

Fair Trading Act 2010

Compare between:

[08 Dec 2010, 00-a0-02] and [01 Jan 2011, 00-b0-04]

Fair Trading Act 2010

An Act to —

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

Part 1 — Preliminary

1. **Short title**

This is the Fair Trading Act 2010.

2. Commencement

This Act comes into operation as follows —

- sections 1 and 2 on the day on which this Act receives the Royal Assent;
- the rest of the Act on a day fixed by proclamation, and different days may be fixed for different provisions.

[3. Has not come into operation ².]

[Parts 2-10 have not come into operation ².]

[Schedule 1 has not come into operation ².]

Notes

This is a compilation of the Fair Trading Act 2010 ^{1a}. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
Fair Trading Act 2010 s. 1 and 2	57 of 2010	8 Dec 2010	8 Dec 2010 (see s. 2(a))

On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Fair Trading Act 2010 s, 3, Pt. 2-10 and Sch. 1-2	57 of 2010	8 Dec 2010	To be proclaimed (see s. 2(b))
Acts Amendment (Fair Trading) Act 2010 Pt. 2 ³	58 of 2010	8 Dec 2010	To be proclaimed (see s. 2(c))

On the date as at which this compilation was prepared, the Fair Trading Act 2010 s. 3, Pt. 2-10 and Sch. 1 had not come into operation. They read as follows:

3. Object

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

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Part 2 — Interpretation and application

Division 1 — General interpretation

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

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

5. **Application of this Division**

- Sections 6 to 9 apply to this Act other than Part 3 and the (1) Australian Consumer Law (WA).
- (2) Section 17 applies to the interpretation of terms used in Part 3 and the Australian Consumer Law (WA).

6. Terms used

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

acquire includes —

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

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

business includes —

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

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

consumer has the meaning given in section 7;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

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

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

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

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

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

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

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

services has the meaning given in section 8;

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

supply includes —

- in relation to goods
 - supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

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(ii) exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade;

and

- (b) in relation to services — provide, grant or render for valuable consideration; and
- in relation both to goods and to services donate for promotional purposes;

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

7. Meaning of consumer

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

consumer means —

- a person who purchases or takes on hire or lease, or is a potential purchaser or hirer or lessee of, or borrows money for the purpose of purchasing, goods otherwise than for resale or letting on hire or leasing; or
- (b) a person who uses or is a potential user of, or borrows money for the purpose of using, any service rendered for fee or reward; or
- a person who purchases or is the potential purchaser of, (c) or borrows money for the purpose of purchasing, an estate or interest in any land or building otherwise than for resale, letting or leasing; or
- (d) a person who becomes a tenant or lessee of, or is a potential tenant or lessee of, any land or building or part of a building otherwise than for assignment or underletting.

- However, a person who carries on a trade or business is not a consumer for the purposes of subsection (1) in respect of or in relation to
 - goods purchased or taken on hire or lease by that person, (a) or of which that person is a potential purchaser, hirer or lessee, in the course of or for the purpose of the carrying on of that trade or business;
 - a service used by that person, or of which the person is a (b) potential user, in the course of or for the purpose of the carrying on of that trade or business;
 - an estate or interest in land or a building purchased by that person, or of which the person is a potential purchaser, in the course of or for the purpose of the carrying on of that trade or business;
 - any land or building or part of a building of which the (d) person becomes the tenant or lessee, or is a potential tenant or lessee, in the course of or for the purpose of the carrying on of that trade or business.
- A person who carries on an agricultural, apicultural, pastoral, horticultural, orcharding, viticultural or other farming undertaking does not carry on a trade or business for the purposes of subsection (2).

8. Meaning of services

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

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce.

- Without limiting the generality of subsection (1), the definition (2) of *services* includes the rights, benefits, privileges and facilities that are, or are to be, provided, granted or conferred under
 - 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) the provision of gas or electricity or the provision of any other form of energy; or
 - (iii) the provision for reward of lodging or accommodation; or
 - the provision, or making available for use, of (iv) facilities for amusement, entertainment, recreation or instruction; or
 - the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

or

- (b) a contract of insurance; or
- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- a contract for or in relation to the lending of money. (d)
- (3) The definition of *services* does not include rights or benefits being the supply of goods or the performance of work under a contract of service.
- (4) Legal services as defined in the Legal Profession Act 2008 section 3 are not services for the purposes of this section.

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- (1) In this Act (other than Part 3 and the *Australian Consumer Law (WA)*), unless the contrary intention appears
 - (a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods; and
 - (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods upon a supply of the goods; and
 - (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services; and
 - (d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both; and
 - (e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods or other property or other services; and
 - (f) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods or services; and
 - (g) a reference to goods or services includes a reference to goods and services; and
 - (h) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether or not the agreement is in writing or evidenced by writing.
- (2) For the purposes of this Act (other than Part 3 and the *Australian Consumer Law (WA)*) —

General interpretation

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- the obtaining of credit by a person in connection with the acquisition of goods or services by the person is an acquisition by the person of services; and
- any amount by which the price of the goods or services (b) is increased because credit was obtained is the price of the services represented by the obtaining of credit.
- In this Act (other than Part 3 and the Australian Consumer (3) Law(WA))
 - a reference to engaging in conduct is to be read as a reference to doing or refusing to do any act, including
 - the making of, or the giving effect to a provision of, a contract or arrangement; or
 - (ii) the arriving at, or the giving effect to a provision of, an understanding;

and

- a reference to conduct, when that expression is used as a (b) noun otherwise than as mentioned in paragraph (a), is to be read as a reference to the doing of or the refusing to do any act, including
 - the making of, or the giving effect to a provision of, a contract or arrangement; or
 - the arriving at, or the giving effect to a provision (ii) of, an understanding;

and

- a reference to refusing to do an act includes (c)
 - a reference to refraining (otherwise than inadvertently) from doing the act; and
 - (ii) a reference to making it known that the act will not be done;

and

(d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the

person making known a willingness to accept applications, offers or proposals for the person to do the act or to do that act on the condition.

- In this Act (other than Part 3 and the Australian Consumer (4) Law (WA))
 - a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and
 - a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.
- In this Act (other than Part 3 and the Australian Consumer (5) Law (WA)), a reference to the making of a representation includes a reference to the publishing of a statement.

Division 2 — Application

10. **Act binds Crown**

- This Act binds the Crown not only in right of Western Australia (1) but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) This Act applies to and in respect of the Crown in any of its capacities to the same extent as if the Crown were, in that capacity, a body corporate.
- (3) Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.
- (4) The protection in subsection (3) does not apply to an authority of the Crown.
- (5) This section is subject to Part 3 Division 4.

11. **Territorial application of Act**

- (1) This Act applies to and in respect of an acquisition or supply or the proposed acquisition or supply of goods or services, or the disposal or proposed disposal of an interest in land
 - if the person by or to whom the goods or services are or are proposed to be acquired or supplied signs in Western Australia a document relating to the acquisition or supply or the proposed acquisition or supply; or
 - if the person by or to whom the interest in land is or is (b) proposed to be disposed of signs in Western Australia a document relating to the disposal or the proposed disposal of that interest; or
 - (c) if that person does not so sign such a document, if the goods or services are or are proposed to be delivered or supplied, or that land is situated, in Western Australia.
- Subsection (1) applies (2)
 - (a) despite anything to the contrary in any other Act or law;
 - (b) except as otherwise expressly provided in or under this Act.
- (3) This Act applies to and in relation to
 - persons carrying on business within this jurisdiction; or
 - bodies corporate incorporated or registered under the (b) law of this jurisdiction; or
 - persons ordinarily resident in this jurisdiction; or (c)
 - persons otherwise connected with this jurisdiction.
- (4) Subject to subsection (3), this Act extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).
- (5) This Act applies to a contract in the following circumstances, despite the terms of the contract —

- if the proper law of a contract for the supply of goods or services to a consumer would, but for a term that it should be the law of some other place or a term to the like effect, be the law of Western Australia;
- if a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country or of another State or of a Territory for all or any of the provisions of this Act.
- This section is subject to section 24. (6)

12. Concurrent operation of laws of other jurisdictions not limited

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

13. No contracting out

- This Act has effect despite any stipulation in any contract or (1) agreement to the contrary.
- If the making of a contract contravenes this Act because the (2) contract includes a particular provision, nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision, so far as that provision is severable.
- (3) Subsection (2) is subject to subsection (1) and to any order made under section 105 or 106.

14. Relationship with other Acts and rules of law

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

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- duty or liability of persons with respect to goods or services supplied to a consumer.
- (2) Except as expressly provided by this Act, nothing in this Act is to be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Act had not been enacted.

Inconsistencies with other enactments 15.

- This section applies if a provision of this Act or a regulation (1) made under this Act is inconsistent with
 - a provision of an Act specified in Schedule 1; or
 - a provision of an instrument made under an Act so (b) specified.
- (2) If this section applies, the provision of the Act so specified, or of the instrument, prevails.
- This section is subject to section 34. (3)

Division 1

Part 3 — The Australian Consumer Law

Division 1 — Object and interpretation

16. **Object of this Part**

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

17. **Definitions**

- (1) In this Part, unless the contrary intention appears application law means
 - a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction;
 - any regulations or other legislative instrument made (b) under a law described in paragraph (a); or
 - the Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications;

Australian Consumer Law means (according to the context) —

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

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

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

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instrument means any document whatever, including the following —

- (a) an Act or an instrument made under an Act;
- a law of this jurisdiction or an instrument made under (b) such a law;
- an award or other industrial determination or order, or an (c) industrial agreement;
- any other order (whether executive, judicial or (d) otherwise);
- (e) a notice, certificate or licence;

Object and interpretation

- (f) an agreement;
- an application made, prosecution notice lodged, (g) information or complaint laid, affidavit sworn, or warrant issued, for any purpose;
- an indictment, presentment, summons or writ; (h)
- any other pleading in, or process issued in connection (i) with, a legal or other proceeding;

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

jurisdiction means a State or the Commonwealth;

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

modifications includes additions, omissions and substitutions;

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

Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] Extract from www.slp.wa.gov.au, see that website for further information

State includes a Territory;

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

this jurisdiction means Western Australia.

- Terms used in this Part and also in the Australian Consumer (2) Law (WA) have the same meanings in this Part as they have in that Law.
- For the purposes of this Part
 - a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and
 - (b) the corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

Division 2 — Application of Australian Consumer Law

18. The Australian Consumer Law text

The Australian Consumer Law text consists of —

- Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth); and
- (b) the regulations made under section 139G of that Act.

19. **Application of Australian Consumer Law**

- (1) For the purposes of this section, the Australian Consumer Law text consists of -
 - (a) Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth), as in force on the commencement of this section (but as modified by section 36); and

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Division 2 Application of Australian Consumer Law

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- the regulations made under section 139G of that Act, as those regulations are in force from time to time.
- (2) The Australian Consumer Law text —
 - (a) applies as a law of this jurisdiction; and
 - as so applying, may be referred to as the Australian (b) Consumer Law (WA); and
 - in so far as it constitutes Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth), is part of this Act; and
 - in so far as it constitutes regulations made under section 139G of the Competition and Consumer Act 2010 (Commonwealth), is subsidiary legislation for the purposes of this Act.
- (3) This section has effect subject to sections 20, 21, 22, 23 and 116(3).

20. **Amendments to Australian Consumer Law**

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

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

- (1) This section applies to the following instruments
 - regulations made under the Competition and Consumer Act 2010 (Commonwealth) section 139G;
 - (b) a determination under the Australian Consumer Law (WA) section 66(1) (display notices);
 - a notice under the Australian Consumer Law (WA) (c) section 104(1) or 105(1) (safety standards);
 - a notice under the Australian Consumer Law (WA) (d) section 114(1) or (2) (permanent bans);

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- (e) a notice under the *Australian Consumer Law (WA)* section 117 (revocation of permanent bans);
- (f) a notice under the *Australian Consumer Law (WA)* section 122(1) (recall notices) by a responsible Minister of this jurisdiction;
- (g) a notice under the *Australian Consumer Law (WA)* section 134(1) or 135(1) (information standards).
- (2) Where an instrument to which this section applies is made, a copy of the instrument must be published in the *Gazette* not later than 28 days after the instrument is made.
- (3) If a copy of an instrument is not published in the *Gazette* in accordance with subsection (2)
 - (a) the instrument ceases to have effect in this jurisdiction on the expiry of the 28th day after the instrument is made, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime; but
 - (b) if a copy of the instrument is subsequently published in the *Gazette*, the instrument again has effect on and from the day after the day of publication of a copy of the instrument.
- (4) Where a copy of an instrument to which this section applies is published in the *Gazette*, the *Interpretation Act 1984* section 42 applies to that instrument as if it were a regulation published in the *Gazette*.
- 22. Meaning of generic term in Australian Consumer Law for purposes of this jurisdiction

In the Australian Consumer Law (WA) —
regulator means the Commissioner (as defined in section 6)

23. **Interpretation of Australian Consumer Law**

- (1) The Acts Interpretation Act 1901 (Commonwealth) applies as a law of this jurisdiction to the Australian Consumer Law (WA).
- For the purposes of subsection (1), the Commonwealth Act (2) mentioned in that subsection applies as if
 - the statutory provisions in the Australian Consumer Law (WA) were a Commonwealth Act; and
 - the regulations in the Australian Consumer Law (WA) or (b) instruments under that Law were regulations or instruments under a Commonwealth Act.
- The Interpretation Act 1984 of Western Australia does not (3) apply to
 - the Australian Consumer Law (WA); or (a)
 - any instrument under that Law.
- Subsection (3) is subject to section 21. (4)

24. **Application of Australian Consumer Law**

- (1) The Australian Consumer Law (WA) applies to and in relation to
 - persons carrying on business within this jurisdiction; or (a)
 - bodies corporate incorporated or registered under the (b) law of this jurisdiction; or
 - (c) persons ordinarily resident in this jurisdiction; or
 - persons otherwise connected with this jurisdiction.
- Subject to subsection (1), the Australian Consumer Law (WA) (2) extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

Division 3

Division 3 — References to Australian Consumer Law

25. References to Australian Consumer Law

- (1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.
- (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

26. References to Australian Consumer Law of other jurisdictions

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
- If a law of a participating jurisdiction other than this jurisdiction (2) provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.

Division 4 — Application of Australian Consumer Law to Crown

27. Division does not apply to Commonwealth

In this Division —

participating jurisdiction or other jurisdiction does not include the Commonwealth.

28. Application law of this jurisdiction

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

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Division 5 Miscellaneous

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

29. Application law of other jurisdictions

- The application law of each participating jurisdiction other than (1) this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.
- If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

30. Crown not liable to pecuniary penalty or prosecution

- (1) Nothing in the application law of this jurisdiction makes the Crown in any capacity liable to a pecuniary penalty or to be prosecuted for an offence.
- Without limiting subsection (1), nothing in the application law (2) of a participating jurisdiction makes the Crown in right of this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

Division 5 — Miscellaneous

31. No doubling-up of liabilities

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

- (a) an act or omission is an offence against the Australian Consumer Law (WA) and is also an offence against the application law of another participating jurisdiction; and
- the offender has been acquitted or convicted of the (b) offence with which the offender is charged, or has already been convicted or acquitted of an offence of which the offender might be convicted upon the indictment or prosecution notice on which the offender has been charged, under the application law of the other participating jurisdiction,

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

- (3) Nothing in subsection (2) prevents the Commissioner from making or issuing a statement under section 57.
- (4) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the Australian Consumer Law (WA) in respect of the same conduct.

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

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

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

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

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

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

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

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

35. Relationship with Sale of Goods Act 1895

- (1) Where a provision of the Australian Consumer Law (WA) Part 3-2 Division 1 is, in its application to any circumstance, matter or thing, inconsistent with a provision of the Sale of Goods Act 1895 in its application to the same circumstance, matter or thing
 - the provision of the Australian Consumer Law (WA) Part 3-2 Division 1 prevails; and
 - the provision of the Sale of Goods Act 1895 is (b) inoperative to the extent of the inconsistency.
- (2) This section applies despite
 - any rule of law or construction to the contrary; and
 - an agreement that provides otherwise. (b)

36. Modifications to Australian Consumer Law (WA)

- (1) This section makes the modifications to the text of Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth), as in force on the commencement of section 19, that, together with the regulations referred to in section 19(1)(b), result in the text that section 19(2) applies as the Australian Consumer Law (WA).
- In section 73(1) delete paragraphs (b) and (c) and insert: (2)
 - (b) on a Saturday:
 - between midnight and 9 am; or (i)
 - (ii) between 5 pm and midnight; or
 - on any other day:

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- between midnight and 9 am; or (i)
- (ii) between 8 pm and midnight.
- In section 170(1) delete paragraphs (b) and (c) and insert:
 - on a Saturday: (b)
 - between midnight and 9 am; or (i)
 - between 5 pm and midnight; or
 - on any other day: (c)
 - between midnight and 9 am; or (i)
 - (ii) between 8 pm and midnight.

Division 6 — Transitional

37. Proceedings for an injunction already commenced

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

38. Unfair contract terms

- The Australian Consumer Law (WA) Part 2-3 applies to a (1) contract entered into on or after the commencement of this section.
- That Part does not apply to a contract entered into before that (2) commencement. However —

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- if the contract is renewed on or after that commencement — that Part applies to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or
- if a term of the contract is varied on or after that commencement, and paragraph (a) has not already applied in relation to the contract — that Part applies to the term as varied, on and from the day (the variation day) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.
- If subsection (2)(b) applies to a term of a contract, (3) sections 23(2) and 27 of the Australian Consumer Law (WA) apply to the contract.

39. Unsolicited consumer agreements

- The Australian Consumer Law (WA) Part 3-2 Division 2 does (1) not apply to any contract made before the commencement of this section.
- The Australian Consumer Law (WA) Part 3-2 Division 2 (2) applies to a contract made on or after the commencement of this section even though negotiations leading to the formation of the contract may have taken place before the commencement of this section.
- The Door to Door Trading Act 1987 section 3C relates to the (3) application of that Act to contracts made before the commencement of this section.

40. Requests for itemised bills

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

41. Pecuniary penalties — having regard to previous findings

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

- Part VC or VI of the Trade Practices Act 1974 (a) (Commonwealth); or
- (b) Part II, V, VI or VII of the Fair Trading Act 1987.

Part 4 — Codes of practice

Division 1 — Preliminary

42. Outline

- (1) This Part provides for the making of regulations prescribing a code of practice for fair dealing between a particular class of suppliers and consumers, or by a particular class of persons in relation to consumers.
- (2) If a person carries on business in contravention of a prescribed code of practice applying to them, the Commissioner can apply to the State Administrative Tribunal for an order requiring the person to comply with the code and rectify the consequence of the contravention of the code.
- (3) This section is intended only as a guide to the general scheme and effect of this Part, and does not limit the other provisions of this Part.

43. Term used: code of practice

In this Part —

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

- (a) between a particular class of suppliers and consumers; or
- (b) by a particular class of persons in relation to consumers; or
- (c) in relation to the supply of a particular kind of goods or services.

Division 2 — Development and implementation of codes of practice

44. Preparation of draft code of practice by Commissioner

- (1) The Commissioner may, with the approval of the Minister, prepare a draft code of practice for submission to the Minister for consideration.
- (2) The Commissioner must, if the Minister directs, prepare a draft code of practice for submission to the Minister for consideration.
- For the purpose of preparing a draft code of practice, the (3) Commissioner must arrange for consultation with, and invite submissions from, persons and organisations that the Commissioner considers would have an interest in the terms of the proposed draft code.
- Without limiting subsection (3), the Commissioner must consult (4) with, and invite submissions from, the following
 - principal organisations that represent those suppliers that are likely to be affected by the terms of the draft code of practice;
 - principal organisations representing consumers.

45. Regulations prescribing code of practice

- (1) The regulations may prescribe a code of practice that
 - has been submitted to the Minister in accordance with section 44: and
 - has been approved by the Minister with or without (b) amendments.
- (2) Regulations prescribing a code of practice must provide that the regulations expire on a date specified in the regulations, which must be a date that is not later than the last day of the period of

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Enforcement of codes of practice

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- 3 years after the date on which the code of practice first takes effect.
- (3) Regulations prescribing a code of practice may be amended to remove the expiry date of the regulations if
 - the Commissioner undertakes a review of the code of practice before the regulations expire; and
 - in undertaking the review, the Commissioner follows the (b) consultation procedures set out in section 44.

46. Interim code of practice

- (1) The regulations may prescribe a code of practice even though the procedures set out in section 44 have not been followed or completed.
- (2) A code of practice prescribed under this section is an interim code of practice, and may have effect for a period (not exceeding 6 months) specified in the regulations.

Division 3 — Enforcement of codes of practice

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

- Where it appears to the Commissioner that a person has carried (1) on business in contravention of a prescribed code of practice applicable to that person, the Commissioner may apply to the State Administrative Tribunal for an order under this section.
- Where, on the application of the Commissioner, the State (2) Administrative Tribunal is satisfied that a person has carried on business in contravention of a prescribed code of practice applicable to that person, the Tribunal may make either or both of the following orders
 - an order that the person cease contravening the code;
 - (b) an order that the person rectify any consequence of that contravention.

- (3) The State Administrative Tribunal may make an order under subsection (2) in relation to a person with that person's consent, without being satisfied that there are grounds for making the order.
- (4) Where the contravention is by a body corporate, and the Tribunal is satisfied that it occurred with the consent or connivance of a person who, at the time of the contravention, was a director of the body corporate or a person concerned in its management, the Tribunal may make the following additional orders
 - (a) an order prohibiting the person from continuing to consent to, or connive at, the contravention;
 - (b) an order prohibiting the person from consenting to, or conniving at, a similar contravention by any other body corporate of which the person is a director or in whose management the person is concerned.
- (5) An order under this section may be made subject to any conditions (whether as to the duration of the order or otherwise) the State Administrative Tribunal thinks fit, including
 - (a) conditions relating to the future conduct of the person affected; and
 - (b) conditions specifying the action to be taken by the person to rectify the consequences of the contravention that is the subject of the order.
- (6) A person who fails to comply with an order of the State Administrative Tribunal under this section commits an offence. Penalty: a fine of \$50 000.
- 48. Commissioner may take or defend proceedings relating to contravention of code of practice
 - (1) This section applies where —

Division 3

Enforcement of codes of practice

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- (a) a person (other than a body corporate) has made a complaint to the Commissioner in respect of a matter arising under a code of practice or in relation to a contravention or suspected contravention of a code of practice; and
- the Commissioner, after investigating the complaint, is (b) satisfied
 - that the complainant may, with respect to the (i) matter, have a right to take proceedings before a court or the State Administrative Tribunal, or a defence to proceedings taken before a court or the State Administrative Tribunal by another person against the complainant in respect of the matter; and
 - (ii) that it is in the public interest that the Commissioner take or, as the case requires, defend those proceedings on behalf of the complainant.
- If this section applies, the Commissioner may take or defend (2) those proceedings on behalf of, and in the name of, the complainant.
- The Commissioner must not take or defend any proceedings (3) under this section without first obtaining
 - the written consent of the complainant, which once given cannot be revoked unless the Commissioner consents to the revocation; and
 - the written consent of the Minister, which may be given (b) subject to any conditions the Minister thinks fit.

49.

Commissioner

- (1) The following provisions apply in relation to any proceedings instituted or defended by the Commissioner under section 48 on behalf of a complainant
 - (a) the Commissioner has, on behalf of the complainant, in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the complainant would have had in the conduct of those proceedings;
 - (b) the Commissioner may, without consulting or seeking the consent of the complainant, conduct the proceedings in whatever manner the Commissioner thinks appropriate and proper;
 - (c) any moneys (excluding costs) recovered by the Commissioner belong and must be paid to the complainant without deduction, and any amount awarded against the complainant must be paid by and is recoverable from the complainant;
 - (d) in all cases the costs of the proceedings must be borne by or paid to and retained by the Commissioner as the case may require;
 - (e) if any party to the proceedings files a counterclaim, or if the complainant on whose behalf the proceedings are being defended is entitled to file a counterclaim, and that counterclaim is not related to the cause of action, the court or, as the case requires, the State Administrative Tribunal hearing the proceedings
 - (i) must, on the application of the Commissioner, order that the counterclaim be heard separately and that the consumer be a party to the counterclaim in the complainant's own right; and
 - (ii) may make any other orders or give any directions in that behalf the court or Tribunal thinks fit.

Part 4 Codes of practice

Division 3 Enforcement of codes of practice

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

50. No doubling-up of liabilities

- For the purposes of this section, a person is convicted of an (1) offence if a court finds the person guilty of the offence, or accepts a plea of guilty of the offence, whether or not a conviction is recorded.
- (2) If an act or omission is a contravention of a prescribed code of practice and is also an offence against the Australian Consumer Law (WA), and an order is made under section 47 in respect of that contravention, the offender is not liable to be punished for the offence against the Australian Consumer Law (WA).
- If an act or omission is a contravention of a prescribed code of practice and is also an offence against the Australian Consumer Law (WA), and the offender has been convicted of the offence under the Australian Consumer Law (WA), the offender is not liable to have an order made against them under section 47.

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

- The fact that the Commissioner has made an application under (1) section 47 in respect of a matter that is alleged to be a contravention of a prescribed code of practice, or that the State Administrative Tribunal has made an order under that section in respect of that matter, does not prevent any other person from taking proceedings before a court or the State Administrative Tribunal in respect of the matter.
- (2) Nothing in this section permits a person other than the Commissioner to make an application under section 47.

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52. Transitional provision relating to existing codes of practice

- Regulations made under the Fair Trading Act 1987 section 84 (1) prescribing a code of practice in accordance with section 43(1) of that Act and that were in force immediately before the commencement of this section continue in force after that commencement as if they were made under section 45, but nothing in section 45(2) and (3) applies in relation to those regulations.
- However, in the case of regulations prescribing a code of practice that first took effect at least 3 years before the commencement of this section, those regulations do not continue in force under subsection (1) unless, within the period of 3 years beginning on the date on which that code of practice first took effect, a review, in accordance with the Fair Trading Act 1987 section 42, has been undertaken.
- (3) Where regulations (other than regulations to which subsection (2) applies) continue in force under subsection (1), the regulations expire at the close of the last day of the period of 3 years beginning on the date on which the code of practice prescribed by the regulations first took effect unless, within that period
 - the Commissioner undertakes a review of the code of (a) practice; and
 - (b) in undertaking the review, the Commissioner follows the consultation procedures set out in section 44.
- Regulations made under the Fair Trading Act 1987 section 84 (4) prescribing an interim code of practice in accordance with section 43(2) of that Act and that were in force immediately before the commencement of this section continue in force after that commencement as if they were made under section 46.

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

- (1) The following provisions apply to a deed executed under the Fair Trading Act 1987 section 44 and that was in force immediately before the commencement of this section
 - the deed continues in force after that commencement; (a)
 - (b) a person must observe undertakings given by the person in the deed:
 - if, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a person has failed to observe an undertaking given by the person in the deed, the State Administrative Tribunal may order the person
 - to observe the undertaking; and (i)
 - in the case of an undertaking to rectify the consequence of a contravention of a code of practice — to observe the undertaking within a time specified by the State Administrative Tribunal in the order.
- (2) A person who contravenes subsection (1)(b) commits an offence.
 - Penalty: a fine of \$10 000.
- A prosecution for an offence under subsection (2) can be instituted only by the Commissioner, and only with leave of the State Administrative Tribunal given when making an order under subsection (1)(c).
- (4) Section 47(3) to (6) apply in relation to proceedings under subsection (1)(c) as if they were proceedings for an order under that section.

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

- This section applies if (1)
 - before the commencement of section 52, a person has carried on business in contravention of a prescribed code of practice applicable to the person; and
 - the code of practice continues in force under section 52; (b)
 - the person did not execute a deed under the Fair Trading Act 1987 section 44 in relation to the contravention of the code of practice before the commencement of this section.
- If this section applies (2)
 - the Commissioner can make an application under section 47 in respect of the contravention of the code of practice, as long as the application is made not later than 6 months after the commencement of this section; and
 - the State Administrative Tribunal can deal with the (b) application under that section accordingly.

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Part 5 — Administrative provisions

Division 1 — Commissioner

55. Commissioner

- (1) In this section
 - executive officer has the meaning given by the Public Sector Management Act 1994 section 3(1).
- (2) The Minister must, by notice published in the *Gazette*, designate an executive officer of the Department as the Commissioner for the purposes of this Act.
- The Commissioner may be referred to by a title specified by the (3) Minister by notice published in the Gazette.

56. General functions of Commissioner

- (1) The functions of the Commissioner include the following
 - to promote the interests of consumers and assist them to a greater awareness in relation to their assessment and use of goods and services;
 - to collect, collate and disseminate information in respect of matters affecting the interests of consumers;
 - to receive complaints from consumers concerning matters affecting their interests as consumers, to consider and, if the Commissioner considers it warranted, to investigate those complaints and to take whatever action in respect of those complaints as seems proper to the Commissioner;
 - to receive complaints of fraudulent or deceptive (d) practices in relation to matters that affect or are likely to affect the interests of consumers, and to make whatever investigations and inquiries and to take whatever other action in respect of those complaints as seems proper to the Commissioner;

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Extract from www.slp.wa.gov.au, see that website for further information

- (e) to advise and assist consumers who seek from the Commissioner information or guidance on matters affecting their interests as consumers;
- (f) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services;
- (g) to perform any other functions that are conferred or imposed on the Commissioner by this Act or any other Act.
- (2) Without limiting the generality of subsection (1), the Commissioner is to
 - (a) make whatever recommendations to the Minister the Commissioner considers necessary or desirable in the interests of consumers and, in particular, investigate and make recommendations to the Minister in relation to any matters that concern the need for, or desirability of, legislative or administrative action in the interests of consumers;
 - (b) advise the Minister on any matters affecting the interests of consumers that the Minister may refer to the Commissioner:
 - (c) make recommendations to the Minister for the establishment and maintenance of means by which
 - (i) matters that affect the interests of consumers and of persons engaged in the production, manufacture, preparation or supply of goods or in commerce or in the provision of services may receive adequate consideration; and
 - (ii) information concerning those matters and considerations may be widely disseminated.
- (3) The Commissioner may cooperate, associate or consult with organisations that have the power to make investigations of the nature referred to in subsection (2)(a).

57. Commissioner may issue warnings or information

- (1) The Commissioner may publish (in any form) a statement identifying and giving warnings or information about any of the following
 - goods that are unsatisfactory or dangerous and persons (a) who supply or are likely to supply those goods;
 - services supplied in an unsatisfactory or dangerous (b) manner and persons who supply or are likely to supply those services:
 - unfair business practices and persons who engage or are (c) likely to engage in those practices;
 - any other matter that adversely affects or may adversely (d) affect the interests of consumers in connection with the acquisition by them of goods or services.
- A statement under subsection (1) may identify particular goods, (2) services, business practices, persons, corporate names, business names and trading names.
- The Commissioner must not make or issue a statement under (3) this section unless satisfied that it is in the public interest to do so.

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

- This section applies where (1)
 - after a complaint or matter has been made or referred to the Department, the Commissioner is satisfied
 - that a consumer has a cause of action or a good defence to an action; and
 - that it is in the public interest or proper to (ii) institute or defend legal proceedings on behalf of the consumer:

or

- (b) the Commissioner is satisfied that it is proper to institute or defend legal proceedings on behalf of a business in relation to the supply or possible supply of goods or services in trade or commerce because a matter of public interest is involved.
- (2) If this section applies, the Commissioner may
 - where subsection (1)(a) applies, on behalf of the consumer, institute legal proceedings against any other person, or defend any proceedings brought against the consumer, with a view to enforcing or protecting the rights of the consumer in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of any Act or any other law relating to the interests of consumers; or
 - where subsection (1)(b) applies, on behalf of the (b) business, institute legal proceedings against any other person, or defend any proceedings brought against the business.
- (3) The Commissioner must not institute or defend any proceedings under this section —
 - (a) unless either
 - the amount claimed or involved in either case does not exceed \$100 000 or such greater amount as is prescribed for the purposes of this paragraph; or
 - an order for specific performance of a contract, (ii) or an order in the nature of an order for specific performance of a contract, is the only remedy sought in the proceedings;

and

- (b) without first obtaining
 - the written consent of the consumer or, as the case requires, the business, which once given

Commissioner

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- cannot be revoked unless the Commissioner consents to the revocation; and
- the written consent of the Minister, which may be given subject to any conditions the Minister thinks fit.
- (4) The Commissioner may make any investigation or inquiry under Part 6 that the Commissioner considers necessary or desirable for the purposes of —
 - (a) satisfying himself or herself that it is proper to institute or defend legal proceedings on behalf of a business under subsection (1)(b); and
 - instituting or defending those proceedings; and (b)
 - (c) conducting those proceedings.
- (5) Nothing in subsection (4) limits Part 6.

59. Provisions applying to proceedings instituted or defended by Commissioner

- (1) The following provisions apply in relation to any proceedings instituted or defended by the Commissioner under section 58 on behalf of a consumer or business
 - the Commissioner has, on behalf of the consumer or business, in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the consumer or business would have had in the conduct of those proceedings;
 - the Commissioner may, without consulting or seeking (b) the consent of the consumer or business, conduct the proceedings in whatever manner the Commissioner thinks appropriate and proper;
 - any moneys (excluding costs) recovered by the (c) Commissioner belong and must be paid to the consumer or business without deduction, and any amount awarded

- against the consumer or business must be paid by and is recoverable from the consumer or business;
- (d) in all cases the costs of the proceedings must be borne by or paid to and retained by the Commissioner as the case may require;
- if any party to the proceedings files a counterclaim, or if (e) the consumer or business on whose behalf the proceedings are being defended is entitled to file a counterclaim, and that counterclaim is not related to the cause of action and in no way relates to the interests of the consumer as a consumer or, as the case requires, the interests of the business as a business, the court hearing the proceedings
 - must, on the application of the Commissioner, order that the counterclaim be heard separately and that the consumer or business be a party to the counterclaim in the consumer's or business's own right; and
 - may make any other orders or give any directions in that behalf the court thinks fit.
- (2) Any money that the Commissioner becomes liable to pay by virtue of this section is to be charged to the Consolidated Account, and this Act, without any further appropriation, is sufficient authority for the payment of the money.

60. **Delegation by Commissioner**

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under a provision of this or any other Act.
- The delegation must be in writing signed by the Commissioner. (2)
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

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- A person exercising or performing a power or duty that has been (4) delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- Nothing in this section limits the ability of the Commissioner to (5) perform a function through an officer or agent.

61. Judicial notice

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

- the official signature of every person who is for the time being, and every person who has at any time been, the Commissioner; and
- the fact that the person holds or has held that office. (b)

Division 2 — Offence

62. Advertisements not to imply approval by consumer affairs authority

In this section — (1)

consumer affairs authority —

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

and

- (b) includes
 - any officer of the Department; and
 - any officer or employee of a statutory body or authority referred to in paragraph (a)(ii) of this definition:

publish includes —

- include in a newspaper or other publication published in
- (b) disseminate by the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound;
- broadcast by radio or for television; (c)
- include on an internet website or otherwise publicly (d) disseminate by means of the internet;
- publicly exhibit in, on, over or under any building, (e) vehicle or place, or in the air, in view of persons in or on any street or public place;
- include in a document gratuitously sent or delivered to (f) any person or thrown or left on premises occupied by any person or left on a vehicle;
- (g) make verbally to any person.
- (2) A person must not publish or cause to be published any statement
 - that is intended or is apparently intended to promote the sale, hiring or leasing of goods, or the sale of an estate or interest in any land or building, or the letting or leasing of any land or building or part of a building, or the use of a service rendered for fee or reward; and
 - that states, either expressly or by implication, that any (b) consumer affairs authority has approved, or has refrained from disapproving, the statement or any material particular in the statement or any claim made in

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Part 5 Administrative provisions

Division 2 Offence

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

Penalty: a fine of \$10 000.

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

Part 6 — Investigation and enforcement

Division 1 — Interpretation

63. Terms used

In this Part —

authorised person means —

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

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

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

Division 2 — **Investigators**

64. Appointment of investigators

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

- any person employed in the Department; (a)
- (b) any person who
 - is an officer of a Public Sector agency that provides services to the Department; and
 - assists in the exercise of the Commissioner's (ii) functions under this Act;
- any person engaged by the chief executive officer to assist in the exercise of the Commissioner's functions under this Act.

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Part 6 Investigation and enforcement

Division 2 Investigators

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65. Certificate of appointment as investigator

- (1) The Commissioner is to provide each investigator with a document, signed by the Commissioner, certifying that the person is entitled to exercise the powers of an investigator.
- (2) A person to whom a document is provided under this section and who ceases to be an investigator must return the document to the Commissioner as soon as practicable.
- A person who contravenes subsection (2) without reasonable excuse, the onus of proving which is on the person, commits an offence.

Penalty: a fine of \$1 000.

66. Investigators to produce certificate of appointment on demand

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

67. Persons assisting investigators

- (1) Where an investigator is exercising any of the investigator's powers under this Part, a person (the assistant), including an interpreter, may accompany the investigator to assist the investigator if the investigator considers the assistance is necessary.
- (2) The assistant
 - may do such things and in such manner as the investigator reasonably requires to assist the investigator to exercise the investigator's powers; but
 - must not do anything that the investigator does not have (b) power to do, except as permitted under a warrant under Division 3.

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

Division 3 — General powers

68. Investigation and inquiry by Commissioner

- (1) The Commissioner may, of the Commissioner's own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for the purposes of carrying out the Commissioner's functions under this Act or any other Act.
- An authorised person may make an investigation or inquiry (2) under this section on behalf of the Commissioner.

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

- For the purposes of carrying out any investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or any other Act, an authorised person may
 - require any person
 - to give whatever information the authorised person requires in relation to any matter the subject of an investigation or inquiry; and
 - to answer any question put to the person in (ii) relation to any matter the subject of an investigation or inquiry;

and

- (b) require any person to produce any document or thing relating to an investigation or inquiry; and
- enter at all reasonable times and search any premises or (c) motor vehicle named in a warrant obtained in accordance with this Division and exercise the powers set out in the warrant; and

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- make a copy or abstract of any document produced or inspected under this section, or of any entry made in the document.
- (2) A requirement made under subsection (1)(a)
 - may be made orally or by notice in writing served on the person required to give information or answer a question, as the case requires; and
 - must specify the time at or within which the information (b) is to be given or the question is to be answered, as the case requires; and
 - (c) may, by its terms, require that the information or answer required
 - be given orally or in writing; and (i)
 - (ii) be given at or sent or delivered to any place specified in the requirement; and
 - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and
 - be given on oath or affirmation or by statutory (iv) declaration.
- (3) An authorised person may administer an oath or affirmation or witness a statutory declaration for the purposes of subsection (2)(c)(iv).
- (4) A requirement made under subsection (1)(b)
 - must be made by notice in writing served on the person required to produce a document or thing, unless the circumstances require the authorised person to have immediate access to the document or thing, in which case the requirement may be given orally; and
 - must specify the time at or within which the document (b) or thing is to be produced; and

- (c) may, by its terms, require that the document or thing required be produced
 - (i) at any place specified in the requirement; and
 - (ii) by any means specified in the requirement.
- (5) Where, under subsection (1)(a) or (b), an authorised person orally requires a person to give any information, answer any question or produce any document or thing, the authorised person must inform the other person that the other person is required, under this Act or another Act, to give the information, answer the question or produce the document or thing, as the case requires.
- (6) Where, under subsection (1)(a) or (b), a person is required by notice in writing to give any information, answer any question or produce any document or thing, the notice must state that the person is required, under this Act or another Act, to give the information, answer the question or produce the document or thing, as the case requires.

70. Conduct of interviews

- (1) An interview conducted by an authorised person under section 69(1)(a) must be conducted in private if
 - (a) the authorised person considers it appropriate; or
 - (b) the person being interviewed so requests.
- (2) Subsection (1) does not limit the operation of section 67 or prevent a representative of the person being interviewed from being present at the interview.
- (3) Subsection (1) may be invoked during an interview by
 - (a) the authorised person; or
 - (b) the person being interviewed.
- (4) If subsection (1) is invoked during an interview, the subsection applies to the remainder of the interview.

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Part 6 Investigation and enforcement

General powers **Division 3**

s. 71

71. Warrant to enter premises or motor vehicle

- **(1)** If an authorised person considers in a particular case that there are reasonable grounds for believing that entry to premises or a motor vehicle is necessary for the purposes of carrying out any investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or any other Act, the authorised person may apply to a magistrate or justice of the peace for a warrant to be issued in respect of those premises or that motor vehicle.
- (2) An application for a warrant must
 - be in writing; and
 - be accompanied by a notice in writing from the (b) authorised person stating that the person considers in the particular case that there are reasonable grounds for believing that entry to premises or a motor vehicle is necessary for the purposes of carrying out an investigation or inquiry in the course of carrying out the Commissioner's functions under this Act or another Act; and
 - (c) set out the grounds for seeking the warrant; and
 - (d) describe the premises or motor vehicle that are to be entered.
- A magistrate or justice of the peace to whom an application is (3) made under this section must refuse it if
 - the application does not comply with the requirements of (a) this Act; or
 - (b) when required to do so by the magistrate or justice of the peace, the applicant does not give to the magistrate or justice of the peace more information about the application.
- The information in an application or given to a magistrate or (4) justice of the peace under this section must be verified before

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

72. Warrants by telephone, fax or other electronic means

- (1) If an authorised person requires a warrant urgently, or a magistrate or justice of the peace is not available within a reasonable distance of the authorised person, the authorised person may apply to a magistrate or justice of the peace by telephone, fax or other electronic means for a warrant under section 71.
- (2) The magistrate or justice of the peace may
 - (a) require communication by voice to the extent that it is practicable in the circumstances; and
 - (b) make a recording of the whole or any part of any such communication by voice.
- (3) Before applying for the warrant, the authorised person must prepare an affidavit that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the authorised person may apply for the warrant before the affidavit is sworn or affirmed.
- (5) The magistrate or justice of the peace may complete and sign the same warrant that the magistrate or justice of the peace would issue under section 74 if the application had been made under section 71 if the magistrate or justice of the peace is satisfied that there are reasonable grounds for issuing the warrant, after having
 - (a) considered the terms of the affidavit; and
 - (b) received such further information (if any) as the magistrate or justice of the peace requires concerning the grounds on which the issue of the warrant is sought.

73. Further provisions relating to warrants by telephone etc.

- If a magistrate or justice of the peace completes and signs a (1) warrant under section 72(5)
 - the magistrate or justice of the peace must
 - tell the authorised person what the terms of the warrant are; and
 - (ii) tell the authorised person the day on which and the time at which the warrant was signed; and
 - tell the authorised person the day (not more than (iii) one week after the magistrate or justice of the peace completes and signs the warrant) on which the warrant ceases to have effect; and
 - record on the warrant the reasons for issuing the (iv) warrant;

and

- (b) the authorised person must
 - complete a form of warrant in the same terms as the warrant completed and signed by the magistrate or justice of the peace; and
 - write on the form the name of the magistrate or (ii) justice of the peace and the day on which and the time at which the warrant was signed.
- (2) The authorised person must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate or justice of the peace
 - the form of warrant completed by the authorised person; and
 - (b) the affidavit referred to in section 72(3), which must have been duly sworn or affirmed.

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- (3) When the magistrate or justice of the peace receives those documents, the magistrate or justice of the peace must
 - (a) attach them to the warrant that the magistrate or justice of the peace completed and signed; and
 - (b) deal with them in the way in which the magistrate or justice of the peace would have dealt with them if the application had been made under section 71.
- (4) A form of warrant duly completed under subsection (1)(b) is authority for the same powers as are authorised by the warrant signed by the magistrate or justice of the peace.
- (5) If a magistrate or justice of the peace completes and signs a warrant under section 72(5), in any proceedings a court must assume, unless the contrary is proved, that the exercise of a power was not authorised by the warrant if
 - (a) it is material, in those proceedings, for the court to be satisfied that the exercise of the power was authorised by this section; and
 - (b) the warrant is not produced in evidence.

74. Issue of warrant

- (1) A magistrate or justice of the peace to whom an application is made under section 71 may issue a warrant if satisfied that the authorised person has reasonable grounds for believing that entry and inspection of the premises or motor vehicle are necessary for the purposes of carrying out an investigation or inquiry under this Act or another Act.
- (2) A warrant under subsection (1) authorises the person to whom the warrant is issued
 - (a) to enter the premises or motor vehicle named in the warrant and search the premises or motor vehicle and any thing that is found on the premises or in or on the motor vehicle; and

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- (b) to inspect documents and other things, and take copies or extracts from documents found on the premises or in or on the motor vehicle; and
- to inspect, examine, take measurements of, or conduct tests on, any thing found on the premises, or in or on the motor vehicle, that is relevant to the investigation or inquiry; and
- to take and remove for examination, analysis or testing a (d) sample of any thing found on the premises, or in or on the motor vehicle, that is relevant to the investigation or inquiry, without paying for the sample; and
- to inspect any service carried on in the premises or from (e) the motor vehicle; and
- (f) to take measurements or recordings of any sort; and
- to take photographs, sound and video recordings and (g) drawings of the premises or motor vehicle searched, and of any thing found in those premises or in or on that motor vehicle, if the person exercising the power has reasonable grounds for believing that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search; and
- to seize things that may be seized under section 79. (h)
- (3) The warrant must state
 - the purpose for which the warrant is issued; and
 - (b) the name of the person to whom the warrant is issued;
 - a description of the premises or motor vehicle that may (c) be entered.
- The magistrate or justice of the peace who issues a warrant must (4) cause a record to be made of particulars of the grounds that the magistrate or justice of the peace has relied on to justify the issue of the warrant.

In this section — (1)

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

specified person means a person who —

- is the owner or lessee of the computer or other data storage device, or is in possession or control of the computer or other data storage device, an employee of any of the above, or any service provider who provides service to the above and holds access information; and
- has relevant knowledge of (b)
 - the computer or a computer network of which the computer or other data storage device forms a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or other data storage device.
- A person executing a warrant under section 74 may require a (2) specified person to provide access information and other information or assistance that is reasonable and necessary to allow the person executing the warrant to access data held in, or accessible from
 - a computer that is on the premises or in or on the motor vehicle named in the warrant; or
 - any other data storage device that is on the premises or (b) in or on the motor vehicle named in the warrant.

76. Further powers conferred by warrant

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

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- (a) to bring and use in the premises or in or on the motor vehicle named in the warrant any equipment, to use any equipment found in the premises or in or on the motor vehicle, and to extract any electricity or other form of energy from the premises or vehicle to operate the equipment that it is reasonable to use in the circumstances, for the purposes of executing the warrant; and
- (b) to access and copy intangible material from computers and other data storage devices located at or accessible from the premises or vehicle named in the warrant (including copying by means of previewing, cloning, or other forensic methods either before or after removal for examination); and
- (c) to use any reasonable measures to
 - (i) gain access to any computer or other data storage device that is at the premises or in or on the vehicle named in the warrant, or that can be accessed from a computer or other data storage device that is at those premises or in or on that vehicle; and
 - (ii) create a forensic copy of any material in such a computer or other data storage device.
- (2) This section does not limit section 74, 75 or 78.

77. Compensation for damage to equipment or data

- (1) This section applies where
 - (a) either
 - (i) damage is caused to equipment as a result of it being operated as mentioned in section 76; or
 - (ii) the data recorded on or accessible from the equipment is damaged;

and

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- the damage was caused as a result of (b)
 - insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment.
- (2) Where this section applies, the owner of the equipment or the user of data recorded on or accessible from the equipment is entitled to compensation for the damage.
- For the purposes of subsection (1), damage to data includes (3) damage by erasure of data or addition of other data.
- An application for compensation is to be made to the (4) Commissioner.
- In determining the amount of compensation payable, regard is to (5) be had to whether the occupier of the premises (or the person in charge of the motor vehicle, as the case requires) and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.
- Any compensation that is payable under this section is to be (6) charged to the Consolidated Account, and this Act, without further appropriation, is sufficient authority for the payment of the compensation.

78. Execution of warrant

- (1) Entry authorised by a warrant under section 74 may be made with whatever assistance and equipment is reasonably necessary for the purpose for which entry is required.
- A person executing a warrant under section 74, and a person (2) assisting that person, may use any force that is reasonably necessary for the execution of the warrant.

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- A warrant authorising the entry and search of a motor vehicle authorises the person executing the warrant to enter any place where the person has reasonable grounds to believe that the vehicle is, for the purpose of locating it and searching it.
- Before entering any premises or motor vehicle under a warrant, (4) the person executing the warrant must show the person, if any, who gives the person entry to the premises or motor vehicle
 - in the case of the Commissioner, a document signed by the Minister and certifying that the person is the Commissioner; and
 - in the case of an authorised person other than the (b) Commissioner, a document signed by the Commissioner and certifying that that person is an authorised person.
- The person executing the warrant must produce it for inspection (5) if asked by
 - the occupier or a person in charge of the premises; or (a)
 - a person in charge of the motor vehicle.
- When executing a warrant, an authorised person may require (6) any person who has the control of any premises, motor vehicle or thing that the authorised person is authorised to enter or inspect to furnish reasonable access to it and to give other reasonable assistance.
- A warrant ceases to have effect on the earliest of the (7) following
 - at the end of the period of one month after its issue; (a)
 - if it is withdrawn by the magistrate or justice of the (b) peace who issued it;
 - (c) when it is executed.

79. Seizure

- (1) An authorised person may seize a document or other thing that is produced or given in response to a requirement under this Division, or that is found as the result of executing a warrant under this Division.
- (2) However, a document or other thing cannot be seized unless the authorised person reasonably suspects that the document or thing
 - (a) is being, or has been, used to commit a breach of this Act or another Act that confers functions on the Commissioner; or
 - (b) may provide evidence of the commission of a breach of this Act or another Act that confers functions on the Commissioner.
- (3) As soon as practicable after the document or other thing is seized, the authorised person must give a receipt for it to the person from whom it was seized.
- (4) The receipt must clearly describe the document or thing seized and its condition.
- (5) If, for any reason, it is not practicable to comply with subsection (3), the authorised person must
 - (a) leave the receipt at the place of seizure; and
 - (b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

80. Copies of seized things to be provided

- (1) This section applies if the person executing a warrant relating to premises seizes, under section 79—
 - (a) a document, film, computer file or other thing that can be readily copied; or

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- (b) a storage device, the information in which can be readily copied.
- (2) Where this section applies, the person executing the warrant must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.
- (3) Subsection (2) does not apply if possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

81. Access to things seized

- (1) Until a thing seized under section 79 is forfeited or returned, the person in whose custody the seized thing is must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

82. Return of seized things

- (1) Where a document or other thing is seized under section 79, an authorised person may retain the document or other thing for as long as is reasonably necessary for the purposes of
 - (a) the investigation to which the document or other thing is relevant; and
 - (b) any proceedings to which the document or other thing is relevant.
- (2) When the retention of the document or other thing ceases to be reasonably necessary for those purposes, the authorised person must ensure that the document or other thing is delivered to the person who appears to the authorised person to be entitled to possession of it.

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83. SAT review: seizure

- (1) A person aggrieved by the seizure of any thing under section 79 may apply to the State Administrative Tribunal for a review of the decision to seize the thing.
- (2) In dealing with an application under subsection (1), the State Administrative Tribunal may determine whether the thing seized must be destroyed, disposed of, forfeited to the State, restored to the person from whom it was seized or otherwise dealt with.
- (3) Subsection (2) does not limit the powers that the *State Administrative Tribunal Act 2004* gives the State Administrative Tribunal.

84. Forfeiture of seized thing

- (1) The Commissioner may determine that a thing seized under section 79 is forfeited to the State if the authorised person who seized the thing
 - (a) cannot find its owner, after making reasonable inquiries; or
 - (b) cannot return the thing to the owner or other person entitled to possession of the thing, after making reasonable efforts.
- (2) In applying subsection (1)
 - (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
 - (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to the owner or other person entitled to possession of the thing.
- (3) Regard must be had to a thing's nature, condition and value in deciding —

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- whether it is reasonable to make inquiries or efforts; and
- if making inquiries or efforts, what inquiries or efforts, (b) including the period over which they are made, are reasonable.

85. **Dealing with forfeited things**

- (1) On the forfeiture of a thing to the State under section 84, the thing becomes the property of the State, and may be dealt with as the chief executive officer considers appropriate.
- (2) Without limiting subsection (1), the chief executive officer may cause the thing to be destroyed, sold or disposed of.

86. Privilege against self-incrimination doesn't apply

- (1) Where under section 69 a person is required to give any information, or answer any question or produce any document or thing
 - that person cannot refuse to comply with that (a) requirement on the ground that the information, answer, document or thing may tend to incriminate the person or render the person liable to any penalty; but
 - the information or answer given, or document or thing (b) produced, by the person is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 88(1)(b).
- This section is without prejudice to the provisions of the (2) Evidence Act 1906 section 11.

87. Information

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

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- on the basis that it has been acquired by the authorised person for the purposes of this Act.
- (2) Where an authorised person copies a document under section 69(1)(d) or when executing a warrant
 - the authorised person may certify the copy as being a true and accurate copy of the document; and
 - in the absence of proof to the contrary, the certified copy (b) is to be accepted by any court or tribunal as evidence of, and as having equal validity as, the original.

Division 4 — Offences

88. Failure to cooperate with investigation

- A person commits an offence who, without reasonable excuse (1) (proof of which lies on the person), when required under Division 3 to give any information, answer any question or produce any document or thing
 - fails to give that information or answer that question at or within the time specified in the requirement; or
 - gives any information or answer that is false or (b) misleading in any material particular; or
 - fails to produce that document or thing at or within the time specified in the requirement.

Penalty: a fine of \$10 000.

- It is a defence in any proceeding for an offence under (2) subsection (1)(a) or (c) for the accused to show
 - that, in the case of an alleged offence arising out of a requirement made orally under section 69, the authorised person did not, when making the requirement, inform the accused that he or she was required under this Act or the other Act that is relevant to give the information, answer the question or produce the document or thing, as the case requires; or

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- that, in the case of an alleged offence arising out of a (b) requirement made by notice in writing under section 69. the notice did not state that the accused was required under this Act or the other Act that is relevant to give the information, answer the question or produce the document or thing, as the case requires; or
- that the time specified in the requirement did not give the accused sufficient notice to enable him or her to comply with the requirement; or
- that, in any case, the authorised person did not, before (d) making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation or inquiry being carried out.

89. Obstructing authorised person

- (1) A person must not prevent or attempt to prevent an authorised person from entering premises or a motor vehicle in the exercise of the authorised person's powers under section 69. Penalty: a fine of \$2 000.
- (2) A person must not obstruct or impede an authorised person in the exercise of the authorised person's powers under section 69. Penalty: a fine of \$2 000.
- A person must comply with a requirement to assist an (3) authorised person executing a warrant under section 74 when requested to do so under section 75(2).
 - Penalty: a fine of \$2 000.
- A person must comply with a requirement to furnish reasonable access to a place or motor vehicle, or to give other reasonable assistance to an authorised person under section 78(6). Penalty: a fine of \$2 000.

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

Part 7 — Criminal and civil proceedings

Division 1 — Preliminary

90. Term used: person involved in contravention

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

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention; or
- (e) has attempted to contravene the provision, or to do any act of a kind referred to in paragraph (a), (b), (c) or (d).

Division 2 — Criminal proceedings

91. Time limit for commencing proceedings

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

92. Who may institute criminal proceedings

- (1) Prosecutions for offences against this Act may be instituted by the Commissioner or by a person authorised in writing by the Commissioner.
- (2) No other person may institute a prosecution for an offence against this Act unless written consent to the institution of the prosecution is given by
 - (a) the Commissioner; or

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

93. Court of summary jurisdiction to be constituted by magistrate

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

94. Other powers of courts in criminal proceedings

- (1) Where proceedings in the Supreme Court or the District Court are taken against a person for contravening, or being involved in a contravention of, a provision of this Act, the Court, in addition to dealing with the offence charged, may
 - (a) grant an injunction under section 99 or 100 against the person in relation to
 - (i) the conduct that constitutes, or is alleged to constitute, the contravention; or
 - (ii) other conduct of that kind;

and

- (b) make an order under section 105 in relation to the contravention.
- (2) If a person is convicted of an offence against this Act, the court by which the conviction was effected may order the offender to reimburse the Department for the cost of purchasing or testing any goods to which the conviction relates.
- (3) Where a person is, by any conviction or order of a court, adjudged to pay a fine, or costs or other sum of money in

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

- exercise any power that the court has apart from this section: or
- on the application of the Minister or the Commissioner, (b) order that the amount unpaid be recoverable as if it were a judgment debt payable by the defaulter to the Crown under a judgment entered up in the court.

95. Offences by directors, employers, and vicarious liability

- (1) Where a corporation within the meaning of the *Corporations* Act 2001 (Commonwealth) or any other body of persons, corporate or unincorporate, is convicted of an offence against this Act, each person who, at the time of the commission of that offence, was a director of the corporation or was the manager, secretary or other similar officer of that body, or who purported to act in any of those capacities, is also guilty of an offence unless the person proves
 - that the offence was committed without the person's knowledge, or that the person did not authorise or permit the commission of the offence; and
 - that the person was not in a position to influence the (b) conduct of that corporation or body or, being in such a position, could not by the exercise of reasonable diligence have prevented the commission of the offence.
- A person who is guilty of an offence by virtue of subsection (1) (2) is liable to a penalty not exceeding the penalty prescribed for the offence of which the corporation or body was convicted.
- Where the affairs of a body of persons are managed by its (3) members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's function of management as if the person were the manager of that body.

Division 2

- (4) Where the employee or agent of a person (*person A*) is convicted of an offence against this Act, each person (*person B*) who, at the time of the commission of the offence, was person A's employer or principal
 - (a) is also guilty of an offence, unless person B proves that person B could not by the exercise of reasonable diligence have prevented the commission of the offence of which person A was convicted; and
 - (b) is liable to a penalty not exceeding the penalty prescribed for the offence of which person A was convicted.
- (5) Where a person has committed an offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3), or would have committed an offence but for the fact that the person could establish a defence under section 96 or 97, and the contravention, or what would have constituted the contravention, was due to the act or default of another person
 - (a) that other person
 - (i) is also guilty of an offence and liable to the same penalty as is provided for the offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3); and
 - (ii) may be charged and convicted of the offence, whether or not proceedings are taken against the first-mentioned person for the offence against the *Australian Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than Divisions 2 and 3);

and

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

Part 7 Criminal and civil proceedings

Division 2 Criminal proceedings

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96. Defence: reasonable mistake

- (1) In a prosecution under this Part for an offence against this Act, it is a defence if the accused establishes that the contravention in respect of which the proceeding was instituted was due to reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.
- (2) However, subsection (1) does not apply in relation to information relied upon by the accused that was supplied to the accused by another person who was, at the time when the contravention occurred
 - (a) an employee or agent of the accused; or
 - (b) if the accused is a body corporate, a director, employee or agent of the accused.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the accused is not entitled to rely on that defence unless
 - (a) the court gives leave; or
 - (b) the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a notice in writing giving whatever information the accused then had that would identify or assist in identifying the other person.

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

- (1) In a prosecution under this Part for an offence against this Act, it is a defence if the accused establishes that
 - (a) the contravention in respect of which the proceeding was instituted was due to
 - (i) the act or default of another person; or
 - (ii) an accident; or

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- some other cause beyond the accused's control; (iii) and
- (b) the accused took reasonable precautions and could not by the exercise of due diligence have prevented the commission of the offence.
- However, subsection (1) does not apply in relation to the act or (2) default of another person who was, at the time when the contravention occurred
 - an employee or agent of the accused; or
 - (b) if the accused is a body corporate, a director, employee or agent of the accused.
- If a defence provided by subsection (1) involves an allegation that a contravention was due to the act or default of another person, the accused is not entitled to rely on that defence unless
 - the court gives leave; or (a)
 - the accused has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a notice in writing giving whatever information the accused then had that would identify or assist in identifying the other person.

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

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

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

Part 7 Criminal and civil proceedings

Civil proceedings Division 3

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- that the accused received the advertisement for (b) publication in the ordinary course of business; and
- (c) that the accused did not know and had no reason to suspect that its publication would amount to a contravention of this Act.

Division 3 — Civil proceedings

99. Injunctions in restraint of conduct

- (1) The Supreme Court or the District Court, on the application of the Minister, the Commissioner or any other person, may grant an injunction in whatever terms the Court determines to be appropriate where the Court is satisfied that a person
 - has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of a provision of this Act; or
 - is involved in a contravention of a provision of this Act.
- The power of the Court to grant an injunction restraining a (2) person (person A) from engaging in conduct may be exercised
 - whether or not it appears to the Court that person A intends to engage again, or to continue to engage, in conduct of that kind; and
 - whether or not person A has previously engaged in (b) conduct of that kind; and
 - whether or not there is an imminent danger of substantial damage to any person if person A engages in conduct of that kind.

100. Other injunctions

The Supreme Court or the District Court, on the application of the Commissioner, may grant an injunction in whatever terms the Court determines to be appropriate where the Court is satisfied that a person has engaged, or is proposing to engage, in

conduct that constitutes, or would constitute, or is involved in, a contravention of —

- (a) an interim ban or a permanent ban under the *Australian Consumer Law (WA)* Part 3-3 Division 2; or
- (b) a provision of any other legislation administered by the Minister or of an order made under any such legislation, being a provision relevant to the alleged contravention; or
- (c) a provision of a prescribed code of practice in force under Part 4 in respect of which the Commissioner has applied to the State Administrative Tribunal under section 47; or
- (d) a provision of an order of the State Administrative Tribunal under section 47.
- (2) If the Court is satisfied, on the application of the Commissioner, that a person has engaged in conduct constituting, or is involved in, a contravention of a provision of this Act, the Court may grant an injunction requiring that person to take specified action to remedy any adverse consequence of that conduct, including
 - (a) an order requiring that person or a person involved in the contravention to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or
 - (b) an order requiring the person or a person involved in the contravention to publish, at the person's own expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

101. Injunctions generally

(1) An injunction granted under this Division may be, or include, an injunction restraining a person from carrying on a business of

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supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business) —

- for a specified period; or
- (b) except on specified terms and conditions.
- The power of the Court to grant an injunction under this (2) Division requiring a person to do an act or thing may be exercised -
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - whether or not the person has previously refused or (b) failed to do that act or thing; and
 - whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

102. Interim injunctions

- (1) An interim injunction may be granted under this Division pending final determination of the application.
- Where the Minister or the Commissioner makes an application (2) to the Court for the grant of an injunction under this Division, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages or costs.
- If, in a case to which subsection (2) does not apply, the Court (3) would, but for this subsection, require a person to give an undertaking as to damages or costs, then
 - if the Minister gives the undertaking, the Court must accept the undertaking by the Minister; and
 - (b) the Court must not require a further undertaking from any other person.

Division 3

103. Final injunction by consent

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

104. Injunction may be rescinded or varied

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

105. Other orders

- (1) Without limiting the generality of section 99 or 100, if, in a proceeding instituted under this Part, or for an offence against this Act, the Supreme Court or the District Court is satisfied that a person has suffered, or is likely to suffer, loss or damage by reason of conduct of another person that contravened a provision of this Act, the Court may make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention for the purpose of compensating the first-mentioned person wholly or in part for the loss or damage or of preventing or reducing the extent of the loss or damage.
- (2) The Court may make an order under this section whether or not an injunction under this Division or any other relief is granted or any other order is made in the proceedings.
- (3) Whether or not other proceedings have been instituted under this Act in relation to a contravention, the Court may make orders under this section
 - (a) on the application of a person who has suffered, or is likely to suffer, loss or damage by reason of the contravention; or
 - (b) on the application of the Commissioner on behalf of one or more such persons made with the written consent of each such person.

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- (4) The orders that may be made under this section include the following —
 - (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void from its beginning or at all times on and after such date, before the date on which the order is made, as is specified in the order;
 - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified;
 - an order refusing to enforce any or all of the provisions of such a contract or arrangement;
 - an order directing the person who engaged in the (d) conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage:
 - (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;
 - an order directing the person who engaged in the (f) conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage;

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- an order, in relation to an instrument creating or (g) transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that —
 - (i) varies, or has the effect of varying, the first-mentioned instrument; or
 - terminates or otherwise affects, or has the effect (ii) of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.
- The powers conferred on the Supreme Court and the District (5) Court under this section in relation to a contract or arrangement do not affect any powers that any other court may have in relation to the contract or arrangement in proceedings instituted in that other court in respect of the contract or arrangement.

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

- In this section, a person (the *first person*) is an associate of (1) another person if
 - the first person holds money or other property on behalf of the other person; or
 - if the other person is a body corporate, the first person is (b) a wholly-owned subsidiary (within the meaning of the Corporations Act 2001 (Commonwealth)) of the other person.
- A Court may, on the application of the Minister or the (2) Commissioner, make an order or orders of the kind specified in subsection (4) if
 - proceedings of a kind referred to in subsection (3) have been taken against a person, or proceedings of a kind

Civil proceedings

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- referred to in subsection (3)(d) may be taken against a person; and
- (b) the Court is satisfied that it is necessary or desirable to make the order or orders for the purpose of preserving money or other property held by, or on behalf of, the person if the person is liable or may become liable under this Act
 - to pay moneys by way of a fine, damages, (i) compensation, refund or otherwise; or
 - to transfer, sell or return other property; (ii) and
- the Court is satisfied that the making of the order or orders will not unduly prejudice the rights and interests of any other person.
- For the purposes of subsection (2)(a), the kinds of proceedings (3) taken against the person are as follows
 - proceedings in the Supreme Court or the District Court against the person for an offence against this Act:
 - an application under section 99 or 100 for an injunction (b) against the person in relation to a contravention of a provision of this Act;
 - an action under the Australian Consumer Law (WA) section 236(1) against the person in relation to a contravention of a provision of this Act;
 - an application for an order under section 105 against a (d) person in relation to a contravention of a provision of this Act.
- The Court may make the following orders under subsection (2) (4) in relation to money or other property held by, or on behalf of, a person (the *respondent*)
 - an order prohibiting, either absolutely or subject to (a) conditions, a person who is indebted to the respondent,

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or to an associate of the respondent, from making a payment, in total or partial discharge of the debt —

- to the respondent; or
- (ii) to another person at the direction or request of the respondent;
- an order prohibiting, either absolutely or subject to (b) conditions, a person who is holding money or other property on behalf of the respondent, or on behalf of an associate of the respondent
 - from paying all or any of the money to the respondent, or to another person at the direction or request of the respondent; or
 - (ii) from transferring the other property to the respondent, or to another person at the direction or request of the respondent, or otherwise parting with possession of that property;
- an order prohibiting, either absolutely or subject to (c) conditions, the taking or sending by any person of money of the respondent, or of an associate of the respondent, to a place outside the State;
- an order prohibiting, either absolutely or subject to (d) conditions, the taking, sending or transfer by any person of other property of the respondent, or of an associate of the respondent, to a place outside the State;
- if the respondent is a natural person, an order appointing (e) a receiver or trustee of the property, or of part of the property, of the respondent with such powers as are specified in the order.
- If the Court makes an order under this section, the order (5) operates
 - for a period specified in the order (which must not be longer than 30 days if the application for the order was

Division 3

Civil proceedings

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- made in the absence of the person against whom the order is sought); or
- (b) if proceedings in relation to which the order is made are concluded before the end of that period, until the conclusion of those proceedings.
- (6) This section
 - (a) has effect subject to the *Bankruptcy Act 1966* (Commonwealth); and
 - (b) does not affect any other powers of the Supreme Court or the District Court.

107. Offence to contravene order under section 106

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

Penalty:

- (a) in the case of a body corporate, a fine of \$1 100 000;
- (b) in the case of a person other than a body corporate, a fine of \$220 000.

108. Finding in certain proceedings to be evidence

- (1) In an action against a person under the *Australian Consumer Law (WA)* section 236(1)
 - (a) a finding of a fact by a court to which subsection (3) applies is prima facie evidence of that fact; and
 - (b) the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (2) In proceedings for an order against a person under section 105(3) or the *Australian Consumer Law (WA)* section 237(1), 238(1) or 239(1) —

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Division 4

- (a) a finding of a fact by a court to which subsection (3) applies is prima facie evidence of that fact; and
- (b) the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (3) This subsection applies to a finding of fact by a court that is made in proceedings under section 99 or 100, or the *Australian Consumer Law (WA)* section 228, 232, 246, 247 or 248, or for an offence against this Act, in which the person has been found to have contravened, or to have been involved in a contravention of, a provision of the *Australian Consumer Law (WA)* Chapter 2, 3 or 4.

Division 4 — Further provisions relating to proceedings

109. References to state of mind

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

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for that intention, opinion, belief or purpose.

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

- (1) Where, in a proceeding under this Part or the *Australian Consumer Law (WA)* in respect of conduct that is engaged in by a body corporate and to which this Part or the *Australian Consumer Law (WA)* applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show
 - (a) that a director, employee or agent of the body corporate engaged in that conduct within the scope of the person's actual or apparent authority; and

Criminal and civil proceedings

Division 4

Further provisions relating to proceedings

s. 111

- (b) that the director, employee or agent had that state of mind.
- (2) Conduct of the kind set out in paragraph (a) or (b) that is engaged in on behalf of a body corporate is to be treated, for the purposes of this Act, as having been engaged in by the body corporate as well
 - (a) conduct by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
 - (b) conduct by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent.

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

- (1) Where, in a proceeding under this Part or the *Australian Consumer Law (WA)* in respect of conduct that is engaged in by a person (the *principal*) other than a body corporate and to which this Part or the *Australian Consumer Law (WA)* applies, it is necessary to establish the state of mind of the principal, it is sufficient to show
 - (a) that an employee or agent of the principal engaged in that conduct within the scope of the person's actual or apparent authority; and
 - (b) that the employee or agent had that state of mind.
- (2) Conduct of the kind set out in paragraph (a) or (b) that is engaged in on behalf of a person (the *principal*) other than a body corporate is to be treated, for the purposes of this Act, as having been engaged in by the principal as well —

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Part 7

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

Part 8 — Miscellaneous

112. Confidentiality of information officially obtained

In this section — (1)

> personal information means information concerning the affairs of a person.

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

Penalty: a fine of \$20 000.

- Subsection (2) does not prohibit the recording, divulging or (3) communicating of any personal information
 - with the consent of the person to whom the information relates, or each of them if there is more than one; or
 - (b) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information relates; or
 - for the purposes of performing a function under or in (c) connection with this Act; or
 - for the purposes of legal proceedings arising out of the (d) administration of this Act or another written law; or
 - for the purpose of the investigation of any suspected offence or the conduct of proceedings against any person for any offence.
- Nothing in this section affects the operation of the (4) Parliamentary Privileges Act 1891.

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

- (1) This section applies to information that is obtained by a person by reason of his or her office, position, employment or engagement under or for the purposes of this Act.
- Without limiting section 112(3), the fact that information to (2) which this section applies is obtained in connection with the performance of a particular function under this Act does not prevent that information from being used or disclosed in connection with the performance of
 - any other function under this Act; or
 - (b) any function under any other written law that is administered through the Department.

114. Protection from liability for wrongdoing

- (1) In this section
 - a reference to the doing of anything includes a reference to an omission to do anything; and
 - liability includes liability for defamation. (b)
- A person is not liable for anything that the person has done, in (2) good faith, in the course of the operations of the Department or the administration of this Act.
- The Crown is also relieved of any liability that it might (3) otherwise have had for another person having done anything as described in subsection (2).
- (4) The protection given by this section applies even though the thing done as described in subsection (2) may have been capable of being done whether or not this Act had been enacted.
- This section is subject to the Chattel Securities Act 1987 (5) sections 24 and 25.

Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04]

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115. Protection from liability for publishing official statements

- In this section (1)
 - *liability* includes liability for defamation.
- (2) This section applies to statements made or issued by a person in the course of the operations of the Department or the administration of this Act.
- (3) A person is not liable for publishing, in good faith
 - a statement to which this section applies; or
 - a fair report or summary of a statement to which this (b) section applies.
- (4) Nothing in this section limits section 114.

116. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- A regulation may create an offence punishable by a penalty of a (2) fine not exceeding \$2 000.
- Without limiting subsection (1), regulations made under that (3) subsection may
 - prescribe calling hours with respect to unsolicited consumer agreements under the Australian Consumer Law (WA) section 73;
 - provide that the Australian Consumer Law (WA) Part 3-2 Division 2 (unsolicited consumer agreements) does not apply, or provisions of that Division that are specified in the regulations do not apply, to or in relation to agreements of a kind specified in the regulations.

Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] Extract from www.slp.wa.gov.au, see that website for further information

- Regulations made under subsection (3)(a) may alter the operation of the Australian Consumer Law (WA) sections 73(1) and 170(1).
- Regulations made under subsection (3)(b) may alter the (5) operation of the Australian Consumer Law (WA) Part 3-2 Division 2.

Part 9 — Transitional provisions

117. **Transitional regulations**

- If there is not sufficient provision in this Act for dealing with a (1) transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- In subsection (1) (2)

transitional matter —

- means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the Consumer Affairs Act 1971, Door to Door Trading Act 1987 and Fair Trading Act 1987 to the provisions of this Act; and
- includes a saving or application matter.
- Regulations made under subsection (1) may provide that specified provisions of a written law
 - do not apply to or in relation to any matter; or
 - apply with specified modifications to or in relation to (b) any matter.
- If regulations under subsection (1) provide that a specified state (4) of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the Gazette but not earlier than the day this section comes into operation, the regulations have effect according to their terms.
- In subsections (3) and (4) (5) specified means specified or described in the regulations.

- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (7) Regulations made under subsection (1) in relation to a matter referred to in subsection (3) must be made within such period as is reasonably and practicably necessary to deal with a transitional matter that arises as a result of the enactment of this Act.

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

- (1) The Fair Trading (Product Information Standard)
 Regulations 2005 (other than Parts 2 and 3) continue in force after the commencement of this section as if those regulations were an information standard under the Australian Consumer Law (WA) Part 3-4, and may be enforced accordingly.
- (2) The regulations continued in force by subsection (1) may be repealed as if they were regulations made under section 116.

119. Transitional provision: recall of defective goods

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

120. Transitional provision: delegations

- (1) If a delegation under the *Consumer Affairs Act 1971* section 23 has effect immediately before the commencement of Part 10, that delegation continues to have effect on and after that commencement as if it had taken place under section 60.
- (2) This section does not limit the *Interpretation Act 1984* Part V.

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

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

Part 10 — Amendments

Division 1 — Consumer Affairs Act 1971 amended

122. Act amended

This Division amends the Consumer Affairs Act 1971.

Sections 2A to 2D inserted 123.

After section 2 insert:

2A. **Application of Act limited**

- This Act does not apply on or after the date on which the Fair (1) Trading Act 2010 Part 10 comes into force.
- (2) This section is subject to sections 2C and 2D.

2B. **Expiry of Act**

- This Act expires on a day fixed by proclamation. (1)
- A proclamation cannot be made under subsection (1) unless the (2) Commissioner has given the Minister a certificate signed by the Commissioner stating that the operation of this Act is no longer necessary.
- (3) In subsection (2) —

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

2C. Act continues to apply for certain purposes

(1) In this section —

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

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Amendments Part 10

Division 2 Door to Door Trading Act 1987 amended

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- This Act continues to apply on and after the commencement day (2) only for the following purposes
 - the investigation and prosecution of offences against this Act committed before the commencement day;
 - the continuation, settlement or discontinuation of (b) proceedings, under or in relation to this Act, that were commenced, but not concluded, before the commencement day.

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

- (1) This Act continues to apply on and after the commencement day (as defined in section 2C(1)) in relation to acts or omissions that occurred before the commencement day.
- (2) Without limiting subsection (1), action may be taken under this Act in relation to those acts or omissions.

Division 2 — Door to Door Trading Act 1987 amended

124. Act amended

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

125. Sections 3A to 3D inserted

After section 2 insert:

3A. **Application of Act limited**

- This Act does not apply on or after the date on which the Fair (1) Trading Act 2010 Part 10 comes into force.
- (2) This section is subject to sections 3C and 3D.

3B. **Expiry of Act**

- This Act expires on a day fixed by proclamation. (1)
- (2) A proclamation cannot be made under subsection (1) unless the Commissioner has given the Minister a certificate signed by the Commissioner stating that the operation of this Act is no longer necessary.
- In subsection (2) (3)

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

3C. Act continues to apply for certain purposes

(1) In this section —

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

- (2) This Act continues to apply on and after the commencement day to contracts made before the commencement day.
- This Act continues to apply on and after the commencement day (3) only for the following purposes
 - the investigation and prosecution of offences against this Act committed before the commencement day;
 - the giving, withdrawal or payment of infringement notices in respect of offences against this Act committed before the commencement day;
 - the continuation, settlement or discontinuation of (c) proceedings, under or in relation to this Act, that were commenced, but not concluded, before the commencement day.
- To avoid doubt, the *Door to Door Trading Regulations 1987* (4) continue in force on and after the commencement day for the purposes of subsection (3) and section 3D and for no other purpose.

Part 10 **Amendments**

Division 3 Fair Trading Act 1987 amended

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

- (1) This Act continues to apply on and after the commencement day (as defined in section 3C(1)) in relation to acts or omissions that occurred before the commencement day.
- Without limiting subsection (1), action may be taken under this (2) Act in relation to those acts or omissions.

Division 3 — Fair Trading Act 1987 amended

126. Act amended

This Division amends the Fair Trading Act 1987.

127. Sections 3A to 3D inserted

After section 2 insert:

3A. **Application of Act limited**

- This Act does not apply on or after the date on which the Fair (1) Trading Act 2010 Part 10 comes into force.
- This section is subject to sections 3C and 3D. (2)

3B. **Expiry of Act**

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

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

3C. Act continues to apply for certain purposes

- In this section (1)
 - commencement day means the day on which the Fair Trading Act- 2010 Part 10 comes into force.
- (2) This Act continues to apply on and after the commencement day only for the following purposes
 - the investigation and prosecution of offences against this Act committed before the commencement day;
 - (b) the giving, withdrawal or payment of infringement notices under section 73 in respect of offences against this Act committed before the commencement day;
 - the continuation, settlement or discontinuation of proceedings, under or in relation to this Act, that were commenced, but not concluded, before the commencement day.
- To avoid doubt, the Fair Trading (Infringement Notices) Regulations 2006 continue in force on and after the commencement day for the purposes of subsection (3) and section 3D and for no other purpose.
- Subsection (2)(c) is subject to the Fair Trading Act 2010 (4) section 37.

3D. Acts or omissions that occurred before the commencement

- (1) This Act continues to apply on and after the commencement day (as defined in section 3C(1)) in relation to acts or omissions that occurred before the commencement day.
- Without limiting subsection (1), action may be taken under this (2) Act in relation to those acts or omissions.

Schedule 1 — Acts that override this Act

[s. 15]

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

Agricultural Products Act 1929

Agriculture and Related Resources Protection Act 1976

Dangerous Goods Safety Act 2004

Fertilizers Act 1977

Firearms Act 1973

Health Act 1911

Mines Safety and Inspection Act 1994

Motor Vehicle Dealers Act 1973

Occupational Safety and Health Act 1984

Plant Diseases Act 1914

Poisons Act 1964

Radiation Safety Act 1975

Road Traffic Act 1974

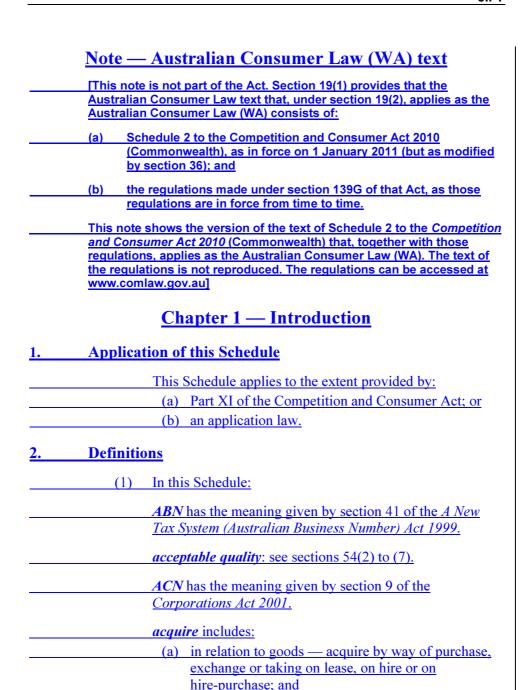
Seeds Act 1981

Spear-guns Control Act 1955

Trade Measurement Act 2006

Veterinary Chemical Control and Animal Feeding Stuffs Act 1976.

3



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(b) in relation to services — accept.

Australian Consumer Law (WA) text

Chapter 1

Introduction

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Note: Section 5 deals with when receipt of a donation is an acquisition.
adverse publicity order: see section 247(2).
affected person, in relation to goods, means:
(a) a consumer who acquires the goods; or
(b) a person who acquires the goods from the consumer
(other than for the purpose of re-supply); or
(c) a person who derives title to the goods through or
under the consumer.
agreement document: see section 78(2).
applicable industry code has the meaning given by
section 51ACA(1) of the Competition and Consumer Act.
application law has the same meaning as in section 140 of
the Competition and Consumer Act.
article includes a token, card or document.
ASIC means the Australian Securities and Investments
Commission.
assert a right to payment: see section 10(1).
associate regulator:
(a) for the purposes of the application of this Schedule
as a law of the Commonwealth — means a body that
is, for the purposes of the application of this
Schedule as a law of a State or a Territory, the regulator within the meaning of the application law
of the State or Territory; or
(b) for the purposes of the application of this Schedule
as a law of a State or a Territory — means:
(i) the Commission; or
(ii) a body that is, for the purposes of the
application of this Schedule as a law of
another State or a Territory, the regulator
within the meaning of the application law of
that other State or Territory.

authority, in relation to a State or a Territory (including	. on
external Territory), means:	<u>; an</u>
(a) a body corporate established for a purpose of the	
State or the Territory by or under a law of the Sta	
or Territory; or	ite
(b) an incorporated company in which the State or the	
Territory, or a body corporate referred to in	<u>IC</u>
paragraph (a), has a controlling interest.	
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 i	<u>n</u>
paragraph (a), has a controlling interest.	
banker has the same meaning as in section 4(1) of the	
Competition and Consumer Act.	
competition and consumer Act.	
ban period for an interim ban: see section 111(1).	
business includes a business not carried on for profit.	
business day, in relation to an unsolicited consumer	
agreement, means a day that is not:	
(a) a Saturday or Sunday; or	
(b) a public holiday in the place where the agreemen	t
was made.	-
business or professional relationship includes a	
relationship between employer and employee, or a simi	lar
relationship.	
call on, in relation to negotiating an unsolicited consum	<u>ier</u>
agreement, does not include call by telephone.	
Commission has the same meaning as in section 4(1) of	f the
Competition and Consumer Act.	

Note

Australian Consumer Law (WA) text

Chapter 1

Introduction

cl. 2

Commonwealth mandatory standard, in relation to goods,
 means a mandatory standard in respect of the goods
imposed by a law of the Commonwealth.
imposed by a law of the Commonwealth.
Commonwealth Minister means the Minister who
administers Part XI of the Competition and Consumer Act.
 Competition and Consumer Act means the Competition
and Consumer Act 2010.
 consumer: see section 3.
 consumer contract: see section 23(3).
 consumer goods means goods that are intended to be used,
or are of a kind likely to be used, for personal, domestic or
household use or consumption, and includes any such
goods that have become fixtures since the time they were
supplied if:
 (a) a recall notice for the goods has been issued; or
(b) a person has voluntarily taken action to recall the
goods.
 continuing credit contract: see section 14(1).
 contravening conduct: see section 239(1)(a)(i).
 court, in relation to a matter, means any court having
jurisdiction in the matter.
covering includes a stopper, glass, bottle, vessel, box,
capsule, case, frame or wrapper.
 <i>credit card</i> : see section 39(5).
credit provider means a person providing, or proposing to
provide, in the course of a business carried on by the
person, credit to consumers in relation to the acquisition of
goods or services.
dealer: see section 71.
debit card: see section 39(6).

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declared term: see section 239(1)(a)(ii).
defective goods action means an action under
section 138, 139, 140 or 141, and includes such an action
because of section 138(3) or 145.
· · · · · · · · · · · · · · · · · · ·
<u>disclosed purpose</u> : see section 55(2).
displayed price: see sections 47(2) to (5).
document includes:
(a) a book, plan, paper, parchment or other material on
which there is writing or printing, or on which there
are marks, symbols or perforations having a meaning
for persons qualified to interpret them; and
(b) a disc, tape, paper or other device from which
sounds or messages are capable of being reproduced.
enforcement proceeding means:
(a) a proceeding for an offence against Chapter 4; or
(b) a proceeding instituted under Chapter 5 (other than
under sections 237 and 239).
evidential burden, in relation to a matter, means the
burden of adducing or pointing to evidence that suggests a
reasonable possibility that the matter exists or does not
exist.
express warranty, in relation to goods, means an
undertaking, assertion or representation:
(a) that relates to:
(i) the quality, state, condition, performance or
characteristics of the goods; or
(ii) the provision of services that are or may at
any time be required for the goods; or
(iii) the supply of parts that are or may at any time
be required for the goods; or
(iv) the future availability of identical goods, or of
goods constituting or forming part of a set of
which the goods, in relation to which the

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undertaking, assertion or representation is
given or made, form part; and
(b) that is given or made in connection with the supply
of the goods, or in connection with the promotion by
any means of the supply or use of the goods; and
(c) the natural tendency of which is to induce persons to
acquire the goods.
financial product has the meaning given by
section 12BAA of the Australian Securities and
Investments Commission Act 2001.
Grancial armics has the magning given by section 12DAD
financial service has the meaning given by section 12BAB of the Australian Securities and Investments Commission
Act 2001.
<u>1107 2001.</u>
<u>free item</u> includes a free service.
goods includes:
(a) ships, aircraft and other vehicles; and
(b) animals, including fish; and
(c) minerals, trees and crops, whether on, under or
attached to land or not; and
(d) gas and electricity; and
(e) computer software; and
(f) second-hand goods; and
(g) any component part of, or accessory to, goods.
(g) unly component part of, of 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.
<i>industry code</i> has the meaning given by section 51ACA of
the Competition and Consumer Act.
<i>information provider</i> : see sections 19(5) and (6).
<i>information standard</i> : see sections 134(1) and 135(1).

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inner container includes any container into which goods
are packed, other than a shipping or airline container, pallet
or other similar article.
interest, in relation to land, means:
(a) a legal or equitable estate or interest in the land; or
(b) a right of occupancy of the land, or of a building or
part of a building erected on the land, arising by
virtue of the holding of shares, or by virtue of a
contract to purchase shares, in an incorporated
company that owns the land or building; or
(c) a right, power or privilege over, or in connection
with, the land.
<i>interim ban</i> : see sections 109(1) and (2).
unterim ban, see sections 109(1) and (2).
involved: a person is involved, in a contravention of a
provision of this Schedule or in conduct that constitutes
such a contravention, if the person:
(a) has aided, abetted, counselled or procured the
contravention; or
(b) has induced, whether by threats or promises or
otherwise, the contravention; or
(c) has been in any way, directly or indirectly,
knowingly concerned in, or party to, the
contravention; or
(d) has conspired with others to effect the contravention.
joint liability proceedings means proceedings relating to
the joint and several liability under section 278 of a linked
credit provider and a supplier of goods or services.
label includes a band or ticket.
lay-by agreement: see section 96(3).
linked credit contract: see section 278(2).
linked credit provider, in relation to a supplier of goods or
services, means a credit provider:

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(a) with whom the supplier has a contract, arrangement
or understanding relating to:
(i) the supply to the supplier of goods in which
the supplier deals; or
(ii) the business carried on by the supplier of
supplying goods or services; or
(iii) the provision to persons to whom goods or
services are supplied by the supplier of credit
in respect of payment for those goods or
services; or
(b) to whom the supplier, by arrangement with the credit
provider, regularly refers persons for the purpose of
obtaining credit; or
(c) whose forms of contract, forms of application or
offers for credit are, by arrangement with the credit
provider, made available to persons by the supplier;
<u>or</u>
(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.
<i>listed public company</i> has the meaning given by
section 995-1(1) the <i>Income Tax Assessment Act 1997</i> .
200101336 1(1) 010 210 0110 1 1 1 1 1 1 1 1 1 1 1 1 1
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.	
<i>market</i> has the same meaning as in section 4E of the	
Competition and Consumer Act.	
<i>materials</i> , 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	
<u>Act 2009.</u>	
negotiated by telephone: see section 78(3).	
negotiation: see section 72.	

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new j	participant: see section 45(2).
non-	linked credit contract: see section 287(5).
non-j	party consumer means:
	in relation to conduct referred to in section 239(1)(a)(i) — a person who is not, or has not been, a party to an enforcement proceeding in relation to the conduct; and in relation to a term of a consumer contract referred to in section 239(1)(a)(ii) — a person who is not, or has not been, a party to an enforcement proceeding in relation to the term.
	cipant, in a pyramid scheme, means a person who cipates in the scheme.
participate, in a pyramid scheme: see section 44(3).	
partic	cipation payment: see section 45(1)(a).
perm	anent ban: see sections 114(1) and (2).
prem	ises 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
	a vehicle, vessel or aircraft; or
	a part of any such premises.
price, of goods or services, means:	
	the amount paid or payable (including any charge of
(a)	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
	(i) the lowest amount (including any charge of any description) for which the goods or services could reasonably have been acquired from the supplier at the time of the transaction

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or, if not from the supplier, from another
supplier; or
(ii) if they could not reasonably have been
acquired separately from another supplier —
their value at the time of the transaction.
prior negotiations or arrangements, in relation to the
acquisition of goods by a consumer, means negotiations or
arrangements:
(a) that were conducted or made with the consumer by
another person in the course of a business carried on
by the other person; and
(b) that induced the consumer to acquire the goods, or
otherwise promoted the acquisition of the goods by
the consumer.
product related service means a service for or relating to:
(a) the installation of consumer goods of a particular
kind; or
(b) the maintenance, repair or cleaning of consumer
goods of a particular kind; or
(c) the assembly of consumer goods of a particular kind;
or
(d) the delivery of consumer goods of a particular kind;
and, without limiting paragraphs (a) to (d), includes any
other service that relates to the supply of consumer goods
of that kind.

proof of transaction : see section 100(4).
publish , in relation to an advertisement, means include in a
publication intended for sale or public distribution
(whether to the public generally or to a restricted class or
number of persons) or for public display (including in an
electronic form).
pyramid scheme: see section 45(1).
recall notice: see section 122(1).
recovery period: see section 41(4).

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recruitment payment: see section 45(1)(b).
<i>regulations</i> means regulations made under section 139G of
the Competition and Consumer Act.
regulator:
(a) for the purposes of the application of this Schedule
<u>as a law of the Commonwealth — means the</u> 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
<u>Territory.</u>
rejection period: see section 262(2).
related, in relation to a body corporate: see section 6.
related contract or instrument: see section 83(2).
rely on, in relation to a term of a consumer contract,
includes the following:
(a) attempt to enforce the term;
(b) attempt to exercise a right conferred, or purportedly conferred, by the term;
(c) assert the existence of a right conferred, or
purportedly conferred, by the term.
<u>responsible Minister means:</u> (a) the Commonwealth Minister; or
(b) the Minister of a State who administers the
application law of the State; or
(c) the Minister of a Territory who administers the
application law of the Territory.
safety defect, in relation to goods: see section 9.
safety standard: see sections 104(1) and 105(1).
sale by auction, in relation to the supply of goods by a
person, means a sale by auction that is conducted by an

agent of the person (whether the agent acts in person or by
electronic means).
send includes deliver, and sent and sender have
corresponding meanings.
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);
<u>or</u>
(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,
<u>amusement, entertainment, recreation or</u> instruction; or
<u></u> _
(iii) a contract for or in relation to the conferring of rights, benefits or privileges for which
remuneration is payable in the form of a
royalty, tribute, levy or similar exaction; or
(iv) a contract of insurance; or
(v) a contract between a banker and a customer of
the banker entered into in the course of the

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	carrying on by the banker of the business of
	banking; or
	(vi) any contract for or in relation to the lending of
	money;
	but does not include rights or benefits being the supply of
	goods or the performance of work under a contract of
<u>S</u>	service.
	share includes stock.
S	ship has the meaning given by section 3(1) of the
	Admiralty Act 1988.
	single price: see section 48(7).
S	substantially transformed, in relation to goods: see
	section 255(3).
	substantiation notice means a notice under section 219.
<u> </u>	substantiation notice compliance period: see
<u>\$</u>	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;
8	and, when used as a noun, has a corresponding meaning,
	and supplied and supplier have corresponding meanings.
1	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
<u>8</u>	agreement, entitled to terminate the agreement.

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	tied continuing credit contract means a continuing credit
	contract under which a credit provider provides credit in
•	respect of the payment by a consumer for goods or services
	supplied by a supplier in relation to whom the credit
	provider is a linked credit provider.
	tied loan contract means a loan contract entered into
	between a credit provider and a consumer where:
•	(a) the credit provider knows, or ought reasonably to
	know, that the consumer enters into the loan contract
	wholly or partly for the purposes of payment for
	goods or services supplied by a supplier; and
	(b) at the time the loan contract is entered into the credit
	provider is a linked credit provider of the supplier.
	trade or commerce means:
	(a) trade or commerce within Australia; or
	(b) trade or commerce between Australia and places
	outside Australia;
	and includes any business or professional activity (whether
	or not carried on for profit).
	transparent:
	(a) in relation to a document — means:
	(i) expressed in reasonably plain language; and
	(ii) legible; and
	(iii) presented clearly; and
	(b) in relation to a term of a consumer contract — see
	section 24(3).
	unfair, in relation to a term of a consumer contract: see
	section 24(1).
	500tion 2 1(1).
	unsolicited consumer agreement: see section 69.
	unsolicited goods means goods sent to a person without
	any request made by the person or on his or her behalf.
	unsolicited services means services supplied to a person
	without any request made by the person or on his or her
	<u>behalf.</u>

Australian Consumer Law (WA) text

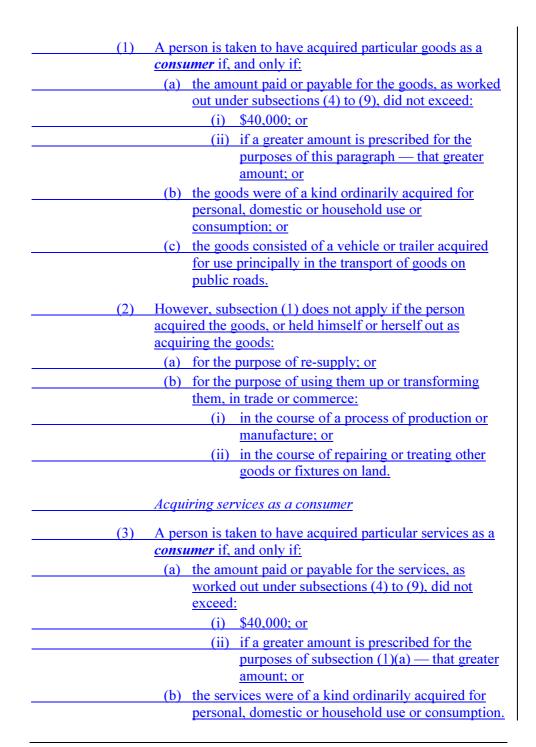
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upfront price: see section 26(2).	
warranty against defects: see section 102(3).	
(2) In this Schedule:	
(a) a reference to engaging in conduct is a reference to	
doing or refusing to do any act, including:	
(i) the making of, or the giving effect to a	
provision of, a contract or arrangement; or	
(ii) the arriving at, or the giving effect to a	
provision of, an understanding; or	
(iii) the requiring of the giving of, or the giving of,	
a covenant; and	
(b) a reference to conduct, when that expression is used	
as a noun otherwise than as mentioned in	
paragraph (a), is a reference to the doing of or the	
refusing to do any act, including:	
(i) the making of, or the giving effect to a	
provision of, a contract or arrangement; or	
(ii) the arriving at, or the giving effect to a	
provision of, an understanding; or	
(iii) the requiring of the giving of, or the giving of,	
a covenant; and	
(c) a reference to refusing to do an act includes a	
reference to:	
(i) refraining (otherwise than inadvertently) from	
doing that act; or	
(ii) making it known that that act will not be done	
<u>and</u>	
(d) a reference to a person offering to do an act, or to do	
an act on a particular condition, includes a reference	
to the person making it known that the person will	
accept applications, offers or proposals for the	
person to do that act or to do that act on that	
condition, as the case may be.	
3. Meaning of consumer	
Acquiring goods as a consumer	
Acquiring goods as a consumer	

Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] Extract from www.slp.wa.gov.au, see that website for further information

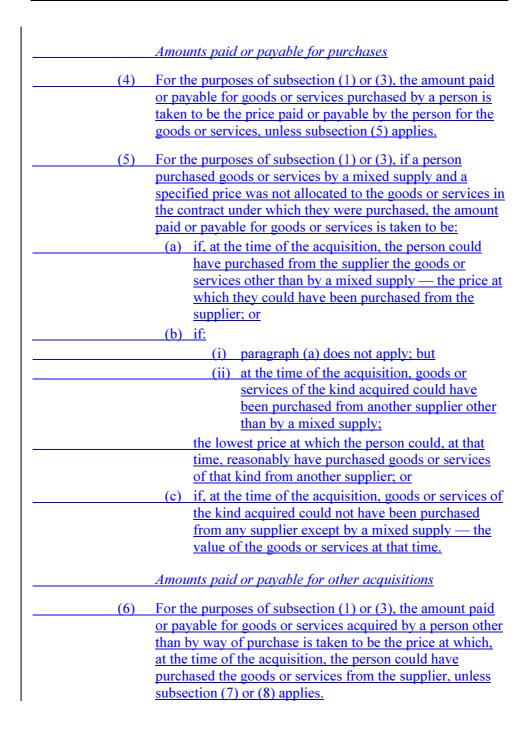


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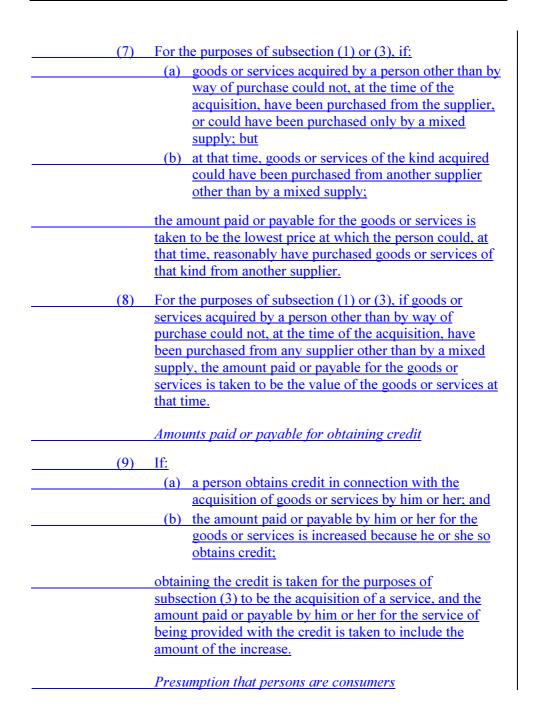
Chapter 1

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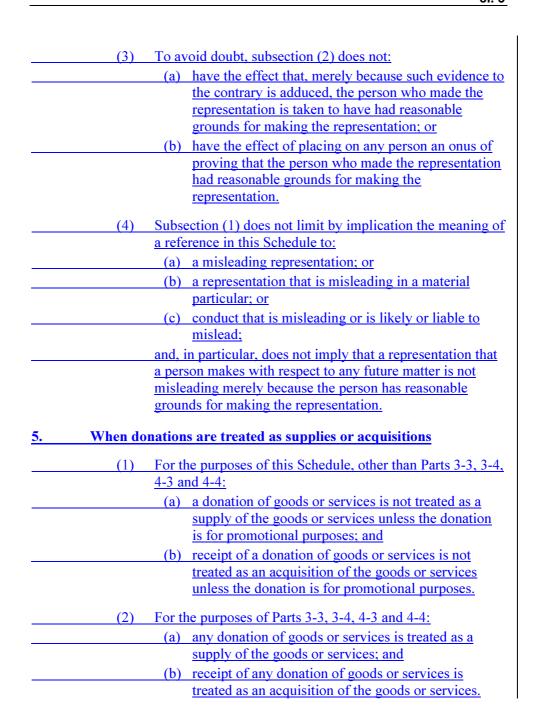
Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] page 114 Extract from www.slp.wa.gov.au, see that website for further information



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(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. 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. 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.

Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] page 116 Extract from www.slp.wa.gov.au, see that website for further information

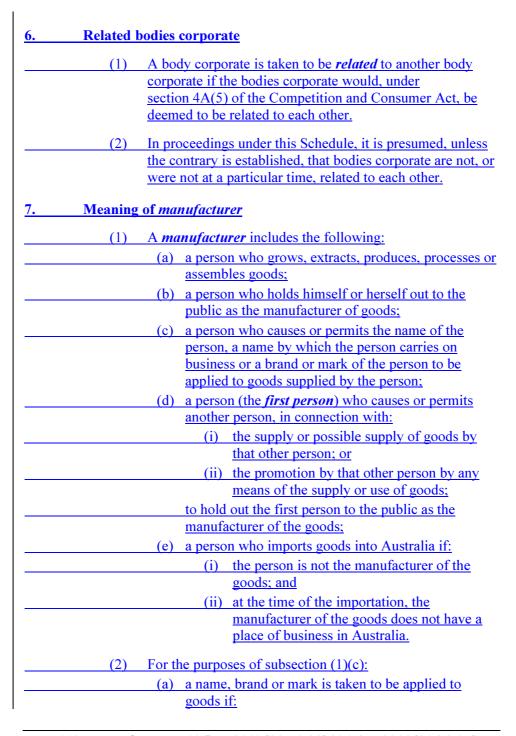


Fair Trading Act 2010

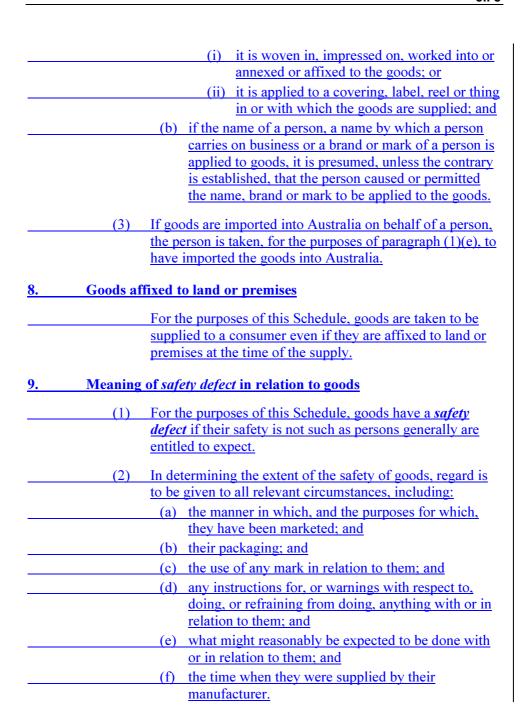
Note Australian Consumer Law (WA) text

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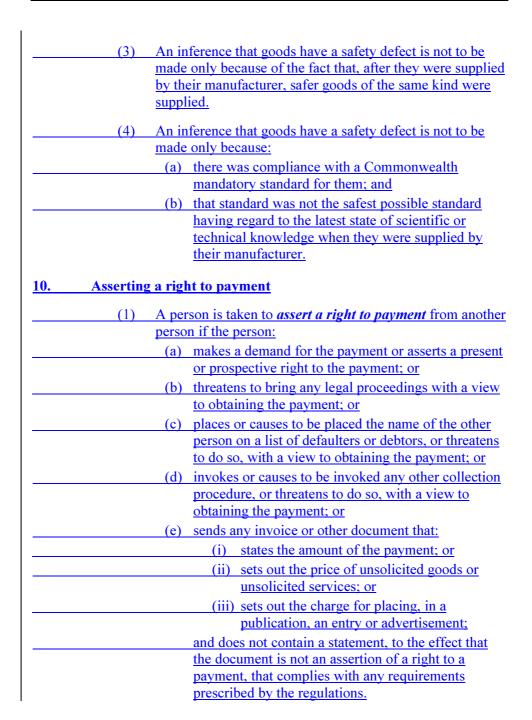


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Chapter 1

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cl. 10



Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] Extract from www.slp.wa.gov.au, see that website for further information

(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 <i>original</i>
services) acquired from a person (the original supplier) includes a reference to:
(i) a supply of the original services to another person in an altered form or condition; and
(ii) a supply to another person of other services that are substantially similar to the original services, and could not have been supplied if the original services had not been acquired

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by the person who acquired them from the original supplier. Application of Schedule in relation to leases and licences of land **12.** 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. 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.

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 <i>credit</i>
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 <i>continuing credit</i>
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.
section 66(2)); or

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Chapter 2 General protections

cl. 16

Severability 16.

- 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.
- This section has effect subject to any order made under **(2)** Division 4 of Part 5-2.

References to provisions in this Schedule **17.**

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

Misleading or deceptive conduct **18.**

Note:

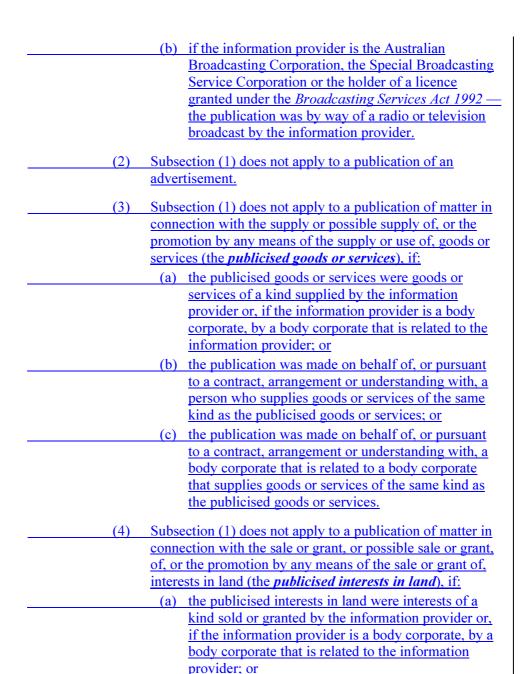
- A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- Nothing in Part 3-1 (which is about unfair practices) limits by implication subsection (1).

For rules relating to representations as to the country of origin of goods, see Part 5-3.

Application of this Part to information providers

- This Part does not apply to a publication of matter by an **(1)** 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

Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] Extract from www.slp.wa.gov.au, see that website for further information



Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] page 125

Extract from www.slp.wa.gov.au, see that website for further information

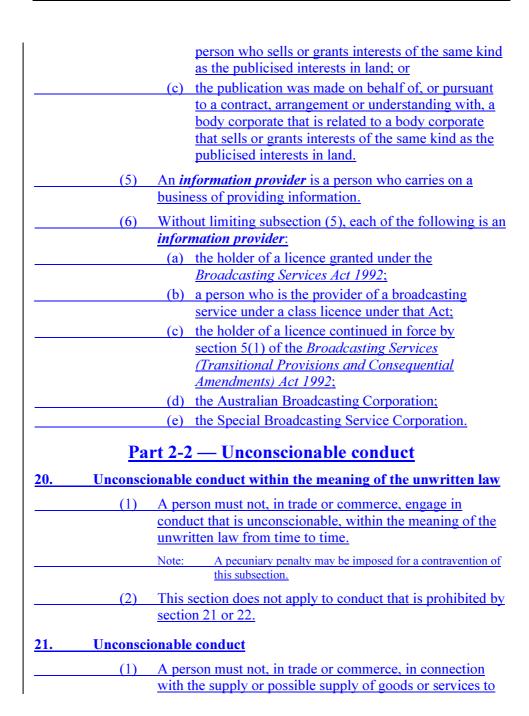
(b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a

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General protections

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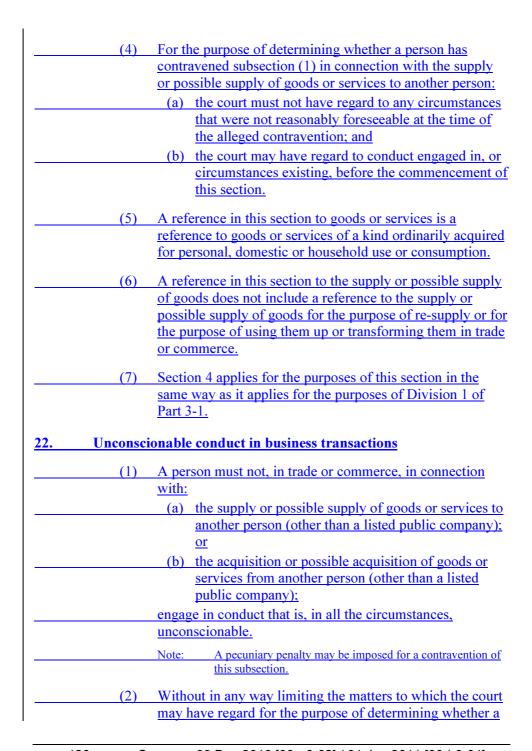
and	other person, engage in conduct that is, in all the
	cumstances, unconscionable.
Not	e: A pecuniary penalty may be imposed for a contravention of
	this subsection.
(2) Wi	thout in any way limiting the matters to which the court
	y have regard for the purpose of determining whether a
	son (the <i>supplier</i>) has contravened subsection (1) in
	nnection with the supply or possible supply of goods or
	vices to another person (the <i>consumer</i>), the court may
hav	ve regard to:
(8	a) the relative strengths of the bargaining positions of
	the supplier and the consumer; and
(1	b) whether, as a result of conduct engaged in by the
	person, the consumer was required to comply with
	conditions that were not reasonably necessary for the
	protection of the legitimate interests of the supplier;
	<u>and</u>
	e) whether the consumer was able to understand any
	documents relating to the supply or possible supply
	of the goods or services; and
	d) whether any undue influence or pressure was exerted
	on, or any unfair tactics were used against, the consumer or a person acting on behalf of the
	consumer by the supplier or a person acting on
	behalf of the supplier in relation to the supply or
	possible supply of the goods or services; and
(4	the amount for which, and the circumstances under
	which, the consumer could have acquired identical
	or equivalent goods or services from a person other
	than the supplier.
(3) A ₁	rougan is not to be taken for the numbers of this section
	berson is not to be taken for the purposes of this section engage in unconscionable conduct in connection with
	supply or possible supply of goods or services to a
	son by reason only that the person institutes legal
	ceedings in relation to that supply or possible supply or
ref	ers a dispute or claim in relation to that supply or
pos	ssible supply to arbitration.

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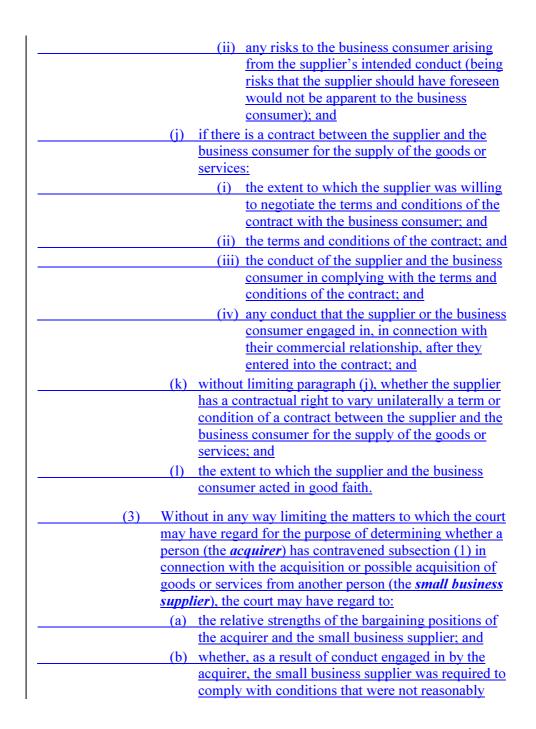
narco	on (the <i>supplier</i>) has contravened subsection (1) in
	ection with the supply or possible supply of goods or
	ces to another person (the <i>business consumer</i>), the
	may have regard to:
(a)	the relative strengths of the bargaining positions of
<u>(a)</u>	the supplier and the business consumer; and
(b)	whether, as a result of conduct engaged in by the
(0)	supplier, the business consumer was required to
	comply with conditions that were not reasonably
	necessary for the protection of the legitimate
	interests of the supplier; and
(c)	whether the business consumer was able to
(0)	understand any documents relating to the supply or
	possible supply of the goods or services; and
(b)	whether any undue influence or pressure was exerted
	on, or any unfair tactics were used against, the
	business consumer or a person acting on behalf of
	the business consumer by the supplier or a person
	acting on behalf of the supplier in relation to the
	supply or possible supply of the goods or services;
	<u>and</u>
(e)	the amount for which, and the circumstances under
	which, the business consumer could have acquired
	identical or equivalent goods or services from a
	person other than the supplier; and
<u>(f)</u>	the extent to which the supplier's conduct towards
	the business consumer was consistent with the
	supplier's conduct in similar transactions between
	the supplier and other like business consumers; and
<u>(g)</u>	the requirements of any applicable industry code;
	<u>and</u>
<u>(h)</u>	· · · · · · · · · · · · · · · · · · ·
	business consumer acted on the reasonable belief
	that the supplier would comply with that code; and
(i)	
	to disclose to the business consumer:
	(i) any intended conduct of the supplier that
	might affect the interests of the business
	consumer; and

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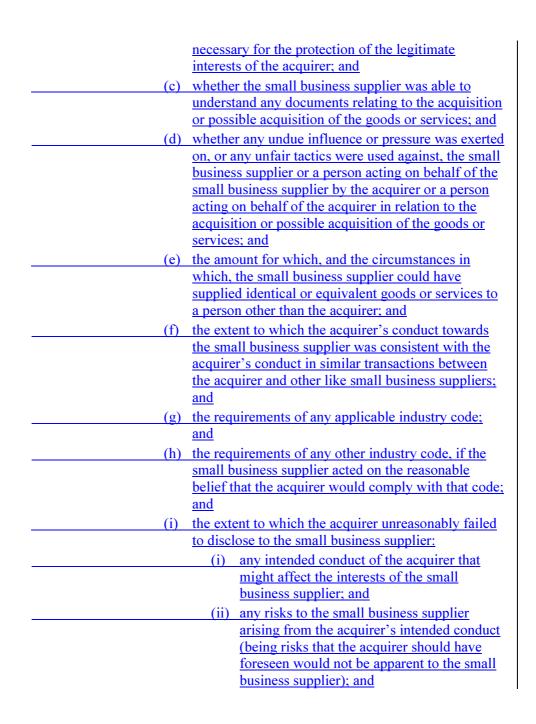
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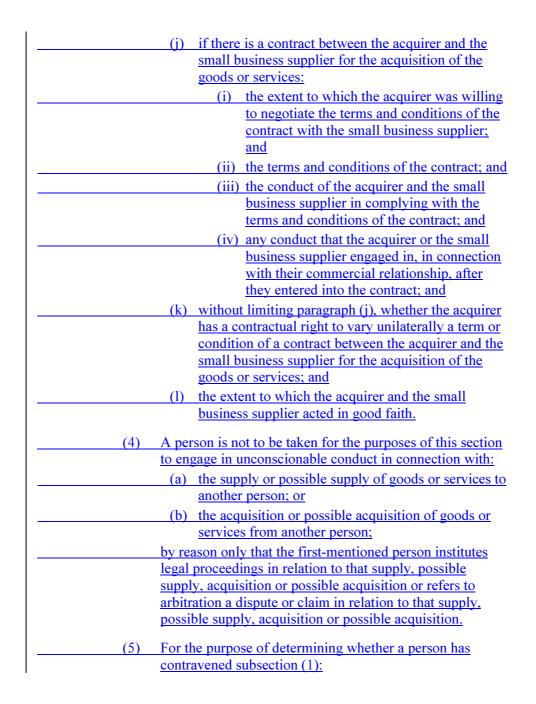


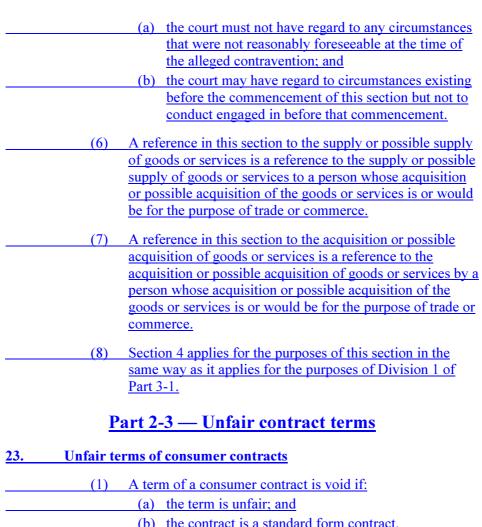
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(b) the contract is a standard form contract.

The contract continues to bind the parties if it is capable of operating without the unfair term.

(3) A *consumer contract* is a contract for:

(a) a supply of goods or services; or

(b) a sale or grant of an interest in land;

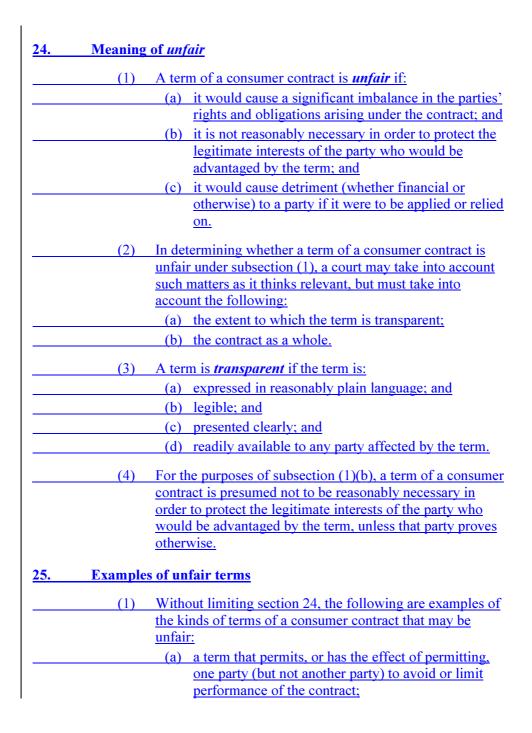
to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.

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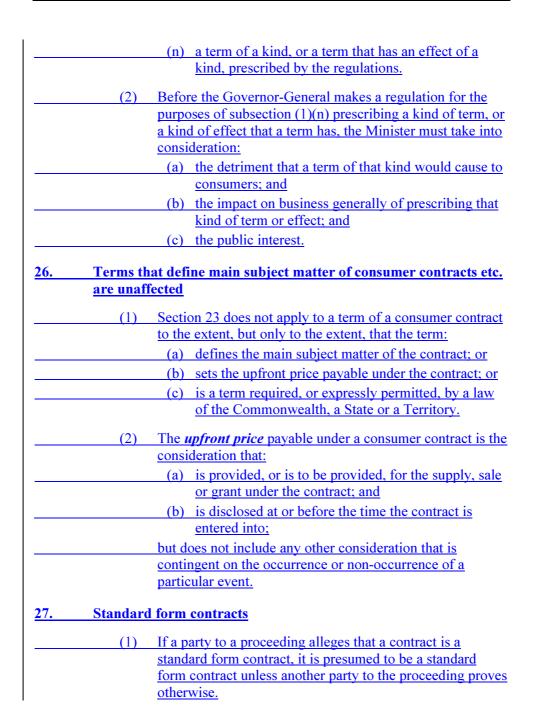
<u>(b)</u>	a term that permits, or has the effect of permitting,
	one party (but not another party) to terminate the
	contract;
(c)	a term that penalises, or has the effect of penalising,
	one party (but not another party) for a breach or
	termination of the contract;
(d)	a term that permits, or has 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;
(1)	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;

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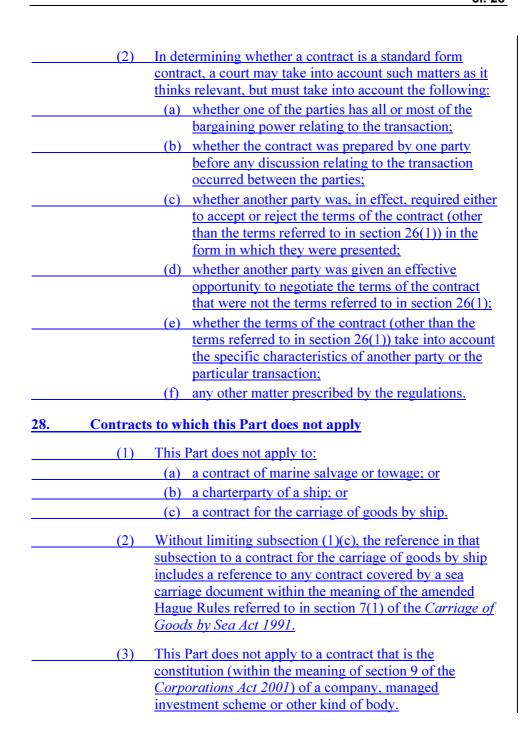
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Chapter 3 — Specific protections

Part 3-1 — Unfair practices

Division 1 — False or misleading representations etc.

False or misleading representations about goods or services		
(1) A person must not, in trade or commerce, in connection		
with the supply or possible supply of goods or services or		
in connection with the promotion by any means of the		
supply or use of goods or services:		
(a) make a false or misleading representation that goods		
are of a particular standard, quality, value, grade,		
composition, style or model or have had a particular		
history or particular previous use; or		
(b) make a false or misleading representation that		
services are of a particular standard, quality, value or		
grade; or		
(c) make a false or misleading representation that goods		
are new; or		
(d) make a false or misleading representation that a		
particular person has agreed to acquire goods or		
services; or		
(e) make a false or misleading representation that		
purports to be a testimonial by any person relating to		
goods or services; or		
(f) make a false or misleading representation		
concerning:		
(i) a testimonial by any person; or		
(ii) a representation that purports to be such a		
testimonial;		
relating to goods or services; or		
(g) make a false or misleading representation that goods		
or services have sponsorship, approval, performance		
characteristics, accessories, uses or benefits; or		

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(h) make a false or misleading representation that the
person making the representation has a sponsorship,
approval or affiliation; or
(i) make a false or misleading representation with
respect to the price of goods or services; or
(j) make a false or misleading representation
concerning the availability of facilities for the repair
of goods or of spare parts for goods; or
(k) make a false or misleading representation
concerning the place of origin of goods; or
(l) make a false or misleading representation
concerning the need for any goods or services; or
(m) make a false or misleading representation
concerning the existence, exclusion or effect of any
condition, warranty, guarantee, right or remedy
(including a guarantee under Division 1 of Part 3-2);
<u>or</u>
(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.
be misteading unless evidence is adduced to the contrary.
(3) To avoid doubt, subsection (2) does not:

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		have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or have the effect of placing on any person an onus of proving that the representation is not misleading.	
<u>30.</u>	False or mislea	ding representations about sale etc. of land	
	with interes	rson must not, in trade or commerce, in connection the sale or grant, or the possible sale or grant, of an est in land or in connection with the promotion by any s 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.	
	(b)	approval or affiliation; or	
	× /	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	
	<u>(f)</u>	concerning the characteristics of the land; or make a false or misleading representation concerning the use to which the land is capable of	
	(g)	being put or may lawfully be put; or make a false or misleading representation	
		concerning the existence or availability of facilities associated with the land.	
	Note:	A pecuniary penalty may be imposed for a contravention of this subsection.	
	(2) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.		

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<u>31.</u>	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;
	<u>or</u>
	(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

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> the person must, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, provide the rebate, gift, prize or other free item in accordance with the offer.

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

(3) Subsection (2) does not apply if:

- (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- Subsection (2) does not apply to an offer that the person **(4)** 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.
- This section does not affect the application of any other (5) 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.

Misleading conduct as to the nature etc. of goods **33.**

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.

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

34. Misleading conduct as to the nature etc. of services

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature,

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	Alice alconoctoriotics, the control little for their manners and the
	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 adv	ertising
(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
	<u>to:</u>
	(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.

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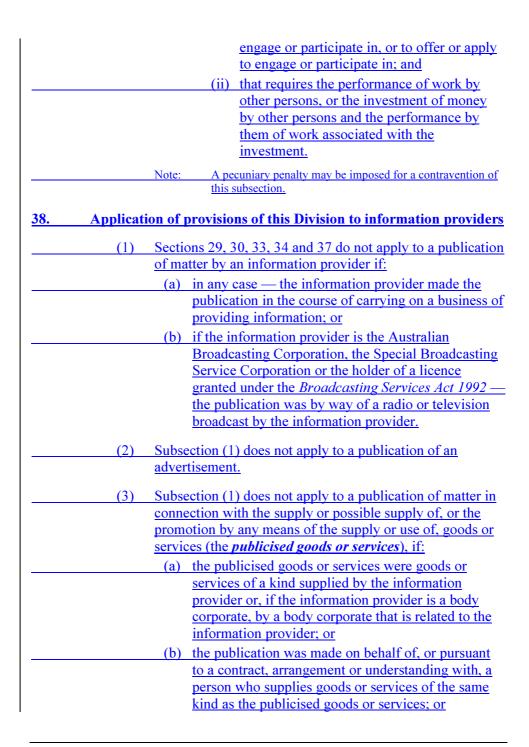
(2)	
(2)	A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time
	of the acceptance, the person intends to supply goods or
	services materially different from the goods or services in
	respect of which the payment or other consideration is
	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

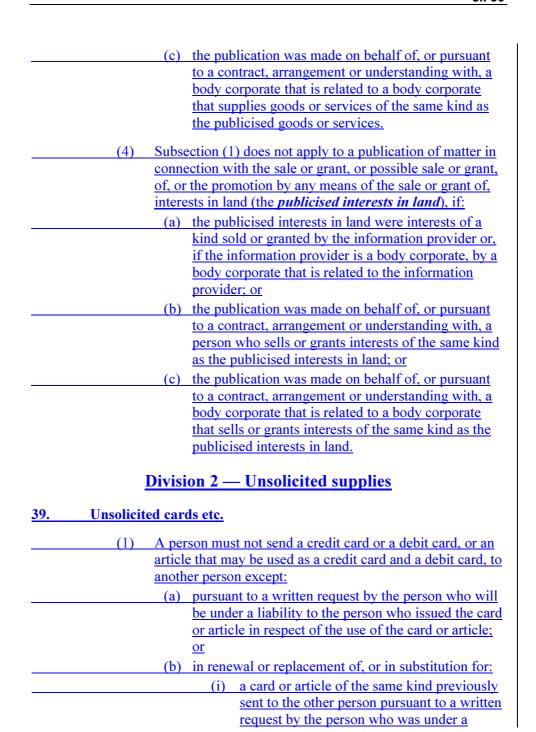
	time, was due to the act or omission of another
	person, or to some other cause beyond the person's
	control; and
	(b) the person took reasonable precautions and exercised
	due diligence to avoid the failure.
(6)	Subsection (4) does not apply if:
	(a) the person offers to supply different goods or
	services 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. Misleadi	ng representations about certain business activities
37. Misleadi (1)	
	A person must not, in trade or commerce, make a
	A person must not, in trade or commerce, make a representation that: (a) is false or misleading in a material particular; and
	A person must not, in trade or commerce, make a representation that: (a) is false or misleading in a material particular; and
	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
	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
	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
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	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.
	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.
(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.
(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. A person must not, in trade or commerce, make a
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(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. A person must not, in trade or commerce, make a representation that: (a) is false or misleading in a material particular; and
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(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. 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:

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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.
(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 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
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this subsection. (2) Subsection (1) does not apply unless the card or article is
sent by or on hehalf of the person who issued it
sent by or on benan 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
<u>request.</u>
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
<u>request.</u>
Note: A pecuniary penalty may be imposed for a contravention of
this subsection.
(5) A <i>credit card</i> is an article that is one or more of the
following:
(a) an article of a kind commonly known as a credit
<u>card;</u>
(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).

Specific protections

-	(6)	
		(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).
		<u>paragraph (a).</u>
<u>40.</u>	Assertion	n of right to payment for unsolicited goods or services
	(1)	A person must not, in trade or commerce, assert a right to
		payment from another person for unsolicited goods unless
		the person has reasonable cause to believe that there is a
		right to the payment.
		Note: A pecuniary penalty may be imposed for a contravention of
		this subsection.
	(2)	A person must not, in trade or commerce, assert a right to
		payment from another person for unsolicited services
		unless the person has reasonable cause to believe that there
		is a right to the payment.
		Note: A pecuniary penalty may be imposed for a contravention of
		this subsection.
	(3)	A person must not, in trade or commerce, send to another
		person an invoice or other document that:
		(a) states the amount of a payment, or sets out the
		charge, for supplying unsolicited goods or
		unsolicited services; and
		(b) does not contain a warning statement that complies
		with the requirements set out in the regulations;
		unless the person has reasonable cause to believe that there
		is a right to the payment or charge.
		Note: A pecuniary penalty may be imposed for a contravention of
		this subsection.
	(4)	In a proceeding against a person in relation to a
-		contravention of this section, the person bears the onus of
		proving that the person had reasonable cause to believe that
		there was a right to the payment or charge.

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41. Liability etc. of	recipient for unsolicited goods
(1) If a p	erson, in trade or commerce, supplies unsolicited
good	s 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.
	erson sends, in trade or commerce, unsolicited goods
	other person:
<u>(a)</u>	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,
(0)	by force of this section, the property of the other
	person freed and discharged from all liens and
	charges of any description.
(3) How	ever, subsection (2) does not apply to or in relation to
	icited 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
<u>(b)</u>	the sender or the owner of the goods has within the
	recovery period taken possession of the goods; or
<u>(c)</u>	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.
	recovery period is whichever of the following periods
<u>ends</u>	
<u>(a)</u>	the period of 3 months starting on the day after the
45	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.
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<u>42.</u>	Liability of recipient for unsolicited services
	If a person, in trade or commerce, supplies unsolicited
	services to another person, the other person:
	(a) is not liable to make any payment for the services;
	<u>and</u>
	(b) is not liable for loss or damage as a result of the
	supply of the services.
43.	Assertion of right to payment for unauthorised entries or
	advertisements
	(1) A person must not assert a right to payment from another
-	person of a charge for placing, in a publication, an entry or
	advertisement relating to:
	(a) the other person; or
	(b) the other person's profession, business, trade or
-	occupation;
	unless the person knows, or has reasonable cause to
	believe, that the other person authorised the placing of the
	entry or advertisement.
	Note: A pecuniary penalty may be imposed for a contravention of
	this subsection.

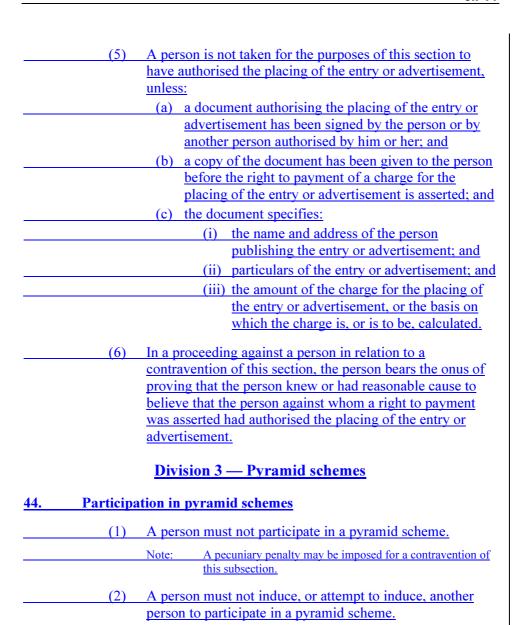
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(2)	A person must not send to another person an invoice or
(2)	other document that:
	(a) states the amount of a payment, or sets out the
	charge, for placing, in a publication, an entry or
	advertisement relating to:
	(i) the other person; or
	(ii) 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;
	<u>and</u>
	(b) is entitled to recover by action in a court against
	another person any payment made by the person to the other person;
	in full or part satisfaction of a charge for placing, in a
	publication, an entry or advertisement, unless the person
	authorised the placing of the entry or advertisement.

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(3)

this subsection.

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To *participate* in a pyramid scheme is:

together with another person); or

A pecuniary penalty may be imposed for a contravention of

(a) to establish or promote the scheme (whether alone or

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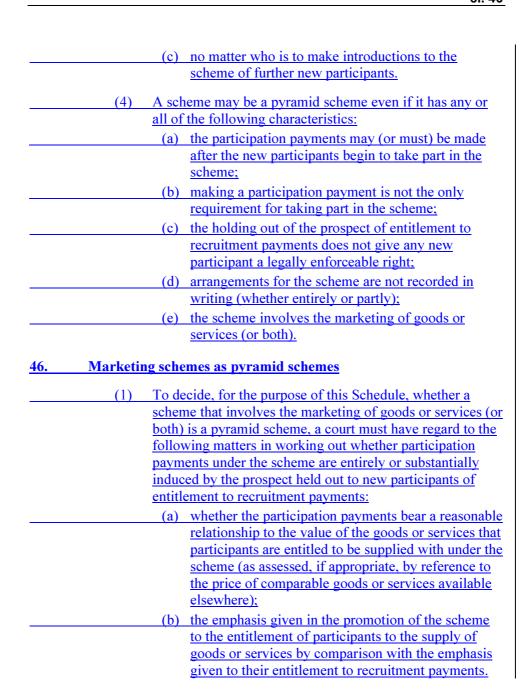
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(b)	to take part in the scheme in any capacity (whether
	or not as an employee or agent of a person who
	establishes or promotes the scheme, or who
	otherwise takes part in the scheme).

	or not as an employee or agent or a person who
	establishes or promotes the scheme, or who
	otherwise takes part in the scheme).
45.	Meaning of pyramid scheme
	(1) A <i>pyramid scheme</i> 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.
	partry 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
	** * · · · · · · · · · · · · · · · · ·

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new participants; and



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Subsection (1) does not limit the matters to which the court (2) 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

	Division 4 — Friding	
<u>47.</u>	Multiple pricing	
	(1) A person must not, in trade or commerce, supply good	ls 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 this subsection.	on of
	(2) A <i>displayed price</i> for goods is a price for the goods, o 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, print	<u>ed,</u>
	stamped or located on, or otherwise applied to, goods or any covering, label, reel or thing used	
	connection with the goods; or	
	(b) that is used in connection with the goods or any	thing
	on which the goods are mounted for display or	
	exposed for supply; or	
	(c) that is determined on the basis of anything enco	<u>ded</u>
	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 s at that price and that time has not passe	
	(ii) in any other case — the catalogue may reasonably be regarded as not out-of-da	te: or
	reasonably be regarded as not out-or-da	10, 01

	(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)	<u>If:</u>
	(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
(1)	displayed price for goods if:
	(a) the price or representation is wholly obscured by
	another such price or representation that is written,
	stamped or located wholly over that price or
	representation; or
	(b) the price or representation:
	(i) is expressed as a price per unit of mass,
	volume, length or other unit of measure; and
	(ii) is presented as an alternative means of
	expressing the price for supply of the goods
	that is a displayed price for the goods; or
	(c) the price or representation is expressed as an amount
	in a currency other than Australian currency; or
	(d) the price or representation is expressed in a way that
	is unlikely to be interpreted as an amount of
	Australian currency.

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(5) Despite	subsection (2), a displayed price for goods that is a
	ed price because it has been published in a
	ue or advertisement ceases to be a displayed price
	goods if:
	he displayed price is retracted; and
	he retraction is published in a manner that has at
-	east a similar circulation or audience as the
<u>c</u>	atalogue or advertisement.
48. Single price to be	specified in certain circumstances
	on must not, in trade or commerce, in connection
with:	
	he supply, or possible supply, to another person of
_	oods or services of a kind ordinarily acquired for
	ersonal, domestic or household use or
	onsumption; or
	he promotion by any means of the supply to another person, or of the use by another person, of goods or
	ervices of a kind ordinarily acquired for personal,
	omestic or household use or consumption;
_	representation with respect to an amount that, if
	ould constitute a part of the consideration for the
	of the goods or services unless the person also
	es, in a prominent way and as a single figure, the
single p	orice for the goods or services.
Note:	A pecuniary penalty may be imposed for a contravention of
	this subsection.
(2) A perso	on is not required to include, in the single price for
	a charge that is payable in relation to sending the
goods f	rom the supplier to the other person.
(3) However	er, if:
(a) t	he person does not include in the single price a
	harge that is payable in relation to sending the
g	goods from the supplier to the other person; and

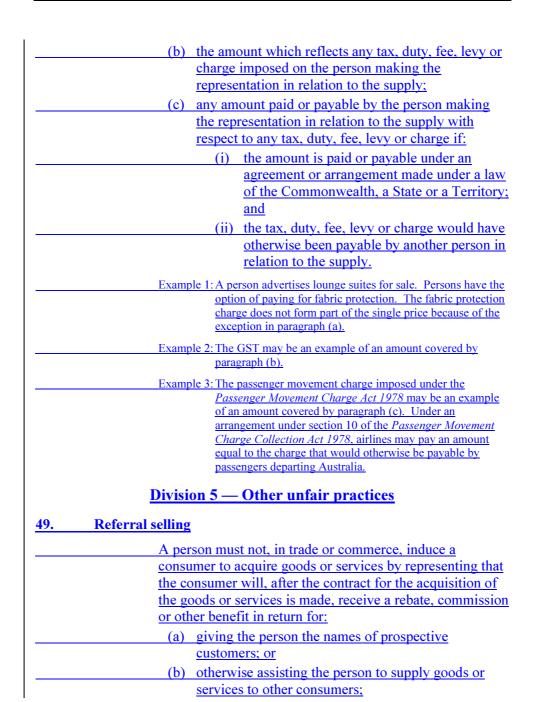
	(b) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person; the person must not make the representation referred to in subsection (1) unless the person also specifies 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.
(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 <i>single price</i> is the minimum quantifiable consideration for the supply of the goods or services at the time of the representation, including each of the following amounts (if any) that is quantifiable at that time: (a) a charge of any description payable to the person making the representation by another person (other
	than a charge that is payable at the option of the other person);

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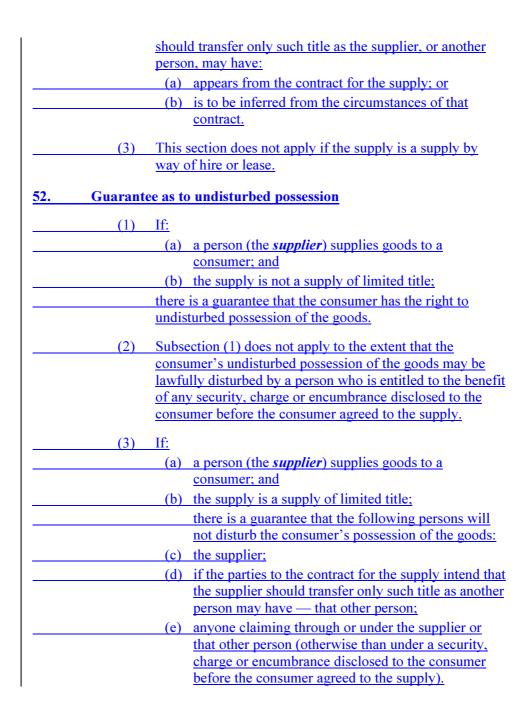
		if receipt of the rebate, commission or other benefit is
		contingent on an event occurring after that contract is
		made.
		Note: A pecuniary penalty may be imposed for a contravention of
		this section.
<u>50.</u>	Harassm	ent and coercion
	(1)	A person must not use physical force, or undue harassment
		or coercion, in connection with:
		(a) the supply or possible supply of goods or services;
		<u>or</u>
		(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.
	<u>Pa</u>	art 3-2 — Consumer transactions
		<u>Division 1 — Consumer guarantees</u>
	Subdivisio	on A — Guarantees relating to the supply of goods
<u>51.</u>	Guarant	ee 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)	()
		<u>limited title</u>) if an intention that the supplier of the goods

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	(4)	This section applies to a supply by way of hire or lease only for the period of the hire or lease.
53. G	uarant	ee as to undisclosed securities etc.
	(1)	If:
		(a) a person (the <i>supplier</i>) 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
	(4)	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:
	<u>, , , , , , , , , , , , , , , , , , , </u>	(a) a person (the <i>supplier</i>) supplies goods to a
		consumer; and
		(b) the supply is a supply of limited title;
		there is a guarantee that all securities, charges or
		encumbrances known to the supplier, and not known to the
		consumer, were disclosed to the consumer before the
		consumer agreed to the supply.
	(4)	This section does not apply if the supply is a supply by
		way of hire or lease.

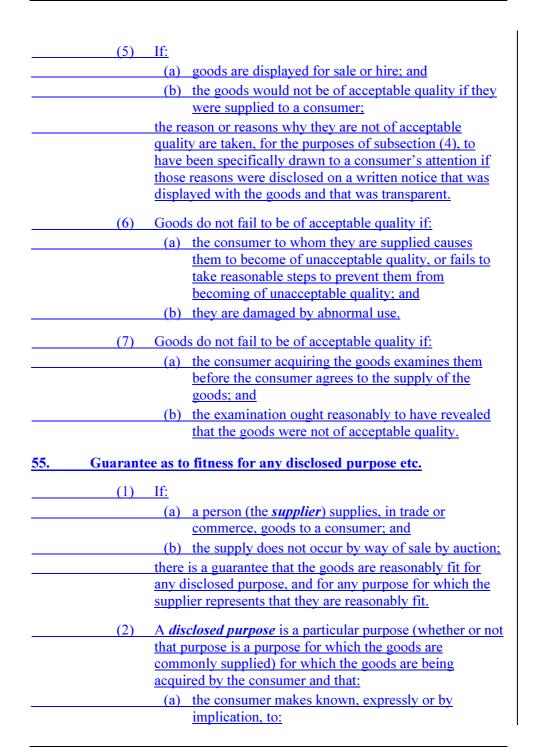
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54. Guarantee as to	acceptable quality
(1) If:	
(a)	a person supplies, in trade or commerce, goods to a
(3)	consumer; and
(b)	the supply does not occur by way of sale by auction;
there	is a guarantee that the goods are of acceptable
quali	
(2) Good	s are of acceptable quality if they are as:
<u>(a)</u>	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
<u>(d)</u>	safe; and
<u>(e)</u>	durable;
as a r	easonable consumer fully acquainted with the state
	ondition of the goods (including any hidden defects of
	oods), would regard as acceptable having regard to the
matte	rs in subsection (3).
(3) The r	natters for the purposes of subsection (2) are:
<u>(a)</u>	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
<u>(d)</u>	any representation made about the goods by the
	supplier or manufacturer of the goods; and
<u>(e)</u>	any other relevant circumstances relating to the
	supply of the goods.
(4) If:	
<u>(a)</u>	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 go	oods are taken to be of acceptable quality.



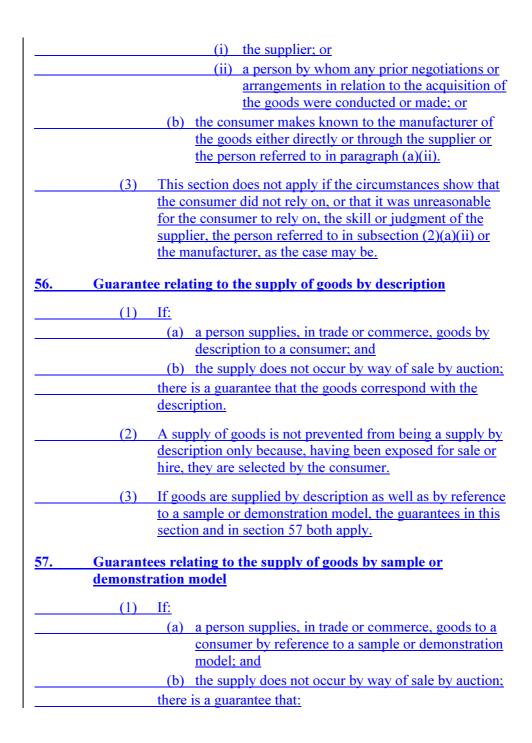
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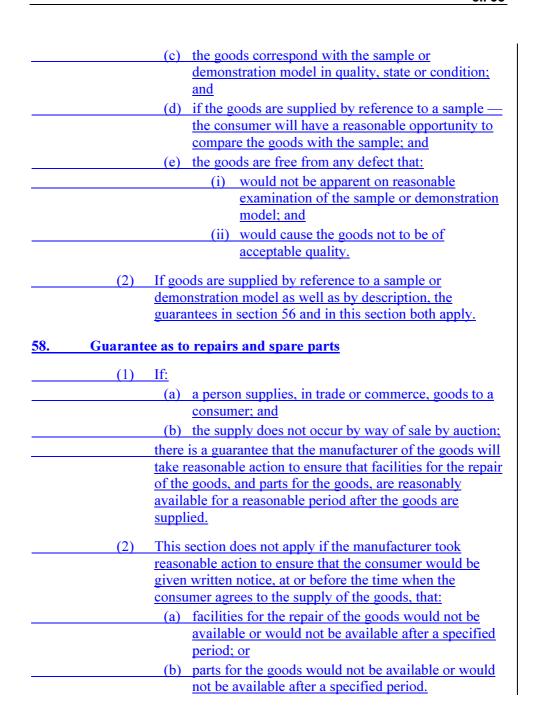
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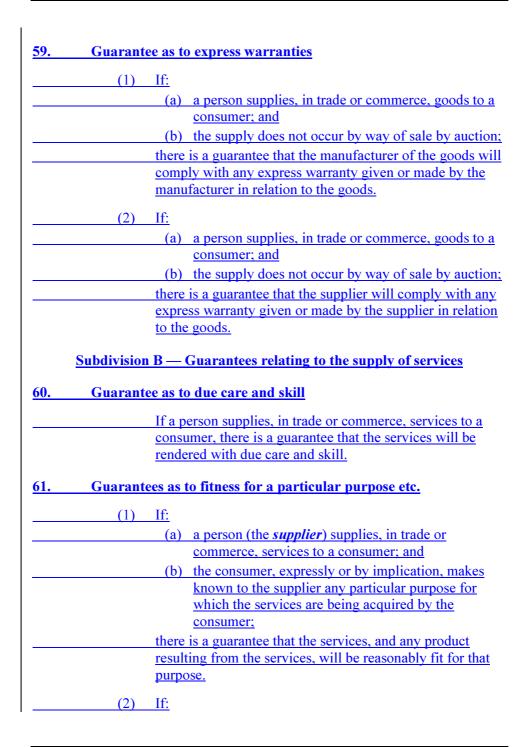


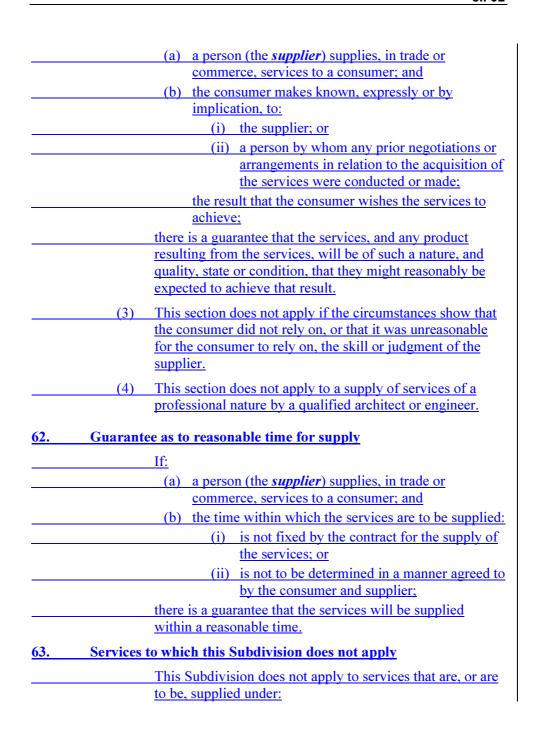
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(a)	a contract for or in relation to the transportation or
	storage of goods for the purposes of a business,
	trade, profession or occupation carried on or
	engaged in by the person for whom the goods are
	transported or stored; or
(b)	a contract of insurance.

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

Guarantees not to be excluded etc. by contract

- 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;
 - (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.
- 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.

Limitation of liability for failures to comply with guarantees 64A.

- 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;

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-	(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
(4)	or not reliance on a term of a contract is fair or reasonable,
(4)	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
(4)	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:
(4)	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
(4)	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
(4)	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
(4)	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,
(4)	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
(4)	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
(4)	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;
(4)	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
(4)	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
(4)	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
(4)	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
(4)	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
(4)	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;
(4)	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
	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;

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the trade and any previous course of dealing between the parties); (d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer. **Subdivision D — Miscellaneous** Application of this Division to supplies of gas, electricity and **65. telecommunications** This Division does not apply to a supply if the supply: (1) (a) is a supply of a kind specified in the regulations; and (b) is a supply of gas, electricity or a telecommunications service. A *telecommunications service* is a service for carrying communications by means of guided or unguided electromagnetic energy or both. **Display notices** The Commonwealth Minister may determine, in writing, (1) 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

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goods.

(b) otherwise — drawn to the consumer's attention before the consumer agrees to the supply of the

	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. Conf	lict of laws
3,1	
	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. Conv	ention on Contracts for the International Sale of Goods
	The provisions of the United Nations Convention on
	Contracts for the International Sale of Goods, done at
	Vienna on 11 April 1980, as amended and in force for
	Australia from time to time, prevail over the provisions of
	this Division to the extent of any inconsistency.

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	Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 32 ([1988] ATS 32). In 2010, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).
	<u>Division 2 — Unsolicited consumer agreements</u>
	Subdivision A — Introduction
69.	Meaning of unsolicited consumer agreement
	(1) An agreement is an <i>unsolicited consumer agreement</i> if:
	(a) it is for the supply, in trade or commerce, of goods
	or services to a consumer; and
	(b) it is made as a result of negotiations between a
	dealer and the consumer:
	(i) in each other's presence at a place other than
	the business or trade premises of the supplier
	of the goods or services; or
-	(ii) by telephone;
	whether or not they are the only negotiations that
	precede the making of the agreement; and
-	(c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the
	purposes of entering into negotiations relating to the
	supply of those goods or services (whether or not the
	consumer made such an invitation in relation to a
	different supply); and
	(d) the total price paid or payable by the consumer under
	the agreement:
	(i) is not ascertainable at the time the agreement
	is made; or
	(ii) if it is ascertainable at that time — is more than \$100 or such other amount prescribed
	by the regulations.
	(1A) The consumer is not taken, for the purposes of
	subsection (1)(c), to have invited the dealer to come to that

		place, or to make a telephone call, merely because the
		consumer has:
		(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 <i>unsolicited consumer agreement</i> 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.	Presump	otion that agreements are unsolicited consumer
	agreeme	
	(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:

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	(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.
<u>71.</u>	Meaning of dealer
	A <i>dealer</i> 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.
	goods of services.
<u>72.</u>	Meaning of negotiation
	A <i>negotiation</i> , in relation to an agreement or a proposed
	agreement, includes any discussion or dealing directed
	towards the making of the agreement or proposed
	agreement (whether or not the terms of the agreement or
	proposed agreement are open to any discussion or dealing)
	Subdivision B — Negotiating unsolicited consumer agreements
73.	Permitted hours for negotiating an unsolicited consumer
	agreement
	(1) A dealer must not call on a person for the purpose of
	negotiating an unsolicited consumer agreement, or for an
	incidental or related purpose:
	(a) at any time on a Sunday or a public holiday; or
	(b) on a Saturday:
	(i) between midnight and 9 am; or

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(c) on any other day:

(ii) between 5 pm and midnight; or

(i) between midnight and 9 am; or

(ii) between 8 pm and midnight. Note: A pecuniary penalty may be imposed for a contravention of this subsection.
(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 <i>Do Not Call Register Act 2006</i> 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

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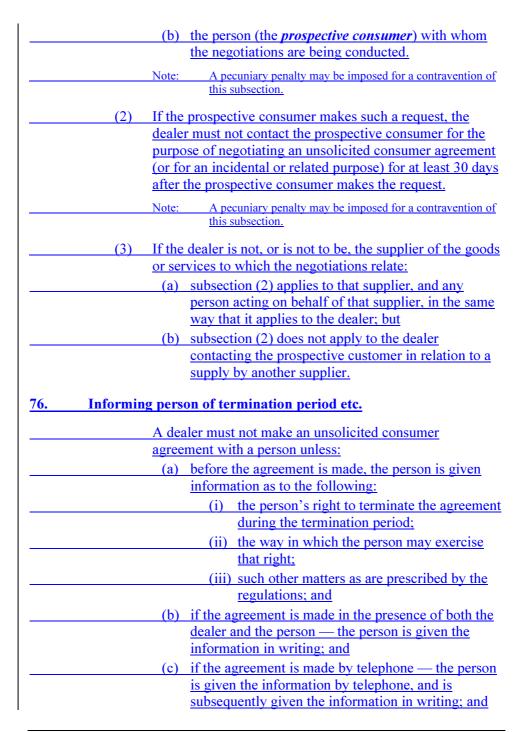
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	(d) the form in which, and the way in which, the person
	is given the information complies with any other
	requirements prescribed by the regulations.
	Note: A pecuniary penalty may be imposed for a contravention of this section.
77. Liability	of suppliers for contraventions by dealers
	<u>If:</u>
	(a) a dealer contravenes a provision of this Subdivision
	in relation to an unsolicited consumer agreement;
	<u>and</u>
	(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. Requirer	nent 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.

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Note: A pec	uniary penalty may be imposed for a contravention of
this su	absection.
(3) An unsolicited	consumer agreement was <i>negotiated by</i>
	e negotiations that resulted in the making of
	took place by telephone (whether or not
	ons preceded the making of the agreement).
other negotiati	ons preceded the making of the agreement).
79. Requirements for all un	solicited consumer agreements etc.
	nder an unsolicited consumer agreement
	at the agreement, or (if the agreement was
	relephone) the agreement document,
complies with	the following requirements:
	set out in full all the terms of the agreement,
includin	<u>g:</u>
(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 l	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 o	conspicuously and prominently set out in
<u>full:</u>	· · · · · · · · · · · · · · · · · · ·

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address; and

(i) the person's name; and

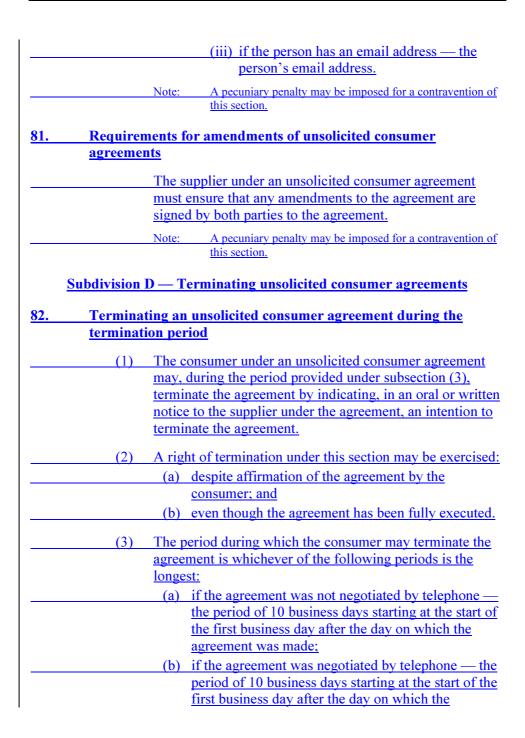
(ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential

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	consumer was given the agreement document
	relating to the agreement;
(c)	if one or more of the following were contravened in
	relation to the agreement:
	(i) section 73 (permitted hours for negotiating
	an unsolicited consumer agreement);
	(ii) section 74 (disclosing purpose and identity);
	(iii) section 75 (ceasing to negotiate on request);
	the period of 3 months starting at the start of the first
	day after the day on which the agreement was made
	or, if the agreement was negotiated by telephone, the
	agreement document was negotiated by telephone, the
	if one or more of the following were contravened in
	relation to the agreement:
	(i) section 76 (informing consumer of termination period);
	(ii) a provision of Subdivision C (requirements
	for unsolicited consumer agreements);
	(iii) section 86 (prohibition on supplies for 10
	business days);
	the period of 6 months starting at the start of the first
	day after the day on which the agreement was made
	or, if the agreement was negotiated by telephone, the
	agreement document was given;
(e)	such other period as the agreement provides.
(4) If the 1	notice under subsection (1) is written, it may be
given:	
	by delivering it personally to the supplier; or
	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
	if the supplier has an email address — by sending it to the supplier's email address referred to in
	section 79(d)(v); or
	if the supplier has a fax number — by faxing it to the
	supplier's fax number referred to in section 79(d)(vi).
	section / may vij.

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	(6)	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. There are no requirements relating to the form or content of a notice under subsection (1).
<u>83.</u>	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.

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<u>84.</u>	Obligation	s of suppliers on termination
	1	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
	9	or a related contract or instrument.
	1	Note: A pecuniary penalty may be imposed for a contravention of this section.
<u>85.</u>	Obligation	s and rights of consumers on termination
	(1)	If an unsolicited consumer agreement is terminated in
	3	accordance with section 82, the consumer under the
	<u>3</u>	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;
		<u>or</u>
		(b) notify the supplier of the place where the
		supplier may collect the goods.
		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)	<u>lf:</u>
		(a) the agreement is terminated in accordance with
		section 82 after the end of the period of 10 business
		days starting:
		(i) if the agreement was not negotiated by
		telephone — at the start of the first business

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day after the day on which the agreement
was made; or
(ii) if the agreement was negotiated by telephone — at the start of the first business
day after the day on which the consumer was
given the agreement document relating to
the agreement; and
(b) 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.
<u>jurisdiction.</u>
(5) However, the consumer is not liable for any such damage
or depreciation attributable to normal use of the goods or to
circumstances beyond the consumer's control.
(6) If:
(a) an unsolicited consumer agreement is terminated in
accordance with section 82 after the end of the
period of 10 business days starting:
(i) if the agreement was not negotiated by
<u>telephone</u> — at the start of the first business
day after the day on which the agreement
was made; or
(ii) if the agreement was negotiated by
telephone — at the start of the first business
day after the day on which the consumer was
given the agreement document relating to the agreement; and
(b) prior to the termination, but after the end of that
period, a service was supplied under the agreement;

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		the termination does not affect any liability of the
		consumer under the agreement to provide consideration for the service.
<u>86.</u>	Prohibit	ion on supplies etc. for 10 business days
	(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 the period of 10 business days starting:
		(d) if the agreement was not negotiated by telephone —
		at the start of the first business day after the day on
		which the agreement was made; or
		(e) if the agreement was negotiated by telephone — at
		the start of the first business day after the day on
		which the consumer was given the agreement
		document relating to the agreement.
		Note: A pecuniary penalty may be imposed for a contravention of this subsection.
	(2)	If the supplier supplies goods to the consumer in contravention of this section, the consumer has the same
		rights in relation to the goods as if the goods were
		unsolicited goods.
		Note: Section 41 deals with unsolicited goods.
	(3)	If the supplier supplies services to the consumer in
		contravention of this section, the consumer has the same
		rights in relation to the services as if the services were
		unsolicited services.
		Note: Section 42 deals with unsolicited services.

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87.	Repayme	ent 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.	Prohibiti	on 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;
	<u>or</u>
	(b) assert an intention to place the consumer's name, or
	cause the consumer's name to be placed, on such a
	<u>list.</u>
	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
	Subdivision E — Miscenaneous
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
	(b) otherwise excluding, limiting, modifying or restricting the effect or operation of this Division; or
	restricting the effect or operation of this Division; or
	restricting the effect or operation of this Division; or (c) making a dispute relating to the agreement, or to a
	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
(2)	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)	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. The supplier under an unsolicited consumer agreement
(2)	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. The supplier under an unsolicited consumer agreement must ensure that the agreement does not include, or purport
(2)	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. The supplier under an unsolicited consumer agreement
(2)	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. 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).
(2)	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. 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

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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).

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

Waiver of rights 90.

- (1) The consumer under an unsolicited consumer agreement is not competent to waive any right conferred by this Division.
- 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.

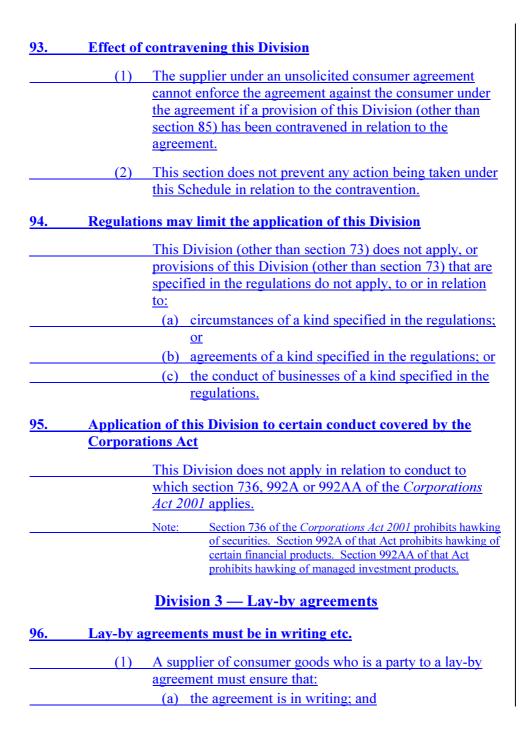
Application of this Division to persons to whom rights of 91. consumers and suppliers are assigned etc.

- 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.
- This Division applies in relation to a person to whom the **(2)** 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.

Application of this Division to supplies to third parties 92.

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.

Extract from www.slp.wa.gov.au, see that website for further information

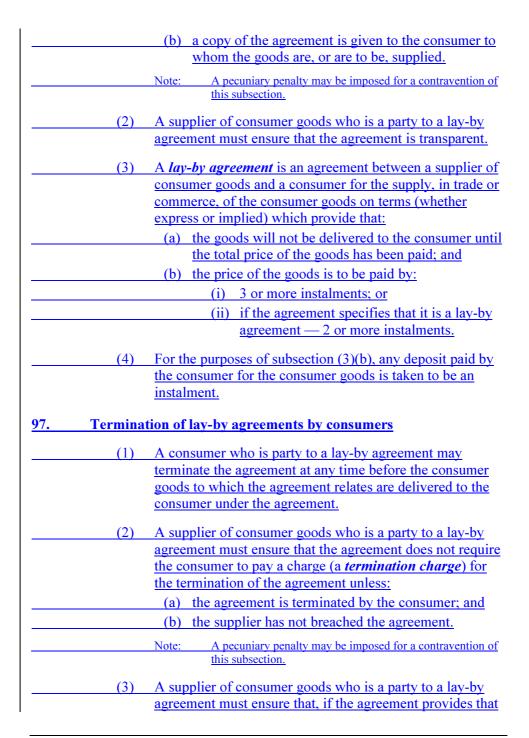


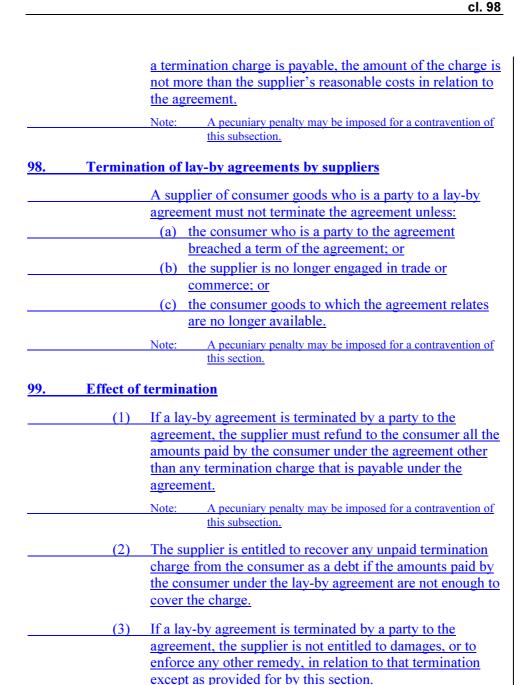
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<u>Division 4 — Miscellaneous</u>

100.	Supplier	must provide proof of transaction etc.
1000		
	(1)	
		(a) a person (the <i>supplier</i>), 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)	<u>If:</u>
		(a) a person (the <i>supplier</i>), 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
	\ <u>-</u>	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

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	(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 <i>A New Tax</i> 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. Consumo	er may request an itemised bill
(1)	If a person (the <i>supplier</i>), 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.

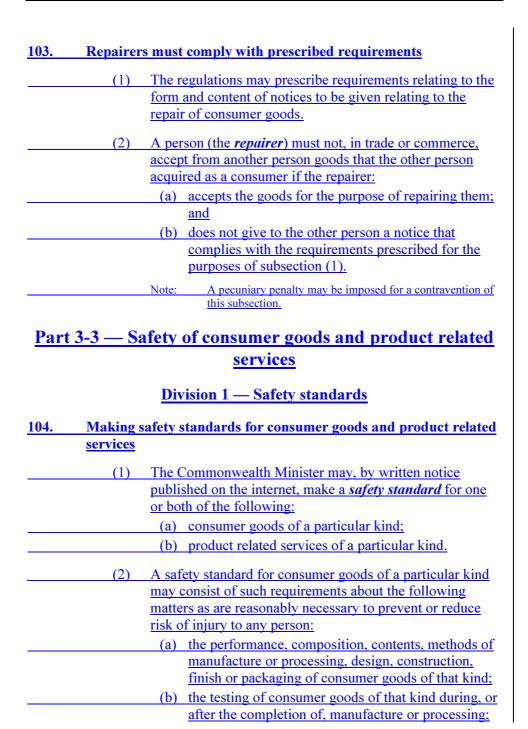
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		Note: A pecuniary penalty may be imposed for a contravention of
		this subsection.
	(4)	The supplier must not charge the consumer for the itemised
	(- /	bill.
		Note: A pecuniary penalty may be imposed for a contravention of
		this subsection.
	(5)	The supplier must ensure that the itemised bill is
	(3)	transparent.
<u>102.</u>	Prescribe	ed 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
	(2)	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
	(3)	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;
		<u>or</u>
		(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.



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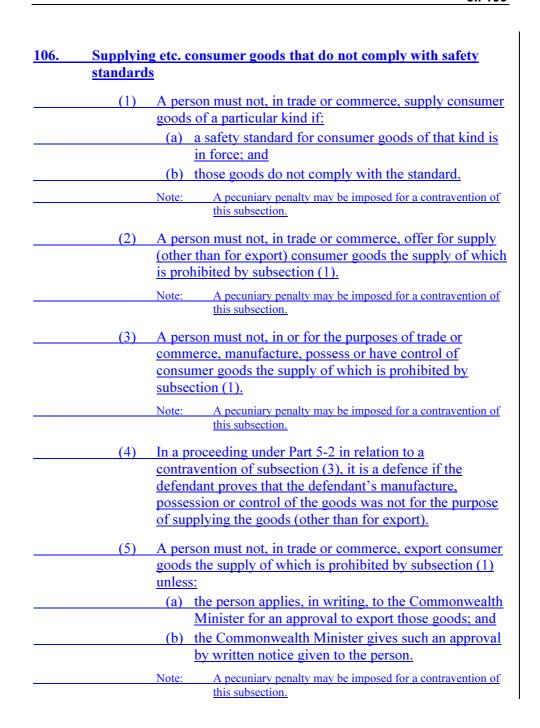
	(c) the form and content of markings, warnings or
	instructions to accompany consumer goods of that
	kind.
(3)	A safety standard for product related services of a
	particular kind may consist of such requirements about the
	following matters as are reasonably necessary to prevent or
	reduce risk of injury to any person:
	(a) the manner in which services of that kind are
	supplied (including, but not limited to, the method of
	supply);
	(b) the skills or qualifications of persons who supply
	such services;
	(c) the materials used in supplying such services;
	(d) the testing of such services;
	(e) the form and content of warnings, instructions or
	other information about such services.
105. Declarin	
105. Declaring related s	ng safety standards for consumer goods and product
related s	ng safety standards for consumer goods and product services
	ag safety standards for consumer goods and product services The Commonwealth Minister may, by written notice
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument:
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations; (b) such a standard, or such a part of a standard, with
related s (1)	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations; (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.
related s	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations; (b) such a standard, or such a part of a standard, with additions or variations specified in the notice. The Commonwealth Minister must not declare under
related s (1)	The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations; (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

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made under section 104(1).

(a) consumer goods of a particular kind; or(b) product related services of a particular kind;

if that standard or part is inconsistent with a safety standard for those goods or services that is in force and that was



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(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 C 1:	
107. Supplying safety sta	g etc. product related services that do not comply with
safety sta	<u>iidarus</u>
(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;
	<u>and</u>
	(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
(2)	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.

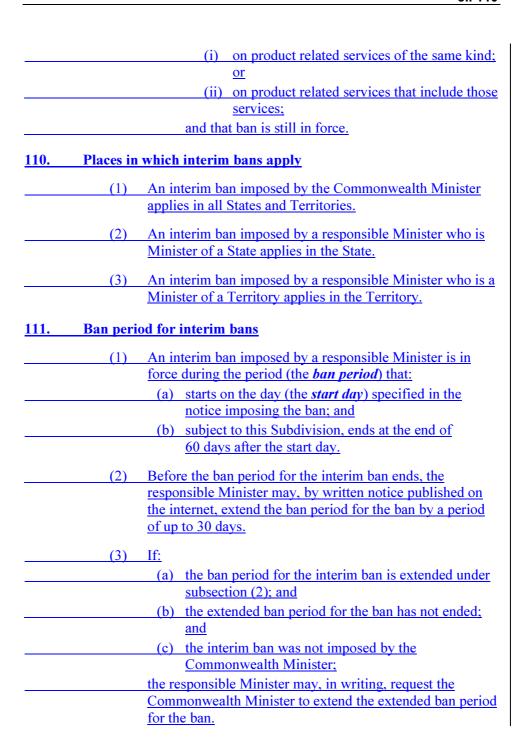
	(3) If:
	(a) a person supplies product related services in
	contravention of this section; and
	(b) another person suffers loss or damage:
	(i) because of defect in, or a dangerous
	characteristic of, consumer goods that results
	from the services being supplied; or
	(ii) because of a reasonably foreseeable 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.
<u>108.</u>	
<u>108.</u>	
108.	Requirement to nominate a safety standard If:
108.	Requirement to nominate a safety standard If:
<u>108.</u>	Requirement to nominate a safety standard If: (a) a safety standard for consumer goods of a particular kind is in force; and
108.	Requirement to nominate a safety standard If: (a) a safety standard for consumer goods of a particular kind is in force; and
108.	Requirement to nominate a safety standard If: (a) a safety standard for consumer goods of a particular kind is in force; and (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to
108.	Requirement to nominate a safety standard If: (a) a safety standard for consumer goods of a particular kind is in force; and (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and
108.	Requirement to nominate a safety standard If: (a) a safety standard for consumer goods of a particular kind is in force; and (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and (c) the regulator gives to a supplier of goods of that kind
108.	Requirement to nominate a safety standard If: (a) a safety standard for consumer goods of a particular kind is in force; and (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and (c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of
108.	Requirement to nominate a safety standard If: (a) a safety standard for consumer goods of a particular kind is in force; and (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and (c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of those sets of requirements the supplier intends to
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108.	If: (a) a safety standard for consumer goods of a particular kind is in force; and (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and (c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard; the supplier must, within the period specified in the request, give to the regulator a written notice specifying which of those sets of requirements the supplier intends to
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<u>Division 2 — Bans on consumer goods and product related services</u>
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 <i>interim ban</i> 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 <i>interim ban</i> 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

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paragraph (a), an interim ban:



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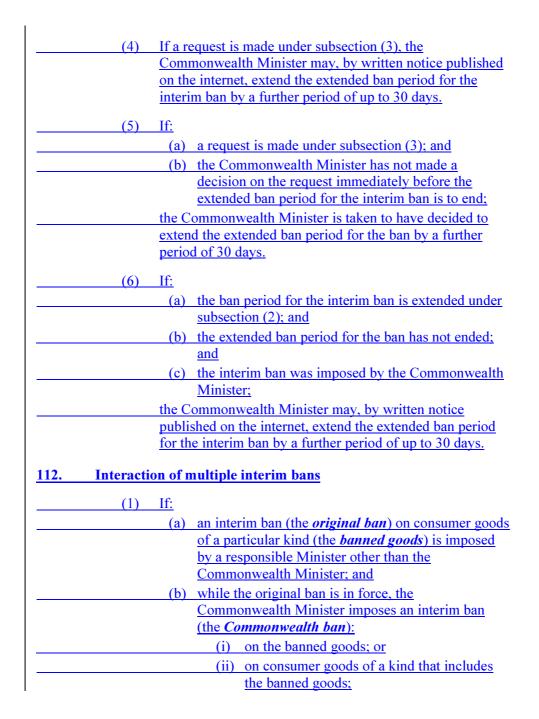
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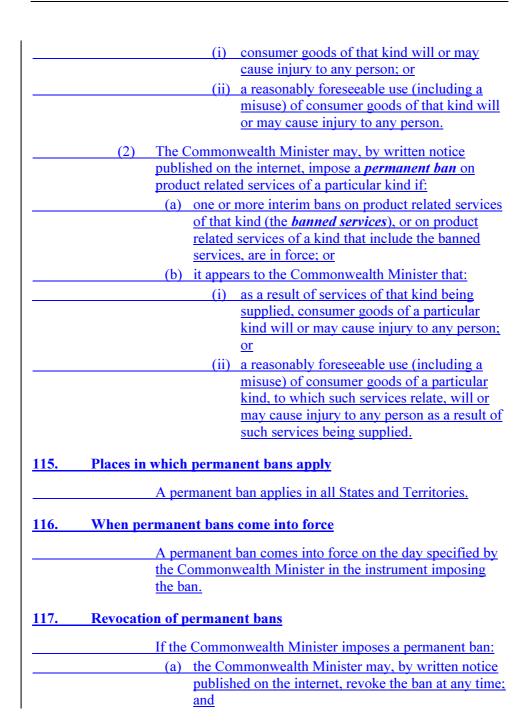
		the original ban, to the extent that it is a ban on the banned
		goods, ceases to be in force immediately before the
		Commonwealth ban comes into force.
	(2)	TC
	(2)	
		(a) an interim ban (the <i>original ban</i>) on product related
		services of a particular kind (the banned services) is
		imposed 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.
<u>113.</u>	Revocati	on of interim bans
<u>113.</u>	Revocati	
113.	Revocati	If a responsible Minister imposes an interim ban:
<u>113.</u>	Revocati	If a responsible Minister imposes an interim ban: (a) the responsible Minister may, by written notice
113.	Revocati	If a responsible Minister imposes an interim ban:
<u>113.</u>	Revocati	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
113.	Revocati	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
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113.		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.
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(b) the ban ceases to be in force on the day specified by the Commonwealth Minister in the notice.

Compliance with interim hone and permanent hone

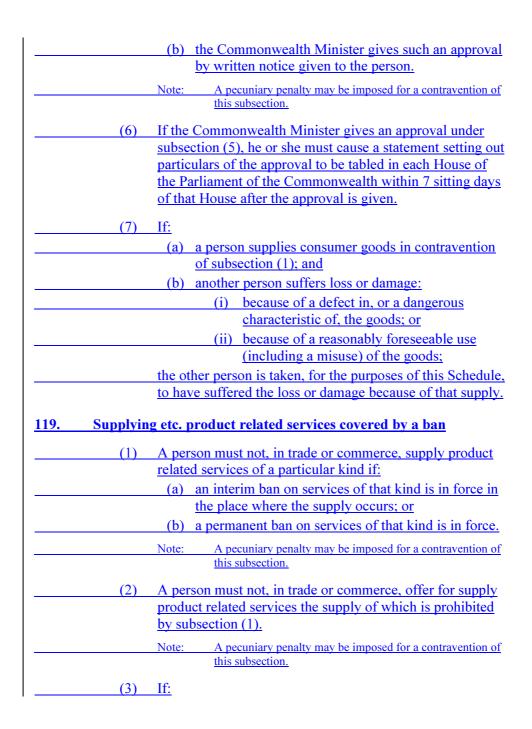
Subdivision C	— Compliance with interim bans and permanent bans
118. Supplying	ng etc. consumer goods covered by a ban
(1)	A person must not, in trade or commerce, supply consumer goods of a particular kind if: (a) an interim ban on consumer goods of that kind is in
	force in the place where the supply 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

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(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
<u></u>
120. Temporary exemption under the <i>Trans-Tasman Mutual</i>
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)
(2) This section does not affect the application of section 46(4) of that Act in relation to such an exemption.
of that Act in relation to such an exemption.
of that Act in relation to such an exemption.
of that Act in relation to such an exemption. 121. Temporary exemption under the Mutual Recognition Act 1992 (1) If:
of that Act in relation to such an exemption. 121. Temporary exemption under the Mutual Recognition Act 1992

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Commonwealth Minister;

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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.

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

- A responsible Minister may, by written notice published on **(1)** 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.
 - 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.

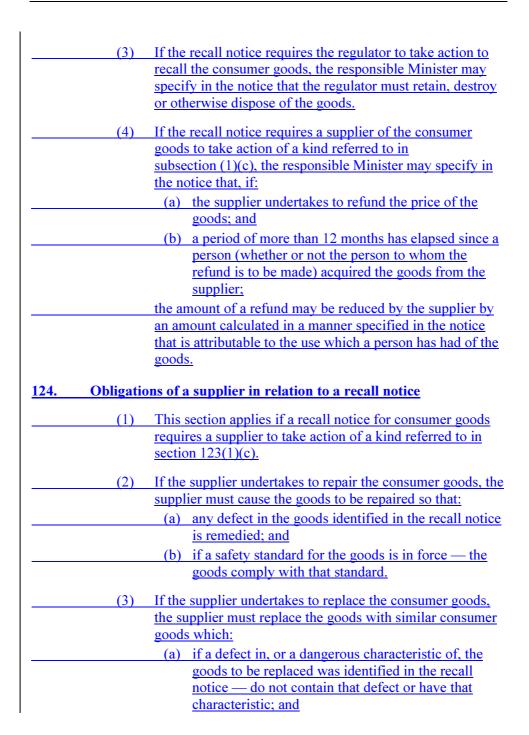
	(3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.
<u>123.</u> Co	ontents of a recall notice
	(1) A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no 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.

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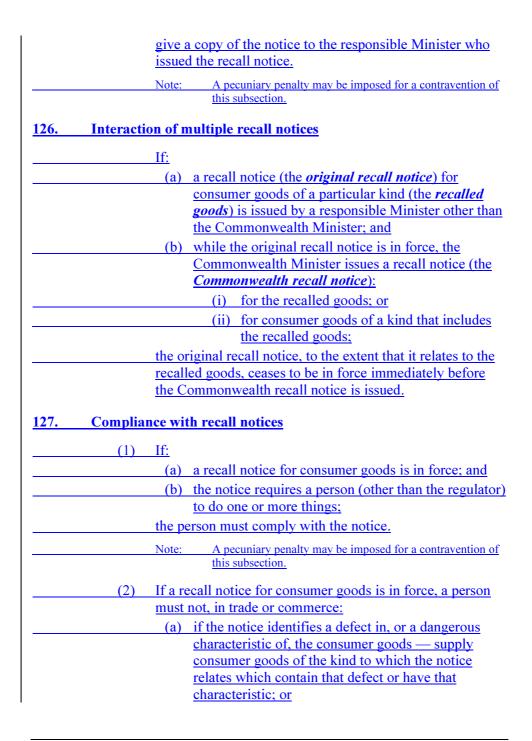
(b) if a safety standard for the goods to be replaced is in force — comply with that standard. (4) If the supplier undertakes: (a) to repair the consumer goods; or (b) to replace the consumer goods; the cost of the repair or replacement, including any necessary transportation costs, must be paid by the 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; 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		
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· · · · · · · · · · · · · · · · · · ·		consumer goods is in force — state that fact.
practicable after the supply of the consumer goods to the	(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.		person outside Australia.
(4) A person who is required to give a notice under	(4)	A person who is required to give a notice under
subsection (1) must, within 10 days after giving the notice,	(Ŧ)_	

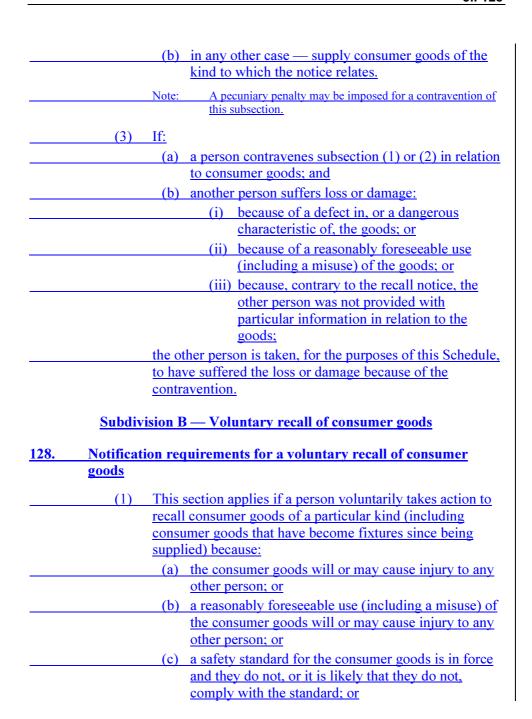
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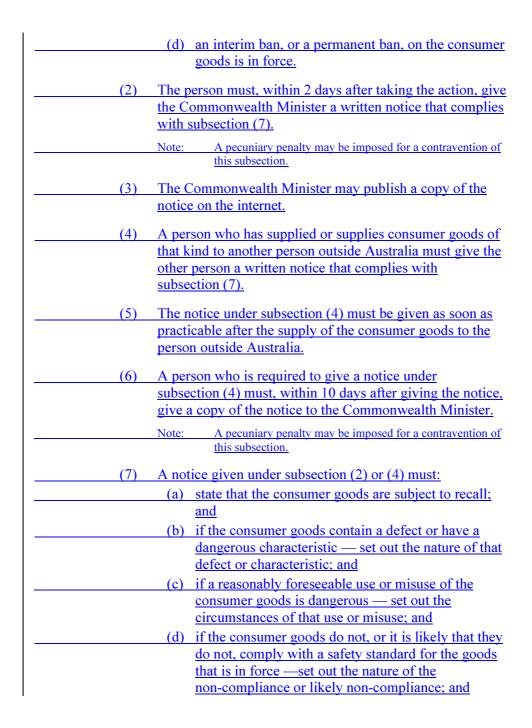


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(e) if an interim ban, or a permanent ban, on the consumer goods is in force — state that fact.

Division 4 — Safety warning notices

		DIVISI	on 4 — Safety warning notices
129.	Safety wa	arning	notices about consumer goods and product related
	services		nones wood to an and good with product rounds
	(1)	A	and a state National and a state of a state of a
	(1)		en notice containing one or both of the following:
			-
-		<u>(a)</u>	
			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;
-		<u>(b)</u>	
			consumer goods of a kind specified in the notice.
	(2)		sponsible Minister may publish on the internet a
		writte	en 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.

Note A

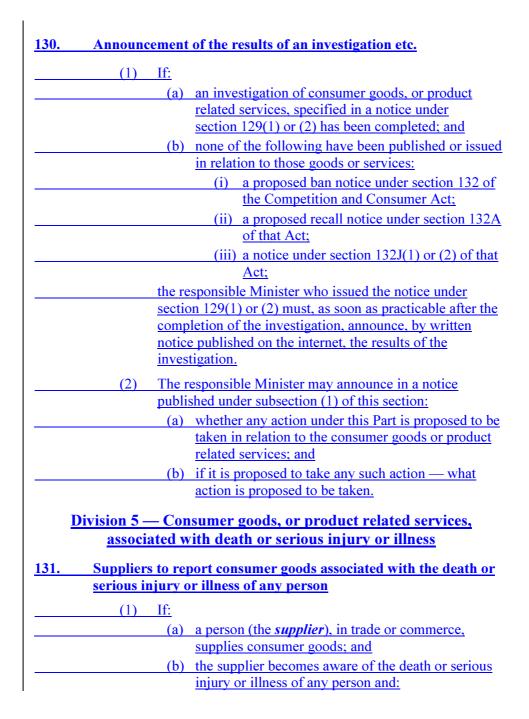
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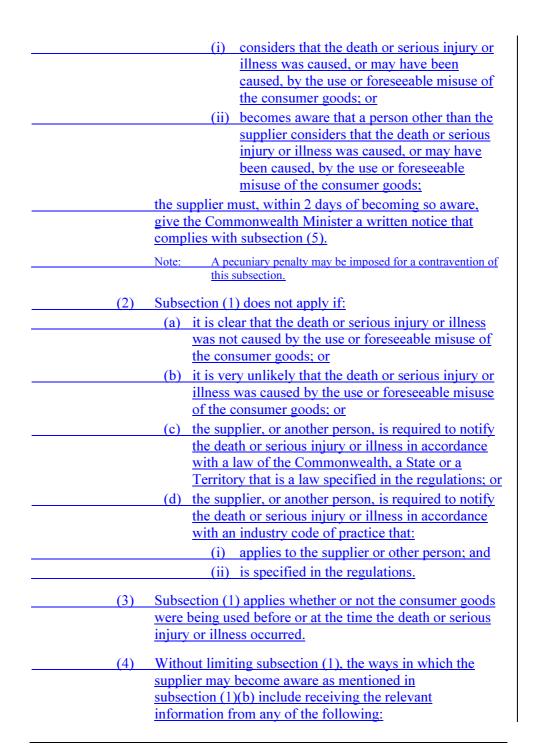
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Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] Extract from www.slp.wa.gov.au, see that website for further information



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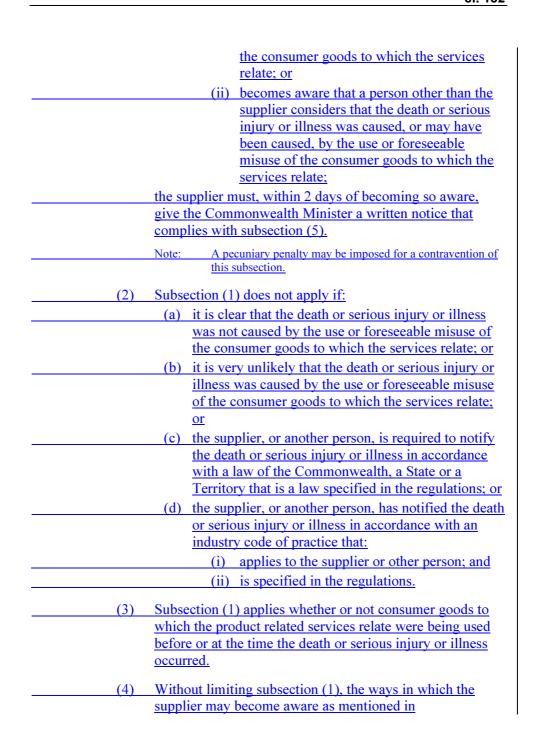
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(a) a consumer:
(a) a consumer; (b) a person who re-supplies the consumer goods;
(c) a repairer or insurer of the goods;
(d) an industry organisation or consumer organisation.
(5) The notice must:
(a) identify the consumer goods; and
(b) include information 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
<u> </u>
(a) a person (the <i>supplier</i>), 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

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Specific protections

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.

The notice must: (5)

- (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.

Confidentiality of notices given under this Division 132A.

- 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)	
	Minister and the Commonwealth Minister considers
	that the disclosure is in the public interest; or
<u>(c)</u>	•
	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
	<u>law; or</u>
(e)	
	enforcement of the criminal law or of a law
	imposing a pecuniary penalty.
D	inizion (Missollonous
<u>U</u>	<u>ivision 6 — Miscellaneous</u>
133. Liability under	a contract of insurance
T.C.	
<u>If:</u>	to the state of th
<u>(a)</u>	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
	broboos to pubbilitor

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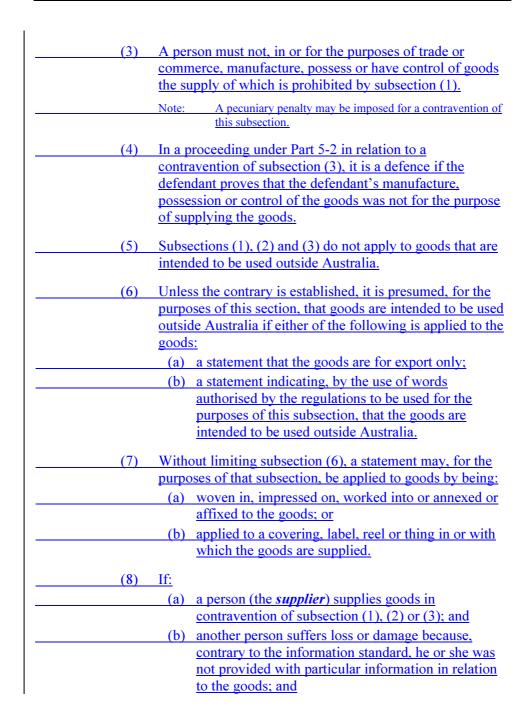
(ii) the liability of the person with respect to possible defects in such consumer goods; and (b) the person gives information relating to any such consumer goods to: (i) a responsible Minister; or (ii) the regulator; or (iii) a person appointed or engaged under the Public Service Act 1999, or under 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;
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;
(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;
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;
(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;
(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;
(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;
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;
corresponding law of a State or a Territory; or (iv) an officer of an authority of the Commonwealth or of a State or Territory;
or (iv) an officer of an authority of the Commonwealth or of a State or Territory;
(iv) an officer of an authority of the Commonwealth or of a State or Territory;
Commonwealth or of a State or Territory;
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$A1_{i-1} = 11 + 11 + 11 + 11 + \dots + 11 + \dots + \dots + 11 + \dots + 11 + \dots + 11 + \dots + \dots$
the liability of the insurer under the contract is not affected
only because the person gave the information.
Devit 2.4 Information atomic
<u>Part 3-4 — Information standards</u>
134. Making information standards for goods and services
194. Making information standards for goods and services
(1) The Commonwealth Minister may, by written notice
published on the internet, make an information standard
for one or both of the following:
(a) goods of a particular kind;
(b) services of a particular kind.
(2) Without limiting subsection (1), an information standard
for goods or services of a particular kind may:
(a) make provision in relation to the content of
information about goods or services of that kind; or
(b) require the provision of specified information about
goods or services of that kind; or
(c) provide for the manner or form in which such
information is to be provided; or
(d) provide that such information is not to be provided
in a specified manner or form; or
(e) provide that information of a specified kind is not to
be provided about goods or services of that kind; or

	(f) assign a meaning to specified information about goods or services.
135.	Declaring information standards for goods and services
	(1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is an information standard for goods or services of a kind specified in the instrument: (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
	(b) such a standard, or such a part of a standard, with additions or variations specified in the notice.
	(2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is an information standard for: (a) goods of a particular kind; or (b) services of a particular kind; if that standard or part is inconsistent with an information standard for those goods or services that is in force and was made under section 134(1).
136.	Supplying etc. goods that do not comply with information standards
	(1) A person must not, in trade or commerce, supply goods of a particular kind if: (a) an information standard for goods of that kind is in force; and (b) the person has not complied with that standard. Note: A pecuniary penalty may be imposed for a contravention of this subsection.
	(2) A person must not, in trade or commerce, offer for supply goods the supply of which is prohibited by subsection (1). Note: A pecuniary penalty may be imposed for a contravention of this subsection.

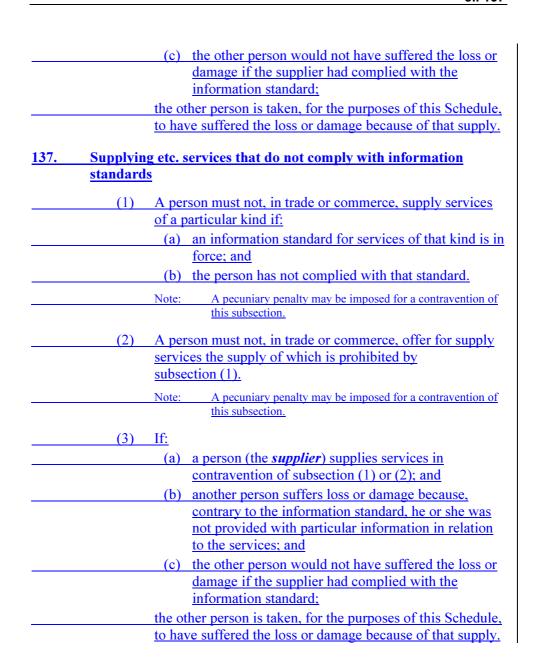
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Part 3-5 — Liability of manufacturers for goods with safety defects

Division 1 — Actions against manufacturers for goods with

	<u>Division 1 — Actions against manufacturers for goods with</u>
	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.
<u>139.</u>	;
	<u>injured individual</u>
	(1) A manufacturer of goods is liable to compensate a person
	<u>if:</u>
	(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

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	(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
	oyed or damaged
<u>are destr</u>	
(1)	A manufacturer of goods is liable to compensate a person
	<u>if:</u>
	(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.
	for loss or damage suffered by a person if land, buildings
<u>or nxtur</u>	es are destroyed or damaged
(1)	A manufacturer of goods is liable to compensate a person
	<u>if:</u>

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(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;
<u>or</u>
(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;
<u>or</u>
(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
<u>comprised in other goods — that safety defect is</u> attributable only to:
attributable only to.

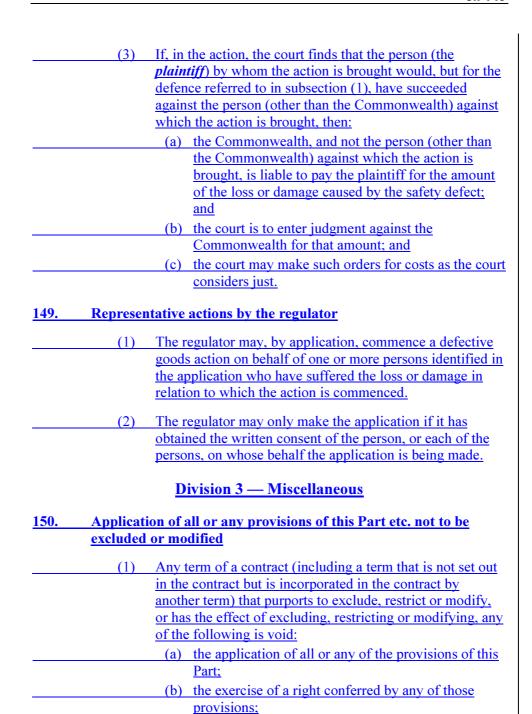
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	(i) the design of the other goods; or
	(ii) the markings on or accompanying the other
	goods; or
	(iii) the instructions or warnings given by the
	manufacturer of the other goods.
	Division 2 — Defective goods actions
<u>143.</u>	Time for commencing 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.
<u>144.</u>	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.
<u>145.</u>	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.
	<u>applies</u>
	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

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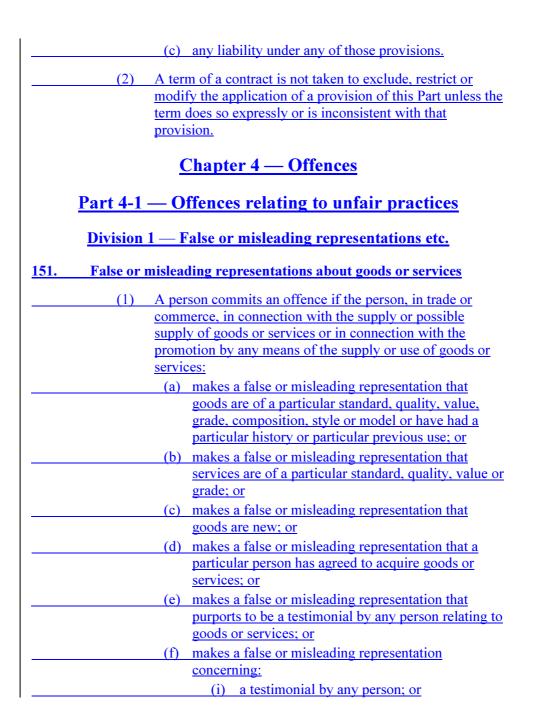
		(b) gives effect to an international agreement.
<u>147.</u>	Unidenti	fied manufacturer
	(1)	A person who:
	` '	(a) wishes to institute a defective goods action; but
		(b) does not know who is the manufacturer of the goods
		to which the action would relate;
		may, by written notice given to a supplier, 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.	Commor	nwealth liability for goods that are defective only because
	of compl	iance 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.

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(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);
<u>or</u>
(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).
dian an unwitten law).
Penalty:
(a) if the person is a body corporate — \$1,100,000; or
(b) if the person is not a body corporate — \$220,000.

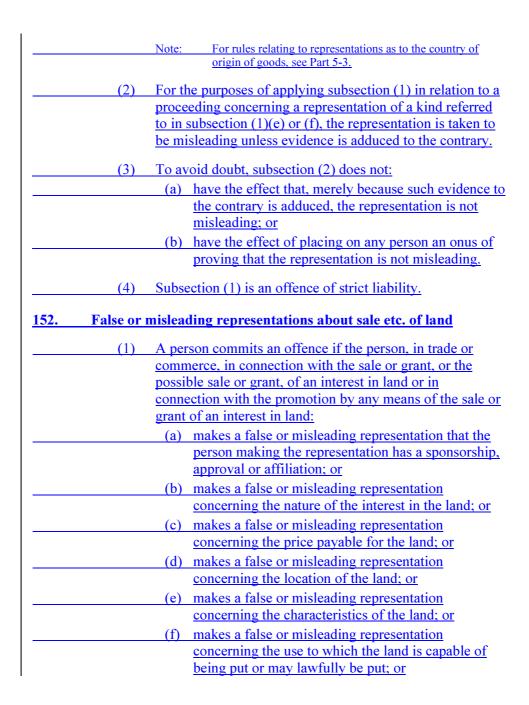
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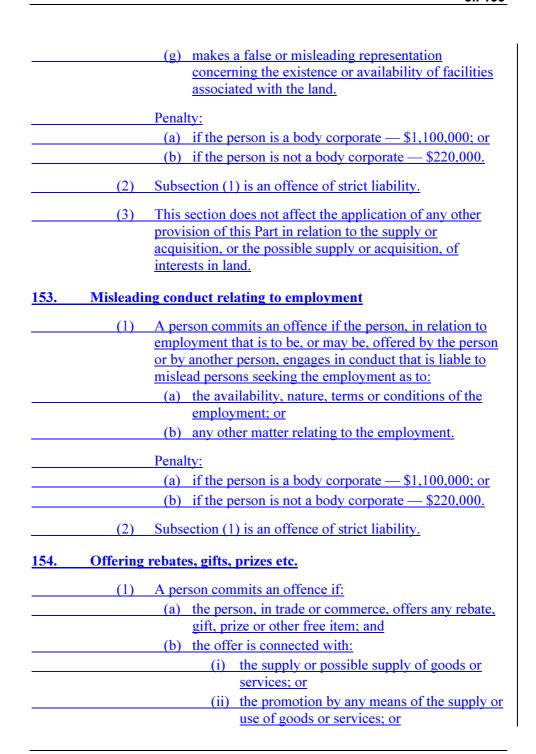
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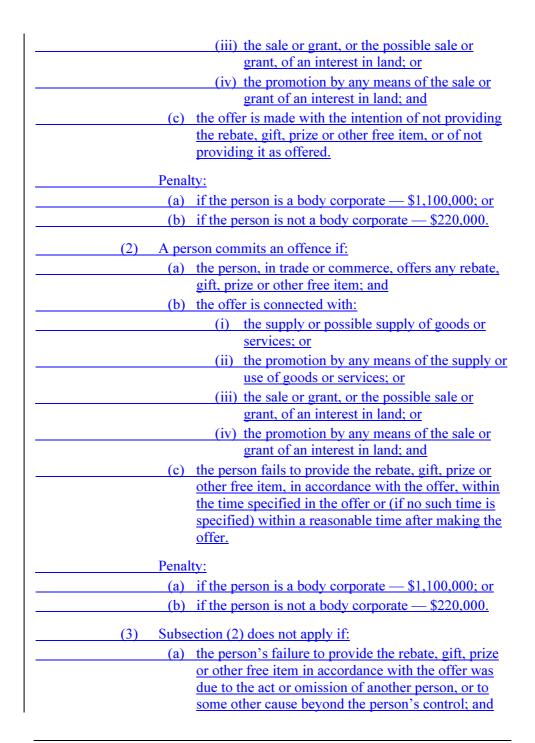


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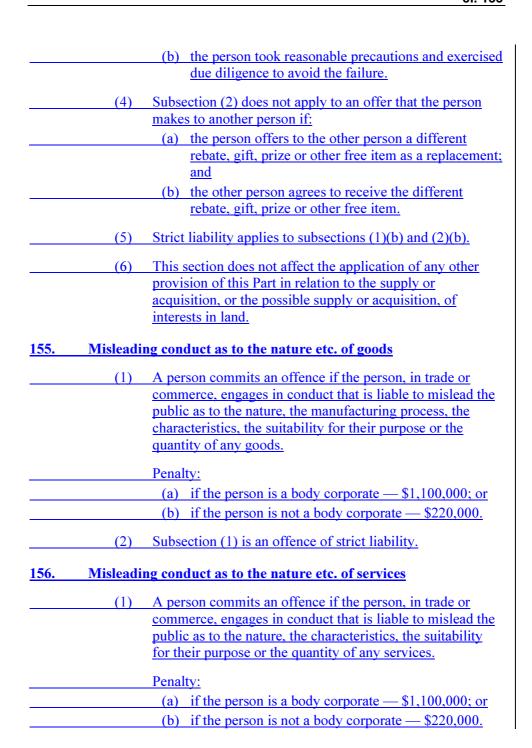
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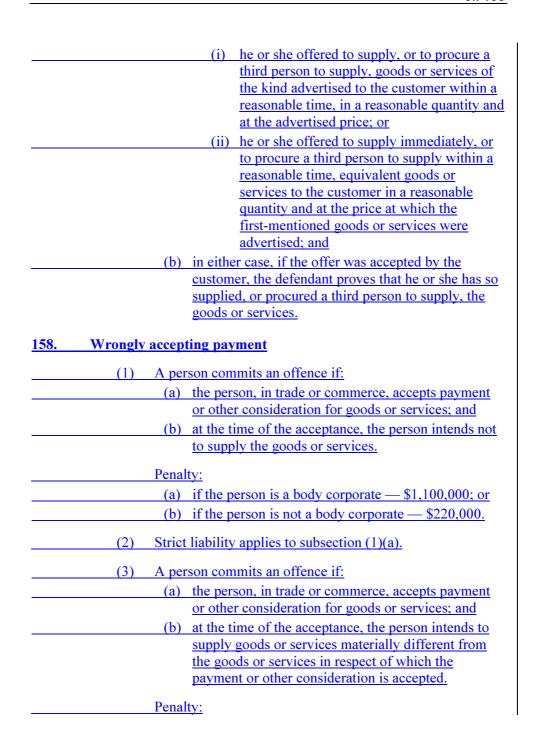
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	(2) Subsection (1) is an offence of strict liability.
<u>157.</u>	Bait advertising
	(1) A person commits an offence if:
	(a) the person, in trade or commerce, advertises goods
	or services for supply at a specified price; and
	(b) there are reasonable 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.
	Penalty:
	(a) if the person is a body corporate — \$1,100,000; or
	(b) if the person is not a body corporate — \$220,000.
	(2) A person commits an offence if:
	(a) the person, in trade or commerce, advertises goods
	or services for supply at a specified price; and
	(b) the person fails to offer such goods or services for
	supply at that price for a period that is, and in quantities that are, reasonable having regard to:
	(i) the nature of the market in which the person
	carries on business; and
	(ii) the nature of the advertisement.
	Penalty:
	(a) if the person is a body corporate — \$1,100,000; or
	(b) if the person is not a body corporate — \$220,000.
	(3) Subsections (1) and (2) are offences of strict liability.
	(4) In a prosecution of a person (the <i>defendant</i>) 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:



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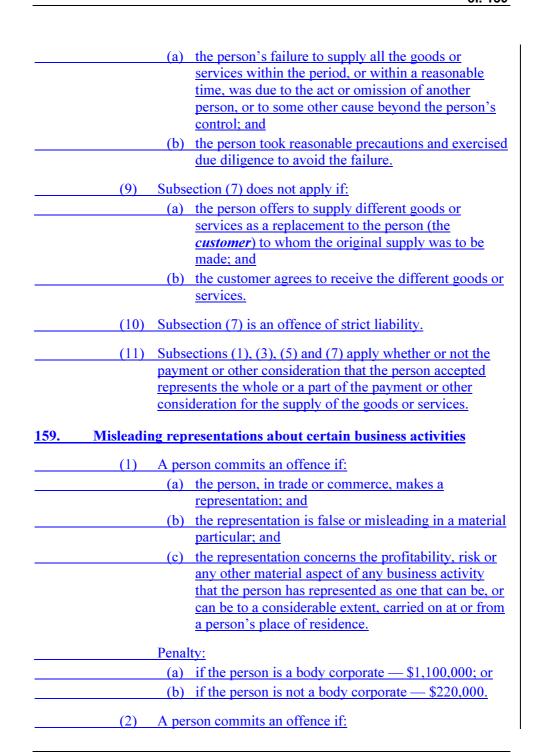
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(a) if the person is a body corporate — \$1,100,000; or
(b) if the person is not a body corporate — \$220,000.
(4) Strict liability applies to subsection (3)(a).
(5) A person commits an offence if:
(a) the person, in trade or commerce, accepts payment 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 posited is appointed at an hefore that time
(ii) if no period is specified at or before that time — within a reasonable time.
Penalty:
(a) if the person is a body corporate — \$1,100,000; or
(b) if the person is not a body corporate — \$220,000.
(6) Strict liability applies to subsection (5)(a).
(7) A person commits an offence if:
(a) the person, in trade or commerce, accepts payment
or other consideration for goods or services; and
(b) the person fails to supply all the goods or services:
(i) within the period specified by or on behalf
of the person at or before the time the
payment or other consideration was
accepted; or (ii) if no posited is appointed at an hefore that time
(ii) if no period is specified at or before that time — within a reasonable time.
— within a reasonable time.
Penalty:
(a) if the person is a body corporate — \$1,100,000; or
(b) if the person is not a body corporate — \$220,000.
(8) Subsection (7) does not apply if:

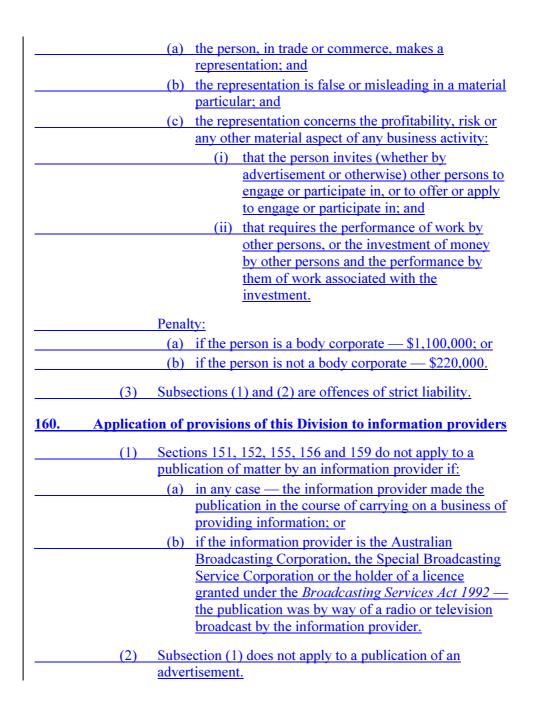
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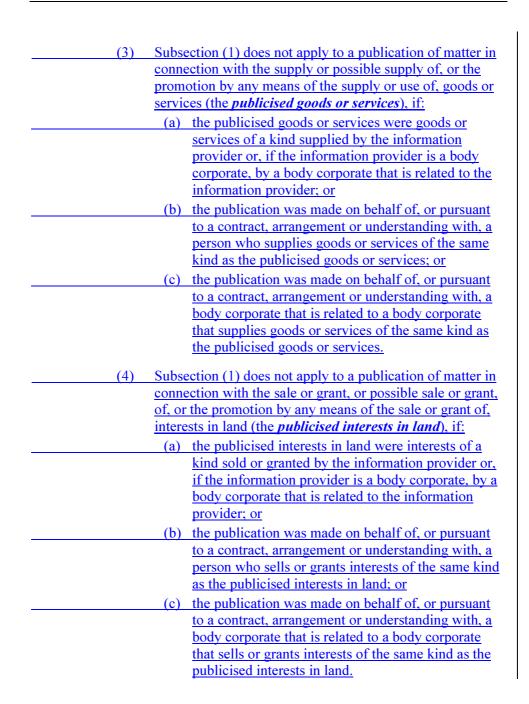
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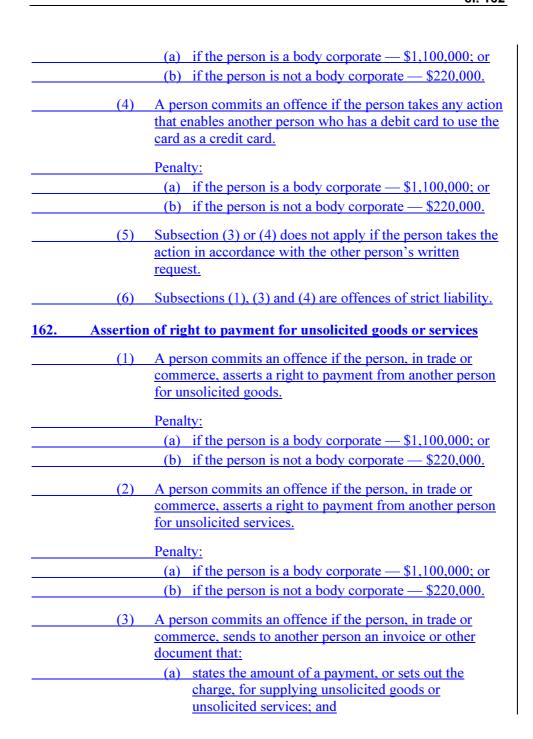
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<u>Division 2 — Unsolicited supplies</u>

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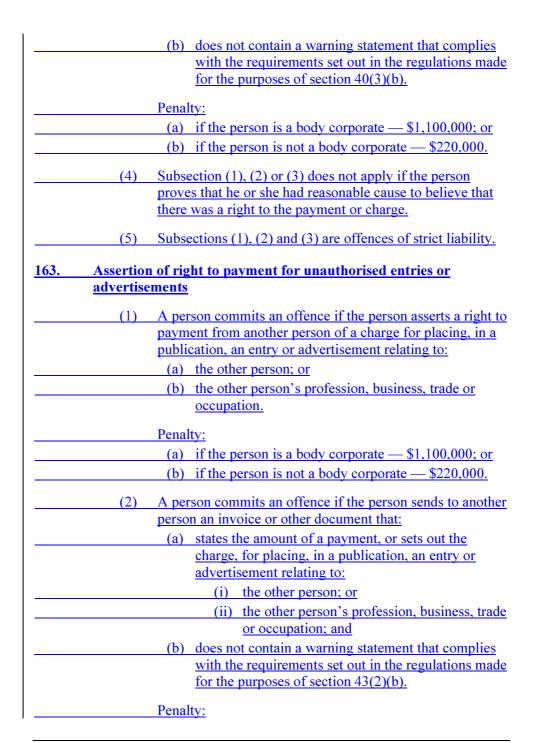


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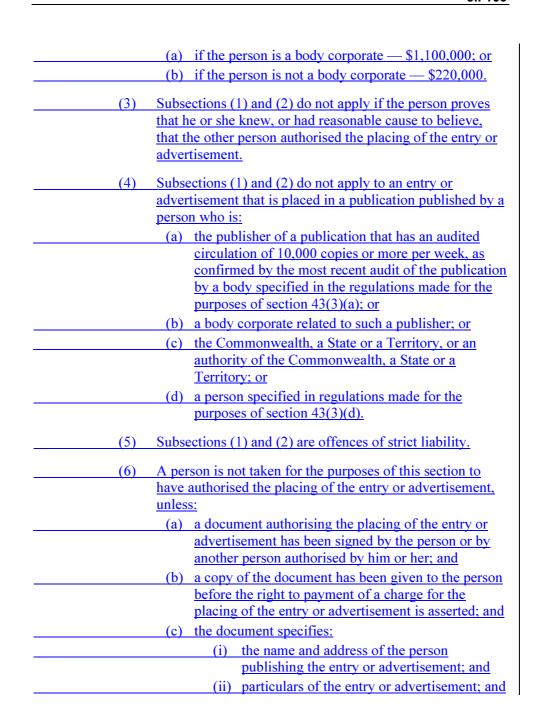
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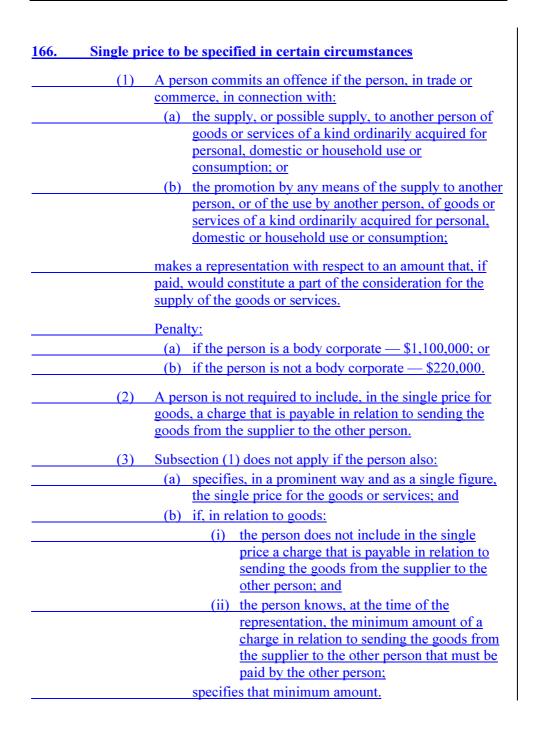


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164. Participation in pyramid schemes (1) A person commits an offence if the person participates in a pyramid scheme. Penalty: (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000. (2) A person commits an offence if the person induces another person to participate in a pyramid scheme. Penalty: (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000. (3) Subsections (1) and (2) are offences of strict liability. Division 4 — Pricing 165. Multiple pricing (1) A person commits an offence if: (a) the person, in trade or commerce, supplies goods; and (b) the goods have more than one displayed price; and (c) the supply takes place for a price that is not the lower, or lowest, of the displayed prices. Penalty:		(iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated. Division 3 — Pyramid schemes
pyramid scheme. Penalty: (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000. (2) A person commits an offence if the person induces another person to participate in a pyramid scheme. Penalty: (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000. (3) Subsections (1) and (2) are offences of strict liability. Division 4 — Pricing (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.	<u>164.</u>	Participation in pyramid schemes
(a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000. (2) A person commits an offence if the person induces another person to participate in a pyramid scheme. Penalty: (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000. (3) Subsections (1) and (2) are offences of strict liability. Division 4 — Pricing 165. Multiple pricing (1) A person commits an offence if: (a) the person, in trade or commerce, supplies goods; and (b) the goods have more than one displayed price; and (c) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.		
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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.		(a) if the person is a body corporate — \$1,100,000; or
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(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.		<u>Division 4 — Pricing</u>
(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.	<u>165.</u>	Multiple pricing
(c) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.		(a) the person, in trade or commerce, supplies goods;
Penalty:		(c) the supply takes place for a price that is not the
(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.		 (a) if the person is a body corporate — \$5,000; or (b) if the person is not a body corporate — \$1,000.

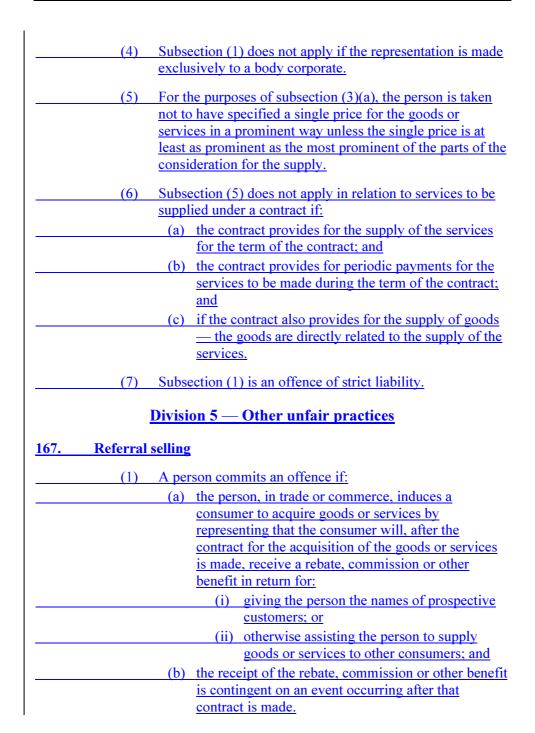


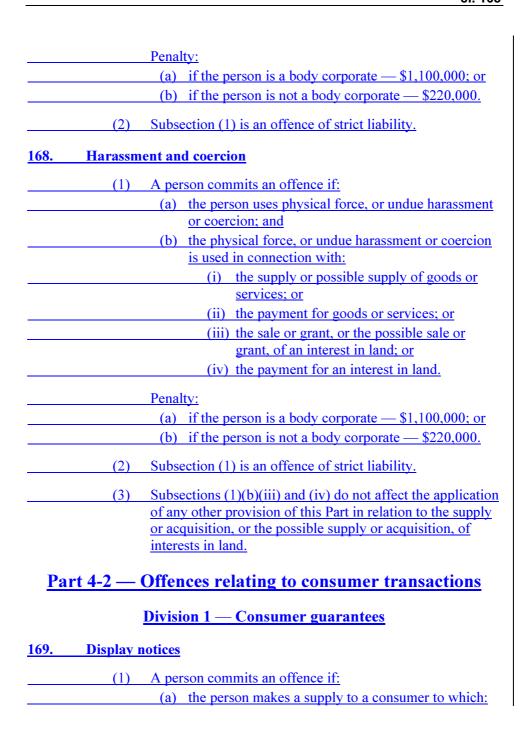
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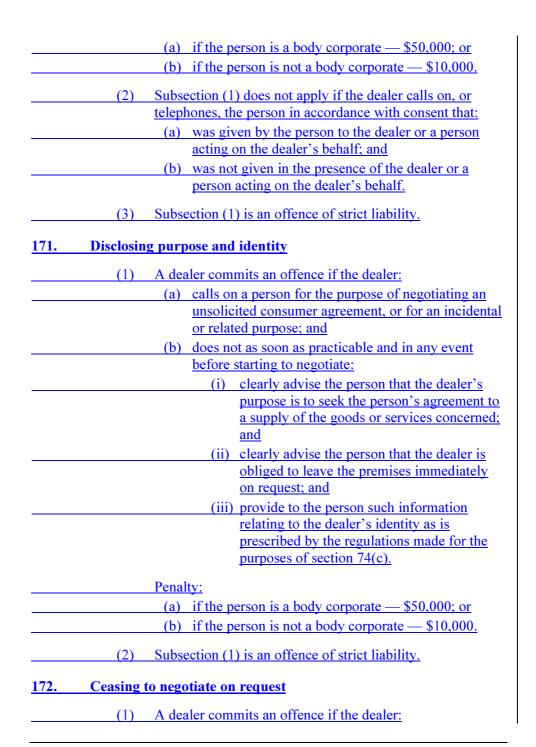
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(i) gramentage analy under Division 1 of
(i) guarantees apply under Division 1 of
Part 3-2; and
(ii) a determination under subsection 66(1)
applies; and
(b) a notice that meets the requirements of the
determination is not, in accordance with the
<u>determination:</u>
(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 Uncelleited consumer agreements
<u>Division 2 — Unsolicited consumer agreements</u>
Subdivision A — Negotiating unsolicited consumer agreements
Subdivision 11 Tregotiating ansonetted consumer agreements
170. Permitted hours for negotiating an unsolicited consumer
<u>agreement</u>
(1) A dealer commits an offence if the dealer calls on a person
(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer
(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:
(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
(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose: (a) at any time on a Sunday or a public holiday; or (b) on a Saturday:
(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose: (a) at any time on a Sunday or a public holiday; or (b) on a Saturday: (i) between midnight and 9 am; or
(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose: (a) at any time on a Sunday or a public holiday; or (b) on a Saturday: (i) between midnight and 9 am; or (ii) between 5 pm and midnight; or
(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose: (a) at any time on a Sunday or a public holiday; or (b) on a Saturday: (i) between midnight and 9 am; or (ii) between 5 pm and midnight; or (c) on any other day:
(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose: (a) at any time on a Sunday or a public holiday; or (b) on a Saturday: (i) between midnight and 9 am; or (ii) between 5 pm and midnight; or (c) on any other day: (i) between midnight and 9 am; or
(1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose: (a) at any time on a Sunday or a public holiday; or (b) on a Saturday: (i) between midnight and 9 am; or (ii) between 5 pm and midnight; or (c) on any other day:

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Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04]

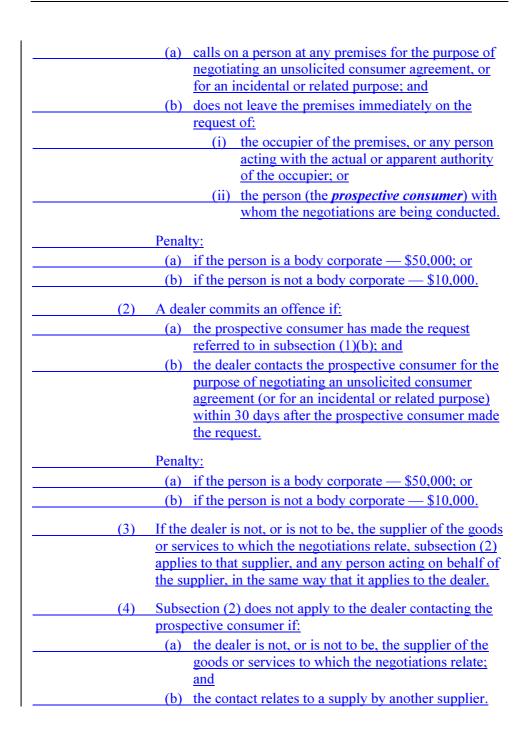
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	(5) Subsections (1) and (2) are offences of strict liability.
<u>173.</u>	Informing person of termination period etc.
	(1) A dealer commits an offence if the dealer makes an unsolicited consumer agreement with a person, and: (a) before the agreement 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.

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	(3)	Subsection (1) is an offence of strict liability.
Subdivisio	n B —	- Requirements for unsolicited consumer agreements etc.
174. Re	<u>equire</u>	ment to give document to the consumer
	(1)	
		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
	(2)	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. Re	equire	ments for all unsolicited consumer agreements etc.
	(1)	The supplier under an unsolicited consumer agreement
	<u>, - , - , - , - , - , - , - , - , - , -</u>	commits an offence if the agreement, or (if the agreement

was negotiate	d by telephone) the agreement document,
	ply with the following requirements:
(a) it must	set out in full all the terms of the agreement,
includi	
(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 fron	t 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);
	<u>and</u>
(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);
	conspicuously and prominently set out in
<u>full:</u>	
(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

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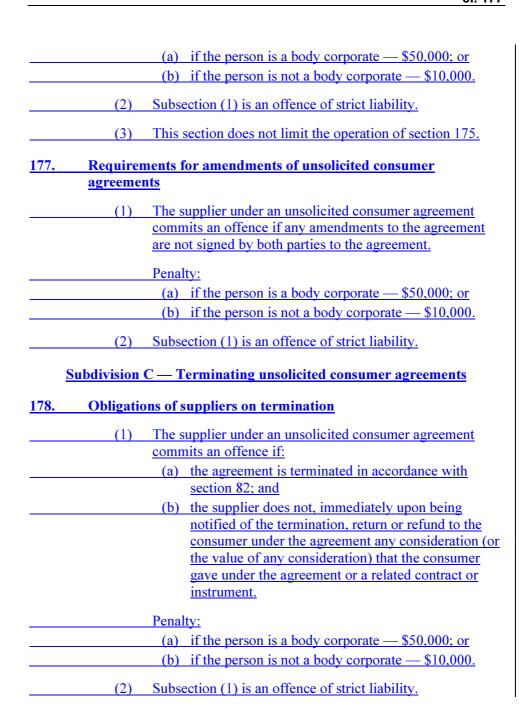
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business address, the supplier's residential
address; and
(v) if the supplier has an email address — the
supplier's email address; and
(vi) if the supplier has a fax number — the
supplier's fax number;
(e) it must be printed clearly or typewritten (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
176. Additional requirements for unsolicited consumer agreements not negotiated by telephone
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:

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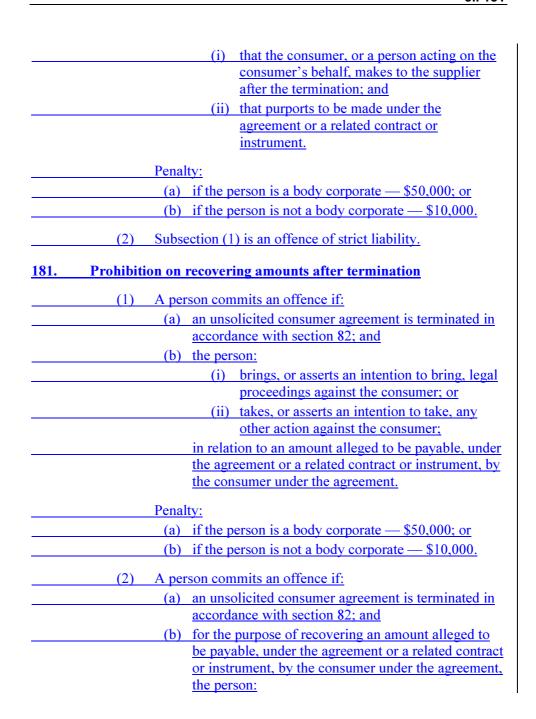
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179. Prohibition on supplies for 10 business days
(1) The supplier under an unsolicited consumer agreement
commits an offence if:
(a) the supplier:
(i) supplies to the consumer under the
agreement the goods or services to be supplied under the agreement; or
(ii) accepts any payment, or any other
consideration, in connection with those
goods or services; or
(iii) requires any payment, or any other consideration, in connection with those goods or services; and
(b) the supply, acceptance or requirement occurs during
the period of 10 business days starting:
(i) if the agreement was not negotiated by
<u>telephone</u> — at the start of the first business day after the day on which the agreement
was made; or
(ii) if the agreement was negotiated by telephone — at the start of the first business
day after the day on which the consumer wa 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:

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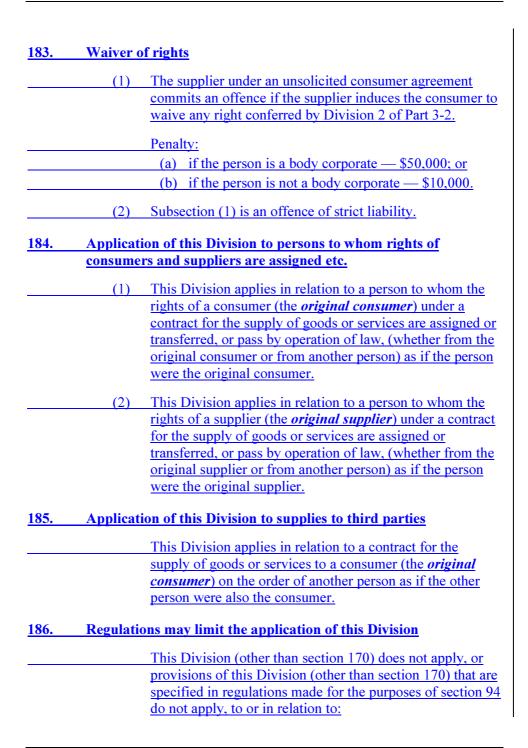
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	(i) places the consumer's name, or causes the
	consumer's name to be placed, on a list of
	defaulters or debtors; or
	(ii) asserts an intention to place the consumer's name, or to cause the consumer's name to be
	placed, on such a list.
_	•
	enalty:
	(a) if the person is a body corporate — \$50,000; or
	(b) if the person is not a body corporate — \$10,000.
(3) S	ubsection (1) is an offence of strict liability.
(4) S	trict liability applies to subsection (2)(a).
	Subdivision D — Miscellaneous
	Subdivision D Wiscenancous
182. Certain pro	visions of unsolicited consumer agreements void
(1) T	he supplier under an unsolicited consumer agreement
	ommits an offence if the agreement includes, or purports
	include, a provision (however described) that is, or
<u>W</u>	rould be, void because of section 89(1).
P	enalty:
	(a) if the person is a body corporate — \$50,000; or
	(b) if the person is not a body corporate — \$10,000.
(2) T	he supplier under an unsolicited consumer agreement
	ommits an offence if the supplier attempts to enforce or
	ely on a provision (however described) that is void
<u>b</u>	ecause of section 89(1).
P	enalty:
	(a) if the person is a body corporate — \$50,000; or
	(b) if the person is not a body corporate — \$10,000.
(3) S	ubsections (1) and (2) are offences of strict liability.

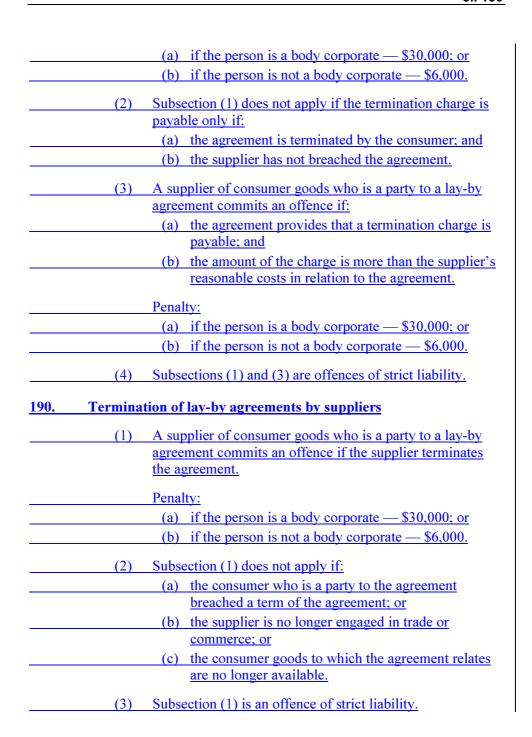
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		(a) circumstances of a kind specified in those
		regulations; or
		(b) agreements of a kind specified in those regulations;
		<u>or</u>
		(c) the conduct of businesses of a kind specified in those
		<u>regulations.</u>
187.	Applicat	ion of this Division to certain conduct covered by the
1071		tions Act
		This Division does not apply in relation to conduct to
		which section 736, 992A or 992AA of the <i>Corporations</i> Act 2001 applies.
		**
		Note: Section 736 of the <i>Corporations Act 2001</i> prohibits hawking of securities. Section 992A of that Act prohibits hawking of
		certain financial products. Section 992AA of that Act
		prohibits hawking of managed investment products.
		<u>Division 3 — Lay-by agreements</u>
188.	Lay-by a	greements must be in writing etc.
	(1)	A supplier of consumer goods who is a party to a lay-by
		agreement commits an offence if:
		(a) the agreement is not in writing; or
		(b) a copy of the agreement is not given to the consumer
		to whom the goods are, or are to be, supplied.
		D 1/
		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.
	` /	
<u> 189.</u>	Termina	tion charges
	(1)	A supplier of consumer goods who is a party to a lay-by
	(1)	agreement commits an offence if the agreement requires
		the consumer to pay a termination charge.
		Penalty:

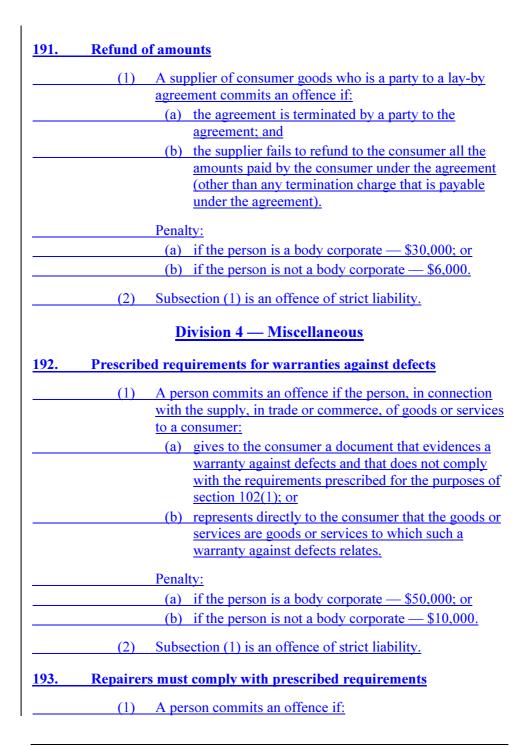


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(a) the person accepts from another person goods that
the other person acquired as a consumer; and
(b) the goods are accepted for the purpose of repairing
them; and
(c) the person does not give to the other person a notice
that complies with the requirements prescribed for the purposes of section 103(1).
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) Subscriber (1) is an affirm a of strict lightlift.
(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
Division 1 Safety standards
194. Supplying etc. consumer goods that do not comply with safety
194. Supplying etc. consumer goods that do not comply with safety standards
<u>standards</u>
standards (1) A person commits an offence if:
(1) A person commits an offence if: (a) the person, in trade or commerce, supplies consumer
(1) A person commits an offence if: (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and
(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
(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
(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.
(1) A person commits an offence if: (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and (b) a safety standard for consumer goods of that kind is in force; and (c) those goods do not comply with the standard. Penalty:
(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.
(1) A person commits an offence if: (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and (b) a safety standard for consumer goods of that kind is in force; and (c) those goods do not comply with the standard. Penalty:

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in force; and

particular kind; and

(a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a

(b) a safety standard for consumer goods of that kind is

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	(c) those goods do not comply with the standard.
	Penalty:
	(a) if the person is a body corporate — \$1,100,000; or
	(b) if the person is not a body corporate — \$220,000.
(3)	A person commits an offence if:
(3)	(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.
	Penalty:
	(a) if the person is a body corporate — \$1,100,000; or
	(b) if the person is not a body corporate — \$220,000.
(4)	Subsection (3) does not apply if the person does not
	manufacture, possess or control the goods for the purpose
	of supplying the goods (other than for export).
(5)	A person commits an offence if:
	(a) the person, in trade or commerce, exports consumer
	goods of a particular kind; and
	(b) a safety standard for consumer goods of that kind is
	in force; and
	(c) those goods do not comply with the standard.
	Penalty:
	(a) if the person is a body corporate — \$1,100,000; or
	(b) if the person is not a body corporate — \$220,000.
(6)	Subsection (5) does not apply if the Commonwealth
	Minister has, by written notice given to the person,
	approved the export of the goods under section 106(5).
(7)	Subsections (1), (2), (3) and (5) are offences of strict
	<u>liability.</u>

195.	Supplyin	ng etc. product related services that do not comply with
	safety sta	
	(1)	A person commits an offence if:
		(a) the person, in trade or commerce, supplies product related services of a particular kind; and
		(b) a safety standard for services of that kind is in force; and
		(c) those services do not comply with the standard.
		Penalty:
		(a) if the person is a body corporate — \$1,100,000; or
		(b) if the person is not a body corporate — \$220,000.
	(2)	A person commits an offence if:
		(a) the person, in trade or commerce, offers for supply product related services of a particular kind; and
		(b) a safety standard for services of that kind is in force;
		and
		(c) those services do not comply with the standard.
		Penalty:
		(a) if the person is a body corporate — \$1,100,000; or
		(b) if the person is not a body corporate — \$220,000.
	(3)	Subsections (1) and (2) are offences of strict liability.
<u>196.</u>	Require	ment to nominate a safety standard
	(1)	A person commits an offence if the person refuses or fails
		to comply with a request given to the person under
		section 108.
		Penalty:
		(a) if the person is a body corporate — \$22,000; or
		(b) if the person is not a body corporate — \$4,400.
	(2)	Subsection (1) is an offence of strict liability.

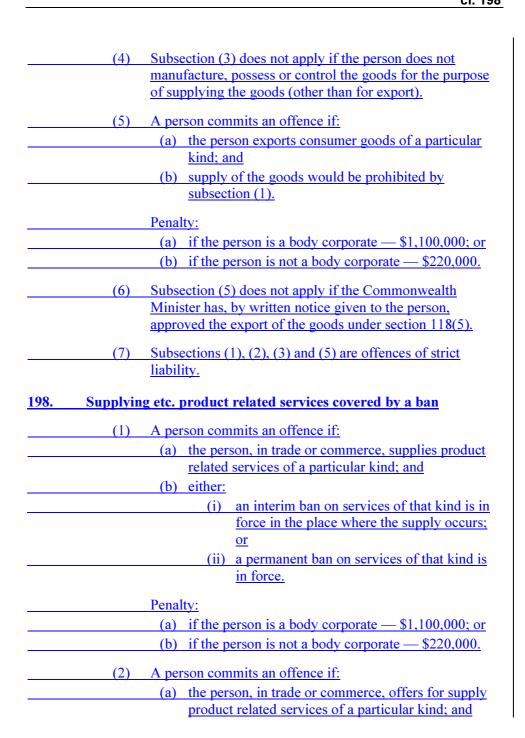
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Divis	ion 2 — Bans on consumer goods and product related services
<u>197.</u>	Supplying etc. consumer goods covered by a ban
	(1) A person commits an offence if: (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and (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.
	Penalty: (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000.
	(2) A person commits an offence if: (a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and (b) the supply would be prohibited by subsection (1).
	Penalty: (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000.
	(3) A person commits an offence if: (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and (b) supply of the goods would be prohibited by subsection (1).
	Penalty:
	 (a) if the person is a body corporate — \$1,100,000; or (b) if the person is not a body corporate — \$220,000.

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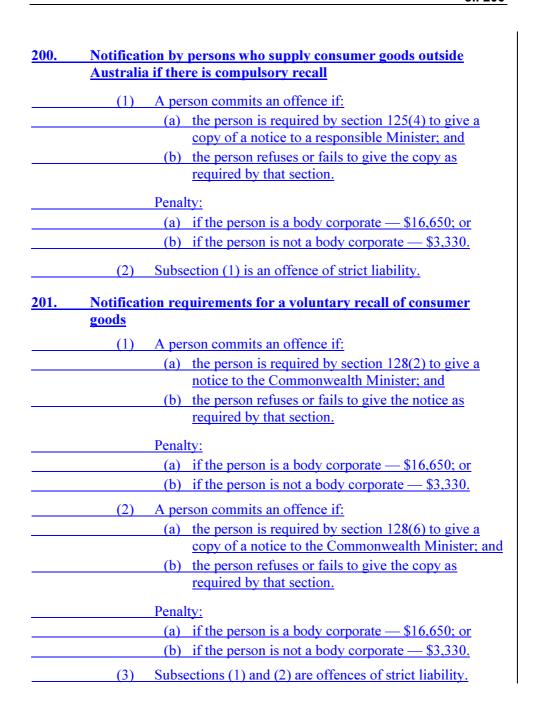
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(h) the comply would be muchilited by subsection (1)
(b) the supply would be prohibited by subsection (1).
Penalty:
(a) if the person is a body corporate — \$1,100,000; or
(b) if the person is not a body corporate — \$220,000.
(3) Subsections (1) and (2) are offences of strict liability.
<u>Division 3 — Recall of consumer goods</u>
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.
Penalty:
(a) if the person is a body corporate — \$1,100,000; or
(b) if the person is not a body corporate — \$220,000.
(2) A person commits an offence if:
(a) a recall notice for consumer goods is in force; and
(b) the person, in trade or commerce:
(i) if the notice identifies a defect in, or a
dangerous characteristic of, the consumer
goods — supplies consumer goods of the kind to which the notice relates which
contain that defect or have that
characteristic; or
(ii) in any other case — supplies consumer
goods of the kind to which the notice relates
Penalty:
(a) if the person is a body corporate — \$1,100,000; or
(b) if the person is not a body corporate — \$220,000.
(3) Subsections (1) and (2) are offences of strict liability.

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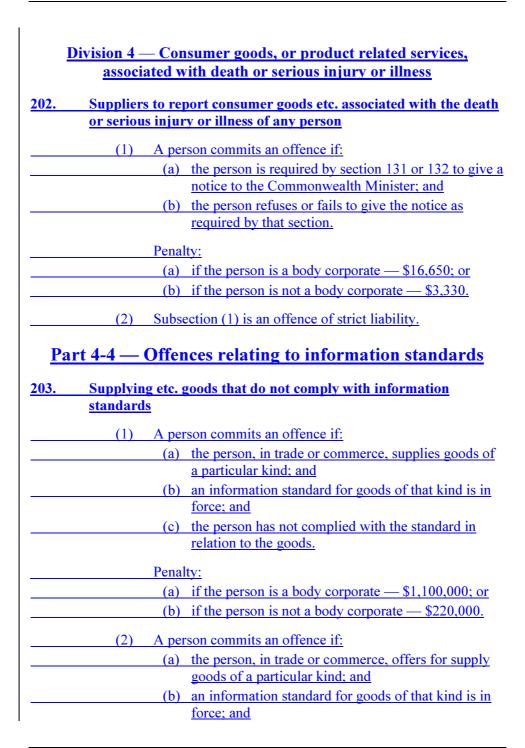


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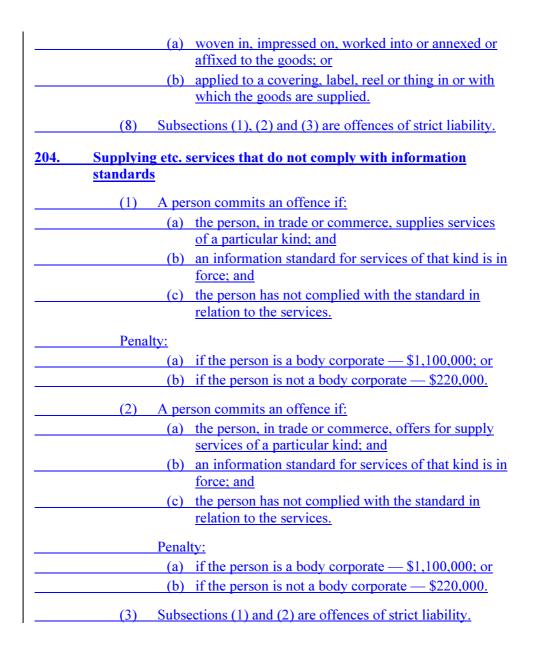
	(c) the person has not complied with the standard in
	relation to the goods.
	Penalty:
	(a) if the person is a body corporate — \$1,100,000; or
	(b) if the person is not a body corporate — \$220,000.
(3)	A person commits an offence if:
	(a) the person, in or for the purposes of trade or
	commerce, manufactures, possesses or has control of
	goods of a particular kind; and
	(b) an information standard for goods of that kind is in
	force; and
-	(c) the person has not complied with the standard in
	relation to the goods.
	Penalty:
	(a) if the person is a body corporate — \$1,100,000; or
	(b) if the person is not a body corporate — \$220,000.
(4)	Subscation (2) does not apply if the person does not
(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)	
	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.
	used outside Australia.
(7)	Without limiting subsection (6), a statement may, for the
	purposes of that subsection, be applied to goods by being:

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Part 4-5 — Offences relating to substantiation notices

205.	Complia	nce with substantiation notices
	(1)	A person commits an offence if the person:
	(1)	(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.
		the marvidual to a penaity.
	(3)	Subsection (1) is an offence of strict liability.
<u>206.</u>	False or	misleading information etc.
	(1)	
		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:

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- (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.
- Subsection (1) is an offence of strict liability. (3)

Part 4-6 — Defences

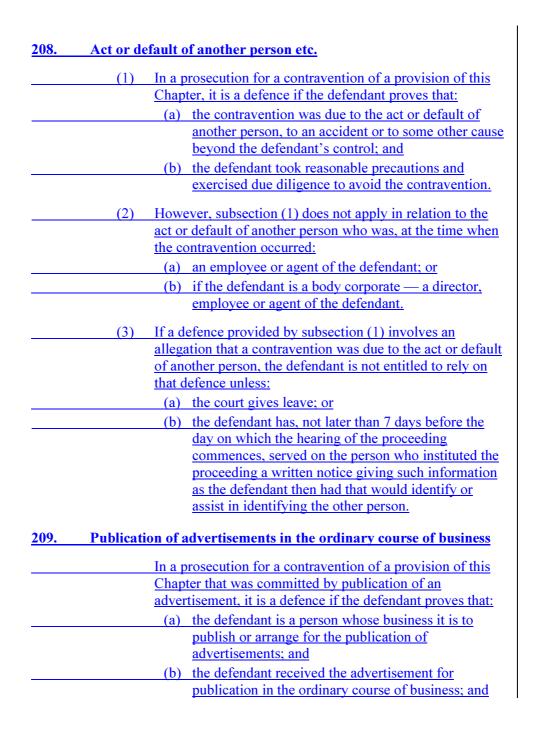
207. Reasonable mistake of fact

- 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.
- However, subsection (1) does not apply in relation to **(2)** 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.
- 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.

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	(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

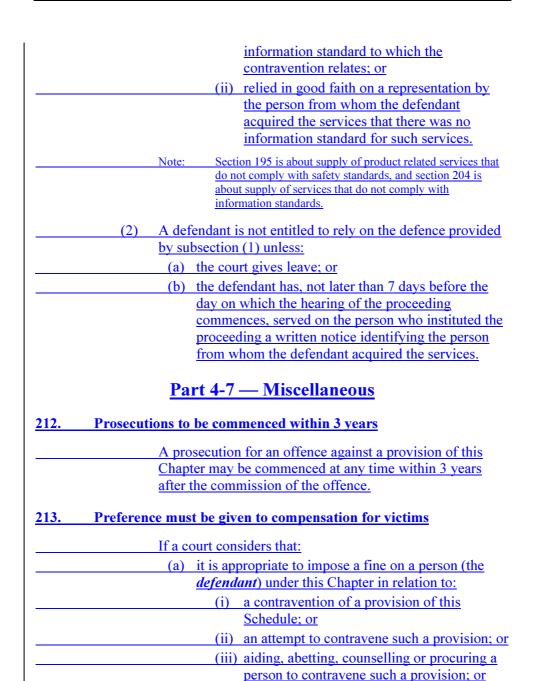
supply of goods that do not comply with information
<u>standards.</u>
(2) A defendant is not entitled to rely on the defence provided
by subsection (1) unless:
(a) the court gives leave; or
(b) the defendant has, not later than 7 days before the
day on which the hearing of the proceeding
commences, served 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

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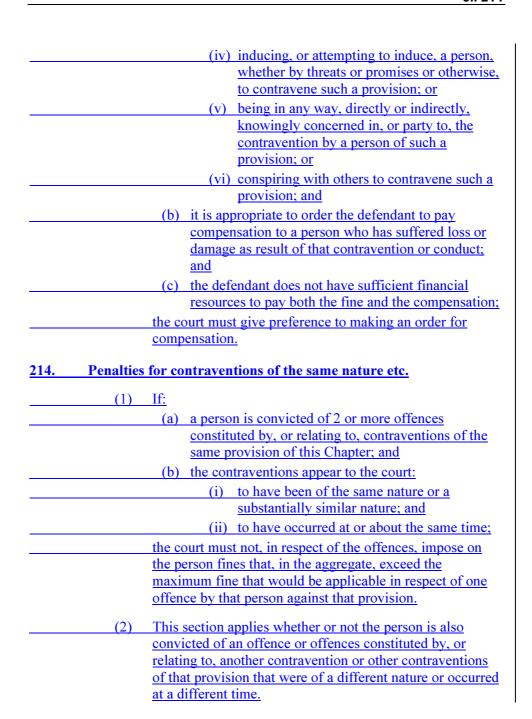
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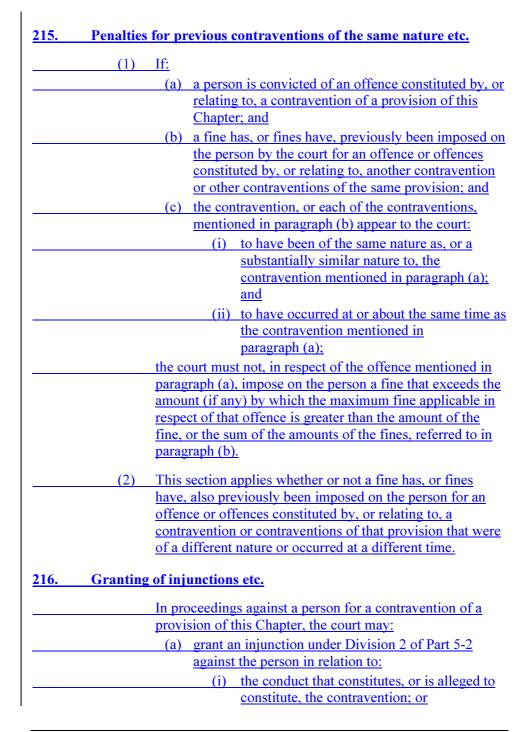


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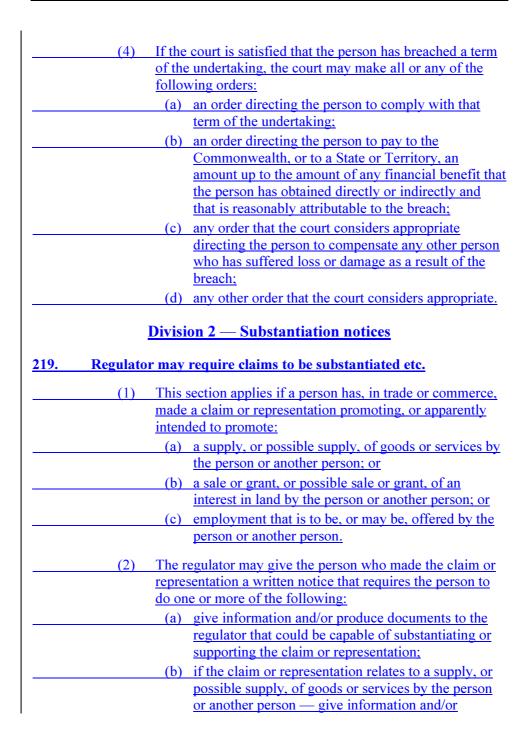
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	(ii) other conduct of that kind; or
	(b) make an order under section 246, 247 or 248 in
	relation to the contravention.
217. Criminal	l proceedings not to be brought for contraventions of
<u>Chapter</u>	
	Criminal proceedings do not lie against a 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.
	<u>provision.</u>
<u>Char</u>	oter 5 — Enforcement and remedies
	Part 5-1 — Enforcement
	<u>Division 1 — Undertakings</u>
218. Regulato	or 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).

Note **Chapter 5** Australian Consumer Law (WA) text

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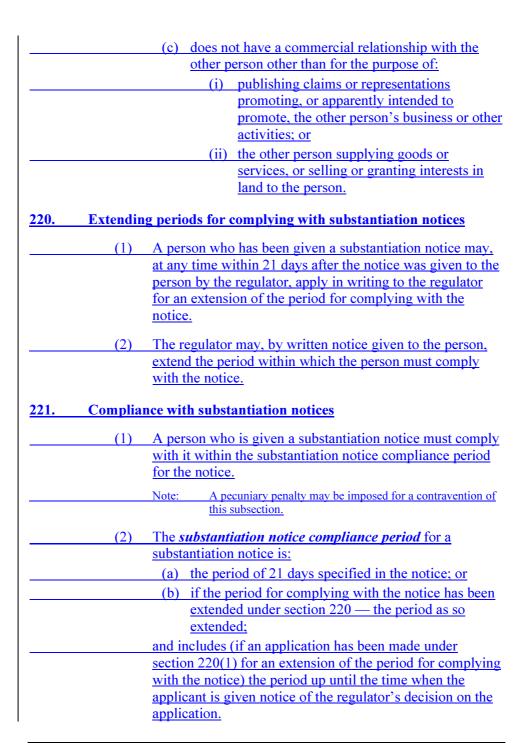


produce documents to the regulator that could be
capable of substantiating:
(i) the quantities in which; and
(ii) the period for which;
the person or other person is or will be able to make
such a supply (whether or not the claim or
representation relates to those quantities or that
<u>period);</u>
(c) 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.
person is of will be able to make such a suppry.
(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
a cashess of providing information, and

Note **Chapter 5** Australian Consumer Law (WA) text

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222.	<u> </u>	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.
		A person must not, in compliance or purported compliance with a substantiation notice given by the regulator:
	7	
		(a) give to the regulator false or misleading information;
		or (b) produce to the regulator documents that contain false
		or misleading information.
	7	Note: A pecuniary penalty may be imposed for a contravention of
	1	this subsection.
	(2) 5	
	(2)	<u>Γhis section does not apply to:</u>
-		(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.
	<u>D</u> i	<u>vision 3 — Public warning notices</u>
223.	Regulator	may issue a public warning notice
	(1)	The regulator may issue to the public a written notice
	3.7	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.
		interest to issue the notice.

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Without limiting subsection (1), if: **(2)**

- (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:
 - a provision of Part 2-2 (which is about unconscionable conduct);
 - (ii) a provision of Part 3-1 (which is about unfair practices);
 - (iii) section 66(2) (which is about display notices);
 - (iv) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);
 - (v) a provision (other than section 96(2)) of Division 3 of Part 3-2 (which is about lay-by agreements);
 - (vi) section 100(1) or (3) or 101(3) or (4) (which are about proof of transactions and itemised bills);

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(vii) section 102(2) or 103(2) (which are about
prescribed requirements for warranties and repairers);
(viii) section 106(1), (2), (3) or (5), 107(1)
or (2), 118(1), (2), (3) or (5), 119(1)
or (2), 125(4), 127(1) or (2), 128(2)
or (6), $131(1)$ or $132(1)$ (which are about
safety of consumer goods and product
related services);
(ix) section 136(1), (2) or (3) or 137(1) or (2)
(which are about information standards);
(x) section 221(1) or 222(1) (which are about
substantiation notices); or
(b) has attempted to contravene such a provision; or
(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

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(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:

Amour	nt of pecuniary penalty	
<u>Item</u>	For each act or omission	the pecuniary penalty is
	to which this section	not to exceed
	applies that relates to	
<u>1</u>	a provision of Part 2-2	(a) if the person is a
		<u>body corporate</u> —
		\$1.1 million; or
		(b) if the person is not a
		<u>body corporate</u> —
		<u>\$220,000.</u>
<u>2</u>	a provision of Part 3-1	(a) if the person is a
	(other than section 47(1))	<u>body corporate</u> —
		\$1.1 million; or
		(b) if the person is not a
		<u>body corporate</u> —
		<u>\$220,000.</u>
<u>3</u>	<u>section 47(1)</u>	(a) if the person is a
		<u>body corporate</u> —
		\$5,000; or
		(b) if the person is not a
		body corporate —
		<u>\$1,000.</u>
<u>4</u>	section 66(2)	(a) if the person is a
		body corporate —
		\$50,000; or
		(b) if the person is not a
		body corporate —
		<u>\$10,000.</u>
<u>5</u>	a provision of Division 2	(a) if the person is a
	of Part 3-2 (other than	body corporate —
	section 85)	\$50,000; or
		(b) if the person is not a
		<u>body corporate</u> —
		<u>\$10,000.</u>

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Amour	nt of pecuniary penalty	
<u>Item</u>	For each act or omission	the pecuniary penalty is
	to which this section	not to exceed
	applies that relates to	
<u>6</u>	a provision of Division 3	(a) if the person is a
	of Part 3-2 (other than	<u>body corporate</u> —
	<u>section 96(2))</u>	\$30,000; or
		(b) if the person is not a
		<u>body corporate</u> —
		<u>\$6,000.</u>
<u>7</u>	section 100(1) or (3)	(a) if the person is a
	<u>or 101(3) or (4)</u>	<u>body corporate</u> —
		\$15,000; or
		(b) if the person is not a
		<u>body corporate</u> —
		<u>\$3,000.</u>
<u>8</u>	section 102(2) or 103(2)	(a) if the person is a
		body corporate —
		\$50,000; or
		(b) if the person is not a
		<u>body corporate</u> —
		<u>\$10,000.</u>
9	section 106(1), (2), (3)	(a) if the person is a
	or (5), 107(1)	<u>body corporate</u> —
	or (2), 118(1), (2), (3)	\$1.1 million; or
	or (5) or 119(1) or (2)	(b) if the person is not a
		<u>body corporate</u> —
1.0		\$220,000.
<u>10</u>	<u>section 125(4)</u>	(a) if the person is a
		body corporate —
		\$16,500; or
		(b) if the person is not a
		body corporate —
11	section 127(1) or (2)	\$3,300. (a) if the person is a
11	Section 127(1) or (2)	(a) if the person is a body corporate —
		\$1.1 million; or
		(b) if the person is not a
		body corporate —
		\$220,000.
		<u>Φ440,000.</u>

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Amour	nt of pecuniary penalty		
<u>Item</u>	For each act or omission	the	pecuniary penalty is
	to which this section	not	to exceed
	applies that relates to		
<u>12</u>	section 128(2)	<u>(a)</u>	if the person is a
	or (6), 131(1) or 132(1)		body corporate —
			\$16,500; or
		<u>(b)</u>	
			body corporate —
			<u>\$3,300.</u>
<u>13</u>	section 136(1), (2) or (3)	<u>(a)</u>	if the person is a
	<u>or 137(1) or (2)</u>		body corporate —
			\$1.1 million; or
		<u>(b)</u>	if the person is not a
			body corporate —
			<u>\$220,000.</u>
<u>14</u>	section 221(1)	<u>(a)</u>	
			body corporate —
			\$16,500; or
		<u>(b)</u>	if the person is not a
			body corporate —
			<u>\$3,300.</u>
<u>15</u>	section 222(1)	<u>(a)</u>	
			<u>body corporate</u> —
			\$27,500; or
		<u>(b)</u>	
			body corporate —
			<u>\$5,500.</u>
(4)	If conduct constitutes a cor	ntrave	ntion of 2 or more
(1)	provisions referred to in su		
	*		tuted under this Schedu
			n to the contravention of
	any one or more of t		
		_	
			ore than one pecuniary in respect of the same
	conduct.	CHOIL	in respect of the same
	conduct.		

(1)	A court must not make an order under section 224 assignt
	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
	<u>if:</u>
	(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

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(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.

Defence 226.

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.

<u>227.</u> Preference must be given to compensation for victims

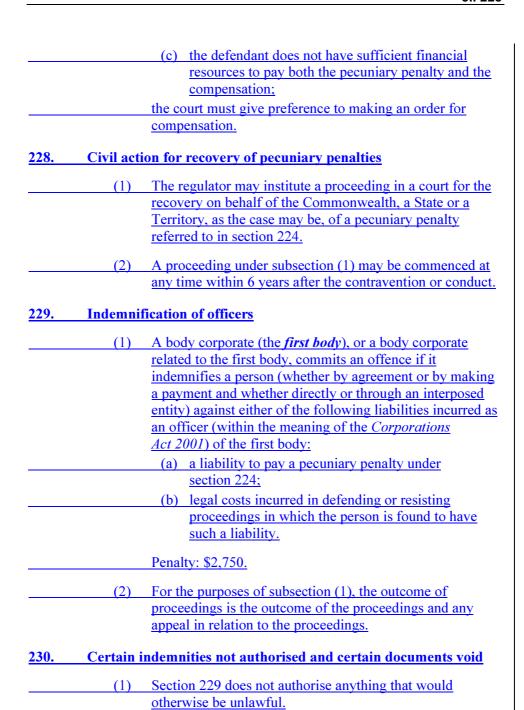
If a court considers that:

- (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

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Extract from www.slp.wa.gov.au, see that website for further information



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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;
 - (b) attempting to contravene such a provision; or
 - 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.
 - Subsection (1) applies in relation to conduct constituted by (3) applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term as if the conduct were a contravention of a provision of Chapter 2.
 - **(4)** The power of the court to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised:

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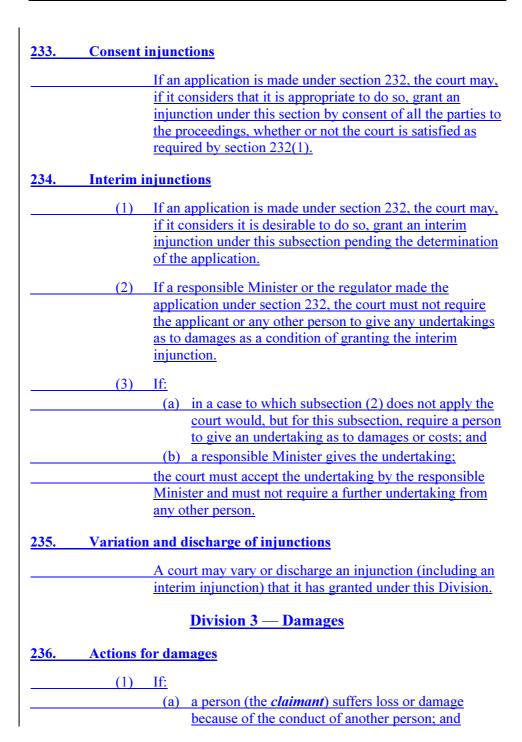
(a) whether or not it appears to the court that the person
intends to engage again, or to continue to engage, in
conduct of a kind referred to in that subsection; and
(b) whether or not the person has previously engaged in
conduct of that kind; and
(c) whether or not there is an imminent danger of
substantial 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.

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(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. An action under subsection (1) may be commenced at any (2) time within 6 years after the day on which the cause of action that relates to the conduct accrued. Division 4 — Compensation orders etc. for injured persons and orders for non-party consumers Subdivision A — Compensation orders etc. for injured persons Compensation orders etc. on application by an injured person or **237.** the regulator A court may: (1) (a) on application of a person (the *injured person*) who has suffered, or is likely to suffer, loss or damage because of the conduct of another person that: (i) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or (ii) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term; or (b) on the application of the regulator made on behalf of one or more such injured persons; make such order or orders as the court thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct. Note 1: For applications for an order or orders under this subsection, see section 242. Note 2: The orders that the court may make include all or any of the orders set out in section 243.

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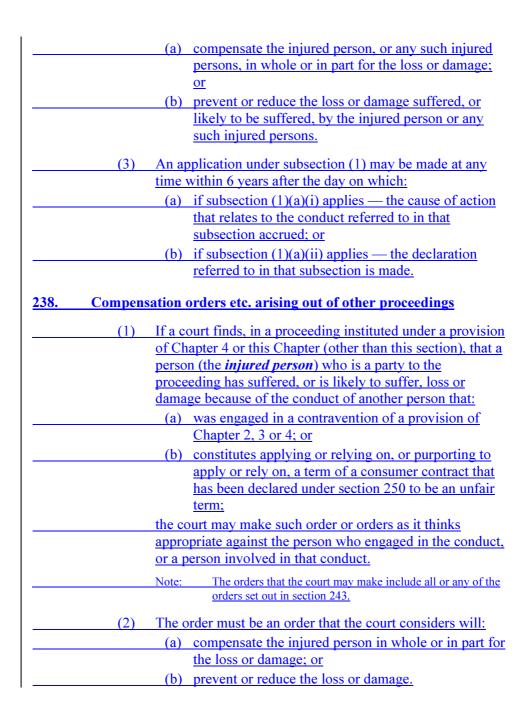
(2)

The order must be an order that the court considers will:

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Subdivision B — Orders for non-party consumers

239.	Orders to redress etc. loss or damage suffered by non-party
2031	consumers
	(1) If:
	(a) a person:
	(i) engaged in conduct (the <i>contravening</i>
	conduct) in contravention of a provision of
	Chapter 2, Part 3-1, Division 2, 3 or 4 of
	Part 3-2 or Chapter 4; or
	(ii) is a party to a consumer contract who is
	advantaged by a term (the <i>declared term</i>) of the contract in relation to which a court has
	made a declaration under section 250; and
	(b) the contravening conduct or declared term caused, or
	is likely to cause, a class of persons to suffer loss or
	damage; and
	(c) the class includes persons who are non-party
	consumers in relation to the contravening conduct or
	declared term;
	a court may, on the application of the regulator, make such order or orders (other than an award of damages) as the
	court thinks appropriate against a person referred to in
	subsection (2) of this section.
	Note 1: For applications for an order or orders under this subsection,
	see section 242.
	Note 2: The orders that the court may make include all or any of the
	orders set out in section 243.
	(2) An order under subsection (1) may be made against:
	(a) if subsection (1)(a)(i) applies — the person who
	engaged in the contravening conduct, or a person
	involved in that conduct; or
	(b) if subsection (1)(a)(ii) applies — a party to the
	contract who is advantaged by the declared term.
	(3) The order must be an order that the court considers will:

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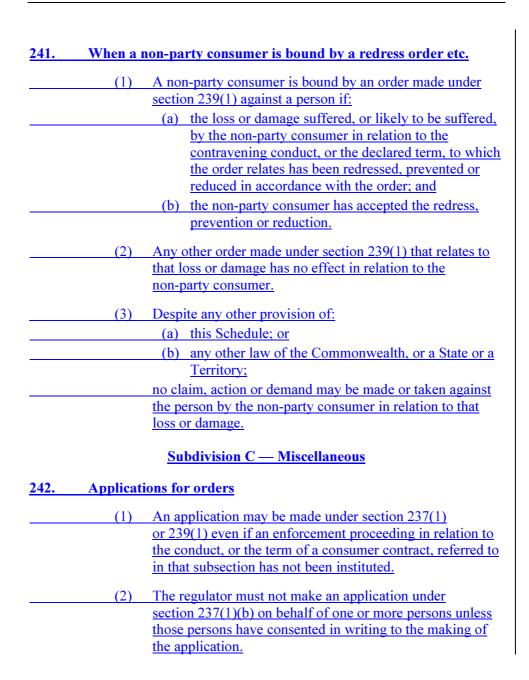
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	(a) redress, in whole or in part, the loss or damage
	suffered by the non-party consumers in relation to
	the contravening conduct or declared term; or
<u> </u>	(b) prevent or reduce the loss or damage suffered, or
	likely to be suffered, by the non-party consumers in
	relation to the contravening conduct or declared
	term.
(4)	An application under subsection (1) may be made at any
	time within 6 years after the day on which:
-	(a) if subsection (1)(a)(i) applies — the cause of action
	that relates to the contravening conduct accrued; or
	(b) if subsection (1)(a)(ii) applies — the declaration is
	made.
240. Determin	ning whether to make a redress order etc. for non-party
consume	
(1)	To determine the transfer determine an end of the control of
(1)	In determining whether to make an order under
	section 239(1) against a person referred to in section 239(2)(a), the court may have regard to the conduct
	of the person, and of the non-party consumers in relation to
	the contravening conduct, since the contravention
	occurred.
	occurred.
(2)	In determining whether to make an order under
	section 239(1) against a person referred to in
	section 239(2)(b), the court may have regard to the conduct
	of the person, and of the non-party consumers in relation to
	the declared term, since the declaration was made.
(3)	In determining whether to make an order under
	section 239(1), the court need not make a finding about
	either of the following matters:
	(a) which persons are non-party consumers in relation to
	the contravening conduct or declared term;
	(b) the nature of the loss or damage suffered, or likely to

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be suffered, by such persons.

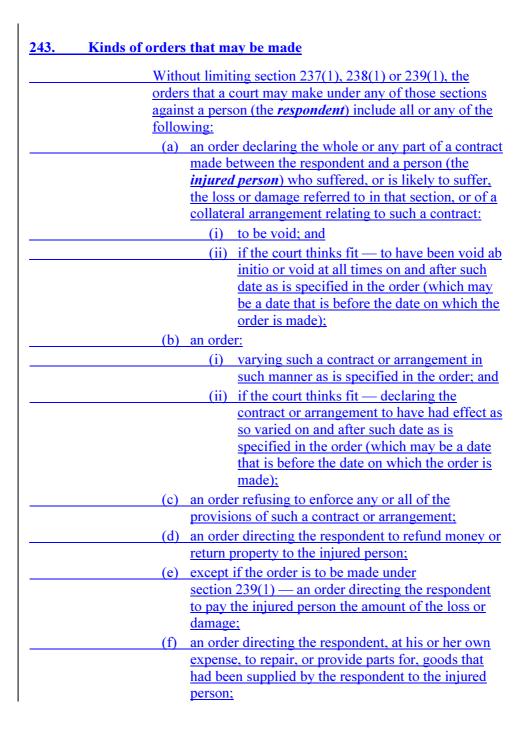


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	(g) an order directing the respondent, at his or her own
	expense, to supply specified services to the injured person;
	(h) an order, in relation to an instrument creating or
	transferring an interest in land, directing the
	respondent to execute 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.
244.	Power of a court to make orders
	A court may make an order under Subdivision A or B of
	this Division whether or not the court:
	(a) grants an injunction under Division 2 of this Part; or
	(b) makes an order under section 236, 246, 247 or 248.
245.	Interaction with other provisions
245.	
245.	Interaction with other provisions Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part.
245.	Subdivisions A and B of this Division do not limit the
245.	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part.
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies 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
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies Non-punitive orders (1) A court may, on application of the regulator, make one or
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies 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
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies 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
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies 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
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies 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
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies 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.
	Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part. Division 5 — Other remedies 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

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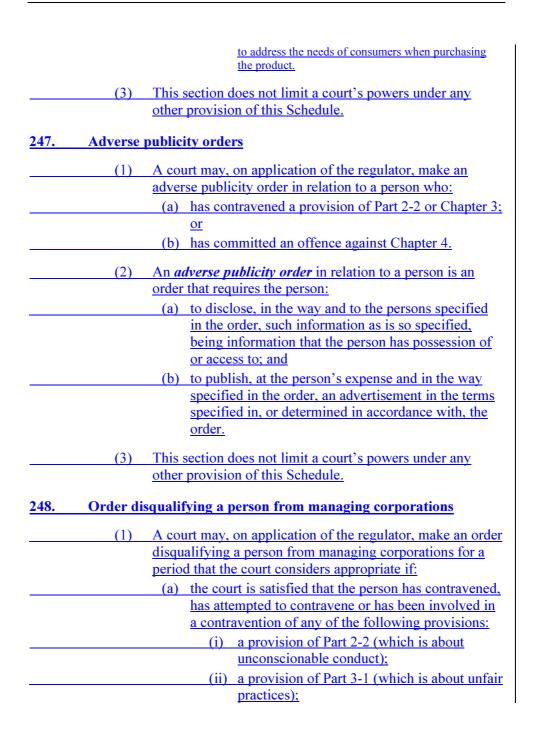
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	conduct, for the benefit of the community or a
(1.)	section of the community;
(b)	an order for the purpose of ensuring that the person does not engage in the conduct, similar conduct, or
	related conduct, during the period of the order
	(which must 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)	
	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
•	

Compare 08 Dec 2010 [00-a0-02] / 01 Jan 2011 [00-b0-04] page 310 Extract from www.slp.wa.gov.au, see that website for further information



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(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
disquarried from managing corporations, see

section 1274AA of the Corporations Act 2001.

For the purposes of this Schedule (other than this section or section 249), an order under this section is not a penalty.

<u> 249.</u>		e against exposure to penalty or forfeiture — Fication 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 o
		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.
	(2)	
	(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.	<u>Declarat</u>	ions relating to consumer contracts
	(1)	A court may, on the application of a party to a consumer
	* /	contract or on the application of the regulator, declare that
		a term of such a contract is an unfair term.
	(2)	Subsection (1) does not apply unless the consumer contrac
	(2)	is a standard form contract.
	(3)	Subsection (1) does not limit any other power of the court
		to make declarations.

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Division 6 — Defences

251.	Publicati	ion 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.
<u>252.</u>	Supplyin	ng 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
	(2)	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:

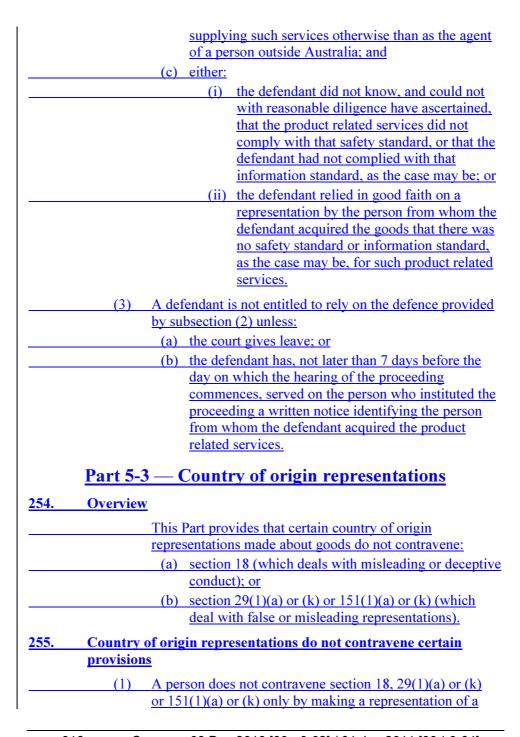
	(i) the defendant did not know, and could not
	with reasonable diligence have ascertained,
	that the consumer goods did not comply
	with that safety standard, or that the
	defendant had not complied with that
	information standard, as the case may be; or
	(ii) the defendant relied in good faith on a
	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.
$(3) A \stackrel{?}{\circ}$	defendant is not entitled to rely on the defence provided
<u>by</u>	subsection (2) unless:
(a	a) the court gives leave; or
(t	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 pro	oduct related services for the purpose of re-supply
233. Supplying pr	oduct related services for the purpose of re-supply
	is section applies to a proceeding under this Part in
	ation to a contravention of a provision of Part 2-1 or 2-2
or (Chapter 3 committed by:
(a	n) the supplying of product related services that did not
	comply with a safety standard for such services; or
(t	,
	supplier who did not comply with an information
	standard for such services.
(2) In t	the proceeding, it is a defence if the defendant proves
tha	
(a	
	defendant for the purpose of re-supply; and
(t	
	person who carried on in Australia a business of
	The state of the s

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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.

Count	try of origin representa	tions	_
Item	Representation	Rec	uirements to be met
<u>1</u>	A representation as	(a)	the goods have been substantially
	to the country of		transformed in that country; and
	origin of goods	<u>(b)</u>	50% or more of the total cost of
			producing or manufacturing the goods
			as worked out under section 256 is
			attributable to production or
			manufacturing processes that occurred
			in that country; and
		(c)	the representation is not a representation
			to which item 2 or 3 of this table
			applies.
<u>2</u>	A representation that	<u>(a)</u>	the country was the country of origin of
	goods are the		each significant ingredient or significant
	produce of a		component of the goods; and
	particular country	<u>(b)</u>	all, or virtually all, processes involved
			in the production or manufacture
			happened in that country.
<u>3</u>	A representation as	<u>(a)</u>	the goods have been substantially
	to the country of		transformed in the country represented
	origin of goods by		by the logo as the country of origin of
	means of a logo		the goods; and
	specified in the	<u>(b)</u>	the prescribed percentage of the cost of
	<u>regulations</u>		producing or manufacturing the goods
			as worked out under section 256 is
			attributable to production or
			manufacturing processes that happened
			in that country.

Fair Trading Act 2010

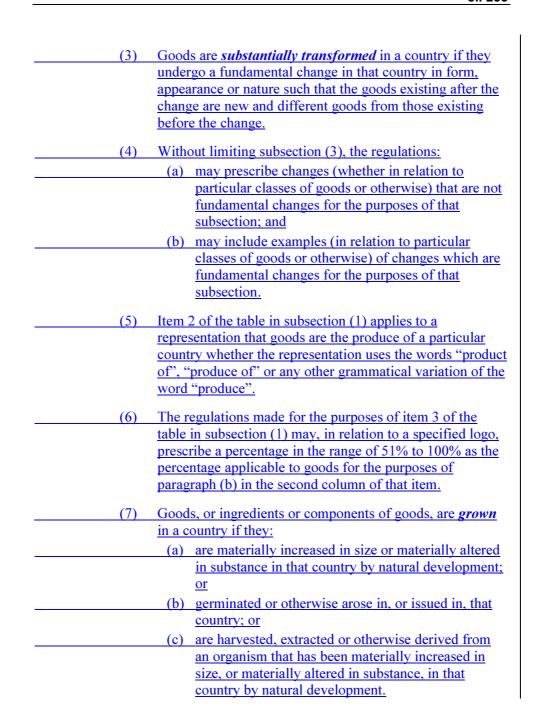
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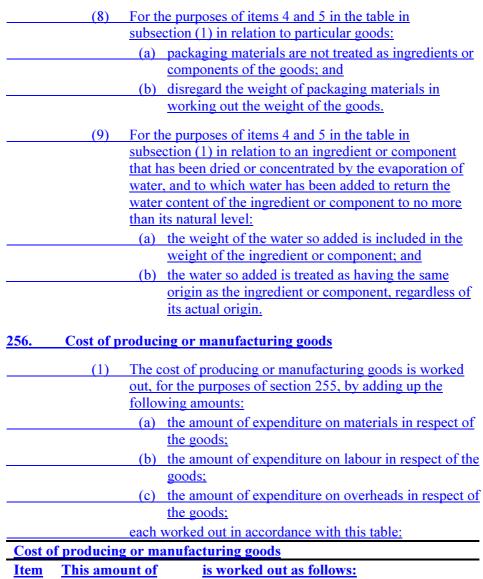
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Count	try of origin representa	tions	
Item	Representation	Rec	uirements to be met
<u>4</u>	A representation that	<u>(a)</u>	the country is the country that could, but
	goods were grown in a particular country		for subsection (2), be represented, in accordance with this Part, as the country
	<u>a particular country</u>		of origin of the goods, or the country of
			which the goods are the produce; and
		(b)	each significant ingredient or significant
		(0)	component of the goods was grown in
			that country; and
		(c)	
			in the production or manufacture
			happened in that country.
<u>5</u>	A representation that	<u>(a)</u>	the country is the country that could, but
	ingredients or		for subsection (2), be represented, in
	components of goods		accordance with this Part, as the country
	were grown in a		of origin of the goods, or the country of
	particular country		which the goods are the produce; and
		<u>(b)</u>	<u> </u>
			claimed to be grown in that country was
		()	grown only in that country; and
		<u>(c)</u>	each ingredient or component that is
			claimed to be grown in that country was
		(d)	processed only in that country; and 50% or more of the total weight of the
		<u>(u)</u>	goods is comprised of ingredients or
			components that were grown and
			processed only in that country.
			ulations may prescribe rules for determining the age of the total costs of production or manufacture of
			ttributable to production or manufacturing processes
			urred in a particular country, see section 257.
	(2) Despite sul	osecti	on (1), this section does not apply to a
	* * * * * * * * * * * * * * * * * * *		f a kind referred to in item 4 or 5 in the
			he table in that subsection if the
	representat	ion is	s made together with another representation
	of a kind re	eferre	d to in item 1 or 2 in that first column.



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expenditure:

Cost	of producing or manuf	acturing goods
<u>Item</u>	This amount of	is worked out as follows:
	expenditure:	
1	Expenditure on	The cost of materials used in the production
	materials in respect	or manufacture of the goods:
	of the goods	(a) that is incurred by the manufacturer of
		the goods; and
		(b) that has not been prescribed by
		regulations made for the purposes of
		subsection (2)(a).
<u>2</u>	Expenditure on	The sum of each labour cost:
	labour in respect of	(a) that is incurred by the manufacturer of
	the goods	the goods; and
		(b) that relates to the production or
		manufacture of the goods; and
		(c) that can reasonably be allocated to the
		production or manufacture of the goods; and
		(d) that has not been prescribed by
		regulations made for the purposes of
		subsection (2)(b).
3	Expenditure on	The sum of each overhead cost:
<u> </u>	overheads in respect	(a) that is incurred by the manufacturer of
	of the goods	the goods; and
		(b) that relates to the production or
		manufacture of the goods; and
		(c) that can reasonably be allocated to the
		production or manufacture of the goods;
		and and
		(d) that has not been prescribed by
		regulations made for the purposes of
		subsection (2)(c).
	(2) The regula	ations may, for the purposes of subsection (1),
	prescribe t	* * *
	-	
	(a) the cost	cost of a particular material, or a part of such a
		rticular labour cost, or a part of a labour cost; or
	(u) a pa	irticular labour cost, of a part of a labour cost, of

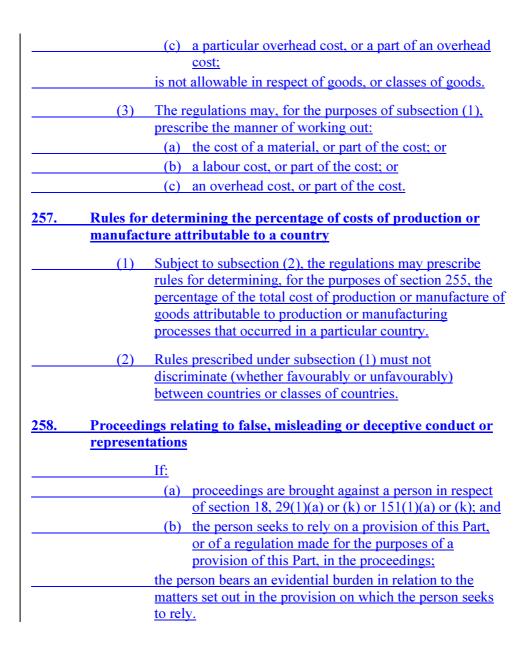
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Part 5-4 — Remedies relating to guarantees

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 <i>supplier</i>) 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.
		the ground of 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.

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(4)	
	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
	<u>left the control of the supplier.</u>
(6)	To avoid doubt, subsection (4) applies in addition to
	subsections (2) and (3).
	
(7)	The consumer may take action under this section whether
	or not the goods are in their original packaging.
260. When a	failure to comply with a guarantee is a major failure
	A failure to comply with a guarantee referred to in
	section 259(1)(b) that applies to a supply of goods is a <i>major failure</i> 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
	which goods of the same kind are commonly
	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
	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
	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

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	(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.
<u>261.</u>	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.
<u>262.</u>	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

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	(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 <i>rejection period</i> 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. Consequ	ences 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.
	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
2011	
-	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.
	apply in relation to the replacement goods.
265.	Termination of contracts for the supply of services that are
	connected with rejected goods
	(1) <u>If:</u>
	(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.

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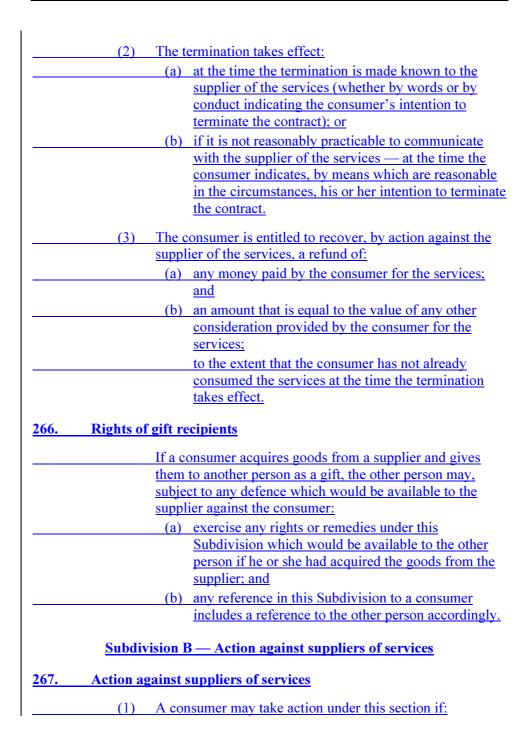
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(a) a person (the <i>supplier</i>) supplies, in trade or
commerce, services to the consumer; and
(b) a guarantee that applies to the supply under
Subdivision B of Division 1 of Part 3-2 is not
complied with; and
(c) unless the guarantee is the guarantee 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;
<u>or</u>
(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.

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	(4)	damages for a because of the was reasonab such loss or d	r may, by action against the supplier, recover any loss or damage suffered by the consumer e failure to comply with the guarantee if it ly foreseeable that the consumer would suffer lamage as a result of such a failure.
	(5)		bt, subsection (4) applies in addition to
		subsections (2	<u>2) and (3).</u>
268.	When a	failure to com	ply with a guarantee is a major failure
		section 267(1 major failure	
			vices would not have been acquired by a able consumer fully acquainted with the
			and extent of the failure; or
			vices are substantially unfit for a purpose for
			services of the same kind are commonly
			ed and they cannot, easily and within a able time, be remedied to make them fit for
			purpose; or
			f 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	f the following apply:
		(i)	· · · · · · · · · · · · · · · · · · ·
			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;

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		(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
<u>269.</u>	Termina	ation of contracts for the supply of services
	(1)	
		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 termina
		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;
		<u>and</u>
		(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.	Termina	ation of contracts for the supply of goods that are
		ed with terminated services
	(1)	If:
	(-)	(a) under section 267, a consumer terminates a contrac
		for the supply of services; and
		(b) a person (the <i>supplier</i>) has supplied, in trade or
		commerce, goods to the consumer that are connect
		with the services;
		The title bet fleed,

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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.
consumer for the goods.
(2) If subsection (1)(d)(ii) applies, the supplier must collect the
goods at the supplier's expense.
<u>Division 2 — Action for damages against manufacturers of goods</u>
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.
nom the manufacturer.
(2) Subsection (1) does not apply if the guarantee under
section 54 is not complied with only because of:

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	(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;
	<u>or</u>
	(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)	<u>If:</u>
	(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
(0)	with an express warranty given or made by the
	supress naturally Brieff of the

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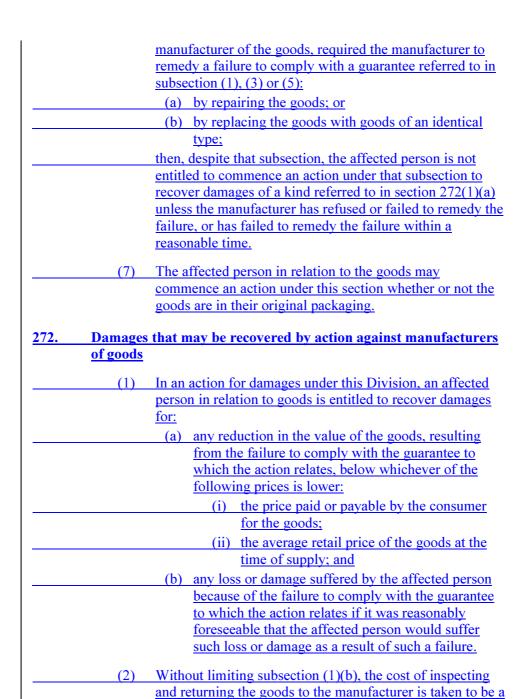
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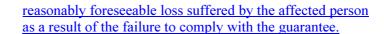
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Subsection (1)(b) does not apply to loss or damage suffered through a reduction in the value of the goods.

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**

Indemnification of suppliers by manufacturers 274.

- 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:
 - 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

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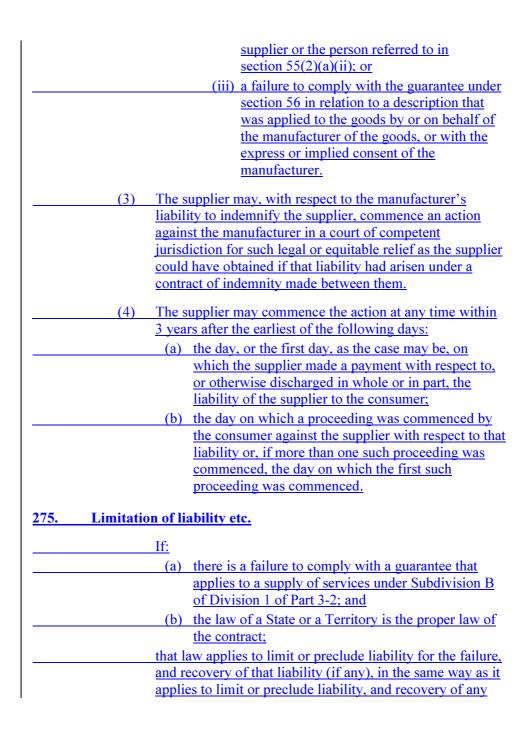
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liability, for a breach of a term of the contract for the supply of the services.

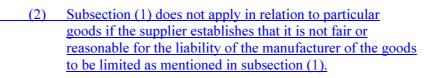
276.	This Par	t not to be excluded etc. by contract
	(1)	A term of a contract (including a term that is not set out in
		the contract but is incorporated in the contract by another
		term of the contract) is void to the extent that the term
		purports to exclude, restrict or modify, or has the effect 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	on in certain circumstances of liability of manufacturer to
	<u>seller</u>	
	(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 <i>supplier</i>) 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.

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- 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

- The regulator may, by application, commence an action **(1)** under this Part on behalf of one or more persons identified in the application who are entitled under this Part to take the action.
- 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 <i>related supply</i>) 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;
	<u>or</u>
	(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 <i>linked credit contract</i> 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 linke
	credit provider where the supplier supplies the
	goods, or causes the goods to be supplied, to the
	<u>linked credit provider; or</u>
	(b) the supply by the supplier of goods or services, or
	goods and services, to the consumer.

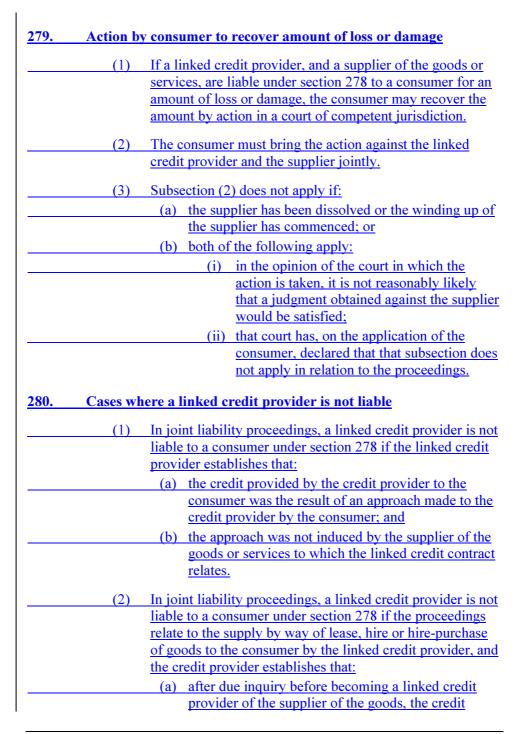
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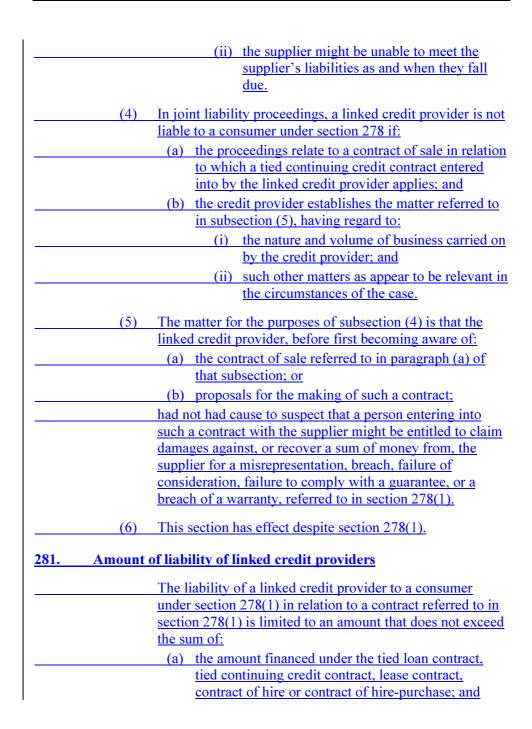
provider was satisfied that the reputation of the
supplier in respect of the supplier's financial
standing and business conduct was good; and
(b) after becoming a linked credit provider of the
supplier, the credit provider had not had cause to
suspect that:
(i) the consumer might be entitled to recover 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.
duc.
(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
<u>that:</u>
(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

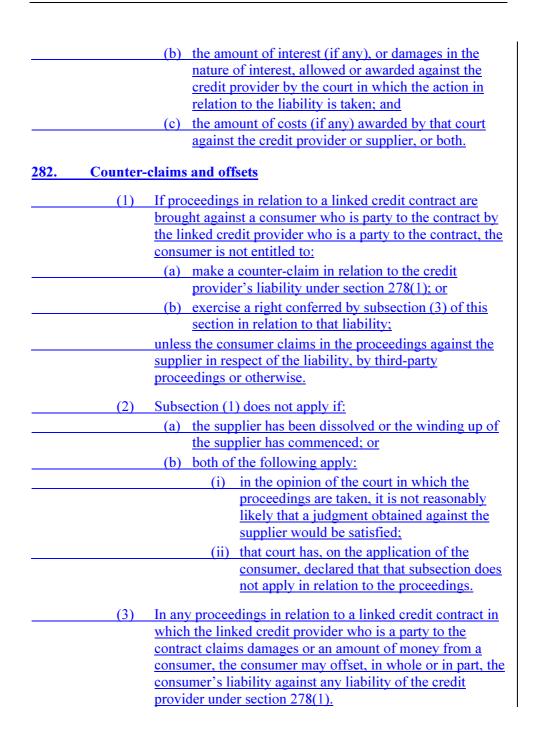
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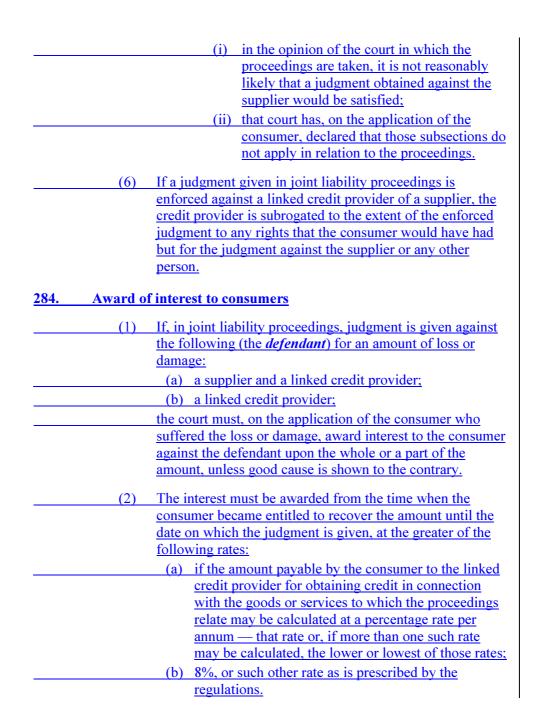




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283. Enforce	ement of judgments etc.
(1)	If, in joint liability proceedings, judgment is given against a supplier and a linked credit provider, the judgment must not be enforced against the credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for at least 30 days.
(2)	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
	(a) the amount eacutated in accordance with section 281; (b) so much of the judgment debt as has not been satisfied by the supplier.
(5)	(a) the supplier has been dissolved or the winding up of the supplier has commenced; or
	(b) both of the following apply:



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	(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.		of suppliers to linked credit providers, and of linked
	credit pr	oviders 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.
		supplier and oreate 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.
		proceedings.
286.	Joint lial	bility proceedings and recovery under section 135 of the
		Credit Code
	(1)	If:
	(1)	(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
<u>liability proceedings (to the extent that they have not been</u>
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
<u>from:</u>
(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
(2) An amount that is recovered under subsection (1) ceases to be recoverable under section 135 of the National Credit
Code.
Couc.
Division 2 — Non-linked credit contracts
287. Liability of suppliers and credit providers relating to non-linked

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

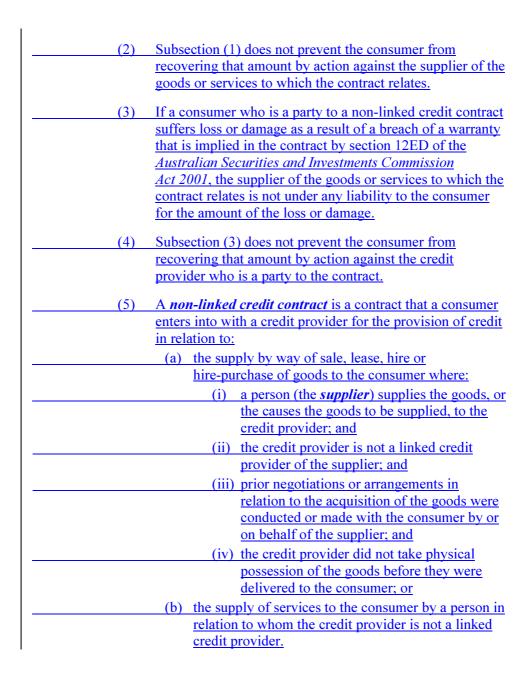
(1) If a consumer who is a party to a non-linked credit contract suffers loss or damage as a result of a failure to comply with a guarantee that applies, under section 54, 55, 56, 57, 60, 61 or 62, in relation to a supply to which the contract relates, the credit provider who is a party to the contract is not under any liability to the consumer for the amount of the loss or damage.

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Notes

This is a compilation of the Fair Trading Act 2010 ^{1a}. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
Fair Trading Act 2010	57 of 2010	8 Dec 2010	s. 1 and 2: 8 Dec 2010 (see s. 2(a)); Act other than s. 1 and 2: 1 Jan 2011 (see s. 2(b) and Gazette 24 Dec 2010 p. 6805)

On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	<u>Assent</u>	Commencement
Acts Amendment (Fair Trading) Act 2010 Pt. 2 ²	58 of 2010	8 Dec 2010	To be proclaimed (see s. 2(c))

On the date as at which this compilation was prepared, the Acts Amendment (Fair Trading) Act 2010 Pt. 2 had not come into operation. It reads as follows:

Part 2 — Fair Trading Act 2010 amended

3. Act amended

This Part amends the Fair Trading Act 2010.

4. Section 57A inserted

After section 56 insert:

57A. Licensing and regulatory functions of Commissioner

The Commissioner has the following functions with respect to the licensing, registration and certification schemes provided for in the Acts specified in Schedule 2 —

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- (a) to administer the scheme of licensing, registration and certification established under those Acts;
- (b) to conduct and promote education and provide advisory services for persons who are licensed, registered or certificated under those Acts, or involved in the administration of those Acts, and for members of the public on
 - (i) matters relating to the operation of those Acts;
 - (ii) matters relating to the operations of persons who are licensed, registered or certificated under those Acts;
- (c) to advise the Minister as to the general administration of those Acts;
- (d) to make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under those Acts;
- (e) to carry out any other functions conferred on the Commissioner under those Acts.

5. Section 62 amended

In section 62(1) in the definition of *consumer affairs authority*:

- (a) after paragraph (a)(i) insert:
 - (iia) an advisory committee appointed under Division 3; or
- (b) in paragraph (b)(ii) delete "body or authority referred to in paragraph (a)(ii)" and insert:

body, an advisory committee or an authority referred to in paragraph (a)(iia) or (a)(ii)

6. Part 5 Division 3 inserted

At the end of Part 5 insert:

Division 3 — Advisory committees

Subdivision 1 — Property Industry Advisory Committee

63A. **Property Industry Advisory Committee**

A committee called the Property Industry Advisory Committee is established.

63B. Membership

- (1) The Committee consists of
 - the Commissioner ex officio; and (a)
 - (b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.
- One of the members appointed under subsection (1)(b) is to be (2) appointed as Chairperson.

63C. **Functions**

The functions of the Committee are to advise the Minister and the Commissioner on -

- the regulation of the real estate, settlement and land valuation industries in Western Australia, including the licensing, regulation and training of persons or businesses who or which undertake the functions of a real estate agent, real estate sales representative, business agent, business sales representative, settlement agent or land valuer; and
- the provision by the Commissioner of education, information and advice to consumers and to the real estate, settlement and land valuation industries in Western Australia: and
- the criteria required for applications under the Real Estate and Business Agents Act 1978 section 1310; and
- (d) any matter referred to the Committee by the Minister or the Commissioner.

63D. Committee may regulate own procedure

- The Committee may regulate its own procedure. (1)
- (2) Subsection (1) is subject to the regulations.

Subdivision 2 — Motor Vehicle Industry Advisory Committee

63E. Motor Vehicle Industry Advisory Committee

A committee called the Motor Vehicle Industry Advisory Committee is established.

63F. Membership

- (1) The Committee consists of
 - (a) the Commissioner ex officio; and
 - (b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.
- (2) One of the members appointed under subsection (1)(b) is to be appointed as Chairperson.

63G. Functions

The functions of the Committee are to advise the Minister and the Commissioner on —

- (a) the regulation of the motor vehicle dealing and repair industry in Western Australia, including the licensing, certification and training of persons or businesses who or which engage in motor vehicle dealing and repair; and
- (b) the provision by the Commissioner of education, information and advice to consumers and to the motor vehicle dealing and repair industry in Western Australia; and
- (c) any matter referred to the Committee by the Minister or the Commissioner.

63H. Committee may regulate own procedure

- (1) The Committee may regulate its own procedure.
- (2) Subsection (1) is subject to the regulations.

Subdivision 3 — Consumer Advisory Committee

63I. Consumer Advisory Committee

A committee called the Consumer Advisory Committee is established.

63J. Membership

- (1) The Committee consists of
 - (a) the Commissioner ex officio; and

- (b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.
- One of the members appointed under subsection (1)(b) is to be (2) appointed as Chairperson.

63K. **Functions**

The functions of the Committee are to advise the Minister and the Commissioner on -

- (a) the activities and policies of the Department as they affect consumers; and
- current and emerging consumer issues; and (b)
- research and education projects relating to consumers; (c)
- any matter referred to the Committee by the Minister or (d) the Commissioner.

63L. Committee may regulate own procedure

- The Committee may regulate its own procedure. (1)
- (2) Subsection (1) is subject to the regulations.

Subdivision 4 — Regulations prescribing committee procedures, etc.

63M. Regulations

- The regulations may provide for the constitution and operation of the advisory committees established under this Division.
- (2) Without limiting the generality of subsection (1), the regulations may
 - require that persons appointed as members of a (a) committee
 - possess particular expertise or qualifications; or (i)
 - (ii) represent particular interest groups, industries or occupations;
 - provide for the number of members, the manner, and terms and conditions of appointment, and the resignation and removal of members of the committees;
 - provide for the appointment of deputies of members; (c)
 - (d) provide for the manner in which members of the committees are to disclose interests;
 - (e) regulate the procedure for meetings of the committees, including the quorum for meetings;

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(f) provide for the remuneration of members of the committees (other than a member ex officio).

7. Section 63 amended

In section 63 in the definition of *authorised person* delete paragraph (c) and insert:

(c) an investigator, or a police officer assisting in an investigation under section 88D;

8. Part 6 Division 4A inserted

After Part 6 Division 3 insert:

Division 4A — Specific powers for enforcement of licensing and regulatory provisions

88A. Terms used

In this Division —

authorisation means a licence, registration, approval, permit, exemption, certificate or other form of authority;

registration Act means an Act listed in Schedule 2;

regulated activity means an occupation or activity that can be lawfully carried on only under an authorisation granted or obtained under a registration Act;

regulated person means a person who carries on a regulated activity.

88B. Investigation and inquiry by Commissioner for licensing and regulatory purposes

- (1) For the purposes of performing the Commissioner's functions under section 57A, the Commissioner may, of the Commissioner's own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for any of the following purposes
 - determining any application or other matter before the Commissioner;
 - (b) determining whether or not a regulated person is or has been complying with
 - (i) the conditions, if any, of their authorisation; or

- (ii) the requirements of the registration Act under which he or she holds an authorisation; or
- (iii) a code of conduct applying to the regulated person under a registration Act;
- determining whether or not any other cause exists that (c) might be considered by the Commissioner to be grounds for disciplinary action against a regulated person under a registration Act;
- detecting offences against a registration Act.
- (2) An authorised person may make an investigation or inquiry under this section on behalf of the Commissioner.

88C. Authorised persons may exercise investigative powers

Authorised persons may exercise the powers set out in Division 3 for the purposes of the performance of any function under this Division.

88D. Police assistance with investigations and inquiries

- (1) The Commissioner of Police must, at the request of the Commissioner, arrange for one or more police officers
 - to make an investigation or inquiry relating to any matter that is the subject of investigation or inquiry under section 88B; and
 - to report on the results of their investigation or inquiry.
- The report must be forwarded to the Commissioner. (2)
- Where a police officer makes an investigation or inquiry or report relating to any matter that is the subject of investigation or inquiry under section 88B
 - in addition to any power, authority, and immunity of the police officer apart from this Act, the police officer has the same powers, authorities, and immunities as an investigator appointed under this Act has in respect of the same matter; and
 - for the purposes of section 66, it is sufficient if the police (b) officer identifies himself or herself as a police officer to the person, if any, affording entry to the police officer.

88E. Compliance checks at regulated person's business premises

(1) An authorised person may, for all or any of the purposes listed in subsection (2) -

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- (a) during normal business hours, enter premises where the business of a regulated person is being carried on, without obtaining a warrant under section 74; and
- (b) exercise the powers in sections 69, 79 and 87 once entry is made.
- (2) The purposes referred to in subsection (1) are as follows
 - (a) to determine whether or not a regulated person is or has been complying with the conditions, if any, of their authorisation;
 - (b) to determine whether or not a regulated person is or has been complying with the requirements of the registration Act under which he or she holds an authorisation;
 - (c) to determine whether or not a regulated person is or has been complying with a code of conduct applying to the registered person under a registration Act.
- (3) An authorised person may invoke the powers in subsection (1) even though an investigation is not under way in relation to any particular regulated person.

9. Section 88 amended

In section 88(1) after "Division 3" insert:

or 4A

10. Section 89 amended

- (1) After section 89(1) insert:
- (2A) A person must not prevent or attempt to prevent an authorised person from entering business premises in the exercise of the authorised person's powers under section 88E.

 Penalty: a fine of \$2 000.
 - (2) In section 89(2) delete "69." and insert:

69 or 88E.

(3) After section 89(4) insert:

(5A)A person must comply with a requirement to furnish reasonable access to business premises, or to give other reasonable assistance to an authorised person, when the authorised person is exercising the authorised person's powers under section 88E. Penalty: a fine of \$2 000.

11. Section 112 amended

In section 112(3):

- delete paragraph (c) and insert:
- (c) for the purposes of performing a function under or in connection with
 - this Act; or (i)
 - (ii) an Act listed in Schedule 2;

- (da) for the purposes of giving information to a body established under a written law if
 - the information concerns the affairs of a regulated person or former regulated person; and
 - the information is given in relation to the (ii) performance by that body of a function under or in connection with that written law;

or

(b) in paragraph (e) delete "offence." and insert:

offence; or

- (c) after paragraph (e) insert:
- by the Commissioner for the purpose of making the (f) public aware of
 - investigations or inquiries being conducted into (i) the conduct of a regulated person, former regulated person or purported regulated person, and the results of those inquiries; and
 - disciplinary action being contemplated or (ii) undertaken in relation to a regulated person,

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former regulated person or purported regulated person, and the outcome of that action.

12. Schedule 2 inserted

After Schedule 1 insert:

Schedule 2 — Registration Acts

[s. 88A]

The following Acts are specified for the purposes of section 88A -

Land Valuers Licensing Act 1978

Motor Vehicle Dealers Act 1973

Motor Vehicle Repairers Act 2003

Real Estate and Business Agents Act 1978

Settlement Agents Act 1981