person.

(2) A Court may, on the application of the Minister or the Commissioner, make an order or orders of the kind specified in subsection (4) if —

(a) proceedings of a kind referred to in subsection (3) have been taken against a person, or proceedings of a kind referred to in subsection (3)(d) may be taken against a person; and

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(b) the Court is satisfied that it is necessary or desirable to make the order or orders for the purpose of preserving money or other property held by, or on behalf of, the person if the person is liable or may become liable under this Act —

(i) to pay moneys by way of a fine, damages, compensation, refund or otherwise; or

(ii) to transfer, sell or return other property;

and

(c) the Court is satisfied that the making of the order or orders will not unduly prejudice the rights and interests of any other person.

(3) For the purposes of subsection (2)(a), the kinds of proceedings taken against the person are as follows —

(a) proceedings in the Supreme Court or the District Court against the person for an offence against this Act;

(b) an application under section 99 or 100 for an injunction against the person in relation to a contravention of a provision of this Act;

(c) an action under the *Australian Consumer Law (WA)* section 236(1) against the person in relation to a contravention of a provision of this Act;

(d) an application for an order under section 105 against a person in relation to a contravention of a provision of this Act.

(4) The Court may make the following orders under subsection (2) in relation to money or other property held by, or on behalf of, a person (the ***respondent***) —

(a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the respondent, or to an associate of the respondent, from making a payment, in total or partial discharge of the debt —

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(i) to the respondent; or

(ii) to another person at the direction or request of the respondent;

(b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the respondent, or on behalf of an associate of the respondent —

(i) from paying all or any of the money to the respondent, or to another person at the direction or request of the respondent; or

(ii) from transferring the other property to the respondent, or to another person at the direction or request of the respondent, or otherwise parting with possession of that property;

(c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the respondent, or of an associate of the respondent, to a place outside the State;

(d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the respondent, or of an associate of the respondent, to a place outside the State;

(e) if the respondent is a natural person, an order appointing a receiver or trustee of the property, or of part of the property, of the respondent with such powers as are specified in the order.

(5) If the Court makes an order under this section, the order operates —

(a) for a period specified in the order (which must not be longer than 30 days if the application for the order was made in the absence of the person against whom the order is sought); or

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(b) if proceedings in relation to which the order is made are concluded before the end of that period, until the conclusion of those proceedings.

(6) This section —

(a) has effect subject to the *Bankruptcy Act 1966* (Commonwealth); and

(b) does not affect any other powers of the Supreme Court or the District Court.

107. Offence to contravene order under section 106

A person commits an offence who contravenes or fails to comply with an order by the Supreme Court or the District Court under section 106 that is applicable to the person.

Penalty:

(a) in the case of a body corporate, a fine of $1 100 000;

(b) in the case of a person other than a body corporate, a fine of $220 000.

108. Finding in certain proceedings to be evidence

(1) In an action against a person under the *Australian Consumer Law (WA)* section 236(1) —

(a) a finding of a fact by a court to which subsection (3) applies is prima facie evidence of that fact; and

(b) the finding may be proved by production of a document under the seal of the court from which the finding appears.

(2) In proceedings for an order against a person under section 105(3) or the *Australian Consumer Law (WA)* section 237(1), 238(1) or 239(1) —

(a) a finding of a fact by a court to which subsection (3) applies is prima facie evidence of that fact; and

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(b) the finding may be proved by production of a document under the seal of the court from which the finding appears.

(3) This subsection applies to a finding of fact by a court that is made in proceedings under section 99 or 100, or the *Australian Consumer Law (WA)* section 228, 232, 246, 247 or 248, or for an offence against this Act, in which the person has been found to have contravened, or to have been involved in a contravention of, a provision of the *Australian Consumer Law (WA)* Chapter 2, 3 or 4.

Division 4 — Further provisions relating to proceedings

109. References to state of mind

A reference in sections 110 and 111 to the state of mind of a person includes a reference to —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for that intention, opinion, belief or purpose.

110. Conduct and state of mind of directors, employees or agents of bodies corporate

(1) Where, in a proceeding under this Part or the *Australian Consumer Law (WA)* in respect of conduct that is engaged in by a body corporate and to which this Part or the *Australian Consumer Law (WA)* applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show —

(a) that a director, employee or agent of the body corporate engaged in that conduct within the scope of the person's actual or apparent authority; and

(b) that the director, employee or agent had that state of mind.

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(2) Conduct of the kind set out in paragraph (a) or (b) that is engaged in on behalf of a body corporate is to be treated, for the purposes of this Act, as having been engaged in by the body corporate as well —

(a) conduct by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or

(b) conduct by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent.

111. Conduct of employees or agents of persons other than bodies corporate

(1) Where, in a proceeding under this Part or the *Australian Consumer Law (WA)* in respect of conduct that is engaged in by a person (the ***principal***) other than a body corporate and to which this Part or the *Australian Consumer Law (WA)* applies, it is necessary to establish the state of mind of the principal, it is sufficient to show —

(a) that an employee or agent of the principal engaged in that conduct within the scope of the person's actual or apparent authority; and

(b) that the employee or agent had that state of mind.

(2) Conduct of the kind set out in paragraph (a) or (b) that is engaged in on behalf of a person (the ***principal***) other than a body corporate is to be treated, for the purposes of this Act, as having been engaged in by the principal as well —

(a) conduct by an employee or agent of the principal within the scope of the person's actual or apparent authority; or

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(b) conduct by any other person, at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the principal, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent.

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Part 8 — Miscellaneous

112. Confidentiality of information officially obtained

(1) In this section —

personal information means information concerning the affairs of a person.

(2) A person must not, either directly or indirectly, make a record of, or divulge or communicate to any other person, any personal information obtained by him or her by reason of his or her office, position, employment or engagement under or for the purposes of this Act.

Penalty: a fine of $20 000.

(3) Subsection (2) does not prohibit the recording, divulging or communicating of any personal information —

(a) with the consent of the person to whom the information relates, or each of them if there is more than one; or

(b) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information relates; or

(c) for the purposes of performing a function under or in connection with this Act; or

(d) for the purposes of legal proceedings arising out of the administration of this Act or another written law; or

(e) for the purpose of the investigation of any suspected offence or the conduct of proceedings against any person for any offence.

(4) Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

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113. Commissioner can use or disclose information for any purpose connected with legislation administered by Department

(1) This section applies to information that is obtained by a person by reason of his or her office, position, employment or engagement under or for the purposes of this Act.

(2) Without limiting section 112(3), the fact that information to which this section applies is obtained in connection with the performance of a particular function under this Act does not prevent that information from being used or disclosed in connection with the performance of —

(a) any other function under this Act; or

(b) any function under any other written law that is administered through the Department.

114. Protection from liability for wrongdoing

(1) In this section —

(a) a reference to the doing of anything includes a reference to an omission to do anything; and

(b) ***liability*** includes liability for defamation.

(2) A person is not liable for anything that the person has done, in good faith, in the course of the operations of the Department or the administration of this Act.

(3) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (2).

(4) The protection given by this section applies even though the thing done as described in subsection (2) may have been capable of being done whether or not this Act had been enacted.

(5) This section is subject to the *Chattel Securities Act 1987* sections 24 and 25.

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115. Protection from liability for publishing official statements

(1) In this section —

liability includes liability for defamation.

(2) This section applies to statements made or issued by a person in the course of the operations of the Department or the administration of this Act.

(3) A person is not liable for publishing, in good faith —

(a) a statement to which this section applies; or

(b) a fair report or summary of a statement to which this section applies.

(4) Nothing in this section limits section 114.

116. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) A regulation may create an offence punishable by a penalty of a fine not exceeding $2 000.

(3) Without limiting subsection (1), regulations made under that subsection may —

(a) prescribe calling hours with respect to unsolicited consumer agreements under the *Australian Consumer Law (WA)* section 73;

(b) provide that the *Australian Consumer Law (WA)* Part 3-2 Division 2 (unsolicited consumer agreements) does not apply, or provisions of that Division that are specified in the regulations do not apply, to or in relation to agreements of a kind specified in the regulations.

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(4) Regulations made under subsection (3)(a) may alter the operation of the *Australian Consumer Law (WA)* sections 73(1) and 170(1).

(5) Regulations made under subsection (3)(b) may alter the operation of the *Australian Consumer Law (WA)* Part 3-2 Division 2.

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Part 9 — Transitional provisions

117. Transitional regulations

(1) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(2) In subsection (1) —

transitional matter —

(a) means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the *Consumer Affairs Act 1971*, *Door to Door Trading Act 1987* and *Fair Trading Act 1987* to the provisions of this Act; and

(b) includes a saving or application matter.

(3) Regulations made under subsection (1) may provide that specified provisions of a written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specified modifications to or in relation to any matter.

(4) If regulations under subsection (1) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this section comes into operation, the regulations have effect according to their terms.

(5) In subsections (3) and (4) —

specified means specified or described in the regulations.

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(6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

(7) Regulations made under subsection (1) in relation to a matter referred to in subsection (3) must be made within such period as is reasonably and practicably necessary to deal with a transitional matter that arises as a result of the enactment of this Act.

118. Saving - *Fair Trading (Product Information Standard) Regulations 2005* Part 4 (builders plates for recreational vessels)

(1) The *Fair Trading (Product Information Standard) Regulations 2005* (other than Parts 2 and 3) continue in force after the commencement of this section as if those regulations were an information standard under the *Australian Consumer Law (WA)* Part 3-4, and may be enforced accordingly.

(2) The regulations continued in force by subsection (1) may be repealed as if they were regulations made under section 116.

119. Transitional provision: recall of defective goods

If an order under the *Fair Trading Act 1987* section 54(2) has effect immediately before the commencement of Part 10, that order continues to have effect on and after that commencement as if it were a recall notice issued under the *Australian Consumer Law (WA)* section 122(1).

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120. Transitional provision: delegations

(1) If a delegation under the *Consumer Affairs Act 1971* section 23 has effect immediately before the commencement of Part 10, that delegation continues to have effect on and after that commencement as if it had taken place under section 60.

(2) This section does not limit the *Interpretation Act 1984* Part V.

121. Application of *Interpretation Act 1984* to expiring Acts

To avoid doubt, the provisions of the *Interpretation Act 1984* (for example, sections 16(1), 36 and 38) about the repeal of written laws and the substitution of other written laws for those so repealed apply to the *Consumer Affairs Act 1971*, *Door to Door Trading Act 1987* and *Fair Trading Act 1987* as if, on the commencement of Part 10, those Acts were repealed and re-enacted by this Act.

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Part 10 — Amendments

Division 1 — *Consumer Affairs Act 1971* amended

122. Act amended

This Division amends the *Consumer Affairs Act 1971*.

123. Sections 2A to 2D inserted

After section 2 insert:

2A. Application of Act limited

(1) This Act does not apply on or after the date on which the *Fair Trading Act 2010* Part 10 comes into force.

(2) This section is subject to sections 2C and 2D.

2B. Expiry of Act

(1) This Act expires on a day fixed by proclamation.

(2) A proclamation cannot be made under subsection (1) unless the Commissioner has given the Minister a certificate signed by the Commissioner stating that the operation of this Act is no longer necessary.

(3) In subsection (2) —

Commissioner has the meaning given in the *Fair Trading Act 2010* section 6.

2C. Act continues to apply for certain purposes

(1) In this section —

commencement day means the day on which the *Fair Trading Act 2010* Part 10 comes into force.

(2) This Act continues to apply on and after the commencement day only for the following purposes —

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(a) the investigation and prosecution of offences against this Act committed before the commencement day;

(b) the continuation, settlement or discontinuation of proceedings, under or in relation to this Act, that were commenced, but not concluded, before the commencement day.

2D. Acts or omissions that occurred before the commencement day

(1) This Act continues to apply on and after the commencement day (as defined in section 2C(1)) in relation to acts or omissions that occurred before the commencement day.

(2) Without limiting subsection (1), action may be taken under this Act in relation to those acts or omissions.

Division 2 — *Door to Door Trading Act 1987* amended

124. Act amended

This Division amends the *Door to Door Trading Act 1987*.

125. Sections 3A to 3D inserted

After section 2 insert:

3A. Application of Act limited

(1) This Act does not apply on or after the date on which the *Fair Trading Act 2010* Part 10 comes into force.

(2) This section is subject to sections 3C and 3D.

3B. Expiry of Act

(1) This Act expires on a day fixed by proclamation.

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(2) A proclamation cannot be made under subsection (1) unless the Commissioner has given the Minister a certificate signed by the Commissioner stating that the operation of this Act is no longer necessary.

(3) In subsection (2) —

Commissioner has the meaning given in the *Fair Trading Act 2010* section 6.

3C. Act continues to apply for certain purposes

(1) In this section —

commencement day means the day on which the *Fair Trading Act 2010* Part 10 comes into force.

(2) This Act continues to apply on and after the commencement day to contracts made before the commencement day.

(3) This Act continues to apply on and after the commencement day only for the following purposes —

(a) the investigation and prosecution of offences against this Act committed before the commencement day;

(b) the giving, withdrawal or payment of infringement notices in respect of offences against this Act committed before the commencement day;

(c) the continuation, settlement or discontinuation of proceedings, under or in relation to this Act, that were commenced, but not concluded, before the commencement day.

(4) To avoid doubt, the *Door to Door Trading Regulations 1987* continue in force on and after the commencement day for the purposes of subsection (3) and section 3D and for no other purpose.

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3D. Acts or omissions that occurred before the commencement day

(1) This Act continues to apply on and after the commencement day (as defined in section 3C(1)) in relation to acts or omissions that occurred before the commencement day.

(2) Without limiting subsection (1), action may be taken under this Act in relation to those acts or omissions.

Division 3 — *Fair Trading Act 1987* amended

126. Act amended

This Division amends the *Fair Trading Act 1987*.

127. Sections 3A to 3D inserted

After section 2 insert:

3A. Application of Act limited

(1) This Act does not apply on or after the date on which the *Fair Trading Act 2010* Part 10 comes into force.

(2) This section is subject to sections 3C and 3D.

3B. Expiry of Act

(1) This Act expires on a day fixed by proclamation.

(2) A proclamation cannot be made under subsection (1) unless the Commissioner has given the Minister a certificate signed by the Commissioner stating that the operation of this Act is no longer necessary.

(3) In subsection (2) —

Commissioner has the meaning given in the *Fair Trading Act 2010* section 6.

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3C. Act continues to apply for certain purposes

(1) In this section —

commencement day means the day on which the *Fair Trading Act 2010* Part 10 comes into force.

(2) This Act continues to apply on and after the commencement day only for the following purposes —

(a) the investigation and prosecution of offences against this Act committed before the commencement day;

(b) the giving, withdrawal or payment of infringement notices under section 73 in respect of offences against this Act committed before the commencement day;

(c) the continuation, settlement or discontinuation of proceedings, under or in relation to this Act, that were commenced, but not concluded, before the commencement day.

(3) To avoid doubt, the *Fair Trading (Infringement Notices) Regulations 2006* continue in force on and after the commencement day for the purposes of subsection (3) and section 3D and for no other purpose.

(4) Subsection (2)(c) is subject to the *Fair Trading Act 2010* section 37.

3D. Acts or omissions that occurred before the commencement day

(1) This Act continues to apply on and after the commencement day (as defined in section 3C(1)) in relation to acts or omissions that occurred before the commencement day.

(2) Without limiting subsection (1), action may be taken under this Act in relation to those acts or omissions.

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Schedule 1 — Acts that override this Act

[s. 15]

The following enactments are specified for the purpose of section 15(1)(a) —

Agricultural Products Act 1929

Agriculture and Related Resources Protection Act 1976

Dangerous Goods Safety Act 2004

Fertilizers Act 1977

Firearms Act 1973

Health Act 1911

Mines Safety and Inspection Act 1994

Motor Vehicle Dealers Act 1973

Occupational Safety and Health Act 1984

Plant Diseases Act 1914

Poisons Act 1964

Radiation Safety Act 1975

Road Traffic Act 1974

Seeds Act 1981

Spear-guns Control Act 1955

Trade Measurement Act 2006

Veterinary Chemical Control and Animal Feeding Stuffs Act 1976.

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Note — Australian Consumer Law (WA) text

[This note is not part of the Act. Section 19(1) provides that the Australian Consumer Law text that, under section 19(2), applies as the Australian Consumer Law (WA) consists of:

(a) Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth), as in force on 1 January 2011 (but as modified by section 36); and

(b) the regulations made under section 139G of that Act, as those regulations are in force from time to time.

This note shows the version of the text of Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) that, together with those regulations, applies as the Australian Consumer Law (WA). The text of the regulations is not reproduced. The regulations can be accessed at www.comlaw.gov.au]

Chapter 1 — Introduction

1. Application of this Schedule

This Schedule applies to the extent provided by:

(a) Part XI of the Competition and Consumer Act; or

(b) an application law.

2. Definitions

(1) In this Schedule:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

acceptable quality: see sections 54(2) to (7).

ACN has the meaning given by section 9 of the *Corporations Act 2001*.

acquire includes:

(a) in relation to goods — acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and

(b) in relation to services — accept.

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Note: Section 5 deals with when receipt of a donation is an acquisition.

adverse publicity order: see section 247(2).

affected person, in relation to goods, means:

(a) a consumer who acquires the goods; or

(b) a person who acquires the goods from the consumer (other than for the purpose of re-supply); or

(c) a person who derives title to the goods through or under the consumer.

agreement document: see section 78(2).

applicable industry code has the meaning given by section 51ACA(1) of the Competition and Consumer Act.

application law has the same meaning as in section 140 of the Competition and Consumer Act.

article includes a token, card or document.

ASIC means the Australian Securities and Investments Commission.

assert a right to payment: see section 10(1).

associate regulator:

(a) for the purposes of the application of this Schedule as a law of the Commonwealth — means a body that is, for the purposes of the application of this Schedule as a law of a State or a Territory, the regulator within the meaning of the application law of the State or Territory; or

(b) for the purposes of the application of this Schedule as a law of a State or a Territory — means:

(i) the Commission; or

(ii) a body that is, for the purposes of the application of this Schedule as a law of another State or a Territory, the regulator within the meaning of the application law of that other State or Territory.

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authority, in relation to a State or a Territory (including an external Territory), means:

(a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or

(b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

authority of the Commonwealth means:

(a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or

(b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

banker has the same meaning as in section 4(1) of the Competition and Consumer Act.

ban period for an interim ban: see section 111(1).

business includes a business not carried on for profit.

business day, in relation to an unsolicited consumer agreement, means a day that is not:

(a) a Saturday or Sunday; or

(b) a public holiday in the place where the agreement was made.

business or professional relationship includes a relationship between employer and employee, or a similar relationship.

call on, in relation to negotiating an unsolicited consumer agreement, does not include call by telephone.

Commission has the same meaning as in section 4(1) of the Competition and Consumer Act.

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Commonwealth mandatory standard, in relation to goods, means a mandatory standard in respect of the goods imposed by a law of the Commonwealth.

Commonwealth Minister means the Minister who administers Part XI of the Competition and Consumer Act.

Competition and Consumer Act means the *Competition and Consumer Act 2010*.

consumer: see section 3.

consumer contract: see section 23(3).

consumer goods means goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption, and includes any such goods that have become fixtures since the time they were supplied if:

(a) a recall notice for the goods has been issued; or

(b) a person has voluntarily taken action to recall the goods.

continuing credit contract: see section 14(1).

contravening conduct: see section 239(1)(a)(i).

court, in relation to a matter, means any court having jurisdiction in the matter.

covering includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper.

credit card: see section 39(5).

credit provider means a person providing, or proposing to provide, in the course of a business carried on by the person, credit to consumers in relation to the acquisition of goods or services.

dealer: see section 71.

debit card: see section 39(6).

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declared term: see section 239(1)(a)(ii).

defective goods action means an action under section 138, 139, 140 or 141, and includes such an action because of section 138(3) or 145.

disclosed purpose: see section 55(2).

displayed price: see sections 47(2) to (5).

document includes:

(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; and

(b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced.

enforcement proceeding means:

(a) a proceeding for an offence against Chapter 4; or

(b) a proceeding instituted under Chapter 5 (other than under sections 237 and 239).

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

express warranty, in relation to goods, means an undertaking, assertion or representation:

(a) that relates to:

(i) the quality, state, condition, performance or characteristics of the goods; or

(ii) the provision of services that are or may at any time be required for the goods; or

(iii) the supply of parts that are or may at any time be required for the goods; or

(iv) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods, in relation to which the

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undertaking, assertion or representation is given or made, form part; and

(b) that is given or made in connection with the supply of the goods, or in connection with the promotion by any means of the supply or use of the goods; and

(c) the natural tendency of which is to induce persons to acquire the goods.

financial product has the meaning given by section 12BAA of the *Australian Securities and Investments Commission Act 2001*.

financial service has the meaning given by section 12BAB of the *Australian Securities and Investments Commission Act 2001*.

free item includes a free service.

goods includes:

(a) ships, aircraft and other vehicles; and

(b) animals, including fish; and

(c) minerals, trees and crops, whether on, under or attached to land or not; and

(d) gas and electricity; and

(e) computer software; and

(f) second-hand goods; and

(g) any component part of, or accessory to, goods.

grown: see section 255(7).

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999.*

industry code has the meaning given by section 51ACA of the Competition and Consumer Act.

information provider: see sections 19(5) and (6).

information standard: see sections 134(1) and 135(1).

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inner container includes any container into which goods are packed, other than a shipping or airline container, pallet or other similar article.

interest, in relation to land, means:

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

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or

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

interim ban: see sections 109(1) and (2).

involved: a person is involved, in a contravention of a provision of this Schedule or in conduct that constitutes such a contravention, if the person:

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

joint liability proceedings means proceedings relating to the joint and several liability under section 278 of a linked credit provider and a supplier of goods or services.

label includes a band or ticket.

lay-by agreement: see section 96(3).

linked credit contract: see section 278(2).

linked credit provider, in relation to a supplier of goods or services, means a credit provider:

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(a) with whom the supplier has a contract, arrangement or understanding relating to:
  (i) the supply to the supplier of goods in which the supplier deals; or
  (ii) the business carried on by the supplier of supplying goods or services; or
  (iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services; or
(b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit; or
(c) whose forms of contract, forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or
(d) with whom the supplier has a contract, arrangement or understanding under which contracts, applications or offers for credit from the credit provider may be signed by persons at premises of the supplier.

listed public company has the meaning given by section 995-1(1) the *Income Tax Assessment Act 1997*.

loan contract means a contract under which a person in the course of a business carried on by that person provides or agrees to provide, whether on one or more occasions, credit to a consumer in one or more of the following ways:
(a) by paying an amount to, or in accordance with the instructions of, the consumer;
(b) by applying an amount in satisfaction or reduction of an amount owed to the person by the consumer;
(c) by varying the terms of a contract under which money owed to the person by the consumer is payable;
(d) by deferring an obligation of the consumer to pay an amount to the person;

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(e) by taking from the consumer a bill of exchange or other negotiable instrument on which the consumer (whether alone or with another person or other persons) is liable as drawer, acceptor or endorser.

major failure: see sections 260 and 268.

mandatory standard, in relation to goods, means a standard:

(a) for the goods or anything relating to the goods; and

(b) that, under a law of the Commonwealth, a State or a Territory, must be complied with when the goods are supplied by their manufacturer, being a law creating an offence or liability if there is such non-compliance,

but does not include a standard which may be complied with by meeting a higher standard.

manufacturer: see section 7.

market has the same meaning as in section 4E of the Competition and Consumer Act.

materials, in relation to goods, means:

(a) if the goods are unmanufactured raw products — those products; and

(b) if the goods are manufactured goods — all matter or substances used or consumed in the manufacture of the goods (other than matter or substances that are treated as overheads); and

(c) in either case — the inner containers in which the goods are packed.

mixed supply: see section 3(11).

National Credit Code has the meaning given by section 5(1) of the *National Consumer Credit Protection Act 2009*.

negotiated by telephone: see section 78(3).

negotiation: see section 72.

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new participant: see section 45(2).

non-linked credit contract: see section 287(5).

non-party consumer means:

(a) in relation to conduct referred to in section 239(1)(a)(i) — a person who is not, or has not been, a party to an enforcement proceeding in relation to the conduct; and

(b) in relation to a term of a consumer contract referred to in section 239(1)(a)(ii) — a person who is not, or has not been, a party to an enforcement proceeding in relation to the term.

participant, in a pyramid scheme, means a person who participates in the scheme.

participate, in a pyramid scheme: see section 44(3).

participation payment: see section 45(1)(a).

permanent ban: see sections 114(1) and (2).

premises means:

(a) an area of land or any other place (whether or not it is enclosed or built on); or

(b) a building or other structure; or

(c) a vehicle, vessel or aircraft; or

(d) a part of any such premises.

price, of goods or services, means:

(a) the amount paid or payable (including any charge of any description) for their acquisition; or

(b) if such an amount is not specified because the acquisition is part only of a transaction for which a total amount is paid or payable:

(i) the lowest amount (including any charge of any description) for which the goods or services could reasonably have been acquired from the supplier at the time of the transaction

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or, if not from the supplier, from another supplier; or

(ii) if they could not reasonably have been acquired separately from another supplier — their value at the time of the transaction.

prior negotiations or arrangements, in relation to the acquisition of goods by a consumer, means negotiations or arrangements:

(a) that were conducted or made with the consumer by another person in the course of a business carried on by the other person; and

(b) that induced the consumer to acquire the goods, or otherwise promoted the acquisition of the goods by the consumer.

product related service means a service for or relating to:

(a) the installation of consumer goods of a particular kind; or

(b) the maintenance, repair or cleaning of consumer goods of a particular kind; or

(c) the assembly of consumer goods of a particular kind; or

(d) the delivery of consumer goods of a particular kind;

and, without limiting paragraphs (a) to (d), includes any other service that relates to the supply of consumer goods of that kind.

proof of transaction: see section 100(4).

publish, in relation to an advertisement, means include in a publication intended for sale or public distribution (whether to the public generally or to a restricted class or number of persons) or for public display (including in an electronic form).

pyramid scheme: see section 45(1).

recall notice: see section 122(1).

recovery period: see section 41(4).

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recruitment payment: see section 45(1)(b).

regulations means regulations made under section 139G of the Competition and Consumer Act.

regulator:

(a) for the purposes of the application of this Schedule as a law of the Commonwealth — means the Commission; or

(b) for the purposes of the application of this Schedule as a law of a State or a Territory — has the meaning given by the application law of the State or Territory.

rejection period: see section 262(2).

related, in relation to a body corporate: see section 6.

related contract or instrument: see section 83(2).

rely on, in relation to a term of a consumer contract, includes the following:

(a) attempt to enforce the term;

(b) attempt to exercise a right conferred, or purportedly conferred, by the term;

(c) assert the existence of a right conferred, or purportedly conferred, by the term.

responsible Minister means:

(a) the Commonwealth Minister; or

(b) the Minister of a State who administers the application law of the State; or

(c) the Minister of a Territory who administers the application law of the Territory.

safety defect, in relation to goods: see section 9.

safety standard: see sections 104(1) and 105(1).

sale by auction, in relation to the supply of goods by a person, means a sale by auction that is conducted by an

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agent of the person (whether the agent acts in person or by electronic means).

send includes deliver, and ***sent*** and ***sender*** have corresponding meanings.

serious injury or illness means an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place), but does not include:

(a) an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or

(b) the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.

services includes:

(a) 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

(b) without limiting paragraph (a), the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

(i) a contract for or in relation to the performance of work (including work of a professional nature), whether with or without the supply of goods; or

(ii) a contract for or in relation to the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or

(iii) a contract for or in relation to the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or

(iv) a contract of insurance; or

(v) a contract between a banker and a customer of the banker entered into in the course of the

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carrying on by the banker of the business of banking; or

(vi) any 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.

share includes stock.

ship has the meaning given by section 3(1) of the *Admiralty Act 1988*.

single price: see section 48(7).

substantially transformed, in relation to goods: see section 255(3).

substantiation notice means a notice under section 219.

substantiation notice compliance period: see section 221(2).

supply, when used as a verb, includes:

(a) in relation to goods — supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services — provide, grant or confer;

and, when used as a noun, has a corresponding meaning, and ***supplied*** and ***supplier*** have corresponding meanings.

Note: Section 5 deals with when a donation is a supply.

supply of limited title: see section 51(2).

telecommunications service: see section 65(2).

termination charge: see section 97(2).

termination period, in relation to an unsolicited consumer agreement, means the period within which the consumer under the agreement is, under section 82 or under the agreement, entitled to terminate the agreement.

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tied continuing credit contract means a continuing credit contract under which a credit provider provides credit in respect of the payment by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

tied loan contract means a loan contract entered into between a credit provider and a consumer where:

(a) the credit provider knows, or ought reasonably to know, that the consumer enters into the loan contract wholly or partly for the purposes of payment for goods or services supplied by a supplier; and

(b) at the time the loan contract is entered into the credit provider is a linked credit provider of the supplier.

trade or commerce means:

(a) trade or commerce within Australia; or

(b) trade or commerce between Australia and places outside Australia;

and includes any business or professional activity (whether or not carried on for profit).

transparent:

(a) in relation to a document — means:

(i) expressed in reasonably plain language; and

(ii) legible; and

(iii) presented clearly; and

(b) in relation to a term of a consumer contract — see section 24(3).

unfair, in relation to a term of a consumer contract: see section 24(1).

unsolicited consumer agreement: see section 69.

unsolicited goods means goods sent to a person without any request made by the person or on his or her behalf.

unsolicited services means services supplied to a person without any request made by the person or on his or her behalf.

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upfront price: see section 26(2).

warranty against defects: see section 102(3).

(2) In this Schedule:

(a) a reference to engaging in conduct is 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; or

(iii) the requiring of the giving of, or the giving of, a covenant; and

(b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is 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; or

(iii) the requiring of the giving of, or the giving of, a covenant; and

(c) a reference to refusing to do an act includes a reference to:

(i) refraining (otherwise than inadvertently) from doing that act; or

(ii) making it known that that 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 it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

3. Meaning of *consumer*

Acquiring goods as a consumer

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(1) A person is taken to have acquired particular goods as a ***consumer*** if, and only if:

(a) the amount paid or payable for the goods, as worked out under subsections (4) to (9), did not exceed:

(i) $40,000; or

(ii) if a greater amount is prescribed for the purposes of this paragraph — that greater amount; or

(b) the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption; or

(c) the goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads.

(2) However, subsection (1) does not apply if the person acquired the goods, or held himself or herself out as acquiring the goods:

(a) for the purpose of re-supply; or

(b) for the purpose of using them up or transforming them, in trade or commerce:

(i) in the course of a process of production or manufacture; or

(ii) in the course of repairing or treating other goods or fixtures on land.

Acquiring services as a consumer

(3) A person is taken to have acquired particular services as a ***consumer*** if, and only if:

(a) the amount paid or payable for the services, as worked out under subsections (4) to (9), did not exceed:

(i) $40,000; or

(ii) if a greater amount is prescribed for the purposes of subsection (1)(a) — that greater amount; or

(b) the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

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Amounts paid or payable for purchases

(4) For the purposes of subsection (1) or (3), the amount paid or payable for goods or services purchased by a person is taken to be the price paid or payable by the person for the goods or services, unless subsection (5) applies.

(5) For the purposes of subsection (1) or (3), if a person purchased goods or services by a mixed supply and a specified price was not allocated to the goods or services in the contract under which they were purchased, the amount paid or payable for goods or services is taken to be:

(a) if, at the time of the acquisition, the person could have purchased from the supplier the goods or services other than by a mixed supply — the price at which they could have been purchased from the supplier; or

(b) if:

(i) paragraph (a) does not apply; but

(ii) at the time of the acquisition, goods or services of the kind acquired could have been purchased from another supplier other than by a mixed supply;

the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or

(c) if, at the time of the acquisition, goods or services of the kind acquired could not have been purchased from any supplier except by a mixed supply — the value of the goods or services at that time.

Amounts paid or payable for other acquisitions

(6) For the purposes of subsection (1) or (3), the amount paid or payable for goods or services acquired by a person other than by way of purchase is taken to be the price at which, at the time of the acquisition, the person could have purchased the goods or services from the supplier, unless subsection (7) or (8) applies.

(7) For the purposes of subsection (1) or (3), if:

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(a) goods or services acquired by a person other than by way of purchase could not, at the time of the acquisition, have been purchased from the supplier, or could have been purchased only by a mixed supply; but

(b) at that time, goods or services of the kind acquired could have been purchased from another supplier other than by a mixed supply;

the amount paid or payable for the goods or services is taken to be the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier.

(8) For the purposes of subsection (1) or (3), if goods or services acquired by a person other than by way of purchase could not, at the time of the acquisition, have been purchased from any supplier other than by a mixed supply, the amount paid or payable for the goods or services is taken to be the value of the goods or services at that time.

Amounts paid or payable for obtaining credit

(9) If:

(a) a person obtains credit in connection with the acquisition of goods or services by him or her; and

(b) the amount paid or payable by him or her for the goods or services is increased because he or she so obtains credit;

obtaining the credit is taken for the purposes of subsection (3) to be the acquisition of a service, and the amount paid or payable by him or her for the service of being provided with the credit is taken to include the amount of the increase.

Presumption that persons are consumers

(10) If it is alleged in any proceeding under this Schedule, or in any other proceeding in respect of a matter arising under

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this Schedule, that a person was a consumer in relation to particular goods or services, it is presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services.

Mixed supplies

(11) A purchase or other acquisition of goods or services is made by a ***mixed supply*** if the goods or services are purchased or acquired together with other property or services, or together with both other property and other services.

Supplies to consumers

(12) In this Schedule, a reference to a supply of goods or services to a consumer is a reference to a supply of goods or services to a person who is taken to have acquired them as a consumer.

4. Misleading representations with respect to future matters

(1) If:

(a) a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act); and

(b) the person does not have reasonable grounds for making the representation;

the representation is taken, for the purposes of this Schedule, to be misleading.

(2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation made with respect to a future matter by:

(a) a party to the proceeding; or

(b) any other person;

the party or other person is taken not to have had reasonable grounds for making the representation, unless evidence is adduced to the contrary.

(3) To avoid doubt, subsection (2) does not:

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(a) have the effect that, merely because such evidence to the contrary is adduced, the person who made the representation is taken to have had reasonable grounds for making the representation; or

(b) have the effect of placing on any person an onus of proving that the person who made the representation had reasonable grounds for making the representation.

(4) Subsection (1) does not limit by implication the meaning of a reference in this Schedule to:

(a) a misleading representation; or

(b) a representation that is misleading in a material particular; or

(c) conduct that is misleading or is likely or liable to mislead;

and, in particular, does not imply that a representation that a person makes with respect to any future matter is not misleading merely because the person has reasonable grounds for making the representation.

5. When donations are treated as supplies or acquisitions

(1) For the purposes of this Schedule, other than Parts 3-3, 3-4, 4-3 and 4-4:

(a) a donation of goods or services is not treated as a supply of the goods or services unless the donation is for promotional purposes; and

(b) receipt of a donation of goods or services is not treated as an acquisition of the goods or services unless the donation is for promotional purposes.

(2) For the purposes of Parts 3-3, 3-4, 4-3 and 4-4:

(a) any donation of goods or services is treated as a supply of the goods or services; and

(b) receipt of any donation of goods or services is treated as an acquisition of the goods or services.

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6. Related bodies corporate

(1) A body corporate is taken to be ***related*** to another body corporate if the bodies corporate would, under section 4A(5) of the Competition and Consumer Act, be deemed to be related to each other.

(2) In proceedings under this Schedule, it is presumed, unless the contrary is established, that bodies corporate are not, or were not at a particular time, related to each other.

7. Meaning of *manufacturer*

(1) A ***manufacturer*** includes the following:

(a) a person who grows, extracts, produces, processes or assembles goods;

(b) a person who holds himself or herself out to the public as the manufacturer of goods;

(c) a person who causes or permits the name of the person, a name by which the person carries on business or a brand or mark of the person to be applied to goods supplied by the person;

(d) a person (the ***first person***) who causes or permits another person, in connection with:

(i) the supply or possible supply of goods by that other person; or

(ii) the promotion by that other person by any means of the supply or use of goods;

to hold out the first person to the public as the manufacturer of the goods;

(e) a person who imports goods into Australia if:

(i) the person is not the manufacturer of the goods; and

(ii) at the time of the importation, the manufacturer of the goods does not have a place of business in Australia.

(2) For the purposes of subsection (1)(c):

(a) a name, brand or mark is taken to be applied to goods if:

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(i) it is woven in, impressed on, worked into or annexed or affixed to the goods; or

(ii) it is applied to a covering, label, reel or thing in or with which the goods are supplied; and

(b) if the name of a person, a name by which a person carries on business or a brand or mark of a person is applied to goods, it is presumed, unless the contrary is established, that the person caused or permitted the name, brand or mark to be applied to the goods.

(3) If goods are imported into Australia on behalf of a person, the person is taken, for the purposes of paragraph (1)(e), to have imported the goods into Australia.

8. Goods affixed to land or premises

For the purposes of this Schedule, goods are taken to be supplied to a consumer even if they are affixed to land or premises at the time of the supply.

9. Meaning of *safety defect* in relation to goods

(1) For the purposes of this Schedule, goods have a ***safety defect*** if their safety is not such as persons generally are entitled to expect.

(2) In determining the extent of the safety of goods, regard is to be given to all relevant circumstances, including:

(a) the manner in which, and the purposes for which, they have been marketed; and

(b) their packaging; and

(c) the use of any mark in relation to them; and

(d) any instructions for, or warnings with respect to, doing, or refraining from doing, anything with or in relation to them; and

(e) what might reasonably be expected to be done with or in relation to them; and

(f) the time when they were supplied by their manufacturer.

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(3) An inference that goods have a safety defect is not to be made only because of the fact that, after they were supplied by their manufacturer, safer goods of the same kind were supplied.

(4) An inference that goods have a safety defect is not to be made only because:

(a) there was compliance with a Commonwealth mandatory standard for them; and

(b) that standard was not the safest possible standard having regard to the latest state of scientific or technical knowledge when they were supplied by their manufacturer.

10. Asserting a right to payment

(1) A person is taken to ***assert a right to payment*** from another person if the person:

(a) makes a demand for the payment or asserts a present or prospective right to the payment; or

(b) threatens to bring any legal proceedings with a view to obtaining the payment; or

(c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or

(d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or

(e) sends any invoice or other document that:

(i) states the amount of the payment; or

(ii) sets out the price of unsolicited goods or unsolicited services; or

(iii) sets out the charge for placing, in a publication, an entry or advertisement;

and does not contain a statement, to the effect that the document is not an assertion of a right to a payment, that complies with any requirements prescribed by the regulations.

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(2) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person is taken to have been sent by that person unless the contrary is established.

11. References to acquisition, supply and re-supply

In this Schedule:

(a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods pursuant to a supply of the goods; and

(b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services; and

(c) 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; and

(d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and

(e) a reference to the re-supply of goods acquired from a person includes a reference to:

(i) a supply of the goods to another person in an altered form or condition; and

(ii) a supply to another person of goods in which the first-mentioned goods have been incorporated; and

(f) a reference to the re-supply of services (the ***original services***) acquired from a person (the ***original supplier***) includes a reference to:

(i) a supply of the original services to another person in an altered form or condition; and

(ii) a supply to another person of other services that are substantially similar to the original services, and could not have been supplied if the original services had not been acquired

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by the person who acquired them from the original supplier.

12. Application of Schedule in relation to leases and licences of land and buildings

In this Schedule:

(a) a reference to a contract includes a reference to a lease of, or a licence in respect of, land or a building or part of a building (despite the express references in this Schedule to such leases or licences); and

(b) a reference to making or entering into a contract, in relation to such a lease or licence, is a reference to granting or taking the lease or licence; and

(c) a reference to a party to a contract, in relation to such a lease or licence, includes a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.

13. Loss or damage to include injury

In this Schedule:

(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.

14. Meaning of *continuing credit contract*

(1) If:

(a) a person (the ***creditor***), in the course of a business carried on by the creditor, agrees with a consumer to provide credit to the consumer in relation to:

(i) payment for goods or services; or

(ii) cash supplied by the creditor to the consumer from time to time; or

(iii) payment by the creditor to another person in relation to goods or services, or cash,

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supplied by that other person to the consumer from time to time; and

(b) the creditor:

(i) has an agreement, arrangement or understanding (the ***credit agreement***) with the consumer in relation to the provision of the credit; or

(ii) is engaged in a course of dealing (the ***credit dealing***) with the consumer in relation to the provision of the credit; and

(c) the amounts owing to the creditor from time to time under the credit agreement or credit dealing are, or are to be, calculated on the basis that:

(i) all amounts owing; and

(ii) all payments made;

by the consumer under, or in respect of, the credit agreement or credit dealing are entered in one or more accounts kept for the purpose of that agreement or dealing;

the credit agreement or credit dealing is taken, for the purposes of this Schedule, to be a ***continuing credit contract***.

(2) If subsection (1)(a)(iii) applies, the creditor is taken, for the purposes of this section, to have provided credit to the consumer in relation to any goods or services, or cash, supplied by another person to the consumer to the extent of any payments made, or to be made, by the creditor to that other person.

15. Contraventions of this Schedule

Conduct is not taken, for the purposes of this Schedule, to contravene a provision of this Schedule merely because of the application of:

(a) section 23(1); or

(b) a provision of Division 1 of Part 3-2 (other than section 66(2)); or

(c) a provision of Part 3-5.

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16. Severability

(1) If the making of a contract after the commencement of this section contravenes this Schedule because the contract includes a particular provision, nothing in this Schedule affects the validity or enforceability of the contract otherwise than in relation to that provision, so far as that provision is severable.

(2) This section has effect subject to any order made under Division 4 of Part 5-2.

17. References to provisions in this Schedule

In this Schedule, a reference to a provision is a reference to a provision of this Schedule, unless the contrary intention appears.

Chapter 2 — General protections

Part 2-1 — Misleading or deceptive conduct

18. Misleading or deceptive conduct

(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in Part 3-1 (which is about unfair practices) limits by implication subsection (1).

Note: For rules relating to representations as to the country of origin of goods, see Part 5-3.

19. Application of this Part to information providers

(1) This Part does not apply to a publication of matter by an information provider if:

(a) in any case — the information provider made the publication in the course of carrying on a business of providing information; or

(b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting

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Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992* — the publication was by way of a radio or television broadcast by the information provider.

(2) Subsection (1) does not apply to a publication of an advertisement.

(3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the ***publicised goods or services***), if:

(a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or

(b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or

(c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.

(4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the ***publicised interests in land***), if:

(a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or

(b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or

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(c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

(5) An ***information provider*** is a person who carries on a business of providing information.

(6) Without limiting subsection (5), each of the following is an ***information provider***:

(a) the holder of a licence granted under the *Broadcasting Services Act 1992*;

(b) a person who is the provider of a broadcasting service under a class licence under that Act;

(c) the holder of a licence continued in force by section 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*;

(d) the Australian Broadcasting Corporation;

(e) the Special Broadcasting Service Corporation.

Part 2-2 — Unconscionable conduct

20. Unconscionable conduct within the meaning of the unwritten law

(1) A person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) This section does not apply to conduct that is prohibited by section 21 or 22.

21. Unconscionable conduct

(1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the ***supplier***) has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (the ***consumer***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the supplier and the consumer; and

(b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and

(c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and

(e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the supplier.

(3) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that the person institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person:

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(a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

(7) Section 4 applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part 3-1.

22. Unconscionable conduct in business transactions

(1) A person must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to another person (other than a listed public company); or

(b) the acquisition or possible acquisition of goods or services from another person (other than a listed public company);

engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the ***supplier***) has contravened subsection (1) in connection with the supply or possible supply of goods or

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services to another person (the ***business consumer***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the supplier and the business consumer; and

(b) whether, as a result of conduct engaged in by the supplier, the business consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and

(c) whether the business consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the business consumer or a person acting on behalf of the business consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and

(e) the amount for which, and the circumstances under which, the business consumer could have acquired identical or equivalent goods or services from a person other than the supplier; and

(f) the extent to which the supplier's conduct towards the business consumer was consistent with the supplier's conduct in similar transactions between the supplier and other like business consumers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with that code; and

(i) the extent to which the supplier unreasonably failed to disclose to the business consumer:

(i) any intended conduct of the supplier that might affect the interests of the business consumer; and

(ii) any risks to the business consumer arising from the supplier's intended conduct (being

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risks that the supplier should have foreseen would not be apparent to the business consumer); and

(j) if there is a contract between the supplier and the business consumer for the supply of the goods or services:

(i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the business consumer; and

(ii) the terms and conditions of the contract; and

(iii) the conduct of the supplier and the business consumer in complying with the terms and conditions of the contract; and

(iv) any conduct that the supplier or the business consumer engaged in, in connection with their commercial relationship, after they entered into the contract; and

(k) without limiting paragraph (j), whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the business consumer for the supply of the goods or services; and

(l) the extent to which the supplier and the business consumer acted in good faith.

(3) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the ***acquirer***) has contravened subsection (1) in connection with the acquisition or possible acquisition of goods or services from another person (the ***small business supplier***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the acquirer and the small business supplier; and

(b) whether, as a result of conduct engaged in by the acquirer, the small business supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer; and

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(c) whether the small business supplier was able to understand any documents relating to the acquisition or possible acquisition of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the small business supplier or a person acting on behalf of the small business supplier by the acquirer or a person acting on behalf of the acquirer in relation to the acquisition or possible acquisition of the goods or services; and

(e) the amount for which, and the circumstances in which, the small business supplier could have supplied identical or equivalent goods or services to a person other than the acquirer; and

(f) the extent to which the acquirer's conduct towards the small business supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like small business suppliers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the small business supplier acted on the reasonable belief that the acquirer would comply with that code; and

(i) the extent to which the acquirer unreasonably failed to disclose to the small business supplier:

    (i) any intended conduct of the acquirer that might affect the interests of the small business supplier; and

    (ii) any risks to the small business supplier arising from the acquirer's intended conduct (being risks that the acquirer should have foreseen would not be apparent to the small business supplier); and

(j) if there is a contract between the acquirer and the small business supplier for the acquisition of the goods or services:

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(i) the extent to which the acquirer was willing to negotiate the terms and conditions of the contract with the small business supplier; and

(ii) the terms and conditions of the contract; and

(iii) the conduct of the acquirer and the small business supplier in complying with the terms and conditions of the contract; and

(iv) any conduct that the acquirer or the small business supplier engaged in, in connection with their commercial relationship, after they entered into the contract; and

(k) without limiting paragraph (j), whether the acquirer has a contractual right to vary unilaterally a term or condition of a contract between the acquirer and the small business supplier for the acquisition of the goods or services; and

(l) the extent to which the acquirer and the small business supplier acted in good faith.

(4) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with:

(a) the supply or possible supply of goods or services to another person; or

(b) the acquisition or possible acquisition of goods or services from another person;

by reason only that the first-mentioned person institutes legal proceedings in relation to that supply, possible supply, acquisition or possible acquisition or refers to arbitration a dispute or claim in relation to that supply, possible supply, acquisition or possible acquisition.

(5) For the purpose of determining whether a person has contravened subsection (1):

(a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

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(b) the court may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.

(6) A reference in this section to the supply or possible supply of goods or services is a reference to the supply or possible supply of goods or services to a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.

(7) A reference in this section to the acquisition or possible acquisition of goods or services is a reference to the acquisition or possible acquisition of goods or services by a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.

(8) Section 4 applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part 3-1.

Part 2-3 — Unfair contract terms

23. Unfair terms of consumer contracts

(1) A term of a consumer contract is void if:
(a) the term is unfair; and
(b) the contract is a standard form contract.

(2) The contract continues to bind the parties if it is capable of operating without the unfair term.

(3) A ***consumer contract*** is a contract for:
(a) a supply of goods or services; or
(b) a sale or grant of an interest in land;
to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.

24. Meaning of *unfair*

(1) A term of a consumer contract is ***unfair*** if:

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(a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and

(b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and

(c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

(2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the following:

(a) the extent to which the term is transparent;

(b) the contract as a whole.

(3) A term is ***transparent*** if the term is:

(a) expressed in reasonably plain language; and

(b) legible; and

(c) presented clearly; and

(d) readily available to any party affected by the term.

(4) For the purposes of subsection (1)(b), a term of a consumer contract is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

25. Examples of unfair terms

(1) Without limiting section 24, the following are examples of the kinds of terms of a consumer contract that may be unfair:

(a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract;

(b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract;

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(c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract;

(d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract;

(e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract;

(f) a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract;

(g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract;

(h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether the contract has been breached or to interpret its meaning;

(i) a term that limits, or has the effect of limiting, one party's vicarious liability for its agents;

(j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party's consent;

(k) a term that limits, or has the effect of limiting, one party's right to sue another party;

(l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract;

(m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract;

(n) a term of a kind, or a term that has an effect of a kind, prescribed by the regulations.

(2) Before the Governor-General makes a regulation for the purposes of subsection (1)(n) prescribing a kind of term, or

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a kind of effect that a term has, the Minister must take into consideration:

(a) the detriment that a term of that kind would cause to consumers; and

(b) the impact on business generally of prescribing that kind of term or effect; and

(c) the public interest.

26. Terms that define main subject matter of consumer contracts etc. are unaffected

(1) Section 23 does not apply to a term of a consumer contract to the extent, but only to the extent, that the term:

(a) defines the main subject matter of the contract; or

(b) sets the upfront price payable under the contract; or

(c) is a term required, or expressly permitted, by a law of the Commonwealth, a State or a Territory.

(2) The ***upfront price*** payable under a consumer contract is the consideration that:

(a) is provided, or is to be provided, for the supply, sale or grant under the contract; and

(b) is disclosed at or before the time the contract is entered into;

but does not include any other consideration that is contingent on the occurrence or non-occurrence of a particular event.

27. Standard form contracts

(1) If a party to a proceeding alleges that a contract is a standard form contract, it is presumed to be a standard form contract unless another party to the proceeding proves otherwise.

(2) In determining whether a contract is a standard form contract, a court may take into account such matters as it thinks relevant, but must take into account the following:

(a) whether one of the parties has all or most of the bargaining power relating to the transaction;

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(b) whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;

(c) whether another party was, in effect, required either to accept or reject the terms of the contract (other than the terms referred to in section 26(1)) in the form in which they were presented;

(d) whether another party was given an effective opportunity to negotiate the terms of the contract that were not the terms referred to in section 26(1);

(e) whether the terms of the contract (other than the terms referred to in section 26(1)) take into account the specific characteristics of another party or the particular transaction;

(f) any other matter prescribed by the regulations.

28. Contracts to which this Part does not apply

(1) This Part does not apply to:

(a) a contract of marine salvage or towage; or

(b) a charterparty of a ship; or

(c) a contract for the carriage of goods by ship.

(2) Without limiting subsection (1)(c), the reference in that subsection to a contract for the carriage of goods by ship includes a reference to any contract covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the *Carriage of Goods by Sea Act 1991*.

(3) This Part does not apply to a contract that is the constitution (within the meaning of section 9 of the *Corporations Act 2001*) of a company, managed investment scheme or other kind of body.

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Chapter 3 — Specific protections

Part 3-1 — Unfair practices

Division 1 — False or misleading representations etc.

29. False or misleading representations about goods or services

(1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(a) make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or

(b) make a false or misleading representation that services are of a particular standard, quality, value or grade; or

(c) make a false or misleading representation that goods are new; or

(d) make a false or misleading representation that a particular person has agreed to acquire goods or services; or

(e) make a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or

(f) make a false or misleading representation concerning:

(i) a testimonial by any person; or

(ii) a representation that purports to be such a testimonial;

relating to goods or services; or

(g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or

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(h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or

(i) make a false or misleading representation with respect to the price of goods or services; or

(j) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or

(k) make a false or misleading representation concerning the place of origin of goods; or

(l) make a false or misleading representation concerning the need for any goods or services; or

(m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or

(n) make a false or misleading representation concerning a requirement to pay for a contractual right that:

(i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and

(ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Note 1: A pecuniary penalty may be imposed for a contravention of this subsection.

Note 2: For rules relating to representations as to the country of origin of goods, see Part 5-3.

(2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary.

(3) To avoid doubt, subsection (2) does not:

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(a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or

(b) have the effect of placing on any person an onus of proving that the representation is not misleading.

30. False or misleading representations about sale etc. of land

(1) A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:

(a) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or

(b) make a false or misleading representation concerning the nature of the interest in the land; or

(c) make a false or misleading representation concerning the price payable for the land; or

(d) make a false or misleading representation concerning the location of the land; or

(e) make a false or misleading representation concerning the characteristics of the land; or

(f) make a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or

(g) make a false or misleading representation concerning the existence or availability of facilities associated with the land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

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31. Misleading conduct relating to employment

A person must not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as to:

(a) the availability, nature, terms or conditions of the employment; or

(b) any other matter relating to the employment.

Note: A pecuniary penalty may be imposed for a contravention of this section.

32. Offering rebates, gifts, prizes etc.

(1) A person must not, in trade or commerce, offer any rebate, gift, prize or other free item with the intention of not providing it, or of not providing it as offered, in connection with:

(a) the supply or possible supply of goods or services; or

(b) the promotion by any means of the supply or use of goods or services; or

(c) the sale or grant, or the possible sale or grant, of an interest in land; or

(d) the promotion by any means of the sale or grant of an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If a person offers any rebate, gift, prize or other free item in connection with:

(a) the supply or possible supply of goods or services; or

(b) the promotion by any means of the supply or use of goods or services; or

(c) the sale or grant, or the possible sale or grant, of an interest in land; or

(d) the promotion by any means of the sale or grant of an interest in land;

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the person must, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, provide the rebate, gift, prize or other free item in accordance with the offer.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) Subsection (2) does not apply if:

(a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and

(b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(4) Subsection (2) does not apply to an offer that the person makes to another person if:

(a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and

(b) the other person agrees to receive the different rebate, gift, prize or other free item.

(5) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

33. Misleading conduct as to the nature etc. of goods

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Note: A pecuniary penalty may be imposed for a contravention of this section.

34. Misleading conduct as to the nature etc. of services

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature,

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the characteristics, the suitability for their purpose or the quantity of any services.

Note: A pecuniary penalty may be imposed for a contravention of this section.

35. Bait advertising

(1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:

(a) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:

(i) the nature of the market in which the person carries on business; and

(ii) the nature of the advertisement; and

(b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:

(a) the nature of the market in which the person carries on business; and

(b) the nature of the advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

36. Wrongly accepting payment

(1) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends not to supply the goods or services.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(2) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance:

(a) there are reasonable grounds for believing that the person will not be able to supply the goods or services:

(i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

(ii) if no period is specified at or before that time — within a reasonable time; and

(b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) A person who, in trade or commerce, accepts payment or other consideration for goods or services must supply all the goods or services:

(a) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

(b) if no period is specified at or before that time — within a reasonable time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(5) Subsection (4) does not apply if:

(a) the person's failure to supply all the goods or services within the period, or within a reasonable

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time, was due to the act or omission of another person, or to some other cause beyond the person's control; and

(b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(6) Subsection (4) does not apply if:

(a) the person offers to supply different goods or services as a replacement to the person (the ***customer***) to whom the original supply was to be made; and

(b) the customer agrees to receive the different goods or services.

(7) Subsections (1), (2), (3) and (4) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

37. Misleading representations about certain business activities

(1) A person must not, in trade or commerce, make a representation that:

(a) is false or misleading in a material particular; and

(b) concerns the profitability, risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, make a representation that:

(a) is false or misleading in a material particular; and

(b) concerns the profitability, risk or any other material aspect of any business activity:

(i) that the person invites (whether by advertisement or otherwise) other persons to

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engage or participate in, or to offer or apply to engage or participate in; and

(ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

38. Application of provisions of this Division to information providers

(1) Sections 29, 30, 33, 34 and 37 do not apply to a publication of matter by an information provider if:

(a) in any case — the information provider made the publication in the course of carrying on a business of providing information; or

(b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992* — the publication was by way of a radio or television broadcast by the information provider.

(2) Subsection (1) does not apply to a publication of an advertisement.

(3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the ***publicised goods or services***), if:

(a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or

(b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or

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(c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.

(4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the ***publicised interests in land***), if:

(a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or

(b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or

(c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

Division 2 — Unsolicited supplies

39. Unsolicited cards etc.

(1) A person must not send a credit card or a debit card, or an article that may be used as a credit card and a debit card, to another person except:

(a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or

(b) in renewal or replacement of, or in substitution for:

(i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a

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liability, to the person who issued the card previously so sent, in respect of the use of that card; or

(ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) Subsection (1) does not apply unless the card or article is sent by or on behalf of the person who issued it.

(3) A person must not take any action that enables another person who has a credit card to use the card as a debit card, except in accordance with the other person's written request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) A person must not take any action that enables another person who has a debit card to use the card as a credit card, except in accordance with the other person's written request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(5) A ***credit card*** is an article that is one or more of the following:

(a) an article of a kind commonly known as a credit card;

(b) a similar article intended for use in obtaining cash, goods or services on credit;

(c) an article of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit;

and includes an article that may be used as an article referred to in paragraph (a), (b) or (c).

(6) A ***debit card*** is:

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(a) an article intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; or

(b) an article that may be used as an article referred to in paragraph (a).

40. Assertion of right to payment for unsolicited goods or services

(1) A person must not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the person has reasonable cause to believe that there is a right to the payment.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the person has reasonable cause to believe that there is a right to the payment.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A person must not, in trade or commerce, send to another person an invoice or other document that:

(a) states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services; and

(b) does not contain a warning statement that complies with the requirements set out in the regulations;

unless the person has reasonable cause to believe that there is a right to the payment or charge.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person had reasonable cause to believe that there was a right to the payment or charge.

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41. Liability etc. of recipient for unsolicited goods

(1) If a person, in trade or commerce, supplies unsolicited goods to another person, the other person:

(a) is not liable to make any payment for the goods; and

(b) is not liable for loss of or damage to the goods, other than loss or damage resulting from the other person doing a wilful and unlawful act in relation to the goods during the recovery period.

(2) If a person sends, in trade or commerce, unsolicited goods to another person:

(a) neither the sender nor any person claiming under the sender is entitled, after the end of the recovery period, to take action for the recovery of the goods from the other person; and

(b) at the end of the recovery period, the goods become, by force of this section, the property of the other person freed and discharged from all liens and charges of any description.

(3) However, subsection (2) does not apply to or in relation to unsolicited goods sent to a person if:

(a) the person has, at any time during the recovery period, unreasonably refused to permit the sender or the owner of the goods to take possession of the goods; or

(b) the sender or the owner of the goods has within the recovery period taken possession of the goods; or

(c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for him or her.

(4) The ***recovery period*** is whichever of the following periods ends first:

(a) the period of 3 months starting on the day after the day on which the person received the goods;

(b) if the person who receives the unsolicited goods gives notice with respect to the goods to the supplier

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or sender in accordance with subsection (5) — the period of one month starting on the day after the day on which the notice is given.

(5) A notice under subsection (4)(b):

(a) must be in writing; and

(b) must state the name and address of the person who received the goods; and

(c) must state the address at which possession may be taken of the goods, if it is not the address of the person; and

(d) must contain a statement to the effect that the goods are unsolicited goods.

42. Liability of recipient for unsolicited services

If a person, in trade or commerce, supplies unsolicited services to another person, the other person:

(a) is not liable to make any payment for the services; and

(b) is not liable for loss or damage as a result of the supply of the services.

43. Assertion of right to payment for unauthorised entries or advertisements

(1) A person must not assert a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to:

(a) the other person; or

(b) the other person's profession, business, trade or occupation;

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(2) A person must not send to another person an invoice or other document that:

(a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to:

(i) the other person; or

(ii) the other person's profession, business, trade or occupation; and

(b) does not contain a warning statement that complies with the requirements set out in the regulations;

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is:

(a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations; or

(b) a body corporate related to such a publisher; or

(c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or

(d) a person specified in the regulations.

(4) A person:

(a) is not liable to make any payment to another person; and

(b) is entitled to recover by action in a court against another person any payment made by the person to the other person;

in full or part satisfaction of a charge for placing, in a publication, an entry or advertisement, unless the person authorised the placing of the entry or advertisement.

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(5) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless:

(a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her; and

(b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and

(c) the document specifies:

(i) the name and address of the person publishing the entry or advertisement; and

(ii) particulars of the entry or advertisement; and

(iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.

(6) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person knew or had reasonable cause to believe that the person against whom a right to payment was asserted had authorised the placing of the entry or advertisement.

Division 3 — Pyramid schemes

44. Participation in pyramid schemes

(1) A person must not participate in a pyramid scheme.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not induce, or attempt to induce, another person to participate in a pyramid scheme.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) To ***participate*** in a pyramid scheme is:

(a) to establish or promote the scheme (whether alone or together with another person); or

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(b) to take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or who otherwise takes part in the scheme).

45. Meaning of *pyramid scheme*

(1) A ***pyramid scheme*** is a scheme with both of the following characteristics:

(a) to take part in the scheme, some or all new participants must provide, to another participant or participants in the scheme, either of the following (a ***participation payment***):

(i) a financial or non-financial benefit to, or for the benefit of, the other participant or participants;

(ii) a financial or non-financial benefit partly to, or for the benefit of, the other participant or participants and partly to, or for the benefit of, other persons;

(b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled, in relation to the introduction to the scheme of further new participants, to be provided with either of the following (a ***recruitment payment***):

(i) a financial or non-financial benefit to, or for the benefit of, new participants;

(ii) a financial or non-financial benefit partly to, or for the benefit of, new participants and partly to, or for the benefit of, other persons.

(2) A ***new participant*** includes a person who has applied, or been invited, to participate in the scheme.

(3) A scheme may be a pyramid scheme:

(a) no matter who holds out to new participants the prospect of entitlement to recruitment payments; and

(b) no matter who is to make recruitment payments to new participants; and

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(c) no matter who is to make introductions to the scheme of further new participants.

(4) A scheme may be a pyramid scheme even if it has any or all of the following characteristics:

(a) the participation payments may (or must) be made after the new participants begin to take part in the scheme;

(b) making a participation payment is not the only requirement for taking part in the scheme;

(c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;

(d) arrangements for the scheme are not recorded in writing (whether entirely or partly);

(e) the scheme involves the marketing of goods or services (or both).

46. Marketing schemes as pyramid schemes

(1) To decide, for the purpose of this Schedule, whether a scheme that involves the marketing of goods or services (or both) is a pyramid scheme, a court must have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:

(a) whether the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied with under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);

(b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods or services by comparison with the emphasis given to their entitlement to recruitment payments.

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(2) Subsection (1) does not limit the matters to which the court may have regard in working out whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

Division 4 — Pricing

47. Multiple pricing

(1) A person must not, in trade or commerce, supply goods if:

(a) the goods have more than one displayed price; and

(b) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A ***displayed price*** for goods is a price for the goods, or any representation that may reasonably be inferred to be a representation of a price for the goods:

(a) that is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any covering, label, reel or thing used in connection with the goods; or

(b) that is used in connection with the goods or anything on which the goods are mounted for display or exposed for supply; or

(c) that is determined on the basis of anything encoded on or in relation to the goods; or

(d) that is published in relation to the goods in a catalogue available to the public if:

(i) a time is specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed; or

(ii) in any other case — the catalogue may reasonably be regarded as not out-of-date; or

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(e) that is in any other way represented in a manner from which it may reasonably be inferred that the price or representation is applicable to the goods;

and includes such a price or representation that is partly obscured by another such price or representation that is written, stamped or located partly over that price or representation.

(3) If:

(a) a price or representation is included in a catalogue; and

(b) the catalogue is expressed to apply only to goods supplied at a specified location, or in a specified region;

the price or representation is taken, for the purposes of subsection (2)(d), not to have been made in relation to supply of the goods at a different location, or in a different region, as the case may be.

(4) Despite subsection (2), a price or representation is not a displayed price for goods if:

(a) the price or representation is wholly obscured by another such price or representation that is written, stamped or located wholly over that price or representation; or

(b) the price or representation:

(i) is expressed as a price per unit of mass, volume, length or other unit of measure; and

(ii) is presented as an alternative means of expressing the price for supply of the goods that is a displayed price for the goods; or

(c) the price or representation is expressed as an amount in a currency other than Australian currency; or

(d) the price or representation is expressed in a way that is unlikely to be interpreted as an amount of Australian currency.

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(5) Despite subsection (2), a displayed price for goods that is a displayed price because it has been published in a catalogue or advertisement ceases to be a displayed price for the goods if:

(a) the displayed price is retracted; and

(b) the retraction is published in a manner that has at least a similar circulation or audience as the catalogue or advertisement.

48. Single price to be specified in certain circumstances

(1) A person must not, in trade or commerce, in connection with:

(a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or

(b) the promotion by any means of the supply to another person, or of the use by another person, of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;

make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies, in a prominent way and as a single figure, the single price for the goods or services.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the other person.

(3) However, if:

(a) the person does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the other person; and

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(b) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person;

the person must not make the representation referred to in subsection (1) unless the person also specifies that minimum amount.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) Subsection (1) does not apply if the representation is made exclusively to a body corporate.

(5) For the purposes of subsection (1), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.

(6) Subsection (5) does not apply in relation to services to be supplied under a contract if:

(a) the contract provides for the supply of the services for the term of the contract; and

(b) the contract provides for periodic payments for the services to be made during the term of the contract; and

(c) if the contract also provides for the supply of goods — the goods are directly related to the supply of the services.

(7) The ***single price*** is the minimum quantifiable consideration for the supply of the goods or services at the time of the representation, including each of the following amounts (if any) that is quantifiable at that time:

(a) a charge of any description payable to the person making the representation by another person (other than a charge that is payable at the option of the other person);

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(b) the amount which reflects any tax, duty, fee, levy or charge imposed on the person making the representation in relation to the supply;

(c) any amount paid or payable by the person making the representation in relation to the supply with respect to any tax, duty, fee, levy or charge if:

(i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and

(ii) the tax, duty, fee, levy or charge would have otherwise been payable by another person in relation to the supply.

Example 1: A person advertises lounge suites for sale. Persons have the option of paying for fabric protection. The fabric protection charge does not form part of the single price because of the exception in paragraph (a).

Example 2: The GST may be an example of an amount covered by paragraph (b).

Example 3: The passenger movement charge imposed under the *Passenger Movement Charge Act 1978* may be an example of an amount covered by paragraph (c). Under an arrangement under section 10 of the *Passenger Movement Charge Collection Act 1978*, airlines may pay an amount equal to the charge that would otherwise be payable by passengers departing Australia.

Division 5 — Other unfair practices

49. Referral selling

A person must not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for:

(a) giving the person the names of prospective customers; or

(b) otherwise assisting the person to supply goods or services to other consumers;

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if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Note: A pecuniary penalty may be imposed for a contravention of this section.

50. Harassment and coercion

(1) A person must not use physical force, or undue harassment or coercion, in connection with:

(a) the supply or possible supply of goods or services; or

(b) the payment for goods or services; or

(c) the sale or grant, or the possible sale or grant, of an interest in land; or

(d) the payment for an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) Subsections (1)(c) and (d) do not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

Part 3-2 — Consumer transactions

Division 1 — Consumer guarantees

Subdivision A — Guarantees relating to the supply of goods

51. Guarantee as to title

(1) If a person (the ***supplier***) supplies goods to a consumer, there is a guarantee that the supplier will have a right to dispose of the property in the goods when that property is to pass to the consumer.

(2) Subsection (1) does not apply to a supply (a ***supply of limited title***) if an intention that the supplier of the goods should transfer only such title as the supplier, or another person, may have:

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(a) appears from the contract for the supply; or

(b) is to be inferred from the circumstances of that contract.

(3) This section does not apply if the supply is a supply by way of hire or lease.

52. Guarantee as to undisturbed possession

(1) If:

(a) a person (the ***supplier***) supplies goods to a consumer; and

(b) the supply is not a supply of limited title;

there is a guarantee that the consumer has the right to undisturbed possession of the goods.

(2) Subsection (1) does not apply to the extent that the consumer's undisturbed possession of the goods may be lawfully disturbed by a person who is entitled to the benefit of any security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply.

(3) If:

(a) a person (the ***supplier***) supplies goods to a consumer; and

(b) the supply is a supply of limited title;

there is a guarantee that the following persons will not disturb the consumer's possession of the goods:

(c) the supplier;

(d) if the parties to the contract for the supply intend that the supplier should transfer only such title as another person may have — that other person;

(e) anyone claiming through or under the supplier or that other person (otherwise than under a security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply).

(4) This section applies to a supply by way of hire or lease only for the period of the hire or lease.

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53. Guarantee as to undisclosed securities etc.

(1) If:

(a) a person (the ***supplier***) supplies goods to a consumer; and

(b) the supply is not a supply of limited title;

there is a guarantee that:

(c) the goods are free from any security, charge or encumbrance:

(i) that was not disclosed to the consumer, in writing, before the consumer agreed to the supply; or

(ii) that was not created by or with the express consent of the consumer; and

(d) the goods will remain free from such a security, charge or encumbrance until the time when the property in the goods passes to the consumer.

(2) A supplier does not fail to comply with the guarantee only because of the existence of a floating charge over the supplier's assets unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

Note: Section 339 of the *Personal Property Securities Act 2009* affects the meaning of the references in this subsection to a floating charge and a fixed charge.

(3) If:

(a) a person (the ***supplier***) supplies goods to a consumer; and

(b) the supply is a supply of limited title;

there is a guarantee that all securities, charges or encumbrances known to the supplier, and not known to the consumer, were disclosed to the consumer before the consumer agreed to the supply.

(4) This section does not apply if the supply is a supply by way of hire or lease.

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54. Guarantee as to acceptable quality

(1) If:

(a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the goods are of acceptable quality.

(2) Goods are of ***acceptable quality*** if they are as:

(a) fit for all the purposes for which goods of that kind are commonly supplied; and

(b) acceptable in appearance and finish; and

(c) free from defects; and

(d) safe; and

(e) durable;

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).

(3) The matters for the purposes of subsection (2) are:

(a) the nature of the goods; and

(b) the price of the goods (if relevant); and

(c) any statements made about the goods on any packaging or label on the goods; and

(d) any representation made about the goods by the supplier or manufacturer of the goods; and

(e) any other relevant circumstances relating to the supply of the goods.

(4) If:

(a) goods supplied to a consumer are not of acceptable quality; and

(b) the only reason or reasons why they are not of acceptable quality were specifically drawn to the consumer's attention before the consumer agreed to the supply;

the goods are taken to be of acceptable quality.

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(5) If:

(a) goods are displayed for sale or hire; and

(b) the goods would not be of acceptable quality if they were supplied to a consumer;

the reason or reasons why they are not of acceptable quality are taken, for the purposes of subsection (4), to have been specifically drawn to a consumer's attention if those reasons were disclosed on a written notice that was displayed with the goods and that was transparent.

(6) Goods do not fail to be of acceptable quality if:

(a) the consumer to whom they are supplied causes them to become of unacceptable quality, or fails to take reasonable steps to prevent them from becoming of unacceptable quality; and

(b) they are damaged by abnormal use.

(7) Goods do not fail to be of acceptable quality if:

(a) the consumer acquiring the goods examines them before the consumer agrees to the supply of the goods; and

(b) the examination ought reasonably to have revealed that the goods were not of acceptable quality.

55. Guarantee as to fitness for any disclosed purpose etc.

(1) If:

(a) a person (the ***supplier***) supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the goods are reasonably fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit.

(2) A ***disclosed purpose*** is a particular purpose (whether or not that purpose is a purpose for which the goods are commonly supplied) for which the goods are being acquired by the consumer and that:

(a) the consumer makes known, expressly or by implication, to:

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(i) the supplier; or

(ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made; or

(b) the consumer makes known to the manufacturer of the goods either directly or through the supplier or the person referred to in paragraph (a)(ii).

(3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier, the person referred to in subsection (2)(a)(ii) or the manufacturer, as the case may be.

56. Guarantee relating to the supply of goods by description

(1) If:

(a) a person supplies, in trade or commerce, goods by description to a consumer; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the goods correspond with the description.

(2) A supply of goods is not prevented from being a supply by description only because, having been exposed for sale or hire, they are selected by the consumer.

(3) If goods are supplied by description as well as by reference to a sample or demonstration model, the guarantees in this section and in section 57 both apply.

57. Guarantees relating to the supply of goods by sample or demonstration model

(1) If:

(a) a person supplies, in trade or commerce, goods to a consumer by reference to a sample or demonstration model; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that:

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(c) the goods correspond with the sample or demonstration model in quality, state or condition; and

(d) if the goods are supplied by reference to a sample — the consumer will have a reasonable opportunity to compare the goods with the sample; and

(e) the goods are free from any defect that:

(i) would not be apparent on reasonable examination of the sample or demonstration model; and

(ii) would cause the goods not to be of acceptable quality.

(2) If goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in section 56 and in this section both apply.

58. Guarantee as to repairs and spare parts

(1) If:

(a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the manufacturer of the goods will take reasonable action to ensure that facilities for the repair of the goods, and parts for the goods, are reasonably available for a reasonable period after the goods are supplied.

(2) This section does not apply if the manufacturer took reasonable action to ensure that the consumer would be given written notice, at or before the time when the consumer agrees to the supply of the goods, that:

(a) facilities for the repair of the goods would not be available or would not be available after a specified period; or

(b) parts for the goods would not be available or would not be available after a specified period.

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59. Guarantee as to express warranties

(1) If:

(a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the manufacturer of the goods will comply with any express warranty given or made by the manufacturer in relation to the goods.

(2) If:

(a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the supplier will comply with any express warranty given or made by the supplier in relation to the goods.

Subdivision B — Guarantees relating to the supply of services

60. Guarantee as to due care and skill

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

61. Guarantees as to fitness for a particular purpose etc.

(1) If:

(a) a person (the ***supplier***) supplies, in trade or commerce, services to a consumer; and

(b) the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the services are being acquired by the consumer;

there is a guarantee that the services, and any product resulting from the services, will be reasonably fit for that purpose.

(2) If:

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(a) a person (the ***supplier***) supplies, in trade or commerce, services to a consumer; and

(b) the consumer makes known, expressly or by implication, to:

(i) the supplier; or

(ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the services were conducted or made;

the result that the consumer wishes the services to achieve;

there is a guarantee that the services, and any product resulting from the services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve that result.

(3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier.

(4) This section does not apply to a supply of services of a professional nature by a qualified architect or engineer.

62. Guarantee as to reasonable time for supply

If:

(a) a person (the ***supplier***) supplies, in trade or commerce, services to a consumer; and

(b) the time within which the services are to be supplied:

(i) is not fixed by the contract for the supply of the services; or

(ii) is not to be determined in a manner agreed to by the consumer and supplier;

there is a guarantee that the services will be supplied within a reasonable time.

63. Services to which this Subdivision does not apply

This Subdivision does not apply to services that are, or are to be, supplied under:

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(a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or

(b) a contract of insurance.

Subdivision C — Guarantees not to be excluded etc. by contract

64. Guarantees not to be excluded etc. by contract

(1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of this Division; or

(b) the exercise of a right conferred by such a provision; or

(c) any liability of a person for a failure to comply with a guarantee that applies under this Division to a supply of goods or services.

(2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with the provision.

64A. Limitation of liability for failures to comply with guarantees

(1) A term of a contract for the supply by a person of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee (other than a guarantee under section 51, 52 or 53) to one or more of the following:

(a) the replacement of the goods or the supply of equivalent goods;

(b) the repair of the goods;

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(c) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(d) the payment of the cost of having the goods repaired.

(2) A term of a contract for the supply by a person of services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee to:

(a) the supplying of the services again; or

(b) the payment of the cost of having the services supplied again.

(3) This section does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the person who supplied the goods or services to rely on that term of the contract.

(4) In determining for the purposes of subsection (3) whether or not reliance on a term of a contract is fair or reasonable, a court is to have regard to all the circumstances of the case, and in particular to the following matters:

(a) the strength of the bargaining positions of the person who supplied the goods or services and the person to whom the goods or services were supplied (the ***buyer***) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;

(b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;

(c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of

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the trade and any previous course of dealing between the parties);

(d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

Subdivision D — Miscellaneous

65. Application of this Division to supplies of gas, electricity and telecommunications

(1) This Division does not apply to a supply if the supply:

(a) is a supply of a kind specified in the regulations; and

(b) is a supply of gas, electricity or a telecommunications service.

(2) A ***telecommunications service*** is a service for carrying communications by means of guided or unguided electromagnetic energy or both.

66. Display notices

(1) The Commonwealth Minister may determine, in writing, that persons (the ***suppliers***) who make supplies, or supplies of a specified kind, to which guarantees apply under this Division are required to display, in accordance with the determination, a notice that meets the requirements of the determination.

(2) A supplier who makes a supply to a consumer to which a guarantee applies under this Division, and to which such a determination relates, must ensure that a notice that meets those requirements is, in accordance with the determination:

(a) if the consumer takes delivery of the goods or services at the supplier's premises — displayed at those premises; or

(b) otherwise — drawn to the consumer's attention before the consumer agrees to the supply of the goods.

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Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) Without limiting subsection (1), a determination under that subsection may do all or any of the following:

(a) require the notice to include specified information about the application of all or any of the provisions of this Division and Part 5-4;

(b) specify where the notice must be displayed;

(c) specify how the notice must be drawn to the attention of consumers;

(d) specify requirements as to the form of the notice.

67. Conflict of laws

If:

(a) the proper law of a contract for the supply of goods or services to a consumer would be the law of any part of Australia but for a term of the contract that provides otherwise; or

(b) a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, the following provisions for all or any of the provisions of this Division:

(i) the provisions of the law of a country other than Australia;

(ii) the provisions of the law of a State or a Territory;

the provisions of this Division apply in relation to the supply under the contract despite that term.

68. Convention on Contracts for the International Sale of Goods

The provisions of the United Nations Convention on Contracts for the International Sale of Goods, done at Vienna on 11 April 1980, as amended and in force for Australia from time to time, prevail over the provisions of this Division to the extent of any inconsistency.

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Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 32 ([1988] ATS 32). In 2010, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Division 2 — Unsolicited consumer agreements

Subdivision A — Introduction

69. Meaning of *unsolicited consumer agreement*

(1) An agreement is an ***unsolicited consumer agreement*** if:

(a) it is for the supply, in trade or commerce, of goods or services to a consumer; and

(b) it is made as a result of negotiations between a dealer and the consumer:

(i) in each other's presence at a place other than the business or trade premises of the supplier of the goods or services; or

(ii) by telephone;

whether or not they are the only negotiations that precede the making of the agreement; and

(c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply); and

(d) the total price paid or payable by the consumer under the agreement:

(i) is not ascertainable at the time the agreement is made; or

(ii) if it is ascertainable at that time — is more than $100 or such other amount prescribed by the regulations.

(1A) The consumer is not taken, for the purposes of subsection (1)(c), to have invited the dealer to come to that place, or to make a telephone call, merely because the consumer has:

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(a) given his or her name or contact details other than for the predominant purpose of entering into negotiations relating to the supply of the goods or services referred to in subsection (1)(c); or

(b) contacted the dealer in connection with an unsuccessful attempt by the dealer to contact the consumer.

(2) An invitation merely to quote a price for a supply is not taken, for the purposes of subsection (1)(c), to be an invitation to enter into negotiations for a supply.

(3) An agreement is also an ***unsolicited consumer agreement*** if it is an agreement of a kind that the regulations provide are unsolicited consumer agreements.

(4) However, despite subsections (1) and (3), an agreement is not an ***unsolicited consumer agreement*** if it is an agreement of a kind that the regulations provide are not unsolicited consumer agreements.

70. Presumption that agreements are unsolicited consumer agreements

(1) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal proceeding), an agreement is presumed to be an unsolicited consumer agreement if:

(a) a party to the proceeding alleges that the agreement is an unsolicited consumer agreement; and

(b) no other party to the proceeding proves that the agreement is not an unsolicited consumer agreement.

(2) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal proceeding), it is presumed that a proposed agreement would be an unsolicited consumer agreement if it were made if:

(a) a party to the proceeding alleges that the proposed agreement would be an unsolicited consumer agreement if it were made; and

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(b) no other party to the proceeding proves that the proposed agreement would not be an unsolicited consumer agreement if it were made.

71. Meaning of *dealer*

A ***dealer*** is a person who, in trade or commerce:

(a) enters into negotiations with a consumer with a view to making an agreement for the supply of goods or services to the consumer; or

(b) calls on, or telephones, a consumer for the purpose of entering into such negotiations;

whether or not that person is, or is to be, the supplier of the goods or services.

72. Meaning of *negotiation*

A ***negotiation***, in relation to an agreement or a proposed agreement, includes any discussion or dealing directed towards the making of the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing).

Subdivision B — Negotiating unsolicited consumer agreements

73. Permitted hours for negotiating an unsolicited consumer agreement

(1) A dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:

(a) at any time on a Sunday or a public holiday; or

(b) on a Saturday:

(i) between midnight and 9 am; or

(ii) between 5 pm and midnight; or

(c) on any other day:

(i) between midnight and 9 am; or

(ii) between 8 pm and midnight.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(2) Subsection (1) does not apply if the dealer calls on the person in accordance with consent that:

(a) was given by the person to the dealer or a person acting on the dealer's behalf; and

(b) was not given in the presence of the dealer or a person acting on the dealer's behalf.

Note: The *Do Not Call Register Act 2006* may apply to a telephone call made for the purpose of negotiating an unsolicited consumer agreement.

74. Disclosing purpose and identity

A dealer who calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must, as soon as practicable and in any event before starting to negotiate:

(a) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and

(b) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and

(c) provide to the person such information relating to the dealer's identity as is prescribed by the regulations.

Note: A pecuniary penalty may be imposed for a contravention of this section.

75. Ceasing to negotiate on request

(1) A dealer who calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must leave the premises immediately on the request of:

(a) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or

(b) the person (the ***prospective consumer***) with whom the negotiations are being conducted.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(2) If the prospective consumer makes such a request, the dealer must not contact the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) for at least 30 days after the prospective consumer makes the request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate:

(a) subsection (2) applies to that supplier, and any person acting on behalf of that supplier, in the same way that it applies to the dealer; but

(b) subsection (2) does not apply to the dealer contacting the prospective customer in relation to a supply by another supplier.

76. Informing person of termination period etc.

A dealer must not make an unsolicited consumer agreement with a person unless:

(a) before the agreement is made, the person is given information as to the following:

(i) the person's right to terminate the agreement during the termination period;

(ii) the way in which the person may exercise that right;

(iii) such other matters as are prescribed by the regulations; and

(b) if the agreement is made in the presence of both the dealer and the person — the person is given the information in writing; and

(c) if the agreement is made by telephone — the person is given the information by telephone, and is subsequently given the information in writing; and

(d) the form in which, and the way in which, the person is given the information complies with any other requirements prescribed by the regulations.

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Note: A pecuniary penalty may be imposed for a contravention of this section.

77. Liability of suppliers for contraventions by dealers

If:

(a) a dealer contravenes a provision of this Subdivision in relation to an unsolicited consumer agreement; and

(b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates;

the supplier of the goods or services is also taken to have contravened that provision in relation to the agreement.

Subdivision C — Requirements for unsolicited consumer agreements etc.

78. Requirement to give document to the consumer

(1) If an unsolicited consumer agreement was not negotiated by telephone, the dealer who negotiated the agreement must give a copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If an unsolicited consumer agreement was negotiated by telephone, the dealer who negotiated the agreement must, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement:

(a) personally; or

(b) by post; or

(c) with the consumer's consent — by electronic communication;

a document (the ***agreement document***) evidencing the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(3) An unsolicited consumer agreement was ***negotiated by telephone*** if the negotiations that resulted in the making of the agreement took place by telephone (whether or not other negotiations preceded the making of the agreement).

79. Requirements for all unsolicited consumer agreements etc.

The supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with the following requirements:

(a) it must set out in full all the terms of the agreement, including:

(i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and

(ii) any postal or delivery charges to be paid by the consumer;

(b) its front page must include a notice that:

(i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and

(ii) conspicuously and prominently sets out any other information prescribed by the regulations; and

(iii) complies with any other requirements prescribed by the regulations;

(c) it must be accompanied by a notice that:

(i) may be used by the consumer to terminate the agreement; and

(ii) complies with any requirements prescribed by the regulations;

(d) it must conspicuously and prominently set out in full:

(i) the supplier's name; and

(ii) if the supplier has an ABN — the supplier's ABN; and

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(iii) if the supplier does not have an ABN but has an ACN — the supplier's ACN; and

(iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and

(v) if the supplier has an email address — the supplier's email address; and

(vi) if the supplier has a fax number — the supplier's fax number;

(e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);

(f) it must be transparent.

Note: A pecuniary penalty may be imposed for a contravention of this section.

80. Additional requirements for unsolicited consumer agreements not negotiated by telephone

The supplier under an unsolicited consumer agreement that was not negotiated by telephone must ensure that, in addition to complying with the requirements of section 79, the agreement complies with the following requirements:

(a) the agreement must be signed by the consumer under the agreement;

(b) if the agreement is signed by a person on the supplier's behalf — the agreement must state that the person is acting on the supplier's behalf, and must set out in full:

(i) the person's name; and

(ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential address; and

(iii) if the person has an email address — the person's email address.

Note: A pecuniary penalty may be imposed for a contravention of this section.

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81. Requirements for amendments of unsolicited consumer agreements

The supplier under an unsolicited consumer agreement must ensure that any amendments to the agreement are signed by both parties to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this section.

Subdivision D — Terminating unsolicited consumer agreements

82. Terminating an unsolicited consumer agreement during the termination period

(1) The consumer under an unsolicited consumer agreement may, during the period provided under subsection (3), terminate the agreement by indicating, in an oral or written notice to the supplier under the agreement, an intention to terminate the agreement.

(2) A right of termination under this section may be exercised:
- (a) despite affirmation of the agreement by the consumer; and
- (b) even though the agreement has been fully executed.

(3) The period during which the consumer may terminate the agreement is whichever of the following periods is the longest:
- (a) if the agreement was not negotiated by telephone — the period of 10 business days starting at the start of the first business day after the day on which the agreement was made;
- (b) if the agreement was negotiated by telephone — the period of 10 business days starting at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement;
- (c) if one or more of the following were contravened in relation to the agreement:
  - (i) section 73 (permitted hours for negotiating an unsolicited consumer agreement);

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(ii) section 74 (disclosing purpose and identity);

(iii) section 75 (ceasing to negotiate on request);

the period of 3 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;

(d) if one or more of the following were contravened in relation to the agreement:

(i) section 76 (informing consumer of termination period);

(ii) a provision of Subdivision C (requirements for unsolicited consumer agreements);

(iii) section 86 (prohibition on supplies for 10 business days);

the period of 6 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;

(e) such other period as the agreement provides.

(4) If the notice under subsection (1) is written, it may be given:

(a) by delivering it personally to the supplier; or

(b) by delivering it, or sending it by post, in an envelope addressed to the supplier, to the supplier's address referred to in section 79(d)(iv); or

(c) if the supplier has an email address — by sending it to the supplier's email address referred to in section 79(d)(v); or

(d) if the supplier has a fax number — by faxing it to the supplier's fax number referred to in section 79(d)(vi).

(5) A notice under subsection (1) sent by post to a supplier is taken to have been given to the supplier at the time of posting.

(6) There are no requirements relating to the form or content of a notice under subsection (1).

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83. Effect of termination

(1) If an unsolicited consumer agreement is terminated in accordance with section 82:

(a) the agreement is taken to have been rescinded by mutual consent; and

(b) any related contract or instrument is void.

(2) A ***related contract or instrument***, in relation to an unsolicited consumer agreement, is:

(a) any contract of guarantee or indemnity that is related to the agreement; or

(b) any instrument related to the agreement that creates a mortgage or charge in favour of the supplier under the contract or the dealer in relation to the contract (or a person nominated by the supplier or dealer); or

(c) any contract or instrument (other than an instrument of a kind referred to in paragraph (b)) that is collateral or related to the agreement;

but does not include a tied continuing credit contract (within the meaning of section 127(2) of Schedule 1 to the *National Consumer Credit Protection Act 2009*), or a tied loan contract (within the meaning of section 127(3) of that Schedule).

(3) The termination of an unsolicited consumer agreement has effect for the purposes of section 82 and this section even if:

(a) the supplier under the agreement has not received the notice of termination; or

(b) the goods or services supplied under the agreement have been wholly or partly consumed or used.

84. Obligations of suppliers on termination

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must, immediately upon being notified of the termination, return or refund to the consumer under the agreement any consideration (or the value of any

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consideration) that the consumer gave under the agreement or a related contract or instrument.

Note: A pecuniary penalty may be imposed for a contravention of this section.

85. Obligations and rights of consumers on termination

(1) If an unsolicited consumer agreement is terminated in accordance with section 82, the consumer under the agreement must, within a reasonable time:

(a) return to the supplier under the agreement any goods:

(i) that have been received from the supplier under the agreement; and

(ii) that the consumer has not already consumed; or

(b) notify the supplier of the place where the supplier may collect the goods.

(2) The goods become the property of the consumer, freed and discharged from all liens and charges of any description, if:

(a) the consumer gives notice to the supplier under subsection (1)(b); and

(b) the supplier does not collect the goods within 30 days after the termination of the contract.

(3) If:

(a) the agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:

(i) if the agreement was not negotiated by telephone — at the start of the first business day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and

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(b) the consumer returns the goods to the supplier, or the supplier collects the goods, under this section; and

(c) the consumer has failed to take reasonable care of the goods;

the consumer is liable to pay compensation to the supplier for the damage to, or depreciation in the value of, the goods.

(4) The compensation is recoverable in a court of competent jurisdiction.

(5) However, the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or to circumstances beyond the consumer's control.

(6) If:

(a) an unsolicited consumer agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:

(i) if the agreement was not negotiated by telephone — at the start of the first business day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and

(b) prior to the termination, but after the end of that period, a service was supplied under the agreement;

the termination does not affect any liability of the consumer under the agreement to provide consideration for the service.

86. Prohibition on supplies etc. for 10 business days

(1) The supplier under an unsolicited consumer agreement must not:

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(a) supply to the consumer under the agreement the goods or services to be supplied under the agreement; or

(b) accept any payment, or any other consideration, in connection with those goods or services; or

(c) require any payment, or any other consideration, in connection with those goods or services;

during the period of 10 business days starting:

(d) if the agreement was not negotiated by telephone — at the start of the first business day after the day on which the agreement was made; or

(e) if the agreement was negotiated by telephone — at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If the supplier supplies goods to the consumer in contravention of this section, the consumer has the same rights in relation to the goods as if the goods were unsolicited goods.

Note: Section 41 deals with unsolicited goods.

(3) If the supplier supplies services to the consumer in contravention of this section, the consumer has the same rights in relation to the services as if the services were unsolicited services.

Note: Section 42 deals with unsolicited services.

87. Repayment of payments received after termination

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must immediately refund to the consumer under the agreement any payment:

(a) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and

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(b) that purports to be made under the agreement or a related contract or instrument.

Note: A pecuniary penalty may be imposed for a contravention of this section.

88. Prohibition on recovering amounts after termination

(1) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not:

(a) bring, or assert an intention to bring, legal proceedings against the consumer; or

(b) take, or assert an intention to take, any other action against the consumer;

in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(1A) Subsection (1) does not apply to:

(a) bringing, or asserting an intention to bring, legal proceedings against the consumer; or

(b) taking, or asserting an intention to take, any other action against the consumer;

to enforce a liability under section 85(3), or a liability of a kind referred to in section 85(6).

(2) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not, for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement:

(a) place the consumer's name, or cause the consumer's name to be placed, on a list of defaulters or debtors; or

(b) assert an intention to place the consumer's name, or cause the consumer's name to be placed, on such a list.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(3) Without limiting Division 2 of Part 5-2, an injunction granted under that Division may require a person responsible for keeping a list of defaulters or debtors on which the consumer's name has been wrongly placed to remove the name from that list.

Subdivision E — Miscellaneous

89. Certain provisions of unsolicited consumer agreements void

(1) A provision (however described) of an unsolicited consumer agreement is void if it has the effect of, or purports to have the effect of:

(a) excluding, limiting, modifying or restricting a right of the consumer under the agreement to terminate the agreement under this Division; or

(b) otherwise excluding, limiting, modifying or restricting the effect or operation of this Division; or

(c) making a dispute relating to the agreement, or to a supply to which the agreement relates, justiciable by a court by which the dispute would not otherwise be justiciable.

(2) The supplier under an unsolicited consumer agreement must ensure that the agreement does not include, or purport to include, a provision (however described) that is, or would be, void because of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) The supplier under an unsolicited consumer agreement must not attempt to enforce or rely on a provision (however described) that is void because of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

90. Waiver of rights

(1) The consumer under an unsolicited consumer agreement is not competent to waive any right conferred by this Division.

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(2) The supplier under the unsolicited consumer agreement must not induce, or attempt to induce, the consumer to waive any right conferred by this Division.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

91. Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.

(1) This Division applies in relation to a person to whom the rights of a consumer (the ***original consumer***) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.

(2) This Division applies in relation to a person to whom the rights of a supplier (the ***original supplier***) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

92. Application of this Division to supplies to third parties

This Division applies in relation to a contract for the supply of goods or services to a consumer (the ***original consumer***) on the order of another person as if the other person were also the consumer.

93. Effect of contravening this Division

(1) The supplier under an unsolicited consumer agreement cannot enforce the agreement against the consumer under the agreement if a provision of this Division (other than section 85) has been contravened in relation to the agreement.

(2) This section does not prevent any action being taken under this Schedule in relation to the contravention.

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94. Regulations may limit the application of this Division

This Division (other than section 73) does not apply, or provisions of this Division (other than section 73) that are specified in the regulations do not apply, to or in relation to:

(a) circumstances of a kind specified in the regulations; or

(b) agreements of a kind specified in the regulations; or

(c) the conduct of businesses of a kind specified in the regulations.

95. Application of this Division to certain conduct covered by the Corporations Act

This Division does not apply in relation to conduct to which section 736, 992A or 992AA of the *Corporations Act 2001* applies.

Note: Section 736 of the *Corporations Act 2001* prohibits hawking of securities. Section 992A of that Act prohibits hawking of certain financial products. Section 992AA of that Act prohibits hawking of managed investment products.

Division 3 — Lay-by agreements

96. Lay-by agreements must be in writing etc.

(1) A supplier of consumer goods who is a party to a lay-by agreement must ensure that:

(a) the agreement is in writing; and

(b) a copy of the agreement is given to the consumer to whom the goods are, or are to be, supplied.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement is transparent.

(3) A ***lay-by agreement*** is an agreement between a supplier of consumer goods and a consumer for the supply, in trade or

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commerce, of the consumer goods on terms (whether express or implied) which provide that:

(a) the goods will not be delivered to the consumer until the total price of the goods has been paid; and

(b) the price of the goods is to be paid by:

(i) 3 or more instalments; or

(ii) if the agreement specifies that it is a lay-by agreement — 2 or more instalments.

(4) For the purposes of subsection (3)(b), any deposit paid by the consumer for the consumer goods is taken to be an instalment.

97. Termination of lay-by agreements by consumers

(1) A consumer who is party to a lay-by agreement may terminate the agreement at any time before the consumer goods to which the agreement relates are delivered to the consumer under the agreement.

(2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement does not require the consumer to pay a charge (a ***termination charge***) for the termination of the agreement unless:

(a) the agreement is terminated by the consumer; and

(b) the supplier has not breached the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A supplier of consumer goods who is a party to a lay-by agreement must ensure that, if the agreement provides that a termination charge is payable, the amount of the charge is not more than the supplier's reasonable costs in relation to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

98. Termination of lay-by agreements by suppliers

A supplier of consumer goods who is a party to a lay-by agreement must not terminate the agreement unless:

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(a) the consumer who is a party to the agreement breached a term of the agreement; or

(b) the supplier is no longer engaged in trade or commerce; or

(c) the consumer goods to which the agreement relates are no longer available.

Note: A pecuniary penalty may be imposed for a contravention of this section.

99. Effect of termination

(1) If a lay-by agreement is terminated by a party to the agreement, the supplier must refund to the consumer all the amounts paid by the consumer under the agreement other than any termination charge that is payable under the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) The supplier is entitled to recover any unpaid termination charge from the consumer as a debt if the amounts paid by the consumer under the lay-by agreement are not enough to cover the charge.

(3) If a lay-by agreement is terminated by a party to the agreement, the supplier is not entitled to damages, or to enforce any other remedy, in relation to that termination except as provided for by this section.

Division 4 — Miscellaneous

100. Supplier must provide proof of transaction etc.

(1) If:

(a) a person (the ***supplier***), in trade or commerce, supplies goods or services to a consumer; and

(b) the total price (excluding GST) of the goods or services is $75 or more;

the supplier must give the consumer a proof of transaction as soon as practicable after the goods or services are so supplied.

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Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If:

(a) a person (the ***supplier***), in trade or commerce, supplies goods or services to a consumer; and

(b) the total price (excluding GST) of the goods or services is less than $75;

the consumer may request a proof of transaction from the supplier as soon as practicable after the goods or services are so supplied.

(3) If a request is made under subsection (2), the supplier must give the proof of transaction within 7 days after the request is made.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) A ***proof of transaction*** for a supply of goods or services to a consumer is a document that:

(a) identifies the supplier of the goods or services; and

(b) if the supplier has an ABN — states the supplier's ABN; and

(c) if the supplier does not have an ABN but has an ACN — states the supplier's ACN; and

(d) states the date of the supply; and

(e) states the goods or services supplied to the consumer; and

(f) states the price of the goods or services.

Note: The following are examples of a proof of transaction:

(a) a tax invoice within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*;

(b) a cash register receipt;

(c) a credit card or debit card statement;

(d) a handwritten receipt;

(e) a lay-by agreement;

(f) a confirmation or receipt number provided for a telephone or internet transaction.

(5) The supplier must ensure that the proof of transaction given under subsection (1) or (3) is transparent.

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101. Consumer may request an itemised bill

(1) If a person (the ***supplier***), in trade or commerce, supplies services to a consumer, the consumer may request that the supplier give the consumer an itemised bill that:

(a) specifies how the price of the services was calculated; and

(b) includes, if applicable, the number of hours of labour that related to the supply of the services and the hourly rate for that labour; and

(c) includes, if applicable, a list of the materials used to supply the services and the amount charged for those materials.

(2) The request under subsection (1) must be made within 30 days after:

(a) the services are supplied; or

(b) the consumer receives a bill or account from the supplier for the supply of the services;

whichever occurs later.

(3) The supplier must give the consumer the itemised bill within 7 days after the request is made.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) The supplier must not charge the consumer for the itemised bill.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(5) The supplier must ensure that the itemised bill is transparent.

102. Prescribed requirements for warranties against defects

(1) The regulations may prescribe requirements relating to the form and content of warranties against defects.

(2) A person must not, in connection with the supply, in trade or commerce, of goods or services to a consumer:

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(a) give to the consumer a document that evidences a warranty against defects that does not comply with the requirements prescribed for the purposes of subsection (1); or

(b) represent directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A ***warranty against defects*** is a representation communicated to a consumer in connection with the supply of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions):

(a) repair or replace the goods or part of them; or

(b) provide again or rectify the services or part of them; or

(c) wholly or partly recompense the consumer;

if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced.

103. Repairers must comply with prescribed requirements

(1) The regulations may prescribe requirements relating to the form and content of notices to be given relating to the repair of consumer goods.

(2) A person (the ***repairer***) must not, in trade or commerce, accept from another person goods that the other person acquired as a consumer if the repairer:

(a) accepts the goods for the purpose of repairing them; and

(b) does not give to the other person a notice that complies with the requirements prescribed for the purposes of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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Part 3-3 — Safety of consumer goods and product related services

Division 1 — Safety standards

104. Making safety standards for consumer goods and product related services

(1) The Commonwealth Minister may, by written notice published on the internet, make a ***safety standard*** for one or both of the following:

(a) consumer goods of a particular kind;

(b) product related services of a particular kind.

(2) A safety standard for consumer goods of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:

(a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of consumer goods of that kind;

(b) the testing of consumer goods of that kind during, or after the completion of, manufacture or processing;

(c) the form and content of markings, warnings or instructions to accompany consumer goods of that kind.

(3) A safety standard for product related services of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:

(a) the manner in which services of that kind are supplied (including, but not limited to, the method of supply);

(b) the skills or qualifications of persons who supply such services;

(c) the materials used in supplying such services;

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(d) the testing of such services;

(e) the form and content of warnings, instructions or other information about such services.

105. Declaring safety standards for consumer goods and product related services

(1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is a ***safety standard*** for consumer goods, or product related services, of a kind specified in the instrument:

(a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;

(b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

(2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is a safety standard for:

(a) consumer goods of a particular kind; or

(b) product related services of a particular kind;

if that standard or part is inconsistent with a safety standard for those goods or services that is in force and that was made under section 104(1).

106. Supplying etc. consumer goods that do not comply with safety standards

(1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:

(a) a safety standard for consumer goods of that kind is in force; and

(b) those goods do not comply with the standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

(5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:

(a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and

(b) the Commonwealth Minister gives such an approval by written notice given to the person.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

(7) If:

(a) a person supplies consumer goods in contravention of this section; and

(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, the goods; or

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(ii) because of a reasonably foreseeable use (including a misuse) of the goods; or

(iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the goods; and

(c) the other person would not have suffered the loss or damage if the goods had complied with the safety standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

107. Supplying etc. product related services that do not comply with safety standards

(1) A person must not, in trade or commerce, supply product related services of particular kind if:

(a) a safety standard for services of that kind is in force; and

(b) those services do not comply with the standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) If:

(a) a person supplies product related services in contravention of this section; and

(b) another person suffers loss or damage:

(i) because of defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or

(ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied; or

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(iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the services; and

(c) the other person would not have suffered the loss or damage if the services had complied with the safety standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

108. Requirement to nominate a safety standard

If:

(a) a safety standard for consumer goods of a particular kind is in force; and

(b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and

(c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard;

the supplier must, within the period specified in the request, give to the regulator a written notice specifying which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard.

Division 2 — Bans on consumer goods and product related services

Subdivision A — Interim bans

109. Interim bans on consumer goods or product related services that will or may cause injury to any person etc.

(1) A responsible Minister may, by written notice published on the internet, impose an ***interim ban*** on consumer goods of a particular kind if:

(a) it appears to the responsible Minister that:

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(i) consumer goods of that kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; or

(b) another responsible Minister has imposed, under paragraph (a), an interim ban:

(i) on consumer goods of the same kind; or

(ii) on consumer goods of a kind that includes those goods;

and that ban is still in force.

(2) A responsible Minister may, by written notice published on the internet, impose an ***interim ban*** on product related services of a particular kind if:

(a) it appears to the responsible Minister that:

(i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied; or

(b) another responsible Minister has imposed, under paragraph (a), an interim ban:

(i) on product related services of the same kind; or

(ii) on product related services that include those services;

and that ban is still in force.

110. Places in which interim bans apply

(1) An interim ban imposed by the Commonwealth Minister applies in all States and Territories.

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(2) An interim ban imposed by a responsible Minister who is Minister of a State applies in the State.

(3) An interim ban imposed by a responsible Minister who is a Minister of a Territory applies in the Territory.

111. Ban period for interim bans

(1) An interim ban imposed by a responsible Minister is in force during the period (the ***ban period***) that:

(a) starts on the day (the ***start day***) specified in the notice imposing the ban; and

(b) subject to this Subdivision, ends at the end of 60 days after the start day.

(2) Before the ban period for the interim ban ends, the responsible Minister may, by written notice published on the internet, extend the ban period for the ban by a period of up to 30 days.

(3) If:

(a) the ban period for the interim ban is extended under subsection (2); and

(b) the extended ban period for the ban has not ended; and

(c) the interim ban was not imposed by the Commonwealth Minister;

the responsible Minister may, in writing, request the Commonwealth Minister to extend the extended ban period for the ban.

(4) If a request is made under subsection (3), the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

(5) If:

(a) a request is made under subsection (3); and

(b) the Commonwealth Minister has not made a decision on the request immediately before the extended ban period for the interim ban is to end;

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the Commonwealth Minister is taken to have decided to extend the extended ban period for the ban by a further period of 30 days.

(6) If:

(a) the ban period for the interim ban is extended under subsection (2); and

(b) the extended ban period for the ban has not ended; and

(c) the interim ban was imposed by the Commonwealth Minister;

the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

112. Interaction of multiple interim bans

(1) If:

(a) an interim ban (the ***original ban***) on consumer goods of a particular kind (the ***banned goods***) is imposed by a responsible Minister other than the Commonwealth Minister; and

(b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the ***Commonwealth ban***):

(i) on the banned goods; or

(ii) on consumer goods of a kind that includes the banned goods;

the original ban, to the extent that it is a ban on the banned goods, ceases to be in force immediately before the Commonwealth ban comes into force.

(2) If:

(a) an interim ban (the ***original ban***) on product related services of a particular kind (the ***banned services***) is imposed by a responsible Minister other than the Commonwealth Minister; and

(b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the ***Commonwealth ban***):

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(i) on the banned services; or

(ii) on product related services of a kind that includes the banned services;

the original ban, to the extent that it is a ban on the banned services, ceases to be in force immediately before the Commonwealth ban comes into force.

113. Revocation of interim bans

If a responsible Minister imposes an interim ban:

(a) the responsible Minister may, by written notice published on the internet, revoke the ban at any time; and

(b) the ban ceases to be in force on the day specified by the responsible Minister in the notice.

Subdivision B — Permanent bans

114. Permanent bans on consumer goods or product related services

(1) The Commonwealth Minister may, by written notice published on the internet, impose a ***permanent ban*** on consumer goods of a particular kind if:

(a) one or more interim bans on consumer goods of that kind (the ***banned goods***), or on consumer goods of a kind that include the banned goods, are in force; or

(b) it appears to the Commonwealth Minister that:

(i) consumer goods of that kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.

(2) The Commonwealth Minister may, by written notice published on the internet, impose a ***permanent ban*** on product related services of a particular kind if:

(a) one or more interim bans on product related services of that kind (the ***banned services***), or on product related services of a kind that include the banned services, are in force; or

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(b) it appears to the Commonwealth Minister that:

(i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

115. Places in which permanent bans apply

A permanent ban applies in all States and Territories.

116. When permanent bans come into force

A permanent ban comes into force on the day specified by the Commonwealth Minister in the instrument imposing the ban.

117. Revocation of permanent bans

If the Commonwealth Minister imposes a permanent ban:

(a) the Commonwealth Minister may, by written notice published on the internet, revoke the ban at any time; and

(b) the ban ceases to be in force on the day specified by the Commonwealth Minister in the notice.

Subdivision C — Compliance with interim bans and permanent bans

118. Supplying etc. consumer goods covered by a ban

(1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:

(a) an interim ban on consumer goods of that kind is in force in the place where the supply occurs; or

(b) a permanent ban on consumer goods of that kind is in force.

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Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

(5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:

(a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and

(b) the Commonwealth Minister gives such an approval by written notice given to the person.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

(7) If:

(a) a person supplies consumer goods in contravention of subsection (1); and

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(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, the goods; or

(ii) because of a reasonably foreseeable use (including a misuse) of the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

119. Supplying etc. product related services covered by a ban

(1) A person must not, in trade or commerce, supply product related services of a particular kind if:

(a) an interim ban on services of that kind is in force in the place where the supply occurs; or

(b) a permanent ban on services of that kind is in force.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) If:

(a) a person supplies product related services in contravention of subsection (1); and

(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or

(ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

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Subdivision D — Temporary exemption from mutual recognition principles

120. Temporary exemption under the *Trans-Tasman Mutual Recognition Act 1997*

(1) If:

(a) an interim ban on consumer goods of a particular kind is in force; or

(b) a permanent ban on consumer goods of a particular kind is in force;

the goods are taken, for the purposes of section 46 of the *Trans-Tasman Mutual Recognition Act 1997*, to be goods of a kind that are declared, in the manner provided by section 46(2) of that Act, to be exempt from the operation of that Act.

(2) This section does not affect the application of section 46(4) of that Act in relation to such an exemption.

121. Temporary exemption under the *Mutual Recognition Act 1992*

(1) If:

(a) an interim ban on consumer goods of a particular kind is in force; and

(b) the interim ban was not imposed by the Commonwealth Minister;

the goods are taken, for the purposes of section 15 of the *Mutual Recognition Act 1992*, to be goods of a kind that are declared, in the manner provided by section 15(1) of that Act, to be goods to which that section applies.

(2) This section does not affect the application of section 15(3) of that Act in relation to such an exemption.

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Division 3 — Recall of consumer goods

Subdivision A — Compulsory recall of consumer goods

122. Compulsory recall of consumer goods

(1) A responsible Minister may, by written notice published on the internet, issue a ***recall notice*** for consumer goods of a particular kind if:

(a) a person, in trade or commerce, supplies consumer goods of that kind; and

(b) any of the following applies:

(i) it appears to the responsible Minister that such goods will or may cause injury to any person;

(ii) it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury to any person;

(iii) a safety standard for such goods is in force and the goods do not comply with the standard;

(iv) an interim ban, or a permanent ban, on such goods is in force; and

(c) it appears to the responsible Minister that one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person.

(2) It is not necessary for the purposes of subsection (1)(c) for the responsible Minister to know the identities of any of the suppliers of the consumer goods of that kind.

(3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.

123. Contents of a recall notice

(1) A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no such supplier is

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known to the responsible Minister who issued the notice) the regulator, to take one or more of the following actions:

(a) recall the goods;

(b) disclose to the public, or to a class of persons specified in the notice, one or more of the following:

(i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;

(ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous;

(iii) procedures as specified in the notice for disposing of the goods;

(c) if the identities of any of those suppliers are known to the responsible Minister — inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

(i) unless the notice identifies a dangerous characteristic of the goods — repair the goods;

(ii) replace the goods;

(iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.

(2) The recall notice may specify:

(a) the manner in which the action required to be taken by the notice must be taken; and

(b) the period within which the action must be taken.

(3) If the recall notice requires the regulator to take action to recall the consumer goods, the responsible Minister may specify in the notice that the regulator must retain, destroy or otherwise dispose of the goods.

(4) If the recall notice requires a supplier of the consumer goods to take action of a kind referred to in

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subsection (1)(c), the responsible Minister may specify in the notice that, if:

(a) the supplier undertakes to refund the price of the goods; and

(b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of a refund may be reduced by the supplier by an amount calculated in a manner specified in the notice that is attributable to the use which a person has had of the goods.

124. Obligations of a supplier in relation to a recall notice

(1) This section applies if a recall notice for consumer goods requires a supplier to take action of a kind referred to in section 123(1)(c).

(2) If the supplier undertakes to repair the consumer goods, the supplier must cause the goods to be repaired so that:

(a) any defect in the goods identified in the recall notice is remedied; and

(b) if a safety standard for the goods is in force — the goods comply with that standard.

(3) If the supplier undertakes to replace the consumer goods, the supplier must replace the goods with similar consumer goods which:

(a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the recall notice — do not contain that defect or have that characteristic; and

(b) if a safety standard for the goods to be replaced is in force — comply with that standard.

(4) If the supplier undertakes:

(a) to repair the consumer goods; or

(b) to replace the consumer goods;

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the cost of the repair or replacement, including any necessary transportation costs, must be paid by the supplier.

125. Notification by persons who supply consumer goods outside Australia if there is compulsory recall

(1) If consumer goods of a particular kind are recalled as required by a recall notice, a person who has supplied or supplies those consumer goods to a person outside Australia must give the person outside Australia a written notice that complies with subsection (2).

(2) The notice given under subsection (1) must:

(a) state that the consumer goods are subject to recall; and

(b) if the consumer goods contain a defect or have a dangerous characteristic — set out the nature of that defect or characteristic; and

(c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous — set out the circumstances of that use or misuse; and

(d) if the consumer goods do not comply with a safety standard for such goods that is in force — set out the nature of the non-compliance; and

(e) if an interim ban, or a permanent ban, on the consumer goods is in force — state that fact.

(3) The notice under subsection (1) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.

(4) A person who is required to give a notice under subsection (1) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister who issued the recall notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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126. Interaction of multiple recall notices

If:

(a) a recall notice (the ***original recall notice***) for consumer goods of a particular kind (the ***recalled goods***) is issued by a responsible Minister other than the Commonwealth Minister; and

(b) while the original recall notice is in force, the Commonwealth Minister issues a recall notice (the ***Commonwealth recall notice***):

(i) for the recalled goods; or

(ii) for consumer goods of a kind that includes the recalled goods;

the original recall notice, to the extent that it relates to the recalled goods, ceases to be in force immediately before the Commonwealth recall notice is issued.

127. Compliance with recall notices

(1) If:

(a) a recall notice for consumer goods is in force; and

(b) the notice requires a person (other than the regulator) to do one or more things;

the person must comply with the notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If a recall notice for consumer goods is in force, a person must not, in trade or commerce:

(a) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods — supply consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or

(b) in any other case — supply consumer goods of the kind to which the notice relates.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) If:

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(a) a person contravenes subsection (1) or (2) in relation to consumer goods; and

(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, the goods; or

(ii) because of a reasonably foreseeable use (including a misuse) of the goods; or

(iii) because, contrary to the recall notice, the other person was not provided with particular information in relation to the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of the contravention.

Subdivision B — Voluntary recall of consumer goods

128. Notification requirements for a voluntary recall of consumer goods

(1) This section applies if a person voluntarily takes action to recall consumer goods of a particular kind (including consumer goods that have become fixtures since being supplied) because:

(a) the consumer goods will or may cause injury to any other person; or

(b) a reasonably foreseeable use (including a misuse) of the consumer goods will or may cause injury to any other person; or

(c) a safety standard for the consumer goods is in force and they do not, or it is likely that they do not, comply with the standard; or

(d) an interim ban, or a permanent ban, on the consumer goods is in force.

(2) The person must, within 2 days after taking the action, give the Commonwealth Minister a written notice that complies with subsection (7).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(3) The Commonwealth Minister may publish a copy of the notice on the internet.

(4) A person who has supplied or supplies consumer goods of that kind to another person outside Australia must give the other person a written notice that complies with subsection (7).

(5) The notice under subsection (4) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.

(6) A person who is required to give a notice under subsection (4) must, within 10 days after giving the notice, give a copy of the notice to the Commonwealth Minister.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(7) A notice given under subsection (2) or (4) must:

(a) state that the consumer goods are subject to recall; and

(b) if the consumer goods contain a defect or have a dangerous characteristic — set out the nature of that defect or characteristic; and

(c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous — set out the circumstances of that use or misuse; and

(d) if the consumer goods do not, or it is likely that they do not, comply with a safety standard for the goods that is in force —set out the nature of the non-compliance or likely non-compliance; and

(e) if an interim ban, or a permanent ban, on the consumer goods is in force — state that fact.

Division 4 — Safety warning notices

129. Safety warning notices about consumer goods and product related services

(1) A responsible Minister may publish on the internet a written notice containing one or both of the following:

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(a) a statement that consumer goods of a kind specified in the notice are under investigation to determine whether:

(i) those goods will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of those goods will or may cause injury to any person;

(b) a warning of possible risks involved in the use of consumer goods of a kind specified in the notice.

(2) A responsible Minister may publish on the internet a written notice containing one or both of the following:

(a) a statement that product related services of a kind specified in the notice are under investigation to determine whether:

(i) consumer goods of a particular kind will or may cause injury to any person as a result of services of that kind being supplied; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied;

(b) a warning of possible risks involved in the supply of product related services of a kind specified in the notice.

130. Announcement of the results of an investigation etc.

(1) If:

(a) an investigation of consumer goods, or product related services, specified in a notice under section 129(1) or (2) has been completed; and

(b) none of the following have been published or issued in relation to those goods or services:

(i) a proposed ban notice under section 132 of the Competition and Consumer Act;

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(ii) a proposed recall notice under section 132A of that Act;

(iii) a notice under section 132J(1) or (2) of that Act;

the responsible Minister who issued the notice under section 129(1) or (2) must, as soon as practicable after the completion of the investigation, announce, by written notice published on the internet, the results of the investigation.

(2) The responsible Minister may announce in a notice published under subsection (1) of this section:

(a) whether any action under this Part is proposed to be taken in relation to the consumer goods or product related services; and

(b) if it is proposed to take any such action — what action is proposed to be taken.

Division 5 — Consumer goods, or product related services, associated with death or serious injury or illness

131. Suppliers to report consumer goods associated with the death or serious injury or illness of any person

(1) If:

(a) a person (the ***supplier***), in trade or commerce, supplies consumer goods; and

(b) the supplier becomes aware of the death or serious injury or illness of any person and:

(i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods; or

(ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods;

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the supplier must, within 2 days of becoming so aware, give the Commonwealth Minister a written notice that complies with subsection (5).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) Subsection (1) does not apply if:

(a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods; or

(b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods; or

(c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or

(d) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with an industry code of practice that:

(i) applies to the supplier or other person; and

(ii) is specified in the regulations.

(3) Subsection (1) applies whether or not the consumer goods were being used before or at the time the death or serious injury or illness occurred.

(4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1)(b) include receiving the relevant information from any of the following:

(a) a consumer;

(b) a person who re-supplies the consumer goods;

(c) a repairer or insurer of the goods;

(d) an industry organisation or consumer organisation.

(5) The notice must:

(a) identify the consumer goods; and

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(b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:

(i) when, and in what quantities, the consumer goods were manufactured in Australia, supplied in Australia, imported into Australia or exported from Australia;

(ii) the circumstances in which the death or serious injury or illness occurred;

(iii) the nature of any serious injury or illness suffered by any person;

(iv) any action that the supplier has taken, or is intending to take, in relation to the consumer goods.

(6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:

(a) the consumer goods; or

(b) the death or serious injury or illness of any person.

132. Suppliers to report product related services associated with the death or serious injury or illness of any person

(1) If:

(a) a person (the ***supplier***), in trade or commerce, supplies product related services; and

(b) the supplier becomes aware of the death or serious injury or illness of any person and:

(i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate; or

(ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable

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misuse of the consumer goods to which the services relate;

the supplier must, within 2 days of becoming so aware, give the Commonwealth Minister a written notice that complies with subsection (5).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) Subsection (1) does not apply if:

(a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods to which the services relate; or

(b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods to which the services relate; or

(c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or

(d) the supplier, or another person, has notified the death or serious injury or illness in accordance with an industry code of practice that:

(i) applies to the supplier or other person; and

(ii) is specified in the regulations.

(3) Subsection (1) applies whether or not consumer goods to which the product related services relate were being used before or at the time the death or serious injury or illness occurred.

(4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1)(b) include receiving the relevant information from any of the following:

(a) a consumer;

(b) a person who re-supplies the product related services;

(c) an insurer of the services;

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(d) an industry organisation or consumer organisation.

(5) The notice must:

(a) identify the product related services and the consumer goods to which the services relate; and

(b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:

(i) when the services have been supplied;

(ii) the circumstances in which the death or serious injury or illness occurred;

(iii) the nature of any serious injury or illness suffered by any person;

(iv) any action that the supplier has taken, or is intending to take, in relation to the services.

(6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:

(a) the product related services; or

(b) the consumer goods to which the services relate; or

(c) the death or serious injury or illness of any person.

132A. Confidentiality of notices given under this Division

(1) A person must not disclose to any other person a notice given under this Division, or any part of or information contained in such a notice, unless the person who gave the notice has consented to the notice, or that part or information, not being treated as confidential.

(2) This section does not apply if:

(a) the disclosure is made by the Commonwealth Minister to:

(i) another responsible Minister; or

(ii) the regulator; or

(iii) an associate regulator; or

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(b) the disclosure is made by the Commonwealth Minister and the Commonwealth Minister considers that the disclosure is in the public interest; or

(c) the disclosure is made by a member of the staff of the regulator, or an associate regulator, in the performance of his or her duties as such a member of staff, and is made:

(i) to another member of the staff of the regulator or associate regulator; or

(ii) if the person making the disclosure is a member of the staff of the regulator — to an associate regulator; or

(iii) if the person making the disclosure is a member of the staff of an associate regulator—to the regulator or another associate regulator; or

(d) the disclosure is required or authorised by or under law; or

(e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

Division 6 — Miscellaneous

133. Liability under a contract of insurance

If:

(a) a contract of insurance between an insurer and a person relates to:

(i) the recall of consumer goods that are supplied by the person, or which the person proposes to supply; or

(ii) the liability of the person with respect to possible defects in such consumer goods; and

(b) the person gives information relating to any such consumer goods to:

(i) a responsible Minister; or

(ii) the regulator; or

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(iii) a person appointed or engaged under the *Public Service Act 1999*, or under a corresponding law of a State or a Territory; or

(iv) an officer of an authority of the Commonwealth or of a State or Territory;

the liability of the insurer under the contract is not affected only because the person gave the information.

Part 3-4 — Information standards

134. Making information standards for goods and services

(1) The Commonwealth Minister may, by written notice published on the internet, make an ***information standard*** for one or both of the following:

(a) goods of a particular kind;

(b) services of a particular kind.

(2) Without limiting subsection (1), an information standard for goods or services of a particular kind may:

(a) make provision in relation to the content of information about goods or services of that kind; or

(b) require the provision of specified information about goods or services of that kind; or

(c) provide for the manner or form in which such information is to be provided; or

(d) provide that such information is not to be provided in a specified manner or form; or

(e) provide that information of a specified kind is not to be provided about goods or services of that kind; or

(f) assign a meaning to specified information about goods or services.

135. Declaring information standards for goods and services

(1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is an ***information standard*** for goods or services of a kind specified in the instrument:

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(a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;

(b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

(2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is an information standard for:

(a) goods of a particular kind; or

(b) services of a particular kind;

if that standard or part is inconsistent with an information standard for those goods or services that is in force and was made under section 134(1).

136. Supplying etc. goods that do not comply with information standards

(1) A person must not, in trade or commerce, supply goods of a particular kind if:

(a) an information standard for goods of that kind is in force; and

(b) the person has not complied with that standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, offer for supply goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture,

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possession or control of the goods was not for the purpose of supplying the goods.

(5) Subsections (1), (2) and (3) do not apply to goods that are intended to be used outside Australia.

(6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Australia if either of the following is applied to the goods:

(a) a statement that the goods are for export only;

(b) a statement indicating, by the use of words authorised by the regulations to be used for the purposes of this subsection, that the goods are intended to be used outside Australia.

(7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being:

(a) woven in, impressed on, worked into or annexed or affixed to the goods; or

(b) applied to a covering, label, reel or thing in or with which the goods are supplied.

(8) If:

(a) a person (the ***supplier***) supplies goods in contravention of subsection (1), (2) or (3); and

(b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the goods; and

(c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

137. Supplying etc. services that do not comply with information standards

(1) A person must not, in trade or commerce, supply services of a particular kind if:

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(a) an information standard for services of that kind is in force; and

(b) the person has not complied with that standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, offer for supply services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) If:

(a) a person (the ***supplier***) supplies services in contravention of subsection (1) or (2); and

(b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the services; and

(c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Part 3-5 — Liability of manufacturers for goods with safety defects

Division 1 — Actions against manufacturers for goods with safety defects

138. Liability for loss or damage suffered by an injured individual

(1) A manufacturer of goods is liable to compensate an individual if:

(a) the manufacturer supplies the goods in trade or commerce; and

(b) the goods have a safety defect; and

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(c) the individual suffers injuries because of the safety defect.

(2) The individual may recover, by action against the manufacturer, the amount of the loss or damage suffered by the individual.

(3) If the individual dies because of the injuries, a law of a State or a Territory about liability in respect of the death of individuals applies as if:

(a) the action were an action under the law of the State or Territory for damages in respect of the injuries; and

(b) the safety defect were the manufacturer's wrongful act, neglect or default.

139. Liability for loss or damage suffered by a person other than an injured individual

(1) A manufacturer of goods is liable to compensate a person if:

(a) the manufacturer supplies the goods in trade or commerce; and

(b) the goods have a safety defect; and

(c) an individual (other than the person) suffers injuries because of the safety defect; and

(d) the person suffers loss or damage because of:

(i) the injuries; or

(ii) if the individual dies because of the injuries — the individual's death; and

(e) the loss or damage does not come about because of a business or professional relationship between the person and the individual.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

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140. Liability for loss or damage suffered by a person if other goods are destroyed or damaged

(1) A manufacturer of goods is liable to compensate a person if:

(a) the manufacturer supplies the goods in trade or commerce; and

(b) the goods have a safety defect; and

(c) other goods of a kind ordinarily acquired for personal, domestic or household use or consumption are destroyed or damaged because of the safety defect; and

(d) the person used or consumed, or intended to use or consume, the destroyed or damaged goods for personal, domestic or household use or consumption; and

(e) the person suffers loss or damage as a result of the destruction or damage.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

141. Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged

(1) A manufacturer of goods is liable to compensate a person if:

(a) the manufacturer supplies the goods in trade or commerce; and

(b) the goods have a safety defect; and

(c) land, buildings or fixtures are destroyed or damaged because of the safety defect; and

(d) the land, buildings or fixtures are ordinarily acquired for private use; and

(e) the person used, or intended to use, the land, buildings or fixtures for private use; and

(f) the person suffers loss or damage as a result of the destruction or damage.

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(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

142. Defences to defective goods actions

In a defective goods action, it is a defence if it is established that:

(a) the safety defect in the goods that is alleged to have caused the loss or damage did not exist:

(i) in the case of electricity — at the time at which the electricity was generated, being a time before it was transmitted or distributed; or

(ii) in any other case — at the time when the goods were supplied by their actual manufacturer; or

(b) the goods had that safety defect only because there was compliance with a mandatory standard for them; or

(c) the state of scientific or technical knowledge at the time when the goods were supplied by their manufacturer was not such as to enable that safety defect to be discovered; or

(d) if the goods that had that safety defect were comprised in other goods — that safety defect is attributable only to:

(i) the design of the other goods; or

(ii) the markings on or accompanying the other goods; or

(iii) the instructions or warnings given by the manufacturer of the other goods.

Division 2 — Defective goods actions

143. Time for commencing defective goods actions

(1) Subject to subsection (2), a person may commence a defective goods action at any time within 3 years after the

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time the person became aware, or ought reasonably to have become aware, of all of the following:

(a) the alleged loss or damage;

(b) the safety defect of the goods;

(c) the identity of the person who manufactured the goods.

(2) A defective goods action must be commenced within 10 years of the supply by the manufacturer of the goods to which the action relates.

144. Liability joint and several

If 2 or more persons are liable under Division 1 for the same loss or damage, they are jointly and severally liable.

145. Survival of actions

A law of a State or a Territory about the survival of causes of action vested in persons who die applies to actions under Division 1.

146. No defective goods action where workers' compensation law etc. applies

Division 1 does not apply to a loss or damage in respect of which an amount has been, or could be, recovered under a law of the Commonwealth, a State or a Territory that:

(a) relates to workers' compensation; or

(b) gives effect to an international agreement.

147. Unidentified manufacturer

(1) A person who:

(a) wishes to institute a defective goods action; but

(b) does not know who is the manufacturer of the goods to which the action would relate;

may, by written notice given to a supplier, or each supplier, of the goods who is known to the person, request the supplier or suppliers to give the person particulars

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identifying the manufacturer of the goods, or the supplier of the goods to the supplier requested.

(2) If, 30 days after the person made the request or requests, the person still does not know who is the manufacturer of the goods, then each supplier:

(a) to whom the request was made; and

(b) who did not comply with the request;

is taken, for the purposes of the defective goods liability action (but not for the purposes of section 142(c)), to be the manufacturer of the goods.

148. Commonwealth liability for goods that are defective only because of compliance with Commonwealth mandatory standard

(1) If a person (however described) against whom a defective goods action is brought raises the defence that the goods had the alleged safety defect only because there was compliance with a Commonwealth mandatory standard for the goods, the person must, as soon as practicable after raising that defence, give the Commonwealth:

(a) a prescribed notice of the action and of that defence; and

(b) a copy of the person's defence in the action.

(2) The giving of the notice and defence makes the Commonwealth a defendant in the action.

(3) If, in the action, the court finds that the person (the ***plaintiff***) by whom the action is brought would, but for the defence referred to in subsection (1), have succeeded against the person (other than the Commonwealth) against which the action is brought, then:

(a) the Commonwealth, and not the person (other than the Commonwealth) against which the action is brought, is liable to pay the plaintiff for the amount of the loss or damage caused by the safety defect; and

(b) the court is to enter judgment against the Commonwealth for that amount; and

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(c) the court may make such orders for costs as the court considers just.

149. Representative actions by the regulator

(1) The regulator may, by application, commence a defective goods action on behalf of one or more persons identified in the application who have suffered the loss or damage in relation to which the action is commenced.

(2) The regulator may only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

Division 3 — Miscellaneous

150. Application of all or any provisions of this Part etc. not to be excluded or modified

(1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any of the following is void:

(a) the application of all or any of the provisions of this Part;

(b) the exercise of a right conferred by any of those provisions;

(c) any liability under any of those provisions.

(2) A term of a contract is not taken to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

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Chapter 4 — Offences

Part 4-1 — Offences relating to unfair practices

Division 1 — False or misleading representations etc.

151. False or misleading representations about goods or services

(1) A person commits an offence if the person, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(a) makes a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or

(b) makes a false or misleading representation that services are of a particular standard, quality, value or grade; or

(c) makes a false or misleading representation that goods are new; or

(d) makes a false or misleading representation that a particular person has agreed to acquire goods or services; or

(e) makes a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or

(f) makes a false or misleading representation concerning:

(i) a testimonial by any person; or

(ii) a representation that purports to be such a testimonial;

relating to goods or services; or

(g) makes a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or

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(h) makes a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or

(i) makes a false or misleading representation with respect to the price of goods or services; or

(j) makes a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or

(k) makes a false or misleading representation concerning the place of origin of goods; or

(l) makes a false or misleading representation concerning the need for any goods or services; or

(m) makes a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or

(n) makes a false or misleading representation concerning a requirement to pay for a contractual right that:

(i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and

(ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

Note: For rules relating to representations as to the country of origin of goods, see Part 5-3.

(2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary.

(3) To avoid doubt, subsection (2) does not:

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(a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or

(b) have the effect of placing on any person an onus of proving that the representation is not misleading.

(4) Subsection (1) is an offence of strict liability.

152. False or misleading representations about sale etc. of land

(1) A person commits an offence if the person, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:

(a) makes a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or

(b) makes a false or misleading representation concerning the nature of the interest in the land; or

(c) makes a false or misleading representation concerning the price payable for the land; or

(d) makes a false or misleading representation concerning the location of the land; or

(e) makes a false or misleading representation concerning the characteristics of the land; or

(f) makes a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or

(g) makes a false or misleading representation concerning the existence or availability of facilities associated with the land.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) Subsection (1) is an offence of strict liability.

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(3) This section does not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

153. Misleading conduct relating to employment

(1) A person commits an offence if the person, in relation to employment that is to be, or may be, offered by the person or by another person, engages in conduct that is liable to mislead persons seeking the employment as to:

(a) the availability, nature, terms or conditions of the employment; or

(b) any other matter relating to the employment.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) Subsection (1) is an offence of strict liability.

154. Offering rebates, gifts, prizes etc.

(1) A person commits an offence if:

(a) the person, in trade or commerce, offers any rebate, gift, prize or other free item; and

(b) the offer is connected with:

(i) the supply or possible supply of goods or services; or

(ii) the promotion by any means of the supply or use of goods or services; or

(iii) the sale or grant, or the possible sale or grant, of an interest in land; or

(iv) the promotion by any means of the sale or grant of an interest in land; and

(c) the offer is made with the intention of not providing the rebate, gift, prize or other free item, or of not providing it as offered.

Penalty:

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(a) if the person is a body corporate — $1,100,000; or
(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:
(a) the person, in trade or commerce, offers any rebate, gift, prize or other free item; and
(b) the offer is connected with:
(i) the supply or possible supply of goods or services; or
(ii) the promotion by any means of the supply or use of goods or services; or
(iii) the sale or grant, or the possible sale or grant, of an interest in land; or
(iv) the promotion by any means of the sale or grant of an interest in land; and
(c) the person fails to provide the rebate, gift, prize or other free item, in accordance with the offer, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer.

Penalty:
(a) if the person is a body corporate — $1,100,000; or
(b) if the person is not a body corporate — $220,000.

(3) Subsection (2) does not apply if:
(a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
(b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(4) Subsection (2) does not apply to an offer that the person makes to another person if:
(a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and

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(b) the other person agrees to receive the different rebate, gift, prize or other free item.

(5) Strict liability applies to subsections (1)(b) and (2)(b).

(6) This section does not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

155. Misleading conduct as to the nature etc. of goods

(1) A person commits an offence if the person, in trade or commerce, engages in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Penalty:
(a) if the person is a body corporate — $1,100,000; or
(b) if the person is not a body corporate — $220,000.

(2) Subsection (1) is an offence of strict liability.

156. Misleading conduct as to the nature etc. of services

(1) A person commits an offence if the person, in trade or commerce, engages in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

Penalty:
(a) if the person is a body corporate — $1,100,000; or
(b) if the person is not a body corporate — $220,000.

(2) Subsection (1) is an offence of strict liability.

157. Bait advertising

(1) A person commits an offence if:
(a) the person, in trade or commerce, advertises goods or services for supply at a specified price; and

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(b) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:

(i) the nature of the market in which the person carries on business; and

(ii) the nature of the advertisement.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:

(a) the person, in trade or commerce, advertises goods or services for supply at a specified price; and

(b) the person fails to offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:

(i) the nature of the market in which the person carries on business; and

(ii) the nature of the advertisement.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) are offences of strict liability.

(4) In a prosecution of a person (the ***defendant***) under subsection (2), for failing to offer goods or services to another person (the ***customer***), it is a defence if:

(a) the defendant proves that:

(i) he or she offered to supply, or to procure a third person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or

(ii) he or she offered to supply immediately, or to procure a third person to supply within a

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reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised; and

(b) in either case, if the offer was accepted by the customer, the defendant proves that he or she has so supplied, or procured a third person to supply, the goods or services.

158. Wrongly accepting payment

(1) A person commits an offence if:

(a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and

(b) at the time of the acceptance, the person intends not to supply the goods or services.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) Strict liability applies to subsection (1)(a).

(3) A person commits an offence if:

(a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and

(b) at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(4) Strict liability applies to subsection (3)(a).

(5) A person commits an offence if:

(a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and

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(b) at the time of the acceptance, the person was reckless as to whether he or she would be able to supply the goods or services:

(i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

(ii) if no period is specified at or before that time — within a reasonable time.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(6) Strict liability applies to subsection (5)(a).

(7) A person commits an offence if:

(a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and

(b) the person fails to supply all the goods or services:

(i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

(ii) if no period is specified at or before that time — within a reasonable time.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(8) Subsection (7) does not apply if:

(a) the person's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or omission of another person, or to some other cause beyond the person's control; and

(b) the person took reasonable precautions and exercised due diligence to avoid the failure.

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(9) Subsection (7) does not apply if:

(a) the person offers to supply different goods or services as a replacement to the person (the ***customer***) to whom the original supply was to be made; and

(b) the customer agrees to receive the different goods or services.

(10) Subsection (7) is an offence of strict liability.

(11) Subsections (1), (3), (5) and (7) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

159. Misleading representations about certain business activities

(1) A person commits an offence if:

(a) the person, in trade or commerce, makes a representation; and

(b) the representation is false or misleading in a material particular; and

(c) the representation concerns the profitability, risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:

(a) the person, in trade or commerce, makes a representation; and

(b) the representation is false or misleading in a material particular; and

(c) the representation concerns the profitability, risk or any other material aspect of any business activity:

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(i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and

(ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) are offences of strict liability.

160. Application of provisions of this Division to information providers

(1) Sections 151, 152, 155, 156 and 159 do not apply to a publication of matter by an information provider if:

(a) in any case — the information provider made the publication in the course of carrying on a business of providing information; or

(b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992* — the publication was by way of a radio or television broadcast by the information provider.

(2) Subsection (1) does not apply to a publication of an advertisement.

(3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the ***publicised goods or services***), if:

(a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body

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corporate, by a body corporate that is related to the information provider; or

(b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or

(c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.

(4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the ***publicised interests in land***), if:

(a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or

(b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or

(c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

Division 2 — Unsolicited supplies

161. Unsolicited cards etc.

(1) A person commits an offence if:

(a) the person sends a credit card or a debit card, or an article that may be used as a credit card and a debit card, to another person; and

(b) either:

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(i) the person had issued the card; or

(ii) the card was sent on behalf of the person who had issued the card.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) Subsection (1) does not apply if the person sends the card to the other person:

(a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or

(b) in renewal or replacement of, or in substitution for:

(i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a liability, to the person who issued the card previously so sent, in respect of the use of that card; or

(ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.

(3) A person commits an offence if the person takes any action that enables another person who has a credit card to use the card as a debit card.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(4) A person commits an offence if the person takes any action that enables another person who has a debit card to use the card as a credit card.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

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(b) if the person is not a body corporate — $220,000.

(5) Subsection (3) or (4) does not apply if the person takes the action in accordance with the other person's written request.

(6) Subsections (1), (3) and (4) are offences of strict liability.

162. Assertion of right to payment for unsolicited goods or services

(1) A person commits an offence if the person, in trade or commerce, asserts a right to payment from another person for unsolicited goods.

Penalty:
(a) if the person is a body corporate — $1,100,000; or
(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if the person, in trade or commerce, asserts a right to payment from another person for unsolicited services.

Penalty:
(a) if the person is a body corporate — $1,100,000; or
(b) if the person is not a body corporate — $220,000.

(3) A person commits an offence if the person, in trade or commerce, sends to another person an invoice or other document that:
(a) states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services; and
(b) does not contain a warning statement that complies with the requirements set out in the regulations made for the purposes of section 40(3)(b).

Penalty:
(a) if the person is a body corporate — $1,100,000; or
(b) if the person is not a body corporate — $220,000.

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(4) Subsection (1), (2) or (3) does not apply if the person proves that he or she had reasonable cause to believe that there was a right to the payment or charge.

(5) Subsections (1), (2) and (3) are offences of strict liability.

163. Assertion of right to payment for unauthorised entries or advertisements

(1) A person commits an offence if the person asserts a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to:

(a) the other person; or

(b) the other person's profession, business, trade or occupation.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if the person sends to another person an invoice or other document that:

(a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to:

(i) the other person; or

(ii) the other person's profession, business, trade or occupation; and

(b) does not contain a warning statement that complies with the requirements set out in the regulations made for the purposes of section 43(2)(b).

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) do not apply if the person proves that he or she knew, or had reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

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(4) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is:

(a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations made for the purposes of section 43(3)(a); or

(b) a body corporate related to such a publisher; or

(c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or

(d) a person specified in regulations made for the purposes of section 43(3)(d).

(5) Subsections (1) and (2) are offences of strict liability.

(6) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless:

(a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her; and

(b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and

(c) the document specifies:

(i) the name and address of the person publishing the entry or advertisement; and

(ii) particulars of the entry or advertisement; and

(iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.

Division 3 — Pyramid schemes

164. Participation in pyramid schemes

(1) A person commits an offence if the person participates in a pyramid scheme.

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Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if the person induces another person to participate in a pyramid scheme.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) are offences of strict liability.

Division 4 — Pricing

165. Multiple pricing

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies goods; and

(b) the goods have more than one displayed price; and

(c) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.

Penalty:

(a) if the person is a body corporate — $5,000; or

(b) if the person is not a body corporate — $1,000.

(2) Subsection (1) is an offence of strict liability.

166. Single price to be specified in certain circumstances

(1) A person commits an offence if the person, in trade or commerce, in connection with:

(a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or

(b) the promotion by any means of the supply to another person, or of the use by another person, of goods or

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services of a kind ordinarily acquired for personal, domestic or household use or consumption;

makes a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the other person.

(3) Subsection (1) does not apply if the person also:

(a) specifies, in a prominent way and as a single figure, the single price for the goods or services; and

(b) if, in relation to goods:

(i) the person does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the other person; and

(ii) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person;

specifies that minimum amount.

(4) Subsection (1) does not apply if the representation is made exclusively to a body corporate.

(5) For the purposes of subsection (3)(a), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.

(6) Subsection (5) does not apply in relation to services to be supplied under a contract if:

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(a) the contract provides for the supply of the services for the term of the contract; and

(b) the contract provides for periodic payments for the services to be made during the term of the contract; and

(c) if the contract also provides for the supply of goods — the goods are directly related to the supply of the services.

(7) Subsection (1) is an offence of strict liability.

Division 5 — Other unfair practices

167. Referral selling

(1) A person commits an offence if:

(a) the person, in trade or commerce, induces a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for:

(i) giving the person the names of prospective customers; or

(ii) otherwise assisting the person to supply goods or services to other consumers; and

(b) the receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) Subsection (1) is an offence of strict liability.

168. Harassment and coercion

(1) A person commits an offence if:

(a) the person uses physical force, or undue harassment or coercion; and

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(b) the physical force, or undue harassment or coercion is used in connection with:

(i) the supply or possible supply of goods or services; or

(ii) the payment for goods or services; or

(iii) the sale or grant, or the possible sale or grant, of an interest in land; or

(iv) the payment for an interest in land.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) Subsection (1) is an offence of strict liability.

(3) Subsections (1)(b)(iii) and (iv) do not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

Part 4-2 — Offences relating to consumer transactions

Division 1 — Consumer guarantees

169. Display notices

(1) A person commits an offence if:

(a) the person makes a supply to a consumer to which:

(i) guarantees apply under Division 1 of Part 3-2; and

(ii) a determination under subsection 66(1) applies; and

(b) a notice that meets the requirements of the determination is not, in accordance with the determination:

(i) if the consumer takes delivery of the goods or services at the supplier's premises — displayed at those premises; or

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(ii) otherwise — drawn to the consumer's attention before the consumer agrees to the supply of the goods.

Penalty:
(a) if the person is a body corporate — $50,000; or
(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

Division 2 — Unsolicited consumer agreements

Subdivision A — Negotiating unsolicited consumer agreements

170. Permitted hours for negotiating an unsolicited consumer agreement

(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:
(a) at any time on a Sunday or a public holiday; or
(b) on a Saturday:
(i) between midnight and 9 am; or
(ii) between 5 pm and midnight; or
(c) on any other day:
(i) between midnight and 9 am; or
(ii) between 8 pm and midnight.

Penalty:
(a) if the person is a body corporate — $50,000; or
(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) does not apply if the dealer calls on, or telephones, the person in accordance with consent that:
(a) was given by the person to the dealer or a person acting on the dealer's behalf; and
(b) was not given in the presence of the dealer or a person acting on the dealer's behalf.

(3) Subsection (1) is an offence of strict liability.

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171. Disclosing purpose and identity

(1) A dealer commits an offence if the dealer:

(a) calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose; and

(b) does not as soon as practicable and in any event before starting to negotiate:

(i) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and

(ii) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and

(iii) provide to the person such information relating to the dealer's identity as is prescribed by the regulations made for the purposes of section 74(c).

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

172. Ceasing to negotiate on request

(1) A dealer commits an offence if the dealer:

(a) calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose; and

(b) does not leave the premises immediately on the request of:

(i) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or

(ii) the person (the ***prospective consumer***) with whom the negotiations are being conducted.

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Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) A dealer commits an offence if:

(a) the prospective consumer has made the request referred to in subsection (1)(b); and

(b) the dealer contacts the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) within 30 days after the prospective consumer made the request.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate, subsection (2) applies to that supplier, and any person acting on behalf of the supplier, in the same way that it applies to the dealer.

(4) Subsection (2) does not apply to the dealer contacting the prospective consumer if:

(a) the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate; and

(b) the contact relates to a supply by another supplier.

(5) Subsections (1) and (2) are offences of strict liability.

173. Informing person of termination period etc.

(1) A dealer commits an offence if the dealer makes an unsolicited consumer agreement with a person, and:

(a) before the agreement is made, the person is not given information as to the following:

(i) the person's right to terminate the agreement during the termination period;

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(ii) the way in which the person may exercise that right;

(iii) such other matters as are prescribed by regulations made for the purposes of section 76(a)(iii); or

(b) if the agreement is made in the presence of both the dealer and the person — the person is not given the information in writing; or

(c) if the agreement is made by telephone — the person is not:

(i) given the information by telephone; and

(ii) subsequently given the information in writing; or

(d) the form in which, and the way in which, the person is given the information does not comply with any other requirements prescribed by regulations made for the purposes of section 76(d).

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) If:

(a) a dealer contravenes subsection (1) in relation to an unsolicited consumer agreement; and

(b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates;

the supplier of the goods or services is also taken to have contravened subsection (1) in relation to the agreement.

(3) Subsection (1) is an offence of strict liability.

Subdivision B — Requirements for unsolicited consumer agreements etc.

174. Requirement to give document to the consumer

(1) The dealer who negotiated an unsolicited consumer agreement commits an offence if:

(a) the agreement was not negotiated by telephone; and

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(b) the dealer does not give a copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) The dealer who negotiated an unsolicited consumer agreement commits an offence if:

(a) the agreement was negotiated by telephone; and

(b) the dealer does not, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement:

(i) personally; or

(ii) by post; or

(iii) with the consumer's consent — by electronic communication;

an agreement document evidencing the agreement.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(3) Subsections (1) and (2) are offences of strict liability.

175. Requirements for all unsolicited consumer agreements etc.

(1) The supplier under an unsolicited consumer agreement commits an offence if the agreement, or (if the agreement was negotiated by telephone) the agreement document, does not comply with the following requirements:

(a) it must set out in full all the terms of the agreement, including:

(i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and

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(ii) any postal or delivery charges to be paid by the consumer;

(b) its front page must include a notice that:

(i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and

(ii) conspicuously and prominently sets out any other information prescribed by regulations made for the purposes of section 79(b)(ii); and

(iii) complies with any other requirements prescribed by regulations made for the purposes of section 79(b)(iii);

(c) it must be accompanied by a notice that:

(i) may be used by the consumer to terminate the agreement; and

(ii) complies with any requirements prescribed by regulations made for the purposes of section 79(c)(ii);

(d) it must conspicuously and prominently set out in full:

(i) the supplier's name; and

(ii) if the supplier has an ABN — the supplier's ABN; and

(iii) if the supplier does not have an ABN but has an ACN — the supplier's ACN; and

(iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and

(v) if the supplier has an email address — the supplier's email address; and

(vi) if the supplier has a fax number — the supplier's fax number;

(e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);

(f) it must be transparent.

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Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

176. Additional requirements for unsolicited consumer agreements not negotiated by telephone

(1) The supplier under an unsolicited consumer agreement that was not negotiated by telephone commits an offence if the agreement does not comply with the following requirements:

(a) the agreement must be signed by the consumer under the agreement;

(b) if the agreement is signed by a person on the supplier's behalf — the agreement must state that the person is acting on the supplier's behalf, and must set out in full:

(i) the person's name; and

(ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential address; and

(iii) if the person has an email address — the person's email address.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

(3) This section does not limit the operation of section 175.

177. Requirements for amendments of unsolicited consumer agreements

(1) The supplier under an unsolicited consumer agreement commits an offence if any amendments to the agreement are not signed by both parties to the agreement.

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Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

Subdivision C — Terminating unsolicited consumer agreements

178. Obligations of suppliers on termination

(1) The supplier under an unsolicited consumer agreement commits an offence if:

(a) the agreement is terminated in accordance with section 82; and

(b) the supplier does not, immediately upon being notified of the termination, return or refund to the consumer under the agreement any consideration (or the value of any consideration) that the consumer gave under the agreement or a related contract or instrument.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

179. Prohibition on supplies for 10 business days

(1) The supplier under an unsolicited consumer agreement commits an offence if:

(a) the supplier:

(i) supplies to the consumer under the agreement the goods or services to be supplied under the agreement; or

(ii) accepts any payment, or any other consideration, in connection with those goods or services; or

(iii) requires any payment, or any other consideration, in connection with those goods or services; and

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(b) the supply, acceptance or requirement occurs during the period of 10 business days starting:

(i) if the agreement was not negotiated by telephone — at the start of the first business day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Strict liability applies to subsection (1)(a).

180. Repayment of payments received after termination

(1) The supplier under an unsolicited consumer agreement commits an offence if:

(a) the agreement is terminated in accordance with section 82; and

(b) the supplier does not immediately refund to the consumer under the agreement any payment:

(i) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and

(ii) that purports to be made under the agreement or a related contract or instrument.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

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181. Prohibition on recovering amounts after termination

(1) A person commits an offence if:

(a) an unsolicited consumer agreement is terminated in accordance with section 82; and

(b) the person:

(i) brings, or asserts an intention to bring, legal proceedings against the consumer; or

(ii) takes, or asserts an intention to take, any other action against the consumer;

in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) A person commits an offence if:

(a) an unsolicited consumer agreement is terminated in accordance with section 82; and

(b) for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement, the person:

(i) places the consumer's name, or causes the consumer's name to be placed, on a list of defaulters or debtors; or

(ii) asserts an intention to place the consumer's name, or to cause the consumer's name to be placed, on such a list.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(3) Subsection (1) is an offence of strict liability.

(4) Strict liability applies to subsection (2)(a).

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Subdivision D — Miscellaneous

182. Certain provisions of unsolicited consumer agreements void

(1) The supplier under an unsolicited consumer agreement commits an offence if the agreement includes, or purports to include, a provision (however described) that is, or would be, void because of section 89(1).

Penalty:
(a) if the person is a body corporate — $50,000; or
(b) if the person is not a body corporate — $10,000.

(2) The supplier under an unsolicited consumer agreement commits an offence if the supplier attempts to enforce or rely on a provision (however described) that is void because of section 89(1).

Penalty:
(a) if the person is a body corporate — $50,000; or
(b) if the person is not a body corporate — $10,000.

(3) Subsections (1) and (2) are offences of strict liability.

183. Waiver of rights

(1) The supplier under an unsolicited consumer agreement commits an offence if the supplier induces the consumer to waive any right conferred by Division 2 of Part 3-2.

Penalty:
(a) if the person is a body corporate — $50,000; or
(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

184. Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.

(1) This Division applies in relation to a person to whom the rights of a consumer (the ***original consumer***) under a contract for the supply of goods or services are assigned or

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transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.

(2) This Division applies in relation to a person to whom the rights of a supplier (the ***original supplier***) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

185. Application of this Division to supplies to third parties

This Division applies in relation to a contract for the supply of goods or services to a consumer (the ***original consumer***) on the order of another person as if the other person were also the consumer.

186. Regulations may limit the application of this Division

This Division (other than section 170) does not apply, or provisions of this Division (other than section 170) that are specified in regulations made for the purposes of section 94 do not apply, to or in relation to:

(a) circumstances of a kind specified in those regulations; or

(b) agreements of a kind specified in those regulations; or

(c) the conduct of businesses of a kind specified in those regulations.

187. Application of this Division to certain conduct covered by the Corporations Act

This Division does not apply in relation to conduct to which section 736, 992A or 992AA of the *Corporations Act 2001* applies.

Note: Section 736 of the *Corporations Act 2001* prohibits hawking of securities. Section 992A of that Act prohibits hawking of certain financial products. Section 992AA of that Act prohibits hawking of managed investment products.

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Division 3 — Lay-by agreements

188. Lay-by agreements must be in writing etc.

(1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:

(a) the agreement is not in writing; or

(b) a copy of the agreement is not given to the consumer to whom the goods are, or are to be, supplied.

Penalty:

(a) if the person is a body corporate — $30,000; or

(b) if the person is not a body corporate — $6,000.

(2) Subsection (1) is an offence of strict liability.

189. Termination charges

(1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if the agreement requires the consumer to pay a termination charge.

Penalty:

(a) if the person is a body corporate — $30,000; or

(b) if the person is not a body corporate — $6,000.

(2) Subsection (1) does not apply if the termination charge is payable only if:

(a) the agreement is terminated by the consumer; and

(b) the supplier has not breached the agreement.

(3) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:

(a) the agreement provides that a termination charge is payable; and

(b) the amount of the charge is more than the supplier's reasonable costs in relation to the agreement.

Penalty:

(a) if the person is a body corporate — $30,000; or

(b) if the person is not a body corporate — $6,000.

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(4) Subsections (1) and (3) are offences of strict liability.

190. Termination of lay-by agreements by suppliers

(1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if the supplier terminates the agreement.

Penalty:
(a) if the person is a body corporate — $30,000; or
(b) if the person is not a body corporate — $6,000.

(2) Subsection (1) does not apply if:
(a) the consumer who is a party to the agreement breached a term of the agreement; or
(b) the supplier is no longer engaged in trade or commerce; or
(c) the consumer goods to which the agreement relates are no longer available.

(3) Subsection (1) is an offence of strict liability.

191. Refund of amounts

(1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:
(a) the agreement is terminated by a party to the agreement; and
(b) the supplier fails to refund to the consumer all the amounts paid by the consumer under the agreement (other than any termination charge that is payable under the agreement).

Penalty:
(a) if the person is a body corporate — $30,000; or
(b) if the person is not a body corporate — $6,000.

(2) Subsection (1) is an offence of strict liability.

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Division 4 — Miscellaneous

192. Prescribed requirements for warranties against defects

(1) A person commits an offence if the person, in connection with the supply, in trade or commerce, of goods or services to a consumer:

(a) gives to the consumer a document that evidences a warranty against defects and that does not comply with the requirements prescribed for the purposes of section 102(1); or

(b) represents directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

193. Repairers must comply with prescribed requirements

(1) A person commits an offence if:

(a) the person accepts from another person goods that the other person acquired as a consumer; and

(b) the goods are accepted for the purpose of repairing them; and

(c) the person does not give to the other person a notice that complies with the requirements prescribed for the purposes of section 103(1).

Penalty:

(a) if the person is a body corporate — $50,000; or

(b) if the person is not a body corporate — $10,000.

(2) Subsection (1) is an offence of strict liability.

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Part 4-3 — Offences relating to safety of consumer goods and product related services

Division 1 — Safety standards

194. Supplying etc. consumer goods that do not comply with safety standards

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies consumer goods of a particular kind; and

(b) a safety standard for consumer goods of that kind is in force; and

(c) those goods do not comply with the standard.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:

(a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and

(b) a safety standard for consumer goods of that kind is in force; and

(c) those goods do not comply with the standard.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) A person commits an offence if:

(a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and

(b) a safety standard for consumer goods of that kind is in force; and

(c) those goods do not comply with the standard.

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Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).

(5) A person commits an offence if:

(a) the person, in trade or commerce, exports consumer goods of a particular kind; and

(b) a safety standard for consumer goods of that kind is in force; and

(c) those goods do not comply with the standard.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 106(5).

(7) Subsections (1), (2), (3) and (5) are offences of strict liability.

195. Supplying etc. product related services that do not comply with safety standards

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies product related services of a particular kind; and

(b) a safety standard for services of that kind is in force; and

(c) those services do not comply with the standard.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

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(2) A person commits an offence if:

(a) the person, in trade or commerce, offers for supply product related services of a particular kind; and

(b) a safety standard for services of that kind is in force; and

(c) those services do not comply with the standard.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) are offences of strict liability.

196. Requirement to nominate a safety standard

(1) A person commits an offence if the person refuses or fails to comply with a request given to the person under section 108.

Penalty:

(a) if the person is a body corporate — $22,000; or

(b) if the person is not a body corporate — $4,400.

(2) Subsection (1) is an offence of strict liability.

Division 2 — Bans on consumer goods and product related services

197. Supplying etc. consumer goods covered by a ban

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies consumer goods of a particular kind; and

(b) either:

(i) an interim ban on goods of that kind is in force in the place where the supply occurs; or

(ii) a permanent ban on goods of that kind is in force.

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Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:

(a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and

(b) the supply would be prohibited by subsection (1).

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) A person commits an offence if:

(a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and

(b) supply of the goods would be prohibited by subsection (1).

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).

(5) A person commits an offence if:

(a) the person exports consumer goods of a particular kind; and

(b) supply of the goods would be prohibited by subsection (1).

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

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(6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 118(5).

(7) Subsections (1), (2), (3) and (5) are offences of strict liability.

198. Supplying etc. product related services covered by a ban

(1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies product related services of a particular kind; and
- (b) either:
  - (i) an interim ban on services of that kind is in force in the place where the supply occurs; or
  - (ii) a permanent ban on services of that kind is in force.

Penalty:
- (a) if the person is a body corporate — $1,100,000; or
- (b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply product related services of a particular kind; and
- (b) the supply would be prohibited by subsection (1).

Penalty:
- (a) if the person is a body corporate — $1,100,000; or
- (b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) are offences of strict liability.

Division 3 — Recall of consumer goods

199. Compliance with recall orders

(1) A person commits an offence if:
- (a) a recall notice for consumer goods is in force; and

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(b) the notice requires the person (other than the regulator) to do one or more things; and

(c) the person refuses or fails to comply with the notice.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:

(a) a recall notice for consumer goods is in force; and

(b) the person, in trade or commerce:

(i) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods — supplies consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or

(ii) in any other case — supplies consumer goods of the kind to which the notice relates.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) are offences of strict liability.

200. Notification by persons who supply consumer goods outside Australia if there is compulsory recall

(1) A person commits an offence if:

(a) the person is required by section 125(4) to give a copy of a notice to a responsible Minister; and

(b) the person refuses or fails to give the copy as required by that section.

Penalty:

(a) if the person is a body corporate — $16,650; or

(b) if the person is not a body corporate — $3,330.

(2) Subsection (1) is an offence of strict liability.

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201. Notification requirements for a voluntary recall of consumer goods

(1) A person commits an offence if:

(a) the person is required by section 128(2) to give a notice to the Commonwealth Minister; and

(b) the person refuses or fails to give the notice as required by that section.

Penalty:

(a) if the person is a body corporate — $16,650; or

(b) if the person is not a body corporate — $3,330.

(2) A person commits an offence if:

(a) the person is required by section 128(6) to give a copy of a notice to the Commonwealth Minister; and

(b) the person refuses or fails to give the copy as required by that section.

Penalty:

(a) if the person is a body corporate — $16,650; or

(b) if the person is not a body corporate — $3,330.

(3) Subsections (1) and (2) are offences of strict liability.

Division 4 — Consumer goods, or product related services, associated with death or serious injury or illness

202. Suppliers to report consumer goods etc. associated with the death or serious injury or illness of any person

(1) A person commits an offence if:

(a) the person is required by section 131 or 132 to give a notice to the Commonwealth Minister; and

(b) the person refuses or fails to give the notice as required by that section.

Penalty:

(a) if the person is a body corporate — $16,650; or

(b) if the person is not a body corporate — $3,330.

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(2) Subsection (1) is an offence of strict liability.

Part 4-4 — Offences relating to information standards

203. Supplying etc. goods that do not comply with information standards

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies goods of a particular kind; and

(b) an information standard for goods of that kind is in force; and

(c) the person has not complied with the standard in relation to the goods.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:

(a) the person, in trade or commerce, offers for supply goods of a particular kind; and

(b) an information standard for goods of that kind is in force; and

(c) the person has not complied with the standard in relation to the goods.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) A person commits an offence if:

(a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of goods of a particular kind; and

(b) an information standard for goods of that kind is in force; and

(c) the person has not complied with the standard in relation to the goods.

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Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods.

(5) Subsection (1), (2) or (3) does not apply to goods that are intended to be used outside Australia.

(6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Australia if either of the following is applied to the goods:

(a) a statement that the goods are for export only;

(b) a statement indicating, by the use of words authorised by regulations made for the purposes of section 136(6)(b) to be used for the purposes of section 136(6), that the goods are intended to be used outside Australia.

(7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being:

(a) woven in, impressed on, worked into or annexed or affixed to the goods; or

(b) applied to a covering, label, reel or thing in or with which the goods are supplied.

(8) Subsections (1), (2) and (3) are offences of strict liability.

204. Supplying etc. services that do not comply with information standards

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies services of a particular kind; and

(b) an information standard for services of that kind is in force; and

(c) the person has not complied with the standard in relation to the services.

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Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(2) A person commits an offence if:

(a) the person, in trade or commerce, offers for supply services of a particular kind; and

(b) an information standard for services of that kind is in force; and

(c) the person has not complied with the standard in relation to the services.

Penalty:

(a) if the person is a body corporate — $1,100,000; or

(b) if the person is not a body corporate — $220,000.

(3) Subsections (1) and (2) are offences of strict liability.

Part 4-5 — Offences relating to substantiation notices

205. Compliance with substantiation notices

(1) A person commits an offence if the person:

(a) is given a substantiation notice; and

(b) refuses or fails to comply with it within the substantiation notice compliance period for the notice.

Penalty:

(a) if the person is a body corporate — $16,500; or

(b) if the person is not a body corporate — $3,300.

(2) Subsection (1) does not apply if:

(a) the person is an individual; and

(b) the person refuses or fails to give particular information or produce a particular document in compliance with a substantiation notice; and

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(c) the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.

(3) Subsection (1) is an offence of strict liability.

206. False or misleading information etc.

(1) A person commits an offence if the person, in compliance or purported compliance with a substantiation notice given by the regulator:

(a) gives to the regulator false or misleading information; or

(b) produces to the regulator documents that contain false or misleading information.

Penalty:

(a) if the person is a body corporate — $27,500; or

(b) if the person is not a body corporate — $5,500.

(2) This section does not apply to:

(a) information that the person could not have known was false or misleading; or

(b) the production to the regulator of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

(3) Subsection (1) is an offence of strict liability.

Part 4-6 — Defences

207. Reasonable mistake of fact

(1) In a prosecution for a contravention of a provision of this Chapter, it is a defence if the defendant proves that the contravention was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.

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(2) However, subsection (1) does not apply in relation to information relied upon by the defendant that was supplied to the defendant by another person who was, at the time when the contravention occurred:

(a) an employee or agent of the defendant; or

(b) if the defendant is a body corporate—a director, employee or agent of the defendant.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the defendant is not entitled to rely on that defence unless:

(a) the court gives leave; or

(b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

208. Act or default of another person etc.

(1) In a prosecution for a contravention of a provision of this Chapter, it is a defence if the defendant proves that:

(a) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and

(b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) However, subsection (1) does not apply in relation to the act or default of another person who was, at the time when the contravention occurred:

(a) an employee or agent of the defendant; or

(b) if the defendant is a body corporate — a director, employee or agent of the defendant.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to the act or default

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of another person, the defendant is not entitled to rely on that defence unless:

(a) the court gives leave; or

(b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

209. Publication of advertisements in the ordinary course of business

In a prosecution for a contravention of a provision of this Chapter that was committed by publication of an advertisement, it is a defence if the defendant proves that:

(a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements; and

(b) the defendant received the advertisement for publication in the ordinary course of business; and

(c) the defendant did not know, and had no reason to suspect, that its publication would amount to a contravention of such a provision.

210. Supplying goods acquired for the purpose of re-supply

(1) In a prosecution for a contravention of a provision of this Chapter that was committed by supplying goods in contravention of section 194 or 203, it is a defence if the defendant proves that:

(a) the goods were acquired by the defendant for the purpose of re-supply; and

(b) the goods were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and

(c) in the case of a contravention of section 194 — the defendant:

(i) did not know, and could not with reasonable diligence have ascertained, that the goods

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did not comply with the safety standard to which the contravention relates; or

(ii) relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard for such goods; and

(d) in the case of a contravention of section 203 — the defendant:

(i) did not know, and could not with reasonable diligence have ascertained, that the defendant had not complied with the information standard to which the contravention relates; or

(ii) relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no information standard for such goods.

Note: Section 194 is about supply of consumer goods that do not comply with safety standards, and section 203 is about supply of goods that do not comply with information standards.

(2) A defendant is not entitled to rely on the defence provided by subsection (1) unless:

(a) the court gives leave; or

(b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the goods.

211. Supplying services acquired for the purpose of re-supply

(1) In a prosecution for a contravention of a provision of this Chapter that was committed by supplying services in contravention of section 195 or 204, it is a defence if the defendant proves that:

(a) the services were acquired by the defendant for the purpose of re-supply; and

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(b) the services were so acquired from a person who carried on in Australia a business of supplying such services otherwise than as the agent of a person outside Australia; and

(c) in the case of a contravention of section 195 — the defendant:

(i) did not know, and could not with reasonable diligence have ascertained, that the services did not comply with the safety standard to which the contravention relates; or

(ii) relied in good faith on a representation by the person from whom the defendant acquired the services that there was no safety standard for such services; and

(d) in the case of a contravention of section 204 — the defendant:

(i) did not know, and could not with reasonable diligence have ascertained, that the defendant had not complied with the information standard to which the contravention relates; or

(ii) relied in good faith on a representation by the person from whom the defendant acquired the services that there was no information standard for such services.

Note: Section 195 is about supply of product related services that do not comply with safety standards, and section 204 is about supply of services that do not comply with information standards.

(2) A defendant is not entitled to rely on the defence provided by subsection (1) unless:

(a) the court gives leave; or

(b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the services.

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Part 4-7 — Miscellaneous

212. Prosecutions to be commenced within 3 years

A prosecution for an offence against a provision of this Chapter may be commenced at any time within 3 years after the commission of the offence.

213. Preference must be given to compensation for victims

If a court considers that:

(a) it is appropriate to impose a fine on a person (the ***defendant***) under this Chapter in relation to:

(i) a contravention of a provision of this Schedule; or

(ii) an attempt to contravene such a provision; or

(iii) aiding, abetting, counselling or procuring a person to contravene such a provision; or

(iv) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or

(v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(vi) conspiring with others to contravene such a provision; and

(b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and

(c) the defendant does not have sufficient financial resources to pay both the fine and the compensation;

the court must give preference to making an order for compensation.

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214. Penalties for contraventions of the same nature etc.

(1) If:

(a) a person is convicted of 2 or more offences constituted by, or relating to, contraventions of the same provision of this Chapter; and

(b) the contraventions appear to the court:

(i) to have been of the same nature or a substantially similar nature; and

(ii) to have occurred at or about the same time;

the court must not, in respect of the offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision.

(2) This section applies whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time.

215. Penalties for previous contraventions of the same nature etc.

(1) If:

(a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of this Chapter; and

(b) a fine has, or fines have, previously been imposed on the person by the court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision; and

(c) the contravention, or each of the contraventions, mentioned in paragraph (b) appear to the court:

(i) to have been of the same nature as, or a substantially similar nature to, the contravention mentioned in paragraph (a); and

(ii) to have occurred at or about the same time as the contravention mentioned in paragraph (a);

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the court must not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence is greater than the amount of the fine, or the sum of the amounts of the fines, referred to in paragraph (b).

(2) This section applies whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time.

216. Granting of injunctions etc.

In proceedings against a person for a contravention of a provision of this Chapter, the court may:

(a) grant an injunction under Division 2 of Part 5-2 against the person in relation to:

(i) the conduct that constitutes, or is alleged to constitute, the contravention; or

(ii) other conduct of that kind; or

(b) make an order under section 246, 247 or 248 in relation to the contravention.

217. Criminal proceedings not to be brought for contraventions of Chapter 2 or 3

Criminal proceedings do not lie against a person only because the person:

(a) has contravened a provision of Chapter 2 or 3; 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 induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or

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(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) has conspired with others to contravene such a provision.

Chapter 5 — Enforcement and remedies

Part 5-1 — Enforcement

Division 1 — Undertakings

218. Regulator may accept undertakings

(1) The regulator may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the regulator has a power or function under this Schedule.

(2) The person may, with the consent of the regulator, withdraw or vary the undertaking at any time.

(3) If the regulator considers that the person who gave the undertaking has breached any of its terms, the regulator may apply to a court for an order under subsection (4).

(4) If the court is satisfied that the person has breached a term of the undertaking, the court may make all or any of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) an order directing the person to pay to the Commonwealth, or to a State or Territory, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the court considers appropriate.

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Division 2 — Substantiation notices

219. Regulator may require claims to be substantiated etc.

(1) This section applies if a person has, in trade or commerce, made a claim or representation promoting, or apparently intended to promote:

(a) a supply, or possible supply, of goods or services by the person or another person; or

(b) a sale or grant, or possible sale or grant, of an interest in land by the person or another person; or

(c) employment that is to be, or may be, offered by the person or another person.

(2) The regulator may give the person who made the claim or representation a written notice that requires the person to do one or more of the following:

(a) give information and/or produce documents to the regulator that could be capable of substantiating or supporting the claim or representation;

(b) if the claim or representation relates to a supply, or possible supply, of goods or services by the person or another person — give information and/or produce documents to the regulator that could be capable of substantiating:

(i) the quantities in which; and

(ii) the period for which;

the person or other person is or will be able to make such a supply (whether or not the claim or representation relates to those quantities or that period);

(c) give information and/or produce documents to the regulator that are of a kind specified in the notice;

within 21 days after the notice is given to the person who made the claim or representation.

(3) Any kind of information or documents that the regulator specifies under subsection (2)(c) must be a kind that the regulator is satisfied is relevant to:

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(a) substantiating or supporting the claim or representation; or

(b) if the claim or representation relates to a supply, or possible supply, of goods or services by the person or another person — substantiating the quantities in which, or the period for which, the person or other person is or will be able to make such a supply.

(4) The notice must:

(a) name the person to whom it is given; and

(b) specify the claim or representation to which it relates; and

(c) explain the effect of sections 220, 221 and 222.

(5) The notice may relate to more than one claim or representation that the person has made.

(6) This section does not apply to a person who made the claim or representation if the person:

(a) is an information provider; and

(b) made the claim or representation by publishing it on behalf of another person in the course of carrying on a business of providing information; and

(c) does not have a commercial relationship with the other person other than for the purpose of:

(i) publishing claims or representations promoting, or apparently intended to promote, the other person's business or other activities; or

(ii) the other person supplying goods or services, or selling or granting interests in land to the person.

220. Extending periods for complying with substantiation notices

(1) A person who has been given a substantiation notice may, at any time within 21 days after the notice was given to the person by the regulator, apply in writing to the regulator for an extension of the period for complying with the notice.

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(2) The regulator may, by written notice given to the person, extend the period within which the person must comply with the notice.

221. Compliance with substantiation notices

(1) A person who is given a substantiation notice must comply with it within the substantiation notice compliance period for the notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) The ***substantiation notice compliance period*** for a substantiation notice is:

(a) the period of 21 days specified in the notice; or

(b) if the period for complying with the notice has been extended under section 220 — the period as so extended;

and includes (if an application has been made under section 220(1) for an extension of the period for complying with the notice) the period up until the time when the applicant is given notice of the regulator's decision on the application.

(3) Despite subsection (1), an individual may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the information or production of the document might tend to incriminate the individual or to expose the individual to a penalty.

222. False or misleading information etc.

(1) A person must not, in compliance or purported compliance with a substantiation notice given by the regulator:

(a) give to the regulator false or misleading information; or

(b) produce to the regulator documents that contain false or misleading information.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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(2) This section does not apply to:

(a) information that the person could not have known was false or misleading; or

(b) the production to the regulator of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

Division 3 — Public warning notices

223. Regulator may issue a public warning notice

(1) The regulator may issue to the public a written notice containing a warning about the conduct of a person if:

(a) the regulator has reasonable grounds to suspect that the conduct may constitute a contravention of a provision of Chapter 2, 3 or 4; and

(b) the regulator is satisfied that one or more other persons has suffered, or is likely to suffer, detriment as a result of the conduct; and

(c) the regulator is satisfied that it is in the public interest to issue the notice.

(2) Without limiting subsection (1), if:

(a) a person refuses to respond to a substantiation notice given by the regulator to the person, or fails to respond to the notice before the end of the substantiation notice compliance period for the notice; and

(b) the regulator is satisfied that it is in the public interest to issue a notice under this subsection;

the regulator may issue to the public a written notice containing a warning that the person has refused or failed to respond to the substantiation notice within that period, and specifying the matter to which the substantiation notice related.

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Part 5-2 — Remedies

Division 1 — Pecuniary penalties

224. Pecuniary penalties

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

(a) has contravened any of the following provisions:

(i) a provision of Part 2-2 (which is about unconscionable conduct);

(ii) a provision of Part 3-1 (which is about unfair practices);

(iii) section 66(2) (which is about display notices);

(iv) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);

(v) a provision (other than section 96(2)) of Division 3 of Part 3-2 (which is about lay-by agreements);

(vi) section 100(1) or (3) or 101(3) or (4) (which are about proof of transactions and itemised bills);

(vii) section 102(2) or 103(2) (which are about prescribed requirements for warranties and repairers);

(viii) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);

(ix) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);

(x) section 221(1) or 222(1) (which are about substantiation notices); or

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

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(c) has aided, abetted, counselled or procured a person to contravene such a provision; or

(d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) has conspired with others to contravene such a provision;

the court may order the person to pay to the Commonwealth, State or Territory, as the case may be, such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the court determines to be appropriate.

(2) In determining the appropriate pecuniary penalty, the court must have regard to all relevant matters including:

(a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and

(b) the circumstances in which the act or omission took place; and

(c) whether the person has previously been found by a court in proceedings under Chapter 4 or this Part to have engaged in any similar conduct.

(3) The pecuniary penalty payable under subsection (1) is not to exceed the amount worked out using the following table:

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Amount of pecuniary penalty		
Item	**For each act or omission to which this section applies that relates to...**	**the pecuniary penalty is not to exceed...**
1	a provision of Part 2-2	(a) if the person is a body corporate — $1.1 million; or (b) if the person is not a body corporate — $220,000.
2	a provision of Part 3-1 (other than section 47(1))	(a) if the person is a body corporate — $1.1 million; or (b) if the person is not a body corporate — $220,000.
3	section 47(1)	(a) if the person is a body corporate — $5,000; or (b) if the person is not a body corporate — $1,000.
4	section 66(2)	(a) if the person is a body corporate — $50,000; or (b) if the person is not a body corporate — $10,000.
5	a provision of Division 2 of Part 3-2 (other than section 85)	(a) if the person is a body corporate — $50,000; or (b) if the person is not a body corporate — $10,000.
6	a provision of Division 3 of Part 3-2 (other than section 96(2))	(a) if the person is a body corporate — $30,000; or (b) if the person is not a body corporate — $6,000.

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Amount of pecuniary penalty		
Item	**For each act or omission to which this section applies that relates to...**	**the pecuniary penalty is not to exceed...**
7	section 100(1) or (3) or 101(3) or (4)	(a) if the person is a body corporate — $15,000; or (b) if the person is not a body corporate — $3,000.
8	section 102(2) or 103(2)	(a) if the person is a body corporate — $50,000; or (b) if the person is not a body corporate — $10,000.
9	section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5) or 119(1) or (2)	(a) if the person is a body corporate — $1.1 million; or (b) if the person is not a body corporate — $220,000.
10	section 125(4)	(a) if the person is a body corporate — $16,500; or (b) if the person is not a body corporate — $3,300.
11	section 127(1) or (2)	(a) if the person is a body corporate — $1.1 million; or (b) if the person is not a body corporate — $220,000.
12	section 128(2) or (6), 131(1) or 132(1)	(a) if the person is a body corporate — $16,500; or (b) if the person is not a body corporate — $3,300.

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Amount of pecuniary penalty		
Item	**For each act or omission to which this section applies that relates to...**	**the pecuniary penalty is not to exceed...**
13	section 136(1), (2) or (3) or 137(1) or (2)	(a) if the person is a body corporate — $1.1 million; or (b) if the person is not a body corporate — $220,000.
14	section 221(1)	(a) if the person is a body corporate — $16,500; or (b) if the person is not a body corporate — $3,300.
15	section 222(1)	(a) if the person is a body corporate — $27,500; or (b) if the person is not a body corporate — $5,500.

(4) If conduct constitutes a contravention of 2 or more provisions referred to in subsection (1)(a):

(a) a proceeding may be instituted under this Schedule against a person in relation to the contravention of any one or more of the provisions; but

(b) a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

225. Pecuniary penalties and offences

(1) A court must not make an order under section 224 against a person in relation to either of the following matters (a ***consumer protection breach***):

(a) a contravention of a provision referred to in section 224(1)(a);

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(b) conduct referred to in section 224(1)(b), (c), (d), (e) or (f) that relates to a contravention of such a provision;

if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the consumer protection breach.

(2) Proceedings for an order under section 224 against a person in relation to a consumer protection breach are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the consumer protection breach.

The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.

(3) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a consumer protection breach regardless of whether an order under section 224 has been made against the person in respect of the breach.

(4) Evidence of information given, or evidence of the production of documents, by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for an order under section 224 against the individual in relation to a consumer protection breach (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the consumer protection breach.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the order.

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226. Defence

If, in proceedings under section 224 against a person other than a body corporate, it appears to a court that the person has, or may have:

(a) engaged in conduct in contravention of a provision referred to in subsection (1)(a) of that section; or

(b) engaged in conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention of such a provision;

but 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 under that section.

227. Preference must be given to compensation for victims

If a court considers that:

(a) it is appropriate to order a person (the ***defendant***) to pay a pecuniary penalty under section 224 in relation to:

(i) a contravention of a provision referred to in subsection (1)(a) of that section; or

(ii) conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention such a provision; and

(b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and

(c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty and the compensation;

the court must give preference to making an order for compensation.

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228. Civil action for recovery of pecuniary penalties

(1) The regulator may institute a proceeding in a court for the recovery on behalf of the Commonwealth, a State or a Territory, as the case may be, of a pecuniary penalty referred to in section 224.

(2) A proceeding under subsection (1) may be commenced at any time within 6 years after the contravention or conduct.

229. Indemnification of officers

(1) A body corporate (the ***first body***), or a body corporate related to the first body, commits an offence if it indemnifies a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against either of the following liabilities incurred as an officer (within the meaning of the *Corporations Act 2001*) of the first body:

(a) a liability to pay a pecuniary penalty under section 224;

(b) legal costs incurred in defending or resisting proceedings in which the person is found to have such a liability.

Penalty: $2,750.

(2) For the purposes of subsection (1), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

230. Certain indemnities not authorised and certain documents void

(1) Section 229 does not authorise anything that would otherwise be unlawful.

(2) Anything that purports to indemnify a person against a liability is void to the extent that it contravenes section 229.

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Division 2 — Injunctions

232. Injunctions

(1) A court may grant an injunction, in such terms as the court considers appropriate, if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

(a) a contravention of a provision of Chapter 2, 3 or 4; or

(b) attempting to contravene such a provision; or

(c) aiding, abetting, counselling or procuring a person to contravene such a provision; or

(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) conspiring with others to contravene such a provision.

(2) The court may grant the injunction on application by the regulator or any other person.

(3) Subsection (1) applies in relation to conduct constituted by applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term as if the conduct were a contravention of a provision of Chapter 2.

(4) The power of the court to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection; and

(b) whether or not the person has previously engaged in conduct of that kind; and

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(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

(5) Without limiting subsection (1), the court may grant an injunction under that subsection restraining a person from carrying on a business or supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business):

(a) for a specified period; or

(b) except on specified terms and conditions.

(6) Without limiting subsection (1), the court may grant an injunction under that subsection requiring a person to do any of the following:

(a) refund money;

(b) transfer property;

(c) honour a promise;

(d) destroy or dispose of goods.

(7) The power of the court to grant an injunction under subsection (1) requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

233. Consent injunctions

If an application is made under section 232, the court may, if it considers that it is appropriate to do so, grant an injunction under this section by consent of all the parties to the proceedings, whether or not the court is satisfied as required by section 232(1).

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234. Interim injunctions

(1) If an application is made under section 232, the court may, if it considers it is desirable to do so, grant an interim injunction under this subsection pending the determination of the application.

(2) If a responsible Minister or the regulator made the application under section 232, the court must not require the applicant or any other person to give any undertakings as to damages as a condition of granting the interim injunction.

(3) If:

(a) in a case to which subsection (2) does not apply the court would, but for this subsection, require a person to give an undertaking as to damages or costs; and

(b) a responsible Minister gives the undertaking;

the court must accept the undertaking by the responsible Minister and must not require a further undertaking from any other person.

235. Variation and discharge of injunctions

A court may vary or discharge an injunction (including an interim injunction) that it has granted under this Division.

Division 3 — Damages

236. Actions for damages

(1) If:

(a) a person (the ***claimant***) suffers loss or damage because of the conduct of another person; and

(b) the conduct contravened a provision of Chapter 2 or 3;

the claimant may recover the amount of the loss or damage by action against that other person, or against any person involved in the contravention.

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(2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

Division 4 — Compensation orders etc. for injured persons and orders for non-party consumers

Subdivision A — Compensation orders etc. for injured persons

237. Compensation orders etc. on application by an injured person or the regulator

(1) A court may:

(a) on application of a person (the ***injured person***) who has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:

(i) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or

(ii) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term; or

(b) on the application of the regulator made on behalf of one or more such injured persons;

make such order or orders as the court thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

(2) The order must be an order that the court considers will:

(a) compensate the injured person, or any such injured persons, in whole or in part for the loss or damage; or

(b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or any such injured persons.

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(3) An application under subsection (1) may be made at any time within 6 years after the day on which:

(a) if subsection (1)(a)(i) applies — the cause of action that relates to the conduct referred to in that subsection accrued; or

(b) if subsection (1)(a)(ii) applies — the declaration referred to in that subsection is made.

238. Compensation orders etc. arising out of other proceedings

(1) If a court finds, in a proceeding instituted under a provision of Chapter 4 or this Chapter (other than this section), that a person (the ***injured person***) who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:

(a) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or

(b) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term;

the court may make such order or orders as it thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note: The orders that the court may make include all or any of the orders set out in section 243.

(2) The order must be an order that the court considers will:

(a) compensate the injured person in whole or in part for the loss or damage; or

(b) prevent or reduce the loss or damage.

Subdivision B — Orders for non-party consumers

239. Orders to redress etc. loss or damage suffered by non-party consumers

(1) If:

(a) a person:

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(i) engaged in conduct (the ***contravening conduct***) in contravention of a provision of Chapter 2, Part 3-1, Division 2, 3 or 4 of Part 3-2 or Chapter 4; or

(ii) is a party to a consumer contract who is advantaged by a term (the ***declared term***) of the contract in relation to which a court has made a declaration under section 250; and

(b) the contravening conduct or declared term caused, or is likely to cause, a class of persons to suffer loss or damage; and

(c) the class includes persons who are non-party consumers in relation to the contravening conduct or declared term;

a court may, on the application of the regulator, make such order or orders (other than an award of damages) as the court thinks appropriate against a person referred to in subsection (2) of this section.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

(2) An order under subsection (1) may be made against:

(a) if subsection (1)(a)(i) applies — the person who engaged in the contravening conduct, or a person involved in that conduct; or

(b) if subsection (1)(a)(ii) applies — a party to the contract who is advantaged by the declared term.

(3) The order must be an order that the court considers will:

(a) redress, in whole or in part, the loss or damage suffered by the non-party consumers in relation to the contravening conduct or declared term; or

(b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the non-party consumers in relation to the contravening conduct or declared term.

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(4) An application under subsection (1) may be made at any time within 6 years after the day on which:

(a) if subsection (1)(a)(i) applies — the cause of action that relates to the contravening conduct accrued; or

(b) if subsection (1)(a)(ii) applies — the declaration is made.

240. Determining whether to make a redress order etc. for non-party consumers

(1) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(a), the court may have regard to the conduct of the person, and of the non-party consumers in relation to the contravening conduct, since the contravention occurred.

(2) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(b), the court may have regard to the conduct of the person, and of the non-party consumers in relation to the declared term, since the declaration was made.

(3) In determining whether to make an order under section 239(1), the court need not make a finding about either of the following matters:

(a) which persons are non-party consumers in relation to the contravening conduct or declared term;

(b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

241. When a non-party consumer is bound by a redress order etc.

(1) A non-party consumer is bound by an order made under section 239(1) against a person if:

(a) the loss or damage suffered, or likely to be suffered, by the non-party consumer in relation to the contravening conduct, or the declared term, to which the order relates has been redressed, prevented or reduced in accordance with the order; and

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(b) the non-party consumer has accepted the redress, prevention or reduction.

(2) Any other order made under section 239(1) that relates to that loss or damage has no effect in relation to the non-party consumer.

(3) Despite any other provision of:

(a) this Schedule; or

(b) any other law of the Commonwealth, or a State or a Territory;

no claim, action or demand may be made or taken against the person by the non-party consumer in relation to that loss or damage.

Subdivision C — Miscellaneous

242. Applications for orders

(1) An application may be made under section 237(1) or 239(1) even if an enforcement proceeding in relation to the conduct, or the term of a consumer contract, referred to in that subsection has not been instituted.

(2) The regulator must not make an application under section 237(1)(b) on behalf of one or more persons unless those persons have consented in writing to the making of the application.

243. Kinds of orders that may be made

Without limiting section 237(1), 238(1) or 239(1), the orders that a court may make under any of those sections against a person (the ***respondent***) include all or any of the following:

(a) an order declaring the whole or any part of a contract made between the respondent and a person (the ***injured person***) who suffered, or is likely to suffer, the loss or damage referred to in that section, or of a collateral arrangement relating to such a contract:

(i) to be void; and

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(ii) if the court thinks fit — to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);

(b) an order:

(i) varying such a contract or arrangement in such manner as is specified in the order; and

(ii) if the court thinks fit — declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);

(c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;

(d) an order directing the respondent to refund money or return property to the injured person;

(e) except if the order is to be made under section 239(1) — an order directing the respondent to pay the injured person the amount of the loss or damage;

(f) an order directing the respondent, at his or her own expense, to repair, or provide parts for, goods that had been supplied by the respondent to the injured person;

(g) an order directing the respondent, at his or her own expense, to supply specified services to the injured person;

(h) an order, in relation to an instrument creating or transferring an interest in land, directing the respondent to execute an instrument that:

(i) varies, or has the effect of varying, the first mentioned instrument; or

(ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first mentioned instrument.

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244. Power of a court to make orders

A court may make an order under Subdivision A or B of this Division whether or not the court:

(a) grants an injunction under Division 2 of this Part; or

(b) makes an order under section 236, 246, 247 or 248.

245. Interaction with other provisions

Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part.

Division 5 — Other remedies

246. Non-punitive orders

(1) A court may, on application of the regulator, make one or more of the orders mentioned in subsection (2) in relation to a person who has engaged in conduct that:

(a) contravenes a provision of Chapter 2, 3 or 4; or

(b) constitutes an involvement in a contravention of such a provision.

(2) The court may make the following orders in relation to the person who has engaged in the conduct:

(a) an order directing the person to perform a service that is specified in the order, and that relates to the conduct, for the benefit of the community or a section of the community;

(b) an order for the purpose of ensuring that the person does not engage in the conduct, similar conduct, or related conduct, during the period of the order (which must not be longer than 3 years) including:

(i) an order directing the person to establish a compliance program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and

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(ii) an order directing the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and

(iii) an order directing the person to revise the internal operations of the person's business which led to the person engaging in such conduct;

(c) an order requiring the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to;

(d) an order requiring the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

Note: The following are examples of orders that the court may make under subsection (2)(a):

(a) an order requiring a person who has made false representations to make available a training video which explains advertising obligations under this Schedule;

(b) an order requiring a person who has engaged in misleading or deceptive conduct in relation to a product to carry out a community awareness program to address the needs of consumers when purchasing the product.

(3) This section does not limit a court's powers under any other provision of this Schedule.

247. Adverse publicity orders

(1) A court may, on application of the regulator, make an adverse publicity order in relation to a person who:

(a) has contravened a provision of Part 2-2 or Chapter 3; or

(b) has committed an offence against Chapter 4.

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(2) An ***adverse publicity order*** in relation to a person is an order that requires the person:

(a) to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and

(b) to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

(3) This section does not limit a court's powers under any other provision of this Schedule.

248. Order disqualifying a person from managing corporations

(1) A court may, on application of the regulator, make an order disqualifying a person from managing corporations for a period that the court considers appropriate if:

(a) the court is satisfied that the person has contravened, has attempted to contravene or has been involved in a contravention of any of the following provisions:

(i) a provision of Part 2-2 (which is about unconscionable conduct);

(ii) a provision of Part 3-1 (which is about unfair practices);

(iii) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);

(iv) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);

(v) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);

(vi) a provision of Chapter 4 (which is about offences); and

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(b) the court is satisfied that the disqualification is justified.

Note: Section 206EA of the *Corporations Act 2001* provides that a person is disqualified from managing corporations if a court order is in force under this section. That Act contains various consequences for persons so disqualified.

(2) In determining under subsection (1) whether the disqualification is justified, the court may have regard to:

(a) the person's conduct in relation to the management, business or property of any corporation; and

(b) any other matters that the court considers appropriate.

(3) If the court makes an order under subsection (1), the regulator must:

(a) notify ASIC; and

(b) give ASIC a copy of any such order.

Note: ASIC must keep a register of persons who have been disqualified from managing corporations: see section 1274AA of the *Corporations Act 2001*.

(4) For the purposes of this Schedule (other than this section or section 249), an order under this section is not a penalty.

249. Privilege against exposure to penalty or forfeiture — disqualification from managing corporations

(1) In a civil or criminal proceeding under, or arising out of, this Schedule, a person is not entitled to refuse or fail to comply with a requirement:

(a) to answer a question or give information; or

(b) to produce a document or any other thing; or

(c) to do any other act;

on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.

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(2) Subsection (1) applies whether or not the person is a defendant in the proceeding or in any other proceeding.

(3) A person is not entitled to refuse or fail to comply with a requirement under this Schedule:

(a) to answer a question or give information; or

(b) to produce a document or any other thing; or

(c) to do any other act;

on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.

250. Declarations relating to consumer contracts

(1) A court may, on the application of a party to a consumer contract or on the application of the regulator, declare that a term of such a contract is an unfair term.

(2) Subsection (1) does not apply unless the consumer contract is a standard form contract.

(3) Subsection (1) does not limit any other power of the court to make declarations.

Division 6 — Defences

251. Publication of advertisement in the ordinary course of business

(1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 if the contravention was committed by the publication of an advertisement.

(2) In the proceeding, it is a defence if the defendant proves that:

(a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements; and

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(b) the defendant received the advertisement for publication in the ordinary course of business; and

(c) the defendant did not know, and had no reason to suspect, that its publication would amount to a contravention of such a provision.

252. Supplying consumer goods for the purpose of re-supply

(1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:

(a) the supplying of consumer goods that did not comply with a safety standard for such goods; or

(b) the supplying of consumer goods by a supplier who did not comply with an information standard for such goods.

(2) In the proceeding, it is a defence if the defendant proves that:

(a) the consumer goods were acquired by the defendant for the purpose of re-supply; and

(b) the consumer goods were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and

(c) either:

(i) the defendant did not know, and could not with reasonable diligence have ascertained, that the consumer goods did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or

(ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information standard, as the case may be, for such consumer goods.

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(3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:

(a) the court gives leave; or

(b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the consumer goods.

253. Supplying product related services for the purpose of re-supply

(1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:

(a) the supplying of product related services that did not comply with a safety standard for such services; or

(b) the supplying of product related services by a supplier who did not comply with an information standard for such services.

(2) In the proceeding, it is a defence if the defendant proves that:

(a) the product related services were acquired by the defendant for the purpose of re-supply; and

(b) the product related services were so acquired from a person who carried on in Australia a business of supplying such services otherwise than as the agent of a person outside Australia; and

(c) either:

(i) the defendant did not know, and could not with reasonable diligence have ascertained, that the product related services did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or

(ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information standard,

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as the case may be, for such product related services.

(3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:

(a) the court gives leave; or

(b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the product related services.

Part 5-3 — Country of origin representations

254. Overview

This Part provides that certain country of origin representations made about goods do not contravene:

(a) section 18 (which deals with misleading or deceptive conduct); or

(b) section 29(1)(a) or (k) or 151(1)(a) or (k) (which deal with false or misleading representations).

255. Country of origin representations do not contravene certain provisions

(1) A person does not contravene section 18, 29(1)(a) or (k) or 151(1)(a) or (k) only by making a representation of a kind referred to in an item in the first column of this table, if the requirements of the corresponding item in the second column are met.

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Country of origin representations		
Item	**Representation**	**Requirements to be met**
1	A representation as to the country of origin of goods	(a) the goods have been substantially transformed in that country; and (b) 50% or more of the total cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that occurred in that country; and (c) the representation is not a representation to which item 2 or 3 of this table applies.
2	A representation that goods are the produce of a particular country	(a) the country was the country of origin of each significant ingredient or significant component of the goods; and (b) all, or virtually all, processes involved in the production or manufacture happened in that country.
3	A representation as to the country of origin of goods by means of a logo specified in the regulations	(a) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and (b) the prescribed percentage of the cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that happened in that country.
4	A representation that goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each significant ingredient or significant component of the goods was grown in that country; and (c) all, or virtually all, processes involved in the production or manufacture happened in that country.

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Country of origin representations		
Item	**Representation**	**Requirements to be met**
5	A representation that ingredients or components of goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and (c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and (d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country.

Note: The regulations may prescribe rules for determining the percentage of the total costs of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country, see section 257.

(2) Despite subsection (1), this section does not apply to a representation of a kind referred to in item 4 or 5 in the first column of the table in that subsection if the representation is made together with another representation of a kind referred to in item 1 or 2 in that first column.

(3) Goods are ***substantially transformed*** in a country if they undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

(4) Without limiting subsection (3), the regulations:

(a) may prescribe changes (whether in relation to particular classes of goods or otherwise) that are not fundamental changes for the purposes of that subsection; and

(b) may include examples (in relation to particular classes of goods or otherwise) of changes which are

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fundamental changes for the purposes of that subsection.

(5) Item 2 of the table in subsection (1) applies to a representation that goods are the produce of a particular country whether the representation uses the words "product of", "produce of" or any other grammatical variation of the word "produce".

(6) The regulations made for the purposes of item 3 of the table in subsection (1) may, in relation to a specified logo, prescribe a percentage in the range of 51% to 100% as the percentage applicable to goods for the purposes of paragraph (b) in the second column of that item.

(7) Goods, or ingredients or components of goods, are ***grown*** in a country if they:

(a) are materially increased in size or materially altered in substance in that country by natural development; or

(b) germinated or otherwise arose in, or issued in, that country; or

(c) are harvested, extracted or otherwise derived from an organism that has been materially increased in size, or materially altered in substance, in that country by natural development.

(8) For the purposes of items 4 and 5 in the table in subsection (1) in relation to particular goods:

(a) packaging materials are not treated as ingredients or components of the goods; and

(b) disregard the weight of packaging materials in working out the weight of the goods.

(9) For the purposes of items 4 and 5 in the table in subsection (1) in relation to an ingredient or component that has been dried or concentrated by the evaporation of water, and to which water has been added to return the water content of the ingredient or component to no more than its natural level:

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(a) the weight of the water so added is included in the weight of the ingredient or component; and

(b) the water so added is treated as having the same origin as the ingredient or component, regardless of its actual origin.

256. Cost of producing or manufacturing goods

(1) The cost of producing or manufacturing goods is worked out, for the purposes of section 255, by adding up the following amounts:

(a) the amount of expenditure on materials in respect of the goods;

(b) the amount of expenditure on labour in respect of the goods;

(c) the amount of expenditure on overheads in respect of the goods;

each worked out in accordance with this table:

Cost of producing or manufacturing goods		
Item	**This amount of expenditure:**	**is worked out as follows:**
1	Expenditure on materials in respect of the goods	The cost of materials used in the production or manufacture of the goods: (a) that is incurred by the manufacturer of the goods; and (b) that has not been prescribed by regulations made for the purposes of subsection (2)(a).
2	Expenditure on labour in respect of the goods	The sum of each labour cost: (a) that is incurred by the manufacturer of the goods; and (b) that relates to the production or manufacture of the goods; and (c) that can reasonably be allocated to the production or manufacture of the goods; and (d) that has not been prescribed by regulations made for the purposes of subsection (2)(b).

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Cost of producing or manufacturing goods		
Item	**This amount of expenditure:**	**is worked out as follows:**
3	Expenditure on overheads in respect of the goods	The sum of each overhead cost: (a) that is incurred by the manufacturer of the goods; and (b) that relates to the production or manufacture of the goods; and (c) that can reasonably be allocated to the production or manufacture of the goods; and (d) that has not been prescribed by regulations made for the purposes of subsection (2)(c).

(2) The regulations may, for the purposes of subsection (1), prescribe that:

(a) the cost of a particular material, or a part of such a cost; or

(b) a particular labour cost, or a part of a labour cost; or

(c) a particular overhead cost, or a part of an overhead cost;

is not allowable in respect of goods, or classes of goods.

(3) The regulations may, for the purposes of subsection (1), prescribe the manner of working out:

(a) the cost of a material, or part of the cost; or

(b) a labour cost, or part of the cost; or

(c) an overhead cost, or part of the cost.

257. Rules for determining the percentage of costs of production or manufacture attributable to a country

(1) Subject to subsection (2), the regulations may prescribe rules for determining, for the purposes of section 255, the percentage of the total cost of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country.

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(2) Rules prescribed under subsection (1) must not discriminate (whether favourably or unfavourably) between countries or classes of countries.

258. Proceedings relating to false, misleading or deceptive conduct or representations

If:

(a) proceedings are brought against a person in respect of section 18, 29(1)(a) or (k) or 151(1)(a) or (k); and

(b) the person seeks to rely on a provision of this Part, or of a regulation made for the purposes of a provision of this Part, in the proceedings;

the person bears an evidential burden in relation to the matters set out in the provision on which the person seeks to rely.

Part 5-4 — Remedies relating to guarantees

Division 1 — Action against suppliers

Subdivision A — Action against suppliers of goods

259. Action against suppliers of goods

(1) A consumer may take action under this section if:

(a) a person (the ***supplier***) supplies, in trade or commerce, goods to the consumer; and

(b) a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2 (other than sections 58 and 59(1)) is not complied with.

(2) If the failure to comply with the guarantee can be remedied and is not a major failure:

(a) the consumer may require the supplier to remedy the failure within a reasonable time; or

(b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time—the consumer may:

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(i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied; or

(ii) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection.

(3) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:

(a) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection; or

(b) by action against the supplier, recover compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.

(4) The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.

(5) Subsection (4) does not apply if the failure to comply with the guarantee occurred only because of a cause independent of human control that occurred after the goods left the control of the supplier.

(6) To avoid doubt, subsection (4) applies in addition to subsections (2) and (3).

(7) The consumer may take action under this section whether or not the goods are in their original packaging.

260. When a failure to comply with a guarantee is a major failure

A failure to comply with a guarantee referred to in section 259(1)(b) that applies to a supply of goods is a ***major failure*** if:

(a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or

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(b) the goods depart in one or more significant respects:
  (i) if they were supplied by description — from that description; or
  (ii) if they were supplied by reference to a sample or demonstration model — from that sample or demonstration model; or

(c) the goods are substantially unfit for a purpose for which goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(d) the goods are unfit for a disclosed purpose that was made known to:
  (i) the supplier of the goods; or
  (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made;

  and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(e) the goods are not of acceptable quality because they are unsafe.

261. How suppliers may remedy a failure to comply with a guarantee

If, under section 259(2)(a), a consumer requires a supplier of goods to remedy a failure to comply with a guarantee referred to in section 259(1)(b), the supplier may comply with the requirement:

(a) if the failure relates to title — by curing any defect in title; or

(b) if the failure does not relate to title — by repairing the goods; or

(c) by replacing the goods with goods of an identical type; or

(d) by refunding:
  (i) any money paid by the consumer for the goods; and

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(ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods.

262. When consumers are not entitled to reject goods

(1) A consumer is not entitled, under section 259, to notify a supplier of goods that the consumer rejects the goods if:

(a) the rejection period for the goods has ended; or

(b) the goods have been lost, destroyed or disposed of by the consumer; or

(c) the goods were damaged after being delivered to the consumer for reasons not related to their state or condition at the time of supply; or

(d) the goods have been attached to, or incorporated in, any real or personal property and they cannot be detached or isolated without damaging them.

(2) The ***rejection period*** for goods is the period from the time of the supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with a guarantee referred to in section 259(1)(b) to become apparent having regard to:

(a) the type of goods; and

(b) the use to which a consumer is likely to put them; and

(c) the length of time for which it is reasonable for them to be used; and

(d) the amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

263. Consequences of rejecting goods

(1) This section applies if, under section 259, a consumer notifies a supplier of goods that the consumer rejects the goods.

(2) The consumer must return the goods to the supplier unless:

(a) the goods have already been returned to, or retrieved by, the supplier; or

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(b) the goods cannot be returned, removed or transported without significant cost to the consumer because of:

(i) the nature of the failure to comply with the guarantee to which the rejection relates; or

(ii) the size or height, or method of attachment, of the goods.

(3) If subsection (2)(b) applies, the supplier must, within a reasonable time, collect the goods at the supplier's expense.

(4) The supplier must, in accordance with an election made by the consumer:

(a) refund:

(i) any money paid by the consumer for the goods; and

(ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods; or

(b) replace the rejected goods with goods of the same type, and of similar value, if such goods are reasonably available to the supplier.

(5) The supplier cannot satisfy subsection (4)(a) by permitting the consumer to acquire goods from the supplier.

(6) If the property in the rejected goods had passed to the consumer before the rejection was notified, the property in those goods revests in the supplier on the notification of the rejection.

264. Replaced goods

If the goods are replaced under section 261(c) or 263(4)(b):

(a) the replacement goods are taken, for the purposes of Division 1 of Part 3-2 and this Part, to be supplied by the supplier; and

(b) the provisions of Division 1 of Part 3-2 and this Part apply in relation to the replacement goods.

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265. Termination of contracts for the supply of services that are connected with rejected goods

(1) If:

(a) under section 259, a consumer notifies a supplier of goods that the consumer rejects the goods; and

(b) the supplier is required under section 263(4)(a) to give the consumer a refund; and

(c) a person supplies, in trade or commerce, services to the consumer that are connected with the rejected goods;

the consumer may terminate the contract for the supply of the services.

(2) The termination takes effect:

(a) at the time the termination is made known to the supplier of the services (whether by words or by conduct indicating the consumer's intention to terminate the contract); or

(b) if it is not reasonably practicable to communicate with the supplier of the services — at the time the consumer indicates, by means which are reasonable in the circumstances, his or her intention to terminate the contract.

(3) The consumer is entitled to recover, by action against the supplier of the services, a refund of:

(a) any money paid by the consumer for the services; and

(b) an amount that is equal to the value of any other consideration provided by the consumer for the services;

to the extent that the consumer has not already consumed the services at the time the termination takes effect.

266. Rights of gift recipients

If a consumer acquires goods from a supplier and gives them to another person as a gift, the other person may,

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subject to any defence which would be available to the supplier against the consumer:

(a) exercise any rights or remedies under this Subdivision which would be available to the other person if he or she had acquired the goods from the supplier; and

(b) any reference in this Subdivision to a consumer includes a reference to the other person accordingly.

Subdivision B — Action against suppliers of services

267. Action against suppliers of services

(1) A consumer may take action under this section if:

(a) a person (the ***supplier***) supplies, in trade or commerce, services to the consumer; and

(b) a guarantee that applies to the supply under Subdivision B of Division 1 of Part 3-2 is not complied with; and

(c) unless the guarantee is the guarantee under section 60 — the failure to comply with the guarantee did not occur only because of:

(i) an act, default or omission of, or a representation made by, any person other than the supplier, or an agent or employee of the supplier; or

(ii) a cause independent of human control that occurred after the services were supplied.

(2) If the failure to comply with the guarantee can be remedied and is not a major failure:

(a) the consumer may require the supplier to remedy the failure within a reasonable time; or

(b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time — the consumer may:

(i) otherwise have the failure remedied and, by action against the supplier, recover all

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reasonable costs incurred by the consumer in having the failure so remedied; or

(ii) terminate the contract for the supply of the services.

(3) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:

(a) terminate the contract for the supply of the services; or

(b) by action against the supplier, recover compensation for any reduction in the value of the services below the price paid or payable by the consumer for the services.

(4) The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.

(5) To avoid doubt, subsection (4) applies in addition to subsections (2) and (3).

268. When a failure to comply with a guarantee is a major failure

A failure to comply with a guarantee referred to in section 267(1)(b) that applies to a supply of services is a ***major failure*** if:

(a) the services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or

(b) the services are substantially unfit for a purpose for which services of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(c) both of the following apply:

(i) the services, and any product resulting from the services, are unfit for a particular purpose for which the services were

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acquired by the consumer that was made known to the supplier of the services;

(ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(d) both of the following apply:

(i) the services, and any product resulting from the services, are not of such a nature, or quality, state or condition, that they might reasonably be expected to achieve a result desired by the consumer that was made known to the supplier;

(ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to achieve such a result; or

(e) the supply of the services creates an unsafe situation.

269. Termination of contracts for the supply of services

(1) This section applies if, under section 267, a consumer terminates a contract for the supply of services.

(2) The termination takes effect:

(a) at the time the termination is made known to the supplier of the services (whether by words or by conduct indicating the consumer's intention to terminate the contract); or

(b) if it is not reasonably practicable to communicate with the supplier of the services — at the time the consumer indicates, by means which are reasonable in the circumstances, his or her intention to terminate the contract.

(3) The consumer is entitled to recover, by action against the supplier of the services, a refund of:

(a) any money paid by the consumer for the services; and

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(b) an amount that is equal to the value of any other consideration provided by the consumer for the services;

to the extent that the consumer has not already consumed the services at the time the termination takes effect.

270. Termination of contracts for the supply of goods that are connected with terminated services

(1) If:

(a) under section 267, a consumer terminates a contract for the supply of services; and

(b) a person (the ***supplier***) has supplied, in trade or commerce, goods to the consumer that are connected with the services;

then:

(c) the consumer is taken to have rejected the goods at the time the termination of the contract takes effect; and

(d) the consumer must return the goods to the supplier of the goods unless:

(i) the goods have already been returned to, or retrieved by, the supplier; or

(ii) the goods cannot be returned, removed or transported without significant cost to the consumer because of the nature of the failure to comply with the guarantee to which the rejection relates, or because of the size or height, or method of attachment, of the goods; and

(e) the supplier must refund:

(i) any money paid by the consumer for the goods; and

(ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods.

(2) If subsection (1)(d)(ii) applies, the supplier must collect the goods at the supplier's expense.

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Division 2 — Action for damages against manufacturers of goods

271. Action for damages against manufacturers of goods

(1) If:

(a) the guarantee under section 54 applies to a supply of goods to a consumer; and

(b) the guarantee is not complied with;

an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.

(2) Subsection (1) does not apply if the guarantee under section 54 is not complied with only because of:

(a) an act, default or omission of, or any representation made by, any person other than the manufacturer or an employee or agent of the manufacturer; or

(b) a cause independent of human control that occurred after the goods left the control of the manufacturer; or

(c) the fact that the price charged by the supplier was higher than the manufacturer's recommended retail price, or the average retail price, for the goods.

(3) If:

(a) a person supplies, in trade or commerce, goods by description to a consumer; and

(b) the description was applied to the goods by or on behalf of the manufacturer of the goods, or with express or implied consent of the manufacturer; and

(c) the guarantee under section 56 applies to the supply and it is not complied with;

an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.

(4) Subsection (3) does not apply if the guarantee under section 56 is not complied with only because of:

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(a) an act, default or omission of any person other than the manufacturer or an employee or agent of the manufacturer; or

(b) a cause independent of human control that occurred after the goods left the control of the manufacturer.

(5) If:

(a) the guarantee under section 58 or 59(1) applies to a supply of goods to a consumer; and

(b) the guarantee is not complied with;

an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.

(6) If an affected person in relation to goods has, in accordance with an express warranty given or made by the manufacturer of the goods, required the manufacturer to remedy a failure to comply with a guarantee referred to in subsection (1), (3) or (5):

(a) by repairing the goods; or

(b) by replacing the goods with goods of an identical type;

then, despite that subsection, the affected person is not entitled to commence an action under that subsection to recover damages of a kind referred to in section 272(1)(a) unless the manufacturer has refused or failed to remedy the failure, or has failed to remedy the failure within a reasonable time.

(7) The affected person in relation to the goods may commence an action under this section whether or not the goods are in their original packaging.

272. Damages that may be recovered by action against manufacturers of goods

(1) In an action for damages under this Division, an affected person in relation to goods is entitled to recover damages for:

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(a) any reduction in the value of the goods, resulting from the failure to comply with the guarantee to which the action relates, below whichever of the following prices is lower:

(i) the price paid or payable by the consumer for the goods;

(ii) the average retail price of the goods at the time of supply; and

(b) any loss or damage suffered by the affected person because of the failure to comply with the guarantee to which the action relates if it was reasonably foreseeable that the affected person would suffer such loss or damage as a result of such a failure.

(2) Without limiting subsection (1)(b), the cost of inspecting and returning the goods to the manufacturer is taken to be a reasonably foreseeable loss suffered by the affected person as a result of the failure to comply with the guarantee.

(3) Subsection (1)(b) does not apply to loss or damage suffered through a reduction in the value of the goods.

273. Time limit for actions against manufacturers of goods

An affected person may commence an action for damages under this Division at any time within 3 years after the day on which the affected person first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates has not been complied with.

Division 3 — Miscellaneous

274. Indemnification of suppliers by manufacturers

(1) A manufacturer of goods is liable to indemnify a person (the ***supplier***) who supplies the goods to a consumer if:

(a) the supplier is liable to pay damages under section 259(4) to the consumer for loss or damage suffered by the consumer; and

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(b) the manufacturer is or would be liable under section 271 to pay damages to the consumer for the same loss or damage.

(2) Without limiting subsection (1), a manufacturer of goods is liable to indemnify a person (the ***supplier***) who supplies the goods to a consumer if:

(a) the supplier incurs costs because the supplier is liable under this Part for a failure to comply with a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2; and

(b) the failure is:

(i) a failure to comply with the guarantee under section 54; or

(ii) a failure to comply with the guarantee under section 55 in relation to a disclosed purpose that the consumer made known to the manufacturer either directly or through the supplier or the person referred to in section 55(2)(a)(ii); or

(iii) a failure to comply with the guarantee under section 56 in relation to a description that was applied to the goods by or on behalf of the manufacturer of the goods, or with the express or implied consent of the manufacturer.

(3) The supplier may, with respect to the manufacturer's liability to indemnify the supplier, commence an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the supplier could have obtained if that liability had arisen under a contract of indemnity made between them.

(4) The supplier may commence the action at any time within 3 years after the earliest of the following days:

(a) the day, or the first day, as the case may be, on which the supplier made a payment with respect to, or otherwise discharged in whole or in part, the liability of the supplier to the consumer;

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(b) the day on which a proceeding was commenced by the consumer against the supplier with respect to that liability or, if more than one such proceeding was commenced, the day on which the first such proceeding was commenced.

275. Limitation of liability etc.

If:

(a) there is a failure to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 3-2; and

(b) the law of a State or a Territory is the proper law of the contract;

that law applies to limit or preclude liability for the failure, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of any liability, for a breach of a term of the contract for the supply of the services.

276. This Part not to be excluded etc. by contract

(1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of this Part; or

(b) the exercise of a right a conferred by such a provision; or

(c) any liability of a person in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 to a supply of goods or services.

(2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with the provision.

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(3) This section does not apply to a term of a contract that is a term referred to in section 276A(4).

276A. Limitation in certain circumstances of liability of manufacturer to seller

(1) Despite section 274, if goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of the manufacturer of the goods to a person (the ***supplier***) who supplied the goods to a consumer is limited to a liability to pay to the supplier an amount equal to:

(a) the cost of replacing the goods; or

(b) the cost of obtaining equivalent goods; or

(c) the cost of having the goods repaired;

whichever is the lowest amount.

(2) Subsection (1) does not apply in relation to particular goods if the supplier establishes that it is not fair or reasonable for the liability of the manufacturer of the goods to be limited as mentioned in subsection (1).

(3) In determining for the purposes of subsection (2) whether or not it is fair or reasonable for the liability of a manufacturer to a supplier in relation to goods to be limited as mentioned in subsection (1), a court is to have regard to all the circumstances of the case, and in particular to the following matters:

(a) the availability of suitable alternative sources of supply of the goods;

(b) the availability of equivalent goods;

(c) whether the goods were manufactured, processed or adapted to the special order of the supplier.

(4) This section is subject to any term of a contract between the manufacturer and the supplier imposing on the manufacturer a greater liability than the liability mentioned in subsection (1).

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277. Representative actions by the regulator

(1) The regulator may, by application, commence an action under this Part on behalf of one or more persons identified in the application who are entitled under this Part to take the action.

(2) The regulator may only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

Part 5-5 — Liability of suppliers and credit providers

Division 1 — Linked credit contracts

278. Liability of suppliers and linked credit providers relating to linked credit contracts

(1) If a consumer who is a party to a linked credit contract suffers loss or damage as a result of:

(a) a misrepresentation relating to the credit provided under that linked credit contract, or to a supply of goods or services (a ***related supply***) to which that contract relates; or

(b) a breach of the linked credit contract, or of a contract for a related supply; or

(c) the failure of consideration in relation to the linked credit contract, or to a contract for a related supply; or

(d) a failure to comply with a guarantee that applies, under section 54, 55, 56, 57, 60, 61 or 62, in relation to a related supply; or

(e) a breach of a warranty that is implied in the linked credit contract by section 12ED of the *Australian Securities and Investments Commission Act 2001*;

the linked credit provider who is a party to the contract, and the supplier of a related supply, are jointly and severally liable to the consumer for the amount of the loss or damage.

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(2) A ***linked credit contract*** is a contract that a consumer enters into with a linked credit provider of a person (the ***supplier***) for the provision of credit in relation to:

(a) the supply by way of sale, lease, hire or hire-purchase of goods to the consumer by the linked credit provider where the supplier supplies the goods, or causes the goods to be supplied, to the linked credit provider; or

(b) the supply by the supplier of goods or services, or goods and services, to the consumer.

279. Action by consumer to recover amount of loss or damage

(1) If a linked credit provider, and a supplier of the goods or services, are liable under section 278 to a consumer for an amount of loss or damage, the consumer may recover the amount by action in a court of competent jurisdiction.

(2) The consumer must bring the action against the linked credit provider and the supplier jointly.

(3) Subsection (2) does not apply if:

(a) the supplier has been dissolved or the winding up of the supplier has commenced; or

(b) both of the following apply:

(i) in the opinion of the court in which the action is taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;

(ii) that court has, on the application of the consumer, declared that that subsection does not apply in relation to the proceedings.

280. Cases where a linked credit provider is not liable

(1) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the linked credit provider establishes that:

(a) the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer; and

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(b) the approach was not induced by the supplier of the goods or services to which the linked credit contract relates.

(2) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the proceedings relate to the supply by way of lease, hire or hire-purchase of goods to the consumer by the linked credit provider, and the credit provider establishes that:

(a) after due inquiry before becoming a linked credit provider of the supplier of the goods, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(b) after becoming a linked credit provider of the supplier, the credit provider had not had cause to suspect that:

(i) the consumer might be entitled to recover an amount of loss or damage suffered as a result of a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or breach of a warranty, referred to in section 278(1); and

(ii) the supplier might be unable to meet the supplier's liabilities as and when they fall due.

(3) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the proceedings relate to a contract of sale in relation to which a tied loan contract applies and the linked credit provider establishes that:

(a) after due inquiry before becoming a linked credit provider of the supplier of goods to which the contract relates, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(b) after becoming a linked credit provider of the supplier, but before the tied loan contract was

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entered into, the linked credit provider had not had cause to suspect that:

(i) the consumer might, if the tied loan contract was entered into, be entitled to recover an amount of loss or damage suffered as a result of a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or breach of a warranty, referred to in section 278(1); and

(ii) the supplier might be unable to meet the supplier's liabilities as and when they fall due.

(4) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if:

(a) the proceedings relate to a contract of sale in relation to which a tied continuing credit contract entered into by the linked credit provider applies; and

(b) the credit provider establishes the matter referred to in subsection (5), having regard to:

(i) the nature and volume of business carried on by the credit provider; and

(ii) such other matters as appear to be relevant in the circumstances of the case.

(5) The matter for the purposes of subsection (4) is that the linked credit provider, before first becoming aware of:

(a) the contract of sale referred to in paragraph (a) of that subsection; or

(b) proposals for the making of such a contract;

had not had cause to suspect that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or a breach of a warranty, referred to in section 278(1).

(6) This section has effect despite section 278(1).

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281. Amount of liability of linked credit providers

The liability of a linked credit provider to a consumer under section 278(1) in relation to a contract referred to in section 278(1) is limited to an amount that does not exceed the sum of:

(a) the amount financed under the tied loan contract, tied continuing credit contract, lease contract, contract of hire or contract of hire-purchase; and

(b) the amount of interest (if any), or damages in the nature of interest, allowed or awarded against the credit provider by the court in which the action in relation to the liability is taken; and

(c) the amount of costs (if any) awarded by that court against the credit provider or supplier, or both.

282. Counter-claims and offsets

(1) If proceedings in relation to a linked credit contract are brought against a consumer who is party to the contract by the linked credit provider who is a party to the contract, the consumer is not entitled to:

(a) make a counter-claim in relation to the credit provider's liability under section 278(1); or

(b) exercise a right conferred by subsection (3) of this section in relation to that liability;

unless the consumer claims in the proceedings against the supplier in respect of the liability, by third-party proceedings or otherwise.

(2) Subsection (1) does not apply if:

(a) the supplier has been dissolved or the winding up of the supplier has commenced; or

(b) both of the following apply:

(i) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;

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(ii) that court has, on the application of the consumer, declared that that subsection does not apply in relation to the proceedings.

(3) In any proceedings in relation to a linked credit contract in which the linked credit provider who is a party to the contract claims damages or an amount of money from a consumer, the consumer may offset, in whole or in part, the consumer's liability against any liability of the credit provider under section 278(1).

283. Enforcement of judgments etc.

(1) If, in joint liability proceedings, judgment is given against a supplier and a linked credit provider, the judgment must not be enforced against the credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for at least 30 days.

(2) If the judgment can be enforced against the linked credit provider, it may only be enforced to the extent of the lesser of the following amounts:

(a) the amount calculated in accordance with section 281;

(b) so much of the judgment debt as has not been satisfied by the supplier.

(3) If, in joint liability proceedings, a right conferred by section 282(3) is established by a consumer against a linked credit provider, the consumer must not receive the benefit of the right unless:

(a) judgment has been given against the supplier and credit provider; and

(b) a written demand has been made on the supplier for satisfaction of the judgment; and

(c) the demand has remained unsatisfied for at least 30 days.

(4) If the consumer can receive the benefit of a right conferred by section 282(3), the consumer may only receive the benefit to the extent of the lesser of the following amounts:

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(a) the amount calculated in accordance with section 281;

(b) so much of the judgment debt as has not been satisfied by the supplier.

(5) Subsections (1) and (3) do not apply if:

(a) the supplier has been dissolved or the winding up of the supplier has commenced; or

(b) both of the following apply:

(i) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;

(ii) that court has, on the application of the consumer, declared that those subsections do not apply in relation to the proceedings.

(6) If a judgment given in joint liability proceedings is enforced against a linked credit provider of a supplier, the credit provider is subrogated to the extent of the enforced judgment to any rights that the consumer would have had but for the judgment against the supplier or any other person.

284. Award of interest to consumers

(1) If, in joint liability proceedings, judgment is given against the following (the ***defendant***) for an amount of loss or damage:

(a) a supplier and a linked credit provider;

(b) a linked credit provider;

the court must, on the application of the consumer who suffered the loss or damage, award interest to the consumer against the defendant upon the whole or a part of the amount, unless good cause is shown to the contrary.

(2) The interest must be awarded from the time when the consumer became entitled to recover the amount until the date on which the judgment is given, at the greater of the following rates:

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(a) if the amount payable by the consumer to the linked credit provider for obtaining credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum — that rate or, if more than one such rate may be calculated, the lower or lowest of those rates;

(b) 8%, or such other rate as is prescribed by the regulations.

(3) In determining whether good cause is shown against the awarding of interest under subsection (1), the court must take into account any payment made into court by the supplier or the linked credit provider.

(4) This section applies despite any other law.

285. Liability of suppliers to linked credit providers, and of linked credit providers to suppliers

(1) If a linked credit provider and supplier are liable, under section 278, to a consumer who is a party to a linked credit contract:

(a) if the liability relates to a supply of goods or services to which the linked credit contract relates — the supplier is liable to the credit provider for the amount of loss suffered by the credit provider, unless the supplier and credit provider otherwise agree; or

(b) if the liability relates to the linked credit contract— the credit provider is liable to the supplier for the amount of loss suffered by the supplier, unless the supplier and credit provider otherwise agree.

(2) The amount for which the supplier is liable under subsection (1)(a) of this section is an amount not exceeding the sum of the following amounts:

(a) the maximum amount of the linked credit provider's liability under section 281;

(b) unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked

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credit provider in defending the joint liability proceedings.

286. Joint liability proceedings and recovery under section 135 of the National Credit Code

(1) If:

(a) a consumer is seeking, in joint liability proceedings, to recover an amount under section 279 in relation to a contract for the supply of goods or services; and

(b) the contract has been rescinded or discharged (whether under this Schedule or any other law); and

(c) as a result of the contract being rescinded or discharged, the consumer is entitled under section 135 of the National Credit Code to terminate a linked credit contract; and

(d) the consumer terminates the linked credit contract under that section;

the following amounts may be recovered in the joint liability proceedings (to the extent that they have not been recovered under section 135 of the National Credit Code):

(e) any amount that the consumer is entitled under section 135 of the National Credit Code to recover from the credit provider under the linked credit contract;

(f) any amount that the credit provider is entitled under section 135 of the National Credit Code to recover from:

(i) the consumer; or

(ii) if the supplier under the contract for the supply of goods or services is a party to the joint liability proceedings — the supplier.

(2) An amount that is recovered under subsection (1) ceases to be recoverable under section 135 of the National Credit Code.

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Division 2 — Non-linked credit contracts

287. Liability of suppliers and credit providers relating to non-linked credit contracts

(1) If a consumer who is a party to a non-linked credit contract suffers loss or damage as a result of a failure to comply with a guarantee that applies, under section 54, 55, 56, 57, 60, 61 or 62, in relation to a supply to which the contract relates, the credit provider who is a party to the contract is not under any liability to the consumer for the amount of the loss or damage.

(2) Subsection (1) does not prevent the consumer from recovering that amount by action against the supplier of the goods or services to which the contract relates.

(3) If a consumer who is a party to a non-linked credit contract suffers loss or damage as a result of a breach of a warranty that is implied in the contract by section 12ED of the *Australian Securities and Investments Commission Act 2001*, the supplier of the goods or services to which the contract relates is not under any liability to the consumer for the amount of the loss or damage.

(4) Subsection (3) does not prevent the consumer from recovering that amount by action against the credit provider who is a party to the contract.

(5) A ***non-linked credit contract*** is a contract that a consumer enters into with a credit provider for the provision of credit in relation to:

(a) the supply by way of sale, lease, hire or hire-purchase of goods to the consumer where:

(i) a person (the ***supplier***) supplies the goods, or the causes the goods to be supplied, to the credit provider; and

(ii) the credit provider is not a linked credit provider of the supplier; and

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(iii) prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made with the consumer by or on behalf of the supplier; and

(iv) the credit provider did not take physical possession of the goods before they were delivered to the consumer; or

(b) the supply of services to the consumer by a person in relation to whom the credit provider is not a linked credit provider.

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Notes

[1] This is a compilation of the *Fair Trading Act 2010* [1a]. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
Fair Trading Act 2010	57 of 2010	8 Dec 2010	s. 1 and 2: 8 Dec 2010 (see s. 2(a)); Act other than s. 1 and 2: 1 Jan 2011 (see s. 2(b) and *Gazette* 24 Dec 2010 p. 6805)

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Acts Amendment (Fair Trading) Act 2010 Pt. 2 [2]	58 of 2010	8 Dec 2010	To be proclaimed (see s. 2(c))

[2] On the date as at which this compilation was prepared, the *Acts Amendment (Fair Trading) Act 2010* Pt. 2 had not come into operation. It reads as follows:

Part 2 — *Fair Trading Act 2010* amended

3. Act amended

This Part amends the *Fair Trading Act 2010*.

4. Section 57A inserted

After section 56 insert:

57A. Licensing and regulatory functions of Commissioner

The Commissioner has the following functions with respect to the licensing, registration and certification schemes provided for in the Acts specified in Schedule 2 —

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(a) to administer the scheme of licensing, registration and certification established under those Acts;

(b) to conduct and promote education and provide advisory services for persons who are licensed, registered or certificated under those Acts, or involved in the administration of those Acts, and for members of the public on —

(i) matters relating to the operation of those Acts;

(ii) matters relating to the operations of persons who are licensed, registered or certificated under those Acts;

(c) to advise the Minister as to the general administration of those Acts;

(d) to make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under those Acts;

(e) to carry out any other functions conferred on the Commissioner under those Acts.

5. Section 62 amended

In section 62(1) in the definition of ***consumer affairs authority***:

(a) after paragraph (a)(i) insert:

(iia) an advisory committee appointed under Division 3; or

(b) in paragraph (b)(ii) delete "body or authority referred to in paragraph (a)(ii)" and insert:

body, an advisory committee or an authority referred to in paragraph (a)(iia) or (a)(ii)

6. Part 5 Division 3 inserted

At the end of Part 5 insert:

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Division 3 — Advisory committees

Subdivision 1 — Property Industry Advisory Committee

63A. Property Industry Advisory Committee

A committee called the Property Industry Advisory Committee is established.

63B. Membership

(1) The Committee consists of —

(a) the Commissioner ex officio; and

(b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.

(2) One of the members appointed under subsection (1)(b) is to be appointed as Chairperson.

63C. Functions

The functions of the Committee are to advise the Minister and the Commissioner on —

(a) the regulation of the real estate, settlement and land valuation industries in Western Australia, including the licensing, regulation and training of persons or businesses who or which undertake the functions of a real estate agent, real estate sales representative, business agent, business sales representative, settlement agent or land valuer; and

(b) the provision by the Commissioner of education, information and advice to consumers and to the real estate, settlement and land valuation industries in Western Australia; and

(c) the criteria required for applications under the *Real Estate and Business Agents Act 1978* section 131O; and

(d) any matter referred to the Committee by the Minister or the Commissioner.

63D. Committee may regulate own procedure

(1) The Committee may regulate its own procedure.

(2) Subsection (1) is subject to the regulations.

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Subdivision 2 — Motor Vehicle Industry Advisory Committee

63E. Motor Vehicle Industry Advisory Committee

A committee called the Motor Vehicle Industry Advisory Committee is established.

63F. Membership

(1) The Committee consists of —

(a) the Commissioner ex officio; and

(b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.

(2) One of the members appointed under subsection (1)(b) is to be appointed as Chairperson.

63G. Functions

The functions of the Committee are to advise the Minister and the Commissioner on —

(a) the regulation of the motor vehicle dealing and repair industry in Western Australia, including the licensing, certification and training of persons or businesses who or which engage in motor vehicle dealing and repair; and

(b) the provision by the Commissioner of education, information and advice to consumers and to the motor vehicle dealing and repair industry in Western Australia; and

(c) any matter referred to the Committee by the Minister or the Commissioner.

63H. Committee may regulate own procedure

(1) The Committee may regulate its own procedure.

(2) Subsection (1) is subject to the regulations.

Subdivision 3 — Consumer Advisory Committee

63I. Consumer Advisory Committee

A committee called the Consumer Advisory Committee is established.

63J. Membership

(1) The Committee consists of —

(a) the Commissioner ex officio; and

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(b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.

(2) One of the members appointed under subsection (1)(b) is to be appointed as Chairperson.

63K. Functions

The functions of the Committee are to advise the Minister and the Commissioner on —

(a) the activities and policies of the Department as they affect consumers; and

(b) current and emerging consumer issues; and

(c) research and education projects relating to consumers; and

(d) any matter referred to the Committee by the Minister or the Commissioner.

63L. Committee may regulate own procedure

(1) The Committee may regulate its own procedure.

(2) Subsection (1) is subject to the regulations.

Subdivision 4 — Regulations prescribing committee procedures, etc.

63M. Regulations

(1) The regulations may provide for the constitution and operation of the advisory committees established under this Division.

(2) Without limiting the generality of subsection (1), the regulations may —

(a) require that persons appointed as members of a committee —

(i) possess particular expertise or qualifications; or

(ii) represent particular interest groups, industries or occupations;

(b) provide for the number of members, the manner, and terms and conditions of appointment, and the resignation and removal of members of the committees;

(c) provide for the appointment of deputies of members;

(d) provide for the manner in which members of the committees are to disclose interests;

(e) regulate the procedure for meetings of the committees, including the quorum for meetings;

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(f) provide for the remuneration of members of the committees (other than a member ex officio).

7. Section 63 amended

In section 63 in the definition of ***authorised person*** delete paragraph (c) and insert:

(c) an investigator, or a police officer assisting in an investigation under section 88D;

8. Part 6 Division 4A inserted

After Part 6 Division 3 insert:

Division 4A — Specific powers for enforcement of licensing and regulatory provisions

88A. Terms used

In this Division —

authorisation means a licence, registration, approval, permit, exemption, certificate or other form of authority;

registration Act means an Act listed in Schedule 2;

regulated activity means an occupation or activity that can be lawfully carried on only under an authorisation granted or obtained under a registration Act;

regulated person means a person who carries on a regulated activity.

88B. Investigation and inquiry by Commissioner for licensing and regulatory purposes

(1) For the purposes of performing the Commissioner's functions under section 57A, the Commissioner may, of the Commissioner's own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for any of the following purposes —

(a) determining any application or other matter before the Commissioner;

(b) determining whether or not a regulated person is or has been complying with —

(i) the conditions, if any, of their authorisation; or

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(ii) the requirements of the registration Act under which he or she holds an authorisation; or

(iii) a code of conduct applying to the regulated person under a registration Act;

(c) determining whether or not any other cause exists that might be considered by the Commissioner to be grounds for disciplinary action against a regulated person under a registration Act;

(d) detecting offences against a registration Act.

(2) An authorised person may make an investigation or inquiry under this section on behalf of the Commissioner.

88C. Authorised persons may exercise investigative powers

Authorised persons may exercise the powers set out in Division 3 for the purposes of the performance of any function under this Division.

88D. Police assistance with investigations and inquiries

(1) The Commissioner of Police must, at the request of the Commissioner, arrange for one or more police officers —

(a) to make an investigation or inquiry relating to any matter that is the subject of investigation or inquiry under section 88B; and

(b) to report on the results of their investigation or inquiry.

(2) The report must be forwarded to the Commissioner.

(3) Where a police officer makes an investigation or inquiry or report relating to any matter that is the subject of investigation or inquiry under section 88B —

(a) in addition to any power, authority, and immunity of the police officer apart from this Act, the police officer has the same powers, authorities, and immunities as an investigator appointed under this Act has in respect of the same matter; and

(b) for the purposes of section 66, it is sufficient if the police officer identifies himself or herself as a police officer to the person, if any, affording entry to the police officer.

88E. Compliance checks at regulated person's business premises

(1) An authorised person may, for all or any of the purposes listed in subsection (2) —

(a) during normal business hours, enter premises where the business of a regulated person is being carried on, without obtaining a warrant under section 74; and

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(b) exercise the powers in sections 69, 79 and 87 once entry is made.

(2) The purposes referred to in subsection (1) are as follows —

(a) to determine whether or not a regulated person is or has been complying with the conditions, if any, of their authorisation;

(b) to determine whether or not a regulated person is or has been complying with the requirements of the registration Act under which he or she holds an authorisation;

(c) to determine whether or not a regulated person is or has been complying with a code of conduct applying to the registered person under a registration Act.

(3) An authorised person may invoke the powers in subsection (1) even though an investigation is not under way in relation to any particular regulated person.

9. Section 88 amended

In section 88(1) after "Division 3" insert:

or 4A

10. Section 89 amended

(1) After section 89(1) insert:

(2A) A person must not prevent or attempt to prevent an authorised person from entering business premises in the exercise of the authorised person's powers under section 88E.
Penalty: a fine of $2 000.

(2) In section 89(2) delete "69." and insert:

69 or 88E.

(3) After section 89(4) insert:

(5A) A person must comply with a requirement to furnish reasonable access to business premises, or to give other reasonable assistance

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to an authorised person, when the authorised person is exercising the authorised person's powers under section 88E.

Penalty: a fine of $2 000.

11. Section 112 amended

In section 112(3):

(a) delete paragraph (c) and insert:

(c) for the purposes of performing a function under or in connection with —

(i) this Act; or

(ii) an Act listed in Schedule 2;

or

(da) for the purposes of giving information to a body established under a written law if —

(i) the information concerns the affairs of a regulated person or former regulated person; and

(ii) the information is given in relation to the performance by that body of a function under or in connection with that written law;

or

(b) in paragraph (e) delete "offence." and insert:

offence; or

(c) after paragraph (e) insert:

(f) by the Commissioner for the purpose of making the public aware of —

(i) investigations or inquiries being conducted into the conduct of a regulated person, former regulated person or purported regulated person, and the results of those inquiries; and

(ii) disciplinary action being contemplated or undertaken in relation to a regulated person, former regulated person or purported regulated person, and the outcome of that action.

Extract from www.slp.wa.gov.au, see that website for further information

12. Schedule 2 inserted

After Schedule 1 insert:

Schedule 2 — Registration Acts

[s. 88A]

The following Acts are specified for the purposes of section 88A —

Land Valuers Licensing Act 1978

Motor Vehicle Dealers Act 1973

Motor Vehicle Repairers Act 2003

Real Estate and Business Agents Act 1978

Settlement Agents Act 1981

Extract from www.slp.wa.gov.au, see that website for further information

Defined Terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined Term	Provision(s)
access information	75(1)
acquire	6
application law	17(1)
assistant	67(1)
Australian Consumer Law	17(1)
Australian Consumer Law (WA)	6, 17(1)
Australian Consumer Law text	17(1)
authorised person	63
business	6
code of practice	43
commencement day	2C(1), 3C(1), 3C(1)
Commissioner	6, 2B(3), 3B(3), 3B(3)
consumer	6, 7(1)
consumer affairs authority	62(1)
Department	6
disposal	6
document	6
executive officer	55(1)
first person	106(1)
goods	6
instrument	17(1)
interest	6
Intergovernmental Agreement	17(1)
investigator	63
jurisdiction	17(1)
law	17(1)
liability	114(1), 115(1)
modifications	17(1)
motor vehicle	63
other jurisdiction	27
participating jurisdiction	17(1), 27
person A	95(4), 99(2)
person B	95(4)
personal information	112(1)
principal	111(1), 111(2)
provision	6
publish	62(1)
regulator	22
renewal day	38(2)

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Defined Terms

respondent ..... 106(4)
re-supply 6
services ..... 6, 8(1)
specified ..... 117(5)
specified person ..... 75(1)
State ..... 17(1)
supplier 6
supply 6
Territory ..... 17(1)
this jurisdiction ..... 17(1)
trade or commerce 6
transitional matter ..... 117(2)
variation day ..... 38(2)

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