Western Australia

Australian Consumer Law (WA)

The Australian Consumer Law text applies as a law of Western Australia under the *Fair Trading Act 2010* and may be referred to as the *Australian Consumer Law (WA)*. Section 19(1) of that Act provides that the Australian Consumer Law text consists of:

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) (the **Cth Act**), as in force on 1 June 2021 and as amended by each provision that —

(i) is in an amending law that has effect for the purposes of section 19 of the Act under section 19B; and

(ii) has come into operation for the purposes of section 19 of the Act under section 19C; and

(b) the regulations made under section 139G of the Cth Act, as those regulations are in force from time to time, subject to section 19(1A) of the Act.

Regulations may also be made under the *Fair Trading Act 2010* section 116(3) that alter the operation of certain provisions of the *Australian Consumer Law (WA)*.

The Australian Consumer Law text, in so far as it constitutes Schedule 2 to the Cth Act, is part of the *Fair Trading Act 2010*.

The Australian Consumer Law text, in so far as it constitutes regulations made under section 139G of the Cth Act, is subsidiary legislation for the purposes of the *Fair Trading Act 2010*.

This version is the *Australian Consumer Law (WA)* in so far as it consists of Schedule 2 to the Cth Act, including any modifications and amendments, as at the date specified below.

Regulations made under section 139G of the Cth Act can be accessed at **https://www.legislation.gov.au.**

Western Australia

Australian Consumer Law (WA)

Contents

Chapter 1 — Introduction

1	Application of this Schedule	1
2	Definitions	1
3	Meaning of *consumer*	18
4	Misleading representations with respect to future matters	22
5	When donations are treated as supplies or acquisitions	23
6	Related bodies corporate	23
7	Meaning of *manufacturer*	24
8	Goods affixed to land or premises	25
9	Meaning of *safety defect* in relation to goods	25
10	Asserting a right to payment	26
11	References to acquisition, supply and re-supply	27
12	Application of Schedule in relation to leases and licences of land and buildings	28
13	Loss or damage to include injury	28
14	Meaning of *continuing credit contract*	29
15	Contraventions of this Schedule	30
16	Severability	30
17	References to provisions in this Schedule	30

Chapter 2 — General protections

Part 2-1 — Misleading or deceptive conduct

18	Misleading or deceptive conduct	31
19	Application of this Part to information providers	31

Part 2-2 — Unconscionable conduct

20	Unconscionable conduct within the meaning of the unwritten law	33
21	Unconscionable conduct in connection with goods or services	33
22	Matters the court may have regard to for the purposes of section 21	35
22A	Presumptions relating to whether representations are misleading	38

Part 2-3 — Unfair contract terms

23	Unfair terms of consumer contracts and small business contracts	39
24	Meaning of *unfair*	41
25	Examples of unfair terms	42
26	Terms that define main subject matter of consumer contracts or small business contracts etc. are unaffected	43
27	Standard form contracts	44
28	Contracts to which this Part does not apply	46
28A	This Part does not apply to certain contracts connected with financial markets	46

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	48
30	False or misleading representations about sale etc. of land	50
31	Misleading conduct relating to employment	51
32	Offering rebates, gifts, prizes etc.	51
33	Misleading conduct as to the nature etc. of goods	52
34	Misleading conduct as to the nature etc. of services	53
35	Bait advertising	53
36	Wrongly accepting payment	54
37	Misleading representations about certain business activities	55

38 Application of provisions of this Division to information providers 56

Division 2 — Unsolicited supplies

39 Unsolicited cards etc. 58
40 Assertion of right to payment for unsolicited goods or services 59
41 Liability etc. of recipient for unsolicited goods 60
42 Liability of recipient for unsolicited services 62
43 Assertion of right to payment for unauthorised entries or advertisements 62

Division 3 — Pyramid schemes

44 Participation in pyramid schemes 64
45 Meaning of *pyramid scheme* 65
46 Marketing schemes as pyramid schemes 66

Division 4 — Pricing

47 Multiple pricing 67
48 Single price to be specified in certain circumstances 69

Division 5 — Other unfair practices

49 Referral selling 72
50 Harassment and coercion 72

Part 3-2 — Consumer transactions

Division 1 — Consumer guarantees

Subdivision A — Guarantees relating to the supply of goods

51 Guarantee as to title 73
52 Guarantee as to undisturbed possession 73
53 Guarantee as to undisclosed securities etc. 74
54 Guarantee as to acceptable quality 75
55 Guarantee as to fitness for any disclosed purpose etc. 77
56 Guarantee relating to the supply of goods by description 78
57 Guarantees relating to the supply of goods by sample or demonstration model 79
58 Guarantee as to repairs and spare parts 79
59 Guarantee as to express warranties 80

Subdivision B — Guarantees relating to the supply of services

60 Guarantee as to due care and skill 80
61 Guarantees as to fitness for a particular purpose etc. 81
62 Guarantee as to reasonable time for supply 82
63 Services to which this Subdivision does not apply 82

Subdivision C — Guarantees not to be excluded etc. by contract

64 Guarantees not to be excluded etc. by contract 82
64A Limitation of liability for failures to comply with guarantees 83

Subdivision D — Miscellaneous

65 Application of this Division to supplies of gas, electricity and telecommunications 85
66 Display notices 85
67 Conflict of laws 86
68 Convention on Contracts for the International Sale of Goods 86

Division 2 — Unsolicited consumer agreements

Subdivision A — Introduction

69 Meaning of *unsolicited consumer agreement* 87
70 Presumption that agreements are unsolicited consumer agreements 88
71 Meaning of *dealer* 89
72 Meaning of *negotiation* 89

Subdivision B — Negotiating unsolicited consumer agreements

73 Permitted hours for negotiating an unsolicited consumer agreement 89
74 Disclosing purpose and identity 90
75 Ceasing to negotiate on request 90
76 Informing person of termination period etc. 91
77 Liability of suppliers for contraventions by dealers 92

Subdivision C — Requirements for unsolicited consumer agreements etc.

78 Requirement to give document to the consumer 92
79 Requirements for all unsolicited consumer agreements etc. 93

80 Additional requirements for unsolicited consumer agreements not negotiated by telephone 95
81 Requirements for amendments of unsolicited consumer agreements 95

Subdivision D — Terminating unsolicited consumer agreements

82 Terminating an unsolicited consumer agreement during the termination period 95
83 Effect of termination 98
84 Obligations of suppliers on termination 99
85 Obligations and rights of consumers on termination 99
86 Prohibition on supplies etc. 101
87 Repayment of payments received after termination 102
88 Prohibition on recovering amounts after termination 102

Subdivision E — Miscellaneous

89 Certain provisions of unsolicited consumer agreements void 103
90 Waiver of rights 104
91 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc. 104
92 Application of this Division to supplies to third parties 105
93 Effect of contravening this Division 105
94 Regulations may limit the application of this Division 105
95 Application of this Division to certain conduct covered by the Corporations Act 106

Division 3 — Lay-by agreements

96 Lay-by agreements must be in writing etc. 106
97 Termination of lay-by agreements by consumers 107
98 Termination of lay-by agreements by suppliers 107
99 Effect of termination 108

Division 3A — Gift cards

Subdivision A — Introduction

99A Meaning of *gift card* 108

Subdivision B — Requirements relating to gift cards

99B Gift cards to be redeemable for at least 3 years 109

99C When gift card ceases to be redeemable to appear prominently on gift card 109
99D Terms and conditions not to allow post-supply fees 110
99E Post-supply fees not to be demanded or received 110
99F Certain terms and conditions of gift card void 110

Subdivision C — Miscellaneous

99G Regulations may limit application of this Division 111

Division 4 — Miscellaneous

100 Supplier must provide proof of transaction etc. 112
101 Consumer may request an itemised bill 113
102 Prescribed requirements for warranties against defects 114
103 Repairers must comply with prescribed requirements 115

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 115
106 Supplying etc. consumer goods that do not comply with safety standards 117
107 Supplying etc. product related services that do not comply with safety standards 119
108 Requirements relating to alternative methods of complying 120
108A Requirement to give information or documents 121

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. 122
110 Places in which interim bans apply 123
111 Ban period for interim bans 123
112 Interaction of multiple interim bans 124
113 Revocation of interim bans 125

Subdivision B — Permanent bans

114 Permanent bans on consumer goods or product related services 126
115 Places in which permanent bans apply 127
116 When permanent bans come into force 127
117 Revocation of permanent bans 127

Subdivision C — Compliance with interim bans and permanent bans

118 Supplying etc. consumer goods covered by a ban 127
119 Supplying etc. product related services covered by a ban 129

Subdivision D — Temporary exemption from mutual recognition principles

120 Temporary exemption under the *Trans-Tasman Mutual Recognition Act 1997* 130
121 Temporary exemption under the *Mutual Recognition Act 1992* 130

Division 3 — Recall of consumer goods

Subdivision A — Compulsory recall of consumer goods

122 Compulsory recall of consumer goods 131
123 Contents of a recall notice 132
124 Obligations of a supplier in relation to a recall notice 133
125 Notification by persons who supply consumer goods outside Australia if there is compulsory recall 134
126 Interaction of multiple recall notices 135
127 Compliance with recall notices 135

Subdivision B — Voluntary recall of consumer goods

128 Notification requirements for a voluntary recall of consumer goods 136

Division 4 — Safety warning notices

129 Safety warning notices about consumer goods and product related services 138
130 Announcement of the results of an investigation etc. 139

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 140

132 Suppliers to report product related services associated with the death or serious injury or illness of any person 142

132A Confidentiality of notices given under this Division 144

Division 6 — Miscellaneous

133 Liability under a contract of insurance 146

Part 3-4 — Information standards

134 Making information standards for goods and services 146

136 Supplying etc. goods that do not comply with information standards 148

137 Supplying etc. services that do not comply with information standards 150

137AA Other non-compliance with information standards 151

137A Safe harbour for complying with information standards about free range eggs 151

137B Requirement to give information or documents 152

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 153

139 Liability for loss or damage suffered by a person other than an injured individual 153

140 Liability for loss or damage suffered by a person if other goods are destroyed or damaged 154

141 Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged 155

142 Defences to defective goods actions 155

Division 2 — Defective goods actions

143 Time for commencing defective goods actions 156
144 Liability joint and several 156
145 Survival of actions 156
146 No defective goods action where workers' compensation law etc. applies 157
147 Unidentified manufacturer 157
148 Commonwealth liability for goods that are defective only because of compliance with Commonwealth mandatory standard 157
149 Representative actions by the regulator 158

Division 3 — Miscellaneous

150 Application of all or any provisions of this Part etc. not to be excluded or modified 159

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 160
152 False or misleading representations about sale etc. of land 162
153 Misleading conduct relating to employment 164
154 Offering rebates, gifts, prizes etc. 165
155 Misleading conduct as to the nature etc. of goods 167
156 Misleading conduct as to the nature etc. of services 168
157 Bait advertising 169
158 Wrongly accepting payment 170
159 Misleading representations about certain business activities 173
160 Application of provisions of this Division to information providers 174

Division 2 — Unsolicited supplies

161 Unsolicited cards etc. 176
162 Assertion of right to payment for unsolicited goods or services 178

163 Assertion of right to payment for unauthorised entries or advertisements 179

Division 3 — Pyramid schemes

164 Participation in pyramid schemes 181

Division 4 — Pricing

165 Multiple pricing 182

166 Single price to be specified in certain circumstances 182

Division 5 — Other unfair practices

167 Referral selling 185

168 Harassment and coercion 186

Part 4-2 — Offences relating to consumer transactions

Division 1 — Consumer guarantees

169 Display notices 187

Division 2 — Unsolicited consumer agreements

Subdivision A — Negotiating unsolicited consumer agreements

170 Permitted hours for negotiating an unsolicited consumer agreement 188

171 Disclosing purpose and identity 188

172 Ceasing to negotiate on request 189

173 Informing person of termination period etc. 190

Subdivision B — Requirements for unsolicited consumer agreements etc.

174 Requirement to give document to the consumer 192

175 Requirements for all unsolicited consumer agreements etc. 193

176 Additional requirements for unsolicited consumer agreements not negotiated by telephone 194

177 Requirements for amendments of unsolicited consumer agreements 195

Subdivision C — Terminating unsolicited consumer agreements

178 Obligations of suppliers on termination 195

179 Prohibition on supplies etc. 196

180 Repayment of payments received after termination 197

181 Prohibition on recovering amounts after termination 197

Subdivision D — Miscellaneous

182 Certain provisions of unsolicited consumer agreements void 198
183 Waiver of rights 199
184 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc. 199
185 Application of this Division to supplies to third parties 200
186 Regulations may limit the application of this Division 200
187 Application of this Division to certain conduct covered by the Corporations Act 200

Division 3 — Lay-by agreements

188 Lay-by agreements must be in writing etc. 200
189 Termination charges 201
190 Termination of lay-by agreements by suppliers 202
191 Refund of amounts 202

Division 3A — Gift cards

191A Gift cards to be redeemable for at least 3 years 203
191B When gift card ceases to be redeemable to appear prominently on gift card 203
191C Terms and conditions not to allow post-supply fees 204
191D Post-supply fees not to be demanded or received 204
191E Regulations may limit the application of this Division 204

Division 4 — Miscellaneous

192 Prescribed requirements for warranties against defects 205
193 Repairers must comply with prescribed requirements 205

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 206
195 Supplying etc. product related services that do not comply with safety standards 208
196 Requirement to nominate a safety standard 209

Division 2 — Bans on consumer goods and product related services

197 Supplying etc. consumer goods covered by a ban 209
198 Supplying etc. product related services covered by a ban 211

Division 3 — Recall of consumer goods

199 Compliance with recall orders 212
200 Notification by persons who supply consumer goods outside Australia if there is compulsory recall 213
201 Notification requirements for a voluntary recall of consumer goods 213

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 214

Part 4-4 — Offences relating to information standards

203 Supplying etc. goods that do not comply with information standards 215
204 Supplying etc. services that do not comply with information standards 217

Part 4-5 — Offences relating to substantiation notices

205 Compliance with substantiation notices 218
206 False or misleading information etc. 219

Part 4-6 — Defences

207 Reasonable mistake of fact 219
208 Act or default of another person etc. 220
209 Publication of advertisements in the ordinary course of business 221
210 Supplying goods acquired for the purpose of re-supply 221
211 Supplying services acquired for the purpose of re-supply 223

Part 4-7 — Miscellaneous

212 Prosecutions to be commenced within 3 years 224
213 Preference must be given to compensation for victims 224
214 Penalties for contraventions of the same nature etc. 225
215 Penalties for previous contraventions of the same nature etc. 225
216 Granting of injunctions etc. 226
217 Criminal proceedings not to be brought for contraventions of Chapter 2 or 3 227

Chapter 5 — Enforcement and remedies

Part 5-1 — Enforcement

Division 1 — Undertakings

218 Regulator may accept undertakings 228

Division 2 — Substantiation notices

219 Regulator may require claims to be substantiated etc. 229
220 Extending periods for complying with substantiation notices 231
221 Compliance with substantiation notices 231
222 False or misleading information etc. 232

Division 3 — Public warning notices

223 Regulator may issue a public warning notice 232

Part 5-2 — Remedies

Division 1 — Pecuniary penalties

224 Pecuniary penalties 233
225 Pecuniary penalties and offences 238
226 Defence 239
227 Preference must be given to compensation for victims 240
228 Civil action for recovery of pecuniary penalties 240
229 Indemnification of officers 240
230 Certain indemnities not authorised and certain documents void 241

Division 2 — Injunctions

232 Injunctions 241
233 Consent injunctions 243
234 Interim injunctions 243
235 Variation and discharge of injunctions 244

Division 3 — Damages

236 Actions for damages 244

Division 4 — Compensation orders etc. for injured persons and orders for non-parties

237 Compensation orders etc. on application by an injured person or the regulator 245
238 Compensation orders etc. arising out of other proceedings 246
239 Orders to redress etc. loss or damage suffered by non-parties 246
240 Determining whether to make a redress order etc. for non-parties 248
241 When a non-party is bound by a redress order etc. 248
243 Kinds of orders that may be made 249
243A Orders made in favour of party to contract containing unfair term 251
243B Orders made on application of the regulator to prevent and remedy unfair contract terms 252
245 Interaction with other provisions 254

Division 5 — Other remedies

246 Non-punitive orders 254
247 Adverse publicity orders 256
248 Order disqualifying a person from managing corporations 257
249 Privilege against exposure to penalty or forfeiture—disqualification from managing corporations 258
250 Declarations relating to consumer contracts and small business contracts 259

Division 6 — Defences

251 Publication of advertisement in the ordinary course of business 260
252 Supplying consumer goods for the purpose of re-supply 260
253 Supplying product related services for the purpose of re-supply 261

Part 5-3 — Country of origin representations

254 Overview 263
255 Country of origin representations do not contravene certain provisions 263
258 Proceedings relating to false, misleading or deceptive conduct or representations 266

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 266
260 When a failure to comply with a guarantee is a major failure 268
261 How suppliers may remedy a failure to comply with a guarantee 269
262 When consumers are not entitled to reject goods 269
263 Consequences of rejecting goods 270
264 Replaced goods 271

265 Termination of contracts for the supply of services that are connected with rejected goods 271
266 Rights of gift recipients 272

Subdivision B — Action against suppliers of services

267 Action against suppliers of services 273
268 When a failure to comply with a guarantee is a major failure 274
269 Termination of contracts for the supply of services 275
270 Termination of contracts for the supply of goods that are connected with terminated services 276

Division 2 — Action for damages against manufacturers of goods

271 Action for damages against manufacturers of goods 277
272 Damages that may be recovered by action against manufacturers of goods 279
273 Time limit for actions against manufacturers of goods 280

Division 3 — Miscellaneous

274 Indemnification of suppliers by manufacturers 280
275 Limitation of liability etc. 282
276 This Part not to be excluded etc. by contract 282
276A Limitation in certain circumstances of liability of manufacturer to seller 283
277 Representative actions by the regulator 284

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 284
279 Action by consumer to recover amount of loss or damage 285
280 Cases where a linked credit provider is not liable 285
281 Amount of liability of linked credit providers 288
282 Counter-claims and offsets 288
283 Enforcement of judgments etc. 289
284 Award of interest to consumers 291

285 Liability of suppliers to linked credit providers, and of linked credit providers to suppliers 291
286 Joint liability proceedings and recovery under section 135 of the National Credit Code 292

Division 2 — Non-linked credit contracts

287 Liability of suppliers and credit providers relating to non-linked credit contracts 293

Chapter 6 — Application and transitional provisions

Part 1 — Application and transitional provisions relating to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*

288 Application of amendments relating to lay-by agreements 295
289 Application of amendment relating to repairs 295
290 Saving of regulations relating to repairs 295

Part 1A — Application provision relating to the *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015*

290A Application 296

Part 2 — Application and transitional provisions relating to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017*

291 Application of amendments relating to confidentiality of notices 297

292 Application of amendments relating to prohibition on supplies 297

Part 3 — Application provision relating to the *Treasury Laws Amendment (2018 Measures No. 3) Act 2018*

295 Application of amendments 297

Part 4 — Application provisions relating to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018*

296 Application — listed public companies 298
297 Application — unsolicited supplies 298
298 Application — unsolicited consumer agreements 298
299 Application — single price 298
300 Application — non-punitive orders 298
301 Application — guarantees relating to the supply of services 299

Part 5 — Application and transitional provisions relating to the *Treasury Laws Amendment (Gift Cards) Act 2018*

302 Application of amendments relating to gift cards 299

Part 6 — Application and transitional provisions relating to the *Treasury Laws Amendment (2020 Measures No. 6) Act 2020*

303 Application of amendments relating to multiple non-major consumer guarantee failures 299

Part 7 — Application provision relating to the *Treasury Laws*

Amendment (More Competition, Better Prices) Act 2022

304 Application of amendments relating to penalties 300
305 Application of amendments relating to unfair contract terms 300

Part 8 — Application and saving provisions relating to the *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024*

306 Definitions 302
307 Saving — safety standards declared by the Minister 302
308 Application — nomination and compliance with safety standards 302
309 Application — requests for information or documents 303

Notes

Compilation table 304
Other notes 304

Defined terms

Western Australia

Australian Consumer Law (WA)

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.

[Editorial note:

This Law began to apply in WA on 1 Jan 2011 when the *Fair Trading Act 2010* s. 19 as originally enacted commenced.]

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.

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

adjusted turnover, of a body corporate during a period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the period, other than:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate; or

(b) supplies that are input taxed; or

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or

(d) supplies that are not made in connection with an enterprise that the body corporate carries on; or

(e) supplies that are not connected with the indirect tax zone.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

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.

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).

breach turnover period, of a body corporate, for an offence or an act or omission, means the longer of the following periods:

(a) the period of 12 months ending at the end of the month in which:

(i) for an offence — the body corporate ceased committing the offence, or was charged with the offence (whichever is earlier); or

(ii) for an act or omission — the act or omission ceased, or proceedings in relation to the act or omission were instituted (whichever is earlier);

(b) the period ending at the same time as the period determined under paragraph (a) and starting:

(i) for an offence — at the beginning of the month in which the body corporate committed, or began committing, the offence (as the case requires); or

(ii) for an act or omission — at the beginning of the month in which the act or omission occurred or began occurring (as the case requires).

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.

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 (Cth)*.

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).

declared term: see sections 239(1)(a)(ii), 243A(1) and 243B(1).

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 means any record of information, and includes:

(a) anything on which there is writing; and

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and

(d) a map, plan, drawing or photograph.

egg has the meaning given by subsection 137A(3).

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, 239, 243A and 243B).

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 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.

free range egg has the meaning given by subsection 137A(4).

gift card: see section 99A.

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 section 134(1).

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:

(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.

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;

(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.

new participant: see section 45(2).

non-linked credit contract: see section 287(5).

non-party means:

(a) in relation to conduct — a person who is not, or has not been, a party to an enforcement proceeding in relation to the conduct; or

(b) in relation to a term of a contract — 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).

post-supply fee: see section 99D(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 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).

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 or small business 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 section 104(1).

sale by auction, in relation to the supply of goods by a person, means a sale by auction that is conducted by an 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 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).

small business contract: see subsection 23(4).

standard form contract has a meaning affected by section 27.

substantially transformed, in relation to goods: see section 255(2).

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.

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 or small business contract — see section 24(3).

unfair, in relation to a term of a consumer contract or small business 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:

(a) services supplied to a person; or

(b) services purported to have been supplied to a person which have not been supplied;

without any request made by the person or on his or her behalf.

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.

[Section 2 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 31-33 and Sch. 2 cl. 9-10 and 59-60; No. 136 of 2024 (Cth) Sch. 2 cl. 4 and 5.]

3 Meaning of *consumer*

Acquiring goods as a consumer

(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 following purpose:

(i) for goods other than gift cards — for the purpose of re-supply;

(ii) for gift cards — for the purpose of re-supply in trade or commerce; 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.

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:

(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 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:

(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.

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:

(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.

(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.

(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 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, 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.

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 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

(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) deleted]

(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.

21 Unconscionable conduct in connection with goods or services

(1) A person must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a person; or

(b) the acquisition or possible acquisition of goods or services from a person;

engage in conduct that is, in all the circumstances, unconscionable.

(2) This section does not apply to conduct that is engaged in only because the person engaging in the conduct:

(a) institutes legal proceedings in relation to the supply or possible supply, or in relation to the acquisition or possible acquisition; or

(b) refers to arbitration a dispute or claim in relation to the supply or possible supply, or in relation to the acquisition or possible acquisition.

(3) 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

(b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(4) It is the intention of the Parliament that:

(a) this section is not limited by the unwritten law relating to unconscionable conduct; and

(b) this section is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour; and

(c) in considering whether conduct to which a contract relates is unconscionable, a court's consideration of the contract may include consideration of:

(i) the terms of the contract; and

(ii) the manner in which and the extent to which the contract is carried out;

and is not limited to consideration of the circumstances relating to formation of the contract.

22 Matters the court may have regard to for the purposes of section 21

(1) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the ***supplier***) has contravened section 21 in connection with the supply or possible supply of goods or services to a person (the ***customer***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the supplier and the customer; and

(b) whether, as a result of conduct engaged in by the supplier, the customer 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 customer 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 customer or a person acting on behalf of the customer 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 customer 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 customer was consistent with the supplier's conduct in similar transactions between the supplier and other like customers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the customer 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 customer:

(i) any intended conduct of the supplier that might affect the interests of the customer; and

(ii) any risks to the customer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the customer); and

(j) if there is a contract between the supplier and the customer 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 customer; and

(ii) the terms and conditions of the contract; and

(iii) the conduct of the supplier and the customer in complying with the terms and conditions of the contract; and

(iv) any conduct that the supplier or the customer 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 customer for the supply of the goods or services; and

(l) the extent to which the supplier and the customer acted in good faith.

(2) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the ***acquirer***) has contravened section 21 in connection with the acquisition or

possible acquisition of goods or services from a person (the ***supplier***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the acquirer and the supplier; and

(b) whether, as a result of conduct engaged in by the acquirer, the supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer; and

(c) whether the 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 supplier or a person acting on behalf of the 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 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 supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like suppliers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the 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 supplier:

(i) any intended conduct of the acquirer that might affect the interests of the supplier; and

(ii) any risks to the supplier arising from the acquirer's intended conduct (being risks that the acquirer should have foreseen would not be apparent to the supplier); and

(j) if there is a contract between the acquirer and the supplier for the acquisition of the goods or services:

(i) the extent to which the acquirer was willing to negotiate the terms and conditions of the contract with the supplier; and

(ii) the terms and conditions of the contract; and

(iii) the conduct of the acquirer and the supplier in complying with the terms and conditions of the contract; and

(iv) any conduct that the acquirer or the 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 supplier for the acquisition of the goods or services; and

(l) the extent to which the acquirer and the supplier acted in good faith.

22A Presumptions relating to whether representations are misleading

Section 4 applies for the purposes of sections 21 and 22 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 and small business contracts

(1) A term of a consumer contract or small business 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.

(2A) A person contravenes this subsection if:

(a) the person makes a contract; and

(b) the contract is a consumer contract or small business contract; and

(c) the contract is a standard form contract; and

(d) a term of the contract is unfair; and

(e) the person proposed the unfair term.

Note: A pecuniary penalty may be imposed for a contravention of this subsection: see section 224.

(2B) A person who contravenes subsection (2A) commits a separate contravention of that subsection in respect of each term that is unfair and that the person proposed.

(2C) A person contravenes this subsection if:

(a) the person applies or relies on, or purports to apply or rely on, a term of a contract; and

(b) the contract is a consumer contract or small business contract; and

(c) the contract is a standard form contract; and

(d) the term is unfair.

Note: A pecuniary penalty may be imposed for a contravention of this subsection: see section 224.

(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.

(4) A contract is a ***small business contract*** if:

(a) the contract is for a supply of goods or services, or a sale or grant of an interest in land; and

(b) at least one party to the contract satisfies either or both of the following conditions:

(i) the party makes the contract in the course of carrying on a business and at a time when the party employs fewer than 100 persons;

(ii) the party's turnover, worked out under subsection (6) for the party's last income year (within the meaning of the *Income Tax Assessment Act 1997*) that ended at or before the time when the contract is made, is less than $10,000,000.

(5) In counting for the purposes of subparagraph (4)(b)(i) the number of persons that a person employs:

(a) a casual employee is not to be counted unless employed on a regular and systematic basis; and

(b) a part-time employee (including a part-time casual employee counted under paragraph (a) of this subsection) is to be counted as an appropriate fraction of a full-time equivalent.

(6) For the purposes of subparagraph (4)(b)(ii), a party's turnover for a period is the sum of the values of all supplies the party made during the period, other than the following:

(a) supplies that are input taxed;

(b) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

(c) supplies that are not made in connection with an enterprise that the party carries on;

(d) supplies that are not connected with the indirect tax zone.

(7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

[Section 23 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 1 and 47.]

24 Meaning of *unfair*

(1) A term of a consumer contract or small business contract is ***unfair*** if:

(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 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 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

Without limiting section 24, the following are examples of the kinds of terms of a consumer contract or small business 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;

(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.

26 Terms that define main subject matter of consumer contracts or small business contracts etc. are unaffected

(1) Section 23 does not apply to a term of a contract to the extent, but only to the extent, that:

(a) the term defines the main subject matter of the contract; or

(b) the term sets the upfront price payable under the contract; or

(c) the term is required, or expressly permitted, by a law of the Commonwealth or of a State or Territory; or

(d) the term is included in the contract, or is taken to be so included, by operation of a law of the Commonwealth, or of a State or Territory, that regulates the contract; or

(e) inclusion of the term has either or both of the following results:

(i) one or more other terms are included in the contract, or are taken to be so included, by operation of a law of the Commonwealth, or of a State or Territory, that regulates the contract;

(ii) such a law requires one or more other terms to be included in the contract.

Example: A State law provides that, if a retail lease contains a provision for termination on the ground of proposed demolition of the building containing the leased premises, then provisions set out in the State law are taken to be included in the lease.

Paragraph (d) covers the provisions that are set out in the State law and taken to be included in the lease. Paragraph (e) covers inclusion of the provision for termination, since it has the result that the provisions set out in the State law are taken to be included in the lease.

(2) The ***upfront price*** payable under a 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.

[Section 26 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 53.]

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;

(ba) whether one of the parties has made another contract, in the same or substantially similar terms, prepared by that party, and, if so, how many such contracts that party has made;

(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.

(3) A contract may be determined to be a standard form contract despite the existence of one or more of the following:

(a) an opportunity for a party to negotiate changes, to terms of the contract, that are minor or insubstantial in effect;

(b) an opportunity for a party to select a term from a range of options determined by another party;

(c) an opportunity for a party to another contract or proposed contract to negotiate terms of the other contract or proposed contract.

[Section 27 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 41.]

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.

(4) This Part does not apply to a small business contract to which a prescribed law of the Commonwealth, a State or a Territory applies.

(5) This Part does not apply to a contract:

(a) that establishes, contains or incorporates rules governing the operation of a payment or settlement system approved under section 9 of the *Payment Systems and Netting Act 1998*; or

(b) that is made in the course of, or for the purposes of, operating such a system.

[Section 28 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 54.]

28A This Part does not apply to certain contracts connected with financial markets

(1) This Part does not apply to a contract:

(a) that exists because of:

(i) section 793B of the *Corporations Act 2001* (legal effect of operating rules of a licensed market); or

(ii) section 822B of that Act (legal effect of operating rules of a licensed CS facility); or

(b) that is made under, or in accordance with:

(i) the operating rules of a licensed market; or

(ii) the operating rules of a licensed CS facility.

Note: A licensed CS facility is a clearing and settlement facility whose operation is authorised by an Australian CS facility licence.

(2) This Part does not apply to a contract between:

(a) the operator of a licensed market; and

(b) any of the following:

(i) an entity included in the market's official list;

(ii) the responsible entity for a registered scheme that is so included;

(iii) the operator of a foreign passport fund that is so included;

to the extent that the contract consists of, or includes, listing rules of the licensed market.

(3) An expression has in paragraph (1)(b) and subsection (2) the same meaning as in the *Corporations Act 2001*.

[Section 28A inserted: No. 54 of 2022 (Cth) Sch. 2 cl. 55.]

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

(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:

(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.

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;

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, 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.

(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 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 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

(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 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:

(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 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.

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 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, or purports to supply but does not supply, 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 or purported 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.

(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.

(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

(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

(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.

(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

(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.

(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

(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.

(4A) Subsection (1) does not apply if:

(a) the representation is in a class of representations prescribed by the regulations; and

(b) the conditions (if any) prescribed by the regulations in relation to representations in that class have been complied with.

Note: If the representation is in a class prescribed for paragraph (a) of this subsection and subsection (1) is complied with in relation to the representation, there is no need to also comply with any conditions prescribed for paragraph (b) of this subsection.

(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 unless:

(i) the charge is payable at the option of the other person; and

(ii) at or before the time of the representation, the other person has either deselected the charge or not expressly requested that the charge be applied;

(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: An airline advertises a flight for sale. Persons have the option of paying for a carbon offset. If the carbon offset is preselected on the airline's online booking system, the single price for the flight must include the carbon offset charge. This is because the person has not, at or before the time of the representation, deselected the charge on the online booking site. If the person deselects the optional carbon offset charge later in the online booking process, the single price does not need to include the carbon offset charge after the charge is deselected because of the exception provided by paragraphs (a)(i) and (ii).

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;

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:

(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.

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.

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.

(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:

(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:

(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.

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:

(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

(1) This Subdivision does not apply to services that are, or are to be, supplied under:

(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.

(2) To avoid doubt, subsection (1)(a) does not apply if the consignee of the goods is not carrying on or engaged in a business, trade, profession or occupation in relation to the goods.

Note: This subsection was inserted as a response to the decision of the High Court of Australia in *Wallis v Downard-Pickford (North Queensland) Pty Ltd* [1994] HCA 17.

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;

(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 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.

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.

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.

(1AA) To avoid doubt, a place mentioned in subsection (1)(b)(i) may be a public place, and need not be a place the dealer cannot enter without the consumer's consent or invitation.

Note: This subsection was inserted as a response to the decision of the Federal Court of Australia in *Australian Competition and Consumer Commission v A.C.N. 099 814 749 Pty Ltd* [2016] FCA 403.

(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:

(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

(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) before 9 am on any other day; or

(c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(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.

(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.

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.

(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

(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.

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 starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made;

(b) if the agreement was negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement;

(c) if one or more of sections 73 (permitted hours for negotiating an unsolicited consumer agreement), 74 (disclosing purpose and identity) and 75 (ceasing to negotiate on request) were contravened in relation to the agreement:

(i) if the agreement was not negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the period of 3 months starting on the day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the period of 3 months starting on the day after the

day on which the consumer was given the agreement document relating to the agreement;

(d) if one or more of section 76 (informing consumer of termination period), a provision of Subdivision C (requirements for unsolicited consumer agreements) and section 86 (prohibition on supplies etc.) were contravened in relation to the agreement:

(i) if the agreement was not negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the period of 6 months starting on the day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the period of 6 months starting on the day after the day on which the consumer was given the agreement document relating to the agreement;

(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).

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 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:

(i) if the agreement was not negotiated by telephone — the period starting on the day on

which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement; and

(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:

(i) if the agreement was not negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth 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.

(1) The supplier under an unsolicited consumer agreement must not:

(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:

(d) if the agreement was not negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or

(e) if the agreement was negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth 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

(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.

(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.

(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.

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 992A of the *Corporations Act 2001* applies.

Note: Section 992A of the *Corporations Act 2001* prohibits hawking of financial products.

Division 3 — Lay-by agreements

96 Lay-by agreements must be in writing etc.

(1) A supplier of 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 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 goods and a consumer for the supply, in trade or commerce, of the 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 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 goods to which the agreement relates are delivered to the consumer under the agreement.

(2) A supplier of 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 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 goods who is a party to a lay-by agreement must not terminate the agreement unless:

(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 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 3A — Gift cards

Subdivision A — Introduction

99A Meaning of *gift card*

A ***gift card*** is:

(a) an article (whether in physical or electronic form) that:

(i) is of a kind that is commonly known as a gift card or gift voucher; and

(ii) is redeemable for goods or services; or

(b) an article of a kind specified in regulations made for the purposes of this paragraph;

but does not include an article of a kind specified in the regulations.

Subdivision B — Requirements relating to gift cards

99B Gift cards to be redeemable for at least 3 years

(1) A person must not, in trade or commerce, supply a gift card to a consumer if the day that the gift card ceases to be redeemable is earlier than 3 years after the day of that supply.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If:

(a) a gift card is, in trade or commerce, supplied to a consumer; and

(b) the day that the gift card ceases to be redeemable is earlier than 3 years after the day of that supply;

the day that the gift card ceases to be redeemable is taken to be 3 years after the day of that supply.

(3) Subsection (2) does not affect a person's liability for an alleged contravention of subsection (1) or section 191A.

99C When gift card ceases to be redeemable to appear prominently on gift card

A person must not, in trade or commerce, supply a gift card to a consumer if one of the following does not appear prominently on the gift card:

(a) the date the gift card ceases to be redeemable;

(b) the month and year the gift card ceases to be redeemable;

(c) the date the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;

(d) the month and year the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;

(e) the words "no expiry date" or words to that effect.

Note: A pecuniary penalty may be imposed for a contravention of this section.

99D Terms and conditions not to allow post-supply fees

(1) A person must not, in trade or commerce, supply a gift card to a consumer if the terms or conditions (however described) of the gift card allow or require the payment of a post-supply fee in relation to the gift card.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A ***post-supply fee*** is a fee or charge payable in relation to a gift card after it is supplied to a consumer, other than a fee or charge of a kind specified in the regulations.

99E Post-supply fees not to be demanded or received

A person must not, in trade or commerce, demand or receive payment of a post-supply fee in relation to a gift card.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

99F Certain terms and conditions of gift card void

(1) A term or condition (however described) of a gift card is void if it has the effect of, or purports to have the effect of:

(a) allowing or requiring the payment of a post-supply fee in relation to the gift card; or

(b) reducing the period that the gift card ceases to be redeemable to a period that ends earlier than 3 years after the day the gift card is supplied to a consumer.

(2) The supplier of a gift card must ensure that the terms or conditions (however described) of the gift card do not include, or purport to include, a term or condition that is, or would be, void because of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) This section does not affect a person's liability for an alleged contravention of:

(a) section 99B(1); or

(b) section 99C; or

(c) section 99D(1); or

(d) section 99E; or

(e) section 191A; or

(f) section 191B; or

(g) section 191C; or

(h) section 191D.

Subdivision C — Miscellaneous

99G Regulations may limit application of this Division

The regulations may provide that some or all of the provisions of this Division do not apply to or in relation to:

(a) gift cards of a kind prescribed by the regulations; or

(b) persons of a kind prescribed by the regulations; or

(c) gift cards supplied in circumstances prescribed by the regulations.

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.

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.

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:

(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 goods supplied to a consumer.

(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.

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, for the purposes of preventing or reducing the risk of injury to any person, 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) Without limiting subsection (1), a safety standard for consumer goods of a particular kind may consist of requirements about the following matters:

(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 to accompany consumer goods of that kind;

(d) the form and content of warnings, instructions or other information about consumer goods of that kind.

(3) Without limiting subsection (1), a safety standard for product related services of a particular kind may consist of requirements about the following matters:

(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;

(d) the testing of such services;

(e) the form and content of warnings, instructions or other information about such services.

(4) A safety standard may also deal with matters incidental or related to preventing or reducing the risk of injury to any person.

(5) A safety standard may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing (an ***incorporated instrument***):

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(6) If:

(a) a safety standard makes provision in relation to a matter in accordance with subsection (5); and

(b) the incorporated instrument is prepared or approved by an Australian or international standards body;

the safety standard may also make provision in relation to any matter dealt with in the incorporated instrument.

[Section 104 amended: No. 136 of 2024 (Cth) Sch. 2 cl. 6-9 and 28.]

*[**105** Deleted: No. 136 of 2024 (Cth) Sch. 2 cl. 10.]*

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.

(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

(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

(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 Requirements relating to alternative methods of complying

(1) This section applies if:

(a) a safety standard for consumer goods, or product related services, 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.

(2) If:

(a) a person, in trade or commerce:

(i) has supplied, or offered for supply, goods or services of that kind; or

(ii) is supplying, or offering for supply, goods or services of that kind; or

(iii) intends to supply, or offer for supply, goods or services of that kind; and

(b) the regulator gives to the person a written request to nominate which of those sets of requirements the person has complied with, is complying with, or intends to comply with;

the person must, within the period specified in the request, give to the regulator a written notice nominating one of those sets of requirements.

Note 1: A pecuniary penalty may be imposed for a contravention of this subsection.

Note 2: A contravention of this subsection is an offence (see section 196).

(3) A person contravenes this subsection if:

(a) the person, in trade or commerce:

(i) has supplied, or offered for supply, goods or services of that kind; or

(ii) is supplying, or offering for supply, goods or services of that kind; and

(b) the person nominates a set of requirements, either by giving to the regulator a written notice under subsection (2) of this section or by other means; and

(c) those goods or services did not or do not comply with that set of requirements.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

[Section 108 inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 11.]

108A Requirement to give information or documents

If:

(a) a safety standard for consumer goods, or product related services, of a particular kind is in force; and

(b) a person, in trade or commerce:

(i) has supplied, or offered for supply, goods or services of that kind; or

(ii) is supplying, or offering for supply, goods or services of that kind; or

(iii) intends to supply, or offer for supply, goods or services of that kind; and

(c) the regulator gives to the person a written request for information or documents to determine whether the person has complied, is complying, or will comply with the standard;

the person must, within the period specified in the request, give to the regulator the requested information or documents.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

[Section 108A inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 11.]

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:

(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.

(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;

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***):

(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

(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.

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

(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.

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.

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 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 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;

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.

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:

(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.

(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:

(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;

(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;

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

(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 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;

(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

(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.

(3) This section also does not apply if 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 because it is reasonably necessary to protect public safety, to:

(a) any other agency within the meaning of the *Freedom of Information Act 1982*; or

(b) the Director of Public Prosecutions; or

(c) a State/Territory government body (within the meaning of section 155AAA of the Competition and Consumer Act); or

(d) a foreign government body (within the meaning of the Competition and Consumer Act).

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

(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, make an ***information standard*** in relation to the provision of information 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;

(g) require the making and keeping of records in relation to goods or services of that kind;

(h) require the provision of information to any person, including the regulator, in relation to goods or services of that kind.

(3) An information standard may also deal with matters incidental or related to the provision of information for goods or services of a particular kind.

(4) An information standard may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing (an ***incorporated instrument***):

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(5) If:

(a) an information standard makes provision in relation to a matter in accordance with subsection (4); and

(b) the incorporated instrument is prepared or approved by an Australian or international standards body;

the information standard may also make provision in relation to any matter dealt with in the incorporated instrument.

[Section 134 amended: No. 136 of 2024 (Cth) Sch. 2 cl. 12-15.]

*[**135** Deleted: No. 136 of 2024 (Cth) Sch. 2 cl. 16.]*

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.

(1A) Subsection (1) does not apply if the person failed to comply only with a provision of the standard that is specified by the standard to be a provision to which section 137AA applies.

(1B) A person who wishes to rely on subsection (1A) in proceedings bears an evidential burden in relation to that matter.

(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, 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.

[Section 136 amended: No. 136 of 2024 (Cth) Sch. 2 cl. 17.]

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:

(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.

(1A) Subsection (1) does not apply if the person failed to comply only with a provision of the standard that is specified by the standard to be a provision to which section 137AA applies.

(1B) A person who wishes to rely on subsection (1A) in proceedings bears an evidential burden in relation to that matter.

(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.

[Section 137 amended: No. 136 of 2024 (Cth) Sch. 2 cl. 18.]

137AA Other non-compliance with information standards

(1) A person contravenes this section if:

(a) an information standard for goods or services of a particular kind is in force; and

(b) the person, in trade or commerce, has supplied, or offered for supply, goods or services of that kind; and

(c) the person is subject to a requirement under a provision of the standard that is specified by the standard to be a provision to which this section applies; and

(d) the person engages in conduct in relation to the supply or offer; and

(e) the conduct contravenes the requirement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) Subsection (1) does not apply to goods that are intended to be used outside Australia.

(3) Subsections 136(6) and (7) apply for the purposes of this section in the same way those sections apply for the purposes of section 136.

[Section 137AA inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 19.]

137A Safe harbour for complying with information standards about free range eggs

(1) Neither section 18 nor paragraph 29(1)(a) or 151(1)(a) applies to a person in relation to the labelling or displaying of eggs as free range eggs if, when doing so, the person is complying with all requirements:

(a) specified in an information standard for eggs; and

(b) relating to the labelling or displaying of free range eggs, including requirements about:

(i) the use of the words “free range”; or

(ii) representing that eggs are free range eggs.

(2) If:

(a) proceedings are brought against a person in respect of section 18 or paragraph 29(1)(a) or 151(1)(a); and

(b) the person seeks to rely on subsection (1) of this section in the proceedings;

the person bears an evidential burden in relation to the matters set out in that subsection.

(3) An ***egg*** is an egg laid by a female domestic chicken (*Gallus gallus domesticus*).

(4) ***Free range egg*** has the meaning given by the information standard mentioned in paragraph (1)(a).

137B Requirement to give information or documents

If:

(a) an information standard for goods or services of a particular kind is in force; and

(b) a person, in trade or commerce:

(i) has supplied, or offered for supply, goods or services of that kind; or

(ii) is supplying, or offering for supply, goods or services of that kind; or

(iii) intends to supply, or offer for supply, goods or services of that kind; and

(c) the regulator gives to the person a written request for information or documents to determine whether the person has complied, is complying, or will comply with the standard;

the person must, within the period specified in the request, give to the regulator the requested information or documents.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

[Section 137B inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 20.]

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

(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.

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.

(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 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 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

(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.

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

(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).

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:

(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.

Penalty

(5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(6) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 151 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 34-36.]

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.

(2) Subsection (1) is an offence of strict liability.

Penalty

(2A) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(2B) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

Other

(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.

[Section 152 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 37-39.]

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.

(2) Subsection (1) is an offence of strict liability.

Penalty

(3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 153 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 40-42.]

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.

(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.

(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) Strict liability applies to subsections (1)(b) and (2)(b).

Penalty

(5A) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5B) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

Other

(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.

[Section 154 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 43-45.]

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.

(2) Subsection (1) is an offence of strict liability.

Penalty

(3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 155 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 46-48.]

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.

(2) Subsection (1) is an offence of strict liability.

Penalty

(3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 156 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 44-51.]

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

(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.

(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.

(3) Subsections (1) and (2) are offences of strict liability.

Penalty

(3A) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(3B) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

Defence

(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 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.

[Section 157 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 52-54.]

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.

(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.

(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

(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.

(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.

(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.

(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.

Penalty

(10A) An offence against subsection (1), (3), (5) or (7) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(10B) An offence against subsection (1), (3), (5) or (7) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

Other

(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.

[Section 158 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 55-57.]

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.

(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:

(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.

(3) Subsections (1) and (2) are offences of strict liability.

Penalty

(4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 159 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 58-60.]

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 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:

(i) the person had issued the card; or

(ii) the card was sent on behalf of the person who had issued the card.

(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.

(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.

(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.

Penalty

(7) An offence against subsection (1), (3) or (4) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(8) An offence against subsection (1), (3) or (4) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 161 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 61-63.]

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.

(2) A person commits an offence if the person, in trade or commerce, asserts a right to payment from another person for unsolicited services.

(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 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).

(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.

Penalty

(6) An offence against subsection (1), (2) or (3) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(7) An offence against subsection (1), (2) or (3) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 162 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 64-66.]

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.

(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).

(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.

(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.

Penalty

(5A) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5B) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

Other

(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.

[Section 163 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 67-69.]

Division 3 — Pyramid schemes

164 Participation in pyramid schemes

(1) A person commits an offence if the person participates in a pyramid scheme.

(2) A person commits an offence if the person induces another person to participate in a pyramid scheme.

(3) Subsections (1) and (2) are offences of strict liability.

Penalty

(4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 164 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 70-72.]

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 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.

(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:

(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.

Penalty

(8) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(9) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 166 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 73-75.]

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.

(2) Subsection (1) is an offence of strict liability.

Penalty

(3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 167 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 76-78.]

168 Harassment and coercion

(1) A person commits an offence if:

(a) the person uses physical force, or undue harassment or coercion; and

(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.

(2) Subsection (1) is an offence of strict liability.

Penalty

(2A) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(2B) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

Other

(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.

[Section 168 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 79-81.]

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

(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) before 9 am on any other day; or

(c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday).

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.

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.

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;

(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

(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

(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.

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.

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 etc.

(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

(b) the supply, acceptance or requirement occurs during:

(i) if the agreement was not negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone — the period starting on the day on which the agreement was made and ending at the end of the tenth 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.

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).

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 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 992A of the *Corporations Act 2001* applies.

Note: Section 992A of the *Corporations Act 2001* prohibits hawking of financial products.

Division 3 — Lay-by agreements

188 Lay-by agreements must be in writing etc.

(1) A supplier of 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 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 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.

(4) Subsections (1) and (3) are offences of strict liability.

190 Termination of lay-by agreements by suppliers

(1) A supplier of 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 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 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.

Division 3A — Gift cards

191A Gift cards to be redeemable for at least 3 years

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies a gift card to a consumer; and

(b) the day the gift card ceases to be redeemable is earlier than 3 years after the day of that supply.

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.

191B When gift card ceases to be redeemable to appear prominently on gift card

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies a gift card to a consumer; and

(b) one of the following does not appear prominently on the gift card:

(i) the date the gift card ceases to be redeemable;

(ii) the month and year the gift card ceases to be redeemable;

(iii) the date the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;

(iv) the month and year the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;

(v) the words “no expiry date” or words to that effect.

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.

191C Terms and conditions not to allow post-supply fees

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies a gift card to a consumer; and

(b) the terms or conditions (however described) of the gift card allow or require the payment of a post-supply fee in relation to the gift card.

Penalty:

(a) if the person is a body corporate — $30,000; or

(b) if the person is not a body corporate — $6,000.

(2) An offence against subsection (1) is an offence of strict liability.

191D Post-supply fees not to be demanded or received

(1) A person commits an offence if the person, in trade or commerce, demands or receives payment of a post-supply fee in relation to a gift card.

Penalty:

(a) if the person is a body corporate — $30,000; or

(b) if the person is not a body corporate — $6,000.

(2) An offence against subsection (1) is an offence of strict liability.

191E Regulations may limit the application of this Division

The regulations may provide that some or all of the provisions of this Division do not apply to or in relation to:

(a) gift cards of a kind prescribed by the regulations; or

(b) persons of a kind prescribed by the regulations; or

(c) gift cards supplied in circumstances prescribed by the regulations.

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.

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.

(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.

(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.

(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.

(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.

Penalty

(8) An offence against subsection (1), (2), (3) or (5) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(9) An offence against subsection (1), (2), (3) or (5) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 194 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 82-84.]

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.

(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.

(3) Subsections (1) and (2) are offences of strict liability.

Penalty

(4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 195 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 85-87.]

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 subsection 108(2).

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.

[Section 196 amended: No. 136 of 2024 (Cth) Sch. 2 cl. 21.]

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.

(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).

(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).

(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).

(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.

Penalty

(8) An offence against subsection (1), (2), (3) or (5) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(9) An offence against subsection (1), (2), (3) or (5) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 197 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 88-90.]

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.

(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).

(3) Subsections (1) and (2) are offences of strict liability.

Penalty

(4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 198 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 91-93.]

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

(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.

(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.

(3) Subsections (1) and (2) are offences of strict liability.

Penalty

(4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 199 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 94-96.]

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.

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.

(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.

(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.

(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.

(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.

Penalty

(9) An offence against subsection (1), (2) or (3) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(10) An offence against subsection (1), (2) or (3) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 203 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 97-99.]

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.

(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.

(3) Subsections (1) and (2) are offences of strict liability.

Penalty

(4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly

and that is reasonably attributable to the commission of the offence — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

(5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than $2,500,000.

[Section 204 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 100-102.]

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

(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.

(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 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 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

(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.

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.

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);

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

(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.

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:

(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.

(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.

(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.

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);

(iia) section 23(2A) or (2C) (which is about unfair terms in standard form consumer or small business contracts);

(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);

(va) section 99B(1), 99C, 99D(1), 99E or 99F(2) (which are about gift cards);

(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), 108(2) or (3), 108A, 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), 137(1) or (2), 137AA or 137B (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

(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:

Amount of pecuniary penalty

Item	For each act or omission to which this section applies that relates to	if the person is a body corporate — the pecuniary penalty is not to exceed …	if the person is not a body corporate — the pecuniary penalty is not to exceed …
1	a provision of Part 2-2	the greater of the amounts mentioned in subsection (3A)	$2,500,000
2A	section 23(2A) or (2C)	the greater of the amounts mentioned in subsection (3A)	$2,500,000
2	a provision of Part 3-1 (other than section 47(1))	the greater of the amounts mentioned in subsection (3A)	$2,500,000

Amount of pecuniary penalty			
Item	**For each act or omission to which this section applies that relates to**	**if the person is a body corporate — the pecuniary penalty is not to exceed …**	**if the person is not a body corporate — the pecuniary penalty is not to exceed …**
3	section 47(1)	$5,000	$1,000
4	section 66(2)	$50,000	$10,000
5	a provision of Division 2 of Part 3-2 (other than section 85)	$50,000	$10,000
6	a provision of Division 3 of Part 3-2 (other than section 96(2))	$30,000	$6,000
7	section 99B(1), 99C, 99D(1), 99E or 99F(2)	$30,000	$6,000
8	section 100(1) or (3) or 101(3) or (4)	$15,000	$3,000
9	section 102(2) or 103(2)	$50,000	$10,000
10	section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5) or 119(1) or (2)	the greater of the amounts mentioned in subsection (3A)	$2,500,000
10A	section 108(2)	$50,000	$10,000
10B	section 108(3)	$250,000	$50,000
10C	section 108A	$50,000	$10,000
11	section 125(4)	$16,500	$3,300

Amount of pecuniary penalty			
Item	**For each act or omission to which this section applies that relates to**	**if the person is a body corporate — the pecuniary penalty is not to exceed …**	**if the person is not a body corporate — the pecuniary penalty is not to exceed …**
12	section 127(1) or (2)	the greater of the amounts mentioned in subsection (3A)	$2,500,000
13	section 128(2) or (6), 131(1) or 132(1)	$16,500	$3,300
14	section 136(1), (2) or (3) or 137(1) or (2)	the greater of the amounts mentioned in subsection (3A)	$2,500,000
14A	section 137AA or 137B	$50,000	$10,000
15	section 221(1)	$16,500	$3,300
16	section 222(1)	$27,500	$5,500

(3A) For the purposes of items 1, 2A, 2, 10, 12 and 14 of the table in subsection (3), the amounts are as follows:

(a) $50,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the act or omission — 3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit — 30% of the body corporate's adjusted turnover during the breach turnover period for the act or omission.

(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.

[Section 224 amended: No. 54 of 2022 (Cth) Sch. 1 cl. 103-105 and Sch. 2 cl. 11-13; No. 136 of 2024 (Cth) Sch. 2 cl. 22-26.]

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);

(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.

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.

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.

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) deleted]

(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

(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.

[Section 232 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 14.]

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).

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.

(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-parties

[Heading amended: No. 54 of 2022 (Cth) Sch. 2 cl. 61.]

[Subdivision A heading deleted: No. 54 of 2022 (Cth) Sch. 2 cl. 15.]

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 another person has engaged in conduct in contravention of a provision of Chapter 2, 3 or 4; or

(b) on the application of the regulator made on behalf of, and with the consent in writing 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: 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.

(3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the cause of action accrued that relates to the conduct referred to in that subsection.

[Section 237 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 16-18.]

238 Compensation orders etc. arising out of other proceedings

(1) If:

(a) a proceeding is instituted in a court under a provision of Chapter 4 or this Chapter (other than this section); and

(b) the court finds that a party to the proceeding (the ***injured person***) has suffered loss or damage, or is likely to suffer loss or damage, because another person has engaged in conduct in contravention of a provision of Chapter 2, 3 or 4;

the court may make such order or orders as it thinks appropriate against the other person, or against 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.

[Section 238 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 19.]

[Subdivision B heading deleted: No. 54 of 2022 (Cth) Sch. 2 cl. 20.]

239 Orders to redress etc. loss or damage suffered by non-parties

(1) If:

(a) a person:

(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 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-parties 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: 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-parties 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-parties in relation to the contravening conduct or declared term.

(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.

[Section 239 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 21 and 63-64.]

240 Determining whether to make a redress order etc. for non-parties

(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-parties 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-parties 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-parties 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.

[Section 240 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 65-66.]

241 When a non-party is bound by a redress order etc.

(1) A non-party 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 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

(b) the non-party 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.

(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 in relation to that loss or damage.

[Section 241 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 67-68.]

[Subdivision C Heading deleted: No. 54 of 2022 (Cth) Sch. 2 cl. 22.]

*[**242.** Deleted: No. 54 of 2022 (Cth) Sch. 2 cl. 23.]*

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

(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.

243A Orders made in favour of party to contract containing unfair term

(1) If a declaration has been made under section 250 in relation to a term (the ***declared term***) of a contract, a court may:

(a) on the application of a party to the contract; or

(b) on the application of the regulator made on behalf of, and with the consent in writing of, one or more parties to the contract;

make against a party (the ***respondent***) to the contract who is advantaged by the declared term such order or orders (other than an award of damages) as the court thinks appropriate:

(c) to redress, in whole or in part, loss or damage that has been caused to any person by the declared term; or

(d) to prevent or reduce loss or damage that is likely to be so caused.

(2) Without limiting subsection (1), the orders that a court may make against the respondent include all or any of the following:

(a) an order declaring the whole or any part of the contract, or of a collateral arrangement relating to the contract:

(i) to be void; and

(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 the contract, or such a collateral arrangement, as 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 the contract, or of such a collateral arrangement.

(3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the declaration under section 250 was made.

[Section 243A inserted: No. 54 of 2022 (Cth) Sch. 2 cl. 24.]

243B Orders made on application of the regulator to prevent and remedy unfair contract terms

(1) If a declaration has been made under section 250 in relation to a term (the ***declared term***) of a contract, a court may, on the application of the regulator, make against a party (the ***respondent***) to the contract who is advantaged by the declared term such order or orders (other than an award of damages) as the court thinks appropriate:

(a) to prevent a term (a ***similar term***) that is the same, or substantially similar, in effect to the declared term from being included in any future contract:

(i) to which the respondent is a party; and

(ii) that is a consumer contract or small business contract; and

(iii) that is a standard form contract; or

(b) to redress, in whole or in part, loss or damage that has been caused, or to prevent or reduce loss or damage that is likely to be caused, to any person by a similar term that is included in any existing contract:

(i) to which the respondent is a party; and

(ii) that is a consumer contract or small business contract; and

(iii) that is a standard form contract;

whether or not the future or existing contract is identifiable when the court makes the order or orders.

(2) Without limiting subsection (1), the orders that a court may make against the respondent include all or any of the following:

(a) an injunction restraining the respondent from making any future contract that is of the kind referred to in paragraph (1)(a) and includes a similar term;

(b) an injunction restraining the respondent from applying or relying on a similar term of any existing contract that is of the kind referred to in paragraph (1)(b);

(c) an order declaring the whole or any part of any existing contract of the kind referred to in paragraph (1)(b), or of a collateral arrangement relating to such a contract:

(i) to be void; and

(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);

(d) an order:

(i) varying such an existing contract, or such a collateral arrangement, as 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);

(e) an order refusing to enforce any or all of the provisions of such an existing contract, or of such a collateral arrangement.

(3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the declaration under section 250 was made.

(4) An order made under this section against the respondent binds a person affected by the order, even if the person is not a party to the proceedings in which the order is made.

[Section 243B inserted: No. 54 of 2022 (Cth) Sch. 2 cl. 24.]

*[**244.** Deleted: No. 54 of 2022 (Cth) Sch. 2 cl. 24.]*

245 Interaction with other provisions

(1) An application may be made under section 237(1), 239(1), 243A(1) or 243B(1) even if an enforcement proceeding in relation to the conduct or term referred to in that section has not been instituted.

(2) A court may make an order under a provision of this Division whether or not the court:

(a) grants an injunction under Division 2; or

(b) makes an order under any other provision of this Division or under section 236, 246, 247 or 248.

(3) Nothing in this Division limits the generality of Division 2.

[Section 245 inserted: No. 54 of 2022 (Cth) Sch. 2 cl. 24.]

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;

(aa) an order requiring the person, at the person's expense, to engage:

(i) another person specified in the order; or

(ii) another person in a class of persons specified in the order;

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

(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.

(2A) An order under subsection (2)(aa) is not enforceable against a person mentioned in subsections (2)(aa)(i) and (ii).

(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 2-3 or Chapter 3; or

(b) has committed an offence against Chapter 4.

(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.

[Section 247 inserted: No. 54 of 2022 (Cth) Sch. 2 cl. 25.]

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);

(ia) a provision of Part 2-3 (which is about unfair contract terms);

(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

(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.

[Section 248 inserted: No. 54 of 2022 (Cth) Sch. 2 cl. 26.]

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.

(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 and small business contracts

(1) The Court may declare that a term of a consumer contract is an unfair term, on application by:

(a) a party to the contract; or

(b) the regulator.

(2) The Court may declare that a term of a small business contract is an unfair term, on application by:

(a) a party to the contract, if the party was covered by paragraph 23(4)(b) at the time the contract was entered into; or

(b) the regulator.

(3) Subsections (1) and (2) do not apply unless the contract is a standard form contract.

(4) Subsections (1) and (2) do not apply if Part 2-3 does not apply to the contract.

(5) Subsections (1) and (2) do not limit any other power of the court to make declarations.

[Section 250 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 48.]

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

(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.

(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, 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.

Country of origin representations

Item	Representation	Requirements to be met
1	A representation that goods were grown in a particular country	(a) each significant ingredient or significant component of the goods was grown in that country; and (b) all, or virtually all, processes involved in the production or manufacture of the goods happened in that country.
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

Country of origin representations

Item	Representation	Requirements to be met
		(b) all, or virtually all, processes involved in the production or manufacture of the goods happened in that country.
3	A representation that goods were made or manufactured in, or otherwise originate in, a particular country	(a) the goods were last substantially transformed in that country; and (b) the representation is not a representation to which item 1 or 2 of this table applies.
4	A representation in the form of a mark specified in an information standard relating to country of origin labelling of goods	the requirements under the information standard relating to the use of that mark.

(2) Goods were ***substantially transformed*** in a country if:

(a) the goods met, in relation to that country, the requirements of item 1 or 2 in the second column of the table in subsection (1); or

(b) as a result of one or more processes undertaken in that country, the goods are fundamentally different in identity, nature or essential character from all of their ingredients or components that were imported into that country; or

(c) the goods underwent in that country one or more processes prescribed by the regulations.

(3) Without limiting subsection (2), the regulations:

(a) may prescribe (in relation to particular classes of goods or otherwise) processes or combinations of processes that, for the purposes of that subsection, do not have the result described in subsection (2)(b); and

(b) may include examples (in relation to particular classes of goods or otherwise) of processes or combinations of processes that, for the purposes of that subsection, have the result described in subsection (2)(b).

(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".

(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 item 1 of the table in subsection (1) in relation to particular goods, packaging materials are not treated as ingredients or components of the goods.

(9) For the purposes of item 1 of the table in subsection (1) in relation to an ingredient or component, water added to the ingredient or component is treated as having the same origin as the ingredient or component, regardless of its actual origin, if:

(a) the ingredient or component has been dried or concentrated by the evaporation of water; and

(b) the added water returns the water content of the ingredient or component to no more than its natural level.

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:

(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

(1) 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

(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.

(2) A failure to comply with a guarantee referred to in section 259(1)(b) that applies to a supply of goods is also a ***major failure*** if:

(a) the failure is one of 2 or more failures to comply with a guarantee referred to in section 259(1)(b) that apply to the supply; and

(b) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of those failures, taken as a whole.

Note: The multiple failures do not need to relate to the same guarantee.

(3) Subsection (2) applies regardless of whether the consumer has taken action under section 259 in relation to any of the failures.

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

(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

(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.

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, 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 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

(1) 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 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.

(2) A failure to comply with a guarantee referred to in section 267(1)(b) that applies to a supply of services is also a ***major failure*** if:

(a) the failure is one of 2 or more failures to comply with a guarantee referred to in section 267(1)(b) that apply to the supply; and

(b) the services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of those failures, taken as a whole.

Note: The multiple failures do not need to relate to the same guarantee.

(3) Subsection (2) applies regardless of whether the consumer has taken action under section 267 in relation to any of the failures.

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

(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.

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:

(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:

(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

(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;

(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.

(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).

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.

(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

(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 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).

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;

(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:

(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:

(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 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.

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

(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.

Chapter 6 — Application and transitional provisions

Part 1 — Application and transitional provisions relating to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*

288 Application of amendments relating to lay-by agreements

The amendments made by items 1 to 8 and 10 to 15 of Schedule 7 to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* apply to lay-by agreements entered into on or after the commencement of those items.

289 Application of amendment relating to repairs

The amendment made by item 9 of Schedule 7 to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* applies to notices to be given in relation to the repair of goods accepted on or after the commencement of that item.

290 Saving of regulations relating to repairs

Despite the amendment made to subsection 103(1) of Schedule 2 to the *Competition and Consumer Act 2010* by item 9 of Schedule 7 to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*, regulations that:

(a) were made for the purposes of that subsection; and

(b) were in force immediately before the commencement of that item;

continue in force (and may be dealt with) as if they were made for the purposes of that subsection as amended by that item.

Part 1A — Application provision relating to the *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015*

290A Application

(1) The amendments made by Schedule 1 to the *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* apply in relation to a contract entered into on or after the commencement of that Schedule.

(2) The amendments do not apply to a contract entered into before the commencement of that Schedule. However:

(a) if the contract is renewed on or after that commencement — the amendments apply 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 — the amendments apply 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 and after the variation day.

(3) If paragraph (2)(b) of this section applies to a term of a contract, subsection 23(2) and section 27 apply to the contract.

(4) Despite paragraphs (2)(a) and (b) and subsection (3) of this section, the amendments do not apply to a contract, or a term of a contract, to the extent that the operation of the amendments would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person

otherwise than on just terms (within the meaning of that paragraph of the Constitution).

Part 2 — Application and transitional provisions relating to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017*

291 Application of amendments relating to confidentiality of notices

The amendment made by Part 4 of Schedule 14 to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* applies in relation to disclosures made on or after the commencement of that Part that relate to notices given on or after the commencement of that Part.

292 Application of amendments relating to prohibition on supplies

The amendments made by Part 6 of Schedule 14 to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* apply in relation to unsolicited consumer agreements made on or after the commencement of that Part.

Part 3 — Application provision relating to the *Treasury Laws Amendment (2018 Measures No. 3) Act 2018*

295 Application of amendments

The amendments made by Schedule 1 to the *Treasury Laws Amendment (2018 Measures No. 3) Act 2018* apply in relation to acts or omissions that occur on or after the commencement of that Schedule.

Part 4 — Application provisions relating to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018*

296 Application — listed public companies

The amendments made by items 4 and 5 of Schedule 2 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to acts or omissions on or after the day that Schedule commences.

297 Application — unsolicited supplies

The amendments made by Schedule 3 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to acts or omissions on or after the day that Schedule commences.

298 Application — unsolicited consumer agreements

The amendment made by Schedule 4 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* applies in relation to acts or omissions that relate to agreements entered into on or after the day that Schedule commences.

299 Application — single price

The amendments made by Schedule 5 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to acts or omissions on or after the day that is 12 months after the day that Schedule commences.

300 Application — non-punitive orders

The amendments made by Schedule 8 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply

in relation to orders relating to acts or omissions on or after the day that Schedule commences.

301 Application — guarantees relating to the supply of services

The amendments made by Schedule 9 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to services supplied under a contract entered into on or after the day that Schedule commences.

Part 5 — Application and transitional provisions relating to the *Treasury Laws Amendment (Gift Cards) Act 2018*

302 Application of amendments relating to gift cards

The amendments made by Schedule 1 to the *Treasury Laws Amendment (Gift Cards) Act 2018* apply to gift cards supplied on or after 1 November 2019.

Part 6 — Application and transitional provisions relating to the *Treasury Laws Amendment (2020 Measures No. 6) Act 2020*

303 Application of amendments relating to multiple non-major consumer guarantee failures

(1) The amendments made by Part 1 of Schedule 4 to the *Treasury Laws Amendment (2020 Measures No. 6) Act 2020* apply in relation to goods supplied under a contract entered into on or after the day that that Part commences.

(2) The amendments made by Part 1 of Schedule 4 to the *Treasury Laws Amendment (2020 Measures No. 6) Act 2020* apply in relation to services supplied under a contract entered into on or after the day that that Part commences.

[Section 303 amended: No. 54 of 2022 (Cth) Sch. 2 cl. 77.]

Part 7 — Application provision relating to the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*

[Heading inserted: No. 54 of 2022 (Cth) Sch. 1 cl. 108.]

304 Application of amendments relating to penalties

The amendments made by Part 4 of Schedule 1 to the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* apply in relation to offences committed, or acts or omissions that occurred, on or after the commencement of that Schedule.

[Section 304 inserted: No. 54 of 2022 (Cth) Sch. 1 cl. 108.]

305 Application of amendments relating to unfair contract terms

(1) This section applies to the amendments of this Schedule made by Schedule 2 (the ***amending Schedule***) to the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*.

(2) The amendments:

(a) apply in relation to a contract made at or after the commencement (the ***relevant commencement***) of the amending Schedule; and

(b) do not apply to a contract (an ***existing contract***) made before the relevant commencement, except as provided in this section.

(3) If an existing contract is renewed at or after the relevant commencement, the amendments apply 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.

(4) If an existing contract is varied at or after the relevant commencement by varying or adding a term and subsection (3) has not already applied in relation to the contract:

(a) the amendments apply to the term as varied or added, and so apply:

(i) on and from the day (the ***variation day***) on which the variation of the contract takes effect; and

(ii) as if the contract as varied had been made on the variation day; and

(iii) in relation to conduct that occurs on and after the variation day; and

(b) section 23(2A)(e) applies in relation to a person proposing the varied or added term, whether before, at or after the relevant commencement; and

(c) subsection 23(2), and section 27, as in force at and after the relevant commencement, apply to the contract.

(5) If a contract is made or renewed at or after the relevant commencement, section 23(2A)(e) applies in relation to a person proposing a term of the contract, whether before, at or after the relevant commencement.

(6) Despite subsections (3) to (5) of this section, the amendments do not apply to a contract, or a term of a contract, to the extent that the operation of the amendments would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

[Section 305 inserted: No. 54 of 2022 (Cth) Sch. 2 cl. 78.]

Part 8 — Application and saving provisions relating to the *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024*

[Heading inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 27.]

306 Definitions

In this Part:

amending Schedule means Schedule 2 to the *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024*.

[Section 306 inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 27.]

307 Saving — safety standards declared by the Minister

Despite the repeal of section 105 by the amending Schedule, a safety standard that:

(a) was declared for the purposes of that section; and

(b) was in force immediately before the commencement of Part 1 of the amending Schedule;

continues in force (and may be dealt with) on and after the commencement of Part 1 of the amending Schedule as if it were made for the purposes of section 104, as amended by the amending Schedule.

[Section 307 inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 27.]

308 Application — nomination and compliance with safety standards

(1) Despite the repeal of section 108 by the amending Schedule, that section continues to apply in relation to requests given by the regulator before the commencement of Part 1 of the amending Schedule, as if that repeal had not happened.

(2) Section 108, as inserted by the amending Schedule, applies in relation to safety standards made before, on or after the commencement of Part 1 of the amending Schedule.

[Section 308 inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 27.]

309 Application — requests for information or documents

Sections 108A and 137B, as inserted by the amending Schedule, apply in relation to safety standards and information standards made before, on or after the commencement of Part 1 of the amending Schedule.

[Section 309 inserted: No. 136 of 2024 (Cth) Sch. 2 cl. 27.]

Notes

This is a compilation of the *Australian Consumer Law (WA)* that is part of the *Fair Trading Act 2010*. This is a version of the *Australian Consumer Law (WA)* as at the date specified below. See the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Australian Consumer Law (WA) [1, 2]			1 Jan 2011 (see *Fair Trading Act 2010* s. 2(b) and *Gazette* 24 Dec 2010 p. 6805)
Australian Consumer Law (WA) [3]			1 Jan 2013 (see *Fair Trading Amendment Act 2013* s. 5)
Australian Consumer Law (WA) [4]			26 Oct 2018 (see *Fair Trading Amendment Act 2019* s. 4)
Australian Consumer Law (WA) [5]			1 Jun 2021 (see *Fair Trading Amendment Act 2022* s. 5)
Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (Cth) [6]	54 of 2022 (Cth Act)	9 Nov 2022	1 Jul 2023 (see *Fair Trading Act (Amending Law) Proclamation 2023* WA SL 2023/97)
Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024 (Cth) [6] Sch. 2 it. 4-28	136 of 2024 (Cth Act)	10 Dec 2024	27 Nov 2025 (see *Fair Trading Act (Amending Law) Proclamation 2025* WA SL 2025/190)

Other notes

[1] The Australian Consumer Law text applies as a law of Western Australia under the *Fair Trading Act 2010* and may be referred to as the *Australian Consumer Law (WA)*. Section 19(1) of that Act provides that the Australian Consumer Law text consists of:

(a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth) (the **Cth Act**), as in force on 1 June 2021 and as amended by each provision that —

(i) is in an amending law that has effect for the purposes of section 19 of the Act under section 19B; and

(ii) has come into operation for the purposes of section 19 of the Act under section 19C;

and

(b) the regulations made under section 139G of the Cth Act, as those regulations are in force from time to time, subject to section 19(1A) of the Act.

Regulations may also be made under the *Fair Trading Act 2010* section 116(3) that alter the operation of certain provisions of the *Australian Consumer Law (WA)*.

The Australian Consumer Law text, in so far as it constitutes Schedule 2 to the Cth Act, is part of the *Fair Trading Act 2010*.

The Australian Consumer Law text, in so far as it constitutes regulations made under section 139G of the Cth Act, is subsidiary legislation for the purposes of the *Fair Trading Act 2010*. Regulations made under section 139G of the Cth Act can be accessed at https://www.legislation.gov.au.

[2] The Australian Consumer Law began to apply in WA when the *Fair Trading Act 2010* section 19 as originally enacted commenced on 1 Jan 2011. See this version of the *Australian Consumer Law (WA)*.

[3] In 2013, an amendment to the *Fair Trading Act 2010* s. 19 provided that the version of the Australian Consumer Law that applied in WA was Schedule 2 to the Cth Act as in force on 1 Jan 2013. See this version of the *Australian Consumer Law (WA)*.

[4] In 2019, an amendment to the *Fair Trading Act 2010* s. 19 provided that the version of the Australian Consumer Law that applied in WA was Schedule 2 to the Cth Act as in force on 26 Oct 2018. See this version of the *Australian Consumer Law (WA)*.

[5] In 2022, an amendment to the *Fair Trading Act 2010* s. 19 provided that the version of the Australian Consumer Law that applied in WA was Schedule 2 to the Cth Act as in force on 1 Jun 2021 and subsequently amended as set out under note 1. See this version of the *Australian Consumer Law (WA)*.

[6] Under the *Fair Trading Act 2010* s. 19A and 19C, the following Commonwealth amending laws were tabled in the WA Parliament and proclaimed to commence in WA.

Table of Commonwealth amending laws

Act Name	Tabled in WA Parliament	Proclamation published in WA
Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (Cth)	14 Feb 2023	*Fair Trading Act (Amending Law) Proclamation 2023*

Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024 (Cth)	17 Jun 2025	*Fair Trading Act (Amending Law) Proclamation 2025*

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)
ABN	2(1)
acceptable quality	2(1), 54(2)
ACN	2(1)
acquire	2(1)
acquirer	22(2)
adjusted turnover	2(1)
adverse publicity order	2(1), 247(2)
affected person	2(1)
agreement document	2(1), 78(2)
amending Schedule	305(1), 306
applicable industry code	2(1)
application law	2(1)
article	2(1)
ASIC	2(1)
assert a right to payment	2(1), 10(1)
associate regulator	2(1)
authority	2(1)
authority of the Commonwealth	2(1)
banker	2(1)
banned goods	112(1), 114(1)
banned services	112(2), 114(2)
ban period	2(1), 111(1)
breach turnover period	2(1)
business	2(1)
business day	2(1)
business or professional relationship	2(1)
buyer	64A(4)
call on	2(1)
claimant	236(1)
Commission	2(1)
Commonwealth ban	112(1) and (2)
Commonwealth mandatory standard	2(1)
Commonwealth Minister	2(1)
Commonwealth recall notice	126
Competition and Consumer Act	2(1)
consumer	2(1), 3(1) and (3)
consumer contract	2(1), 23(3)
consumer goods	2(1)
consumer protection breach	225(1)

continuing credit contract ..... 2(1), 14(1)
contravening conduct ..... 2(1), 239(1)
court ..... 2(1)
covering ..... 2(1)
credit agreement ..... 14(1)
credit card ..... 2(1), 39(5)
credit dealing ..... 14(1)
creditor ..... 14(1)
credit provider ..... 2(1)
customer ..... 22(1), 36(6), 157(4), 158(9)
dealer ..... 2(1), 71
debit card ..... 2(1), 39(6)
declared term ..... 2(1), 239(1), 243A(1), 243B(1)
defective goods action ..... 2(1)
defendant ..... 157(4), 213, 227, 284(1)
disclosed purpose ..... 2(1), 55(2)
displayed price ..... 2(1), 47(2)
document ..... 2(1)
egg ..... 2(1), 137A(3)
enforcement proceeding ..... 2(1)
evidential burden ..... 2(1)
existing contract ..... 305(2)
express warranty ..... 2(1)
financial product ..... 2(1)
financial service ..... 2(1)
first body ..... 229(1)
first person ..... 7(1)
free item ..... 2(1)
free range egg ..... 2(1), 137A(4)
gift card ..... 2(1), 99A
goods ..... 2(1)
grown ..... 2(1), 255(7)
GST ..... 2(1)
incorporated instrument ..... 104(5), 134(4)
industry code ..... 2(1)
information provider ..... 2(1), 19(5) and (6)
information standard ..... 2(1), 134(1)
injured person ..... 237(1), 238(1), 243
inner container ..... 2(1)
interest ..... 2(1)
interim ban ..... 2(1), 109(1) and (2)
involved ..... 2(1)
joint liability proceedings ..... 2(1)
label ..... 2(1)

lay-by agreement ..... 2(1), 96(3)
linked credit contract ..... 2(1), 278(2)
linked credit provider ..... 2(1)
loan contract ..... 2(1)
major failure ..... 2(1), 260(1) and (2), 268(1) and (2)
mandatory standard ..... 2(1)
manufacturer ..... 2(1), 7(1)
market ..... 2(1)
materials ..... 2(1)
mixed supply ..... 2(1), 3(11)
National Credit Code ..... 2(1)
negotiated by telephone ..... 2(1), 78(3)
negotiation ..... 2(1), 72
new participant ..... 2(1), 45(2)
non-linked credit contract ..... 2(1), 287(5)
non-party ..... 2(1)
original ban ..... 112(1) and (2)
original consumer ..... 91(1), 92, 184(1), 185
original recall notice 126
original services 11
original supplier ..... 11, 91(2), 184(2)
participant ..... 2(1)
participate ..... 2(1), 44(3)
participation payment ..... 2(1), 45(1)
permanent ban ..... 2(1), 114(1) and (2)
plaintiff ..... 148(3)
post-supply fee ..... 2(1), 99D(2)
premises ..... 2(1)
price ..... 2(1)
prior negotiations or arrangements ..... 2(1)
product related service ..... 2(1)
proof of transaction ..... 2(1), 100(4)
prospective consumer ..... 75(1), 172(1)
publicised goods or services ..... 19(3), 38(3), 160(3)
publicised interests in land ..... 19(4), 38(4), 160(4)
publish ..... 2(1)
pyramid scheme ..... 2(1), 45(1)
recalled goods 126
recall notice ..... 2(1), 122(1)
recovery period ..... 2(1), 41(4)
recruitment payment ..... 2(1), 45(1)
regulations ..... 2(1)
regulator ..... 2(1)
rejection period ..... 2(1), 262(2)

related ..... 2(1), 6(1)
related contract or instrument ..... 2(1), 83(2)
related supply ..... 278(1)
relevant commencement ..... 305(2)
rely on ..... 2(1)
renewal day ..... 290A(2), 305(3)
repairer ..... 103(2)
respondent ..... 243, 243A(1), 243B(1)
responsible Minister ..... 2(1)
safety defect ..... 2(1), 9(1)
safety standard ..... 2(1), 104(1)
sale by auction ..... 2(1)
send ..... 2(1)
sender ..... 2(1)
sent ..... 2(1)
serious injury or illness ..... 2(1)
services ..... 2(1)
share ..... 2(1)
ship ..... 2(1)
similar term ..... 243B(1)
single price ..... 2(1), 48(7)
small business contract ..... 2(1), 23(4)
standard form contract ..... 2(1)
start day ..... 111(1)
substantially transformed ..... 2(1), 255(2)
substantiation notice ..... 2(1)
substantiation notice compliance period ..... 2(1), 221(2)
supplied ..... 2(1)
supplier ..... 2(1), 22(1) and (2), 51(1), 52(1) and (3), 53(1) and (3), 55(1), 61(1) and (2), 62, 100(1) and (2), 101(1), 131(1), 132(1), 136(8), 137(3), 259(1), 67(1), 270(1), 274(1) and (2), 276A(1), 278(2), 287(5)
suppliers ..... 66(1)
supply ..... 2(1)
supply of limited title ..... 2(1), 51(2)
telecommunications service ..... 2(1), 65(2)
termination charge ..... 2(1), 97(2)
termination period ..... 2(1)
tied continuing credit contract ..... 2(1)
tied loan contract ..... 2(1)
trade or commerce ..... 2(1)
transparent ..... 2(1), 24(3)
unfair ..... 2(1), 24(1)
unsolicited consumer agreement ..... 2(1), 69(1), (3) and (4)

unsolicited goods ..... 2(1)
unsolicited services ..... 2(1)
upfront price..... 2(1), 26(2)
variation day .....290A(2), 305(4)
warranty against defects..... 2(1), 102(3)

© State of Western Australia 2025.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia 2025.
By Authority: ROGER JACOBS, Acting Government Printer