

Fair Trading Act 1987 No 68

[1987-68]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Conveyancers Licensing Act 2003 No 3](#) (not commenced)
 - [Fair Trading Amendment Act 2006 No 62](#) (not commenced)
- **See also**
 - [Fair Trading Amendment \(Motor Vehicle Insurance and Repair Industries\) Bill 2006](#)

Authorisation

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Fair Trading Act 1987 No 68



New South Wales

An Act to regulate the supply, advertising and description of goods and services and, in certain respects, the disposal of interests in land; to repeal the *Consumer Protection Act 1969* and certain other Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Fair Trading Act 1987*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Extent to which Act binds the Crown

- (1) This Act binds the Crown in right of the State in so far as the Crown in right of the State carries on a business, whether directly or by an authority of the State.
- (2) Nothing in this Act renders the State liable to prosecution for an offence.

4 Definitions

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

acquire includes:

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

advisory committee means a committee appointed under section 25.

advisory council means any of the councils established by Divisions 5–7 or 9 of Part 2.

assisted person means a person granted legal assistance under section 13.

authorised person means a person authorised by the Director-General.

banning order means an order in force under section 30 or 31 prohibiting or restricting the supply of goods.

business includes:

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

consumer has the meaning given by section 5.

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

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

Department means the Department of Commerce.

Director-General means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in the Department—the Director-General of the Department.

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 includes any source of information, whether or not the information is

available only after the source is subjected to electronic or other process.

goods includes:

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

interest, in relation to land, means:

- (a) a legal or equitable estate or interest in the land,
- (b) a right of occupancy of the land, or of a building or part of a building erected on the land, conferred by shares, or by virtue of a contract to purchase shares, in a corporation that owns the land or the building, or
- (c) a right, power or privilege over, or in connection with, the land.

investigator means an officer appointed by the Director-General under section 18 as an investigator.

officer means:

- (a) the Director-General or any other member of staff (within the meaning of the *Public Sector Employment and Management Act 2002*) of the Department, or
- (b) a member of staff of a public sector agency (within the meaning of section 85 of the *Public Sector Employment and Management Act 2002*) who is transferred to, or who provides services for, the Department, or
- (c) any person engaged by the Director-General (with the approval of the Minister and on such terms as the Minister thinks fit) to assist in the exercise of the Director-General's functions.

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

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

supplier—their value at the time of the transaction.

product information standard means a standard prescribed by regulations referred to in section 38.

product safety standard means a standard prescribed by regulations referred to in section 26.

Products Safety Committee means the Products Safety Committee established under section 24.

public authority means a public or local authority constituted by an Act (whether or not a statutory body representing the Crown), a Government Department or an administrative office.

published, in relation to a statement, includes:

- (a) inserted in a newspaper or other publication,
- (b) publicly exhibited:
 - (i) in, on, over or under a building, vehicle, aircraft or ship, or in any other place (whether or not a public place and whether on land or water), or
 - (ii) in the air in view of persons who are, or are passing, in or on a street or public place,
- (c) contained in a document sent or given to a person or thrown or left upon, or at, premises occupied by a person,
- (d) broadcast by radio or television,
- (e) reproduced electronically, and
- (f) made verbally.

regulations means regulations made under section 92.

send includes deliver.

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the rights, benefits, privileges and facilities that are, or are to be, provided, granted or conferred under:

- (a) a contract for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods,

- (ii) the provision of gas or electricity or the provision of any other form of energy,
 - (iii) the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction, or
 - (iv) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction,
- (b) a contract of insurance,
- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking,
- (d) a contract for or in relation to the lending of money,
- (e) a residential tenancy agreement (within the meaning of the [Residential Parks Act 1998](#)) under which the residential premises consist of a residential site in a residential park or a moveable dwelling on such a residential site (within the meaning of that Act), or
- (f) a service contract (within the meaning of the [Retirement Villages Act 1999](#)),
- but does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

statement includes a representation of any kind, whether made by means of:

- (a) words, maps, plans or drawings, or
 - (b) pictorial representation or design,
- or by any combination of those means.

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

supply includes:

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

this Act includes regulations.

trade or commerce includes any business or professional activity.

Tribunal means the Consumer, Trader and Tenancy Tribunal established by the [Consumer, Trader and Tenancy Tribunal Act 2001](#).

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

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

(2) In this Act:

- (a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods,
- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods upon a supply of the goods,
- (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services,
- (d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with services,
- (e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods,
- (f) a reference to goods or services includes a reference to goods and services,
- (g) 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, and
- (h) 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.

(3) For the purposes of this Act:

- (a) the obtaining of credit by a person in connection with the acquisition of goods or services by the person is an acquisition by the person of services, and
- (b) any amount by which the price of the goods or services is increased because credit was obtained is the price of the services represented by the obtaining of credit.

(4) In this Act:

- (a) a reference to conduct is a reference to an act or a refusal to act, including in

either case an act that constitutes, or would but for the refusal constitute, making or giving effect to a provision of a contract or arrangement, arriving at or giving effect to a provision of an understanding, or requiring or entering into a covenant,

(b) a reference to refusing to do an act includes:

- (i) a reference to refraining (otherwise than inadvertently) from doing the act, and
- (ii) a reference to making it known that the act will not be done, and

(c) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making known a willingness to accept applications, offers or proposals for the person to do the act or to do that act on the condition.

(5) In this Act:

- (a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury, and
- (b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

(6) Where a provision of this Act is inconsistent with a provision of an Act specified in Schedule 1 or prescribed for the purposes of this subsection, or a provision of an instrument made under an Act so specified or prescribed, the provision of the Act so specified or prescribed, or of the instrument, prevails.

(7) In this Act, a reference to the making of a representation includes a reference to the publishing of a statement.

(8) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

5 Meaning of “consumer”

(1) In this Act, a reference to a consumer is a reference to a person who:

- (a) acquires goods or services from a supplier, or
- (b) acquires an interest in land, other than land used, or intended to be used, or apparently intended for use, for industrial or commercial purposes.

(2) Goods or services referred to in subsection (1) do not (except for the purposes of section 43) include goods or services acquired, or held out as being acquired, for re-

supply or, in the case of goods, in the course of a business other than a farming undertaking for the purpose of:

- (a) consuming or transforming them by a process of manufacture or production, or
- (b) using them for the repair or treatment of other goods or of fixtures on land.

(3) In this section:

farming undertaking includes:

- (a) the raising of stock to provide meat or other food for human consumption, and
- (b) any agricultural, pastoral, horticultural, orcharding or viticultural undertaking.

Part 2 Administrative matters

Division 1 Director-General and staff

6 Control and direction by Minister

The Director-General is, in the exercise of functions as Director-General, subject to the control and direction of the Minister except in relation to the contents of a report or recommendation.

7 (Repealed)

8 Delegation by Director-General

- (1) The Director-General may delegate to any person or committee the exercise of any of the functions conferred or imposed on the Director-General by or under the following:
 - (a) this Act,
 - (b) *Conveyancers Licensing Act 1995*,
 - (b1) *Fitness Services (Pre-paid Fees) Act 2000*,
 - (c) *Home Building Act 1989*,
 - (d) *Motor Dealers Act 1974*,
 - (e) *Motor Vehicle Repairs Act 1980*,
 - (f), (g) (Repealed)
 - (h) any other Act administered by the Minister,
 - (i) any other Act prescribed by the regulations for the purposes of this section (or the prescribed provisions of any other prescribed Act),

(j) the regulations under any such Act.

(2) A delegate of the Director-General may sub-delegate a function if authorised in writing to do so by the Director-General.

(3) This section does not apply to the functions of the Director-General under section 64A.

9 Functions of the Director-General

(1) The Director-General may:

(a) advise persons in relation to the provisions of this Act, and of any other legislation administered by the Minister, and take action for remedying infringements of, or for securing compliance with, those provisions, whether on complaint or otherwise,

(b) make available to consumers, and persons dealing with consumers, general information with respect to:

(i) this Act and other legislation administered by the Minister, and

(ii) matters affecting the interests of consumers,

(c) receive complaints from persons on matters (including fraudulent or unfair practices) relating to the supply of goods or services, or the acquisition of interests in land, and deal with any such complaint (whether or not under paragraph (d)) in such manner as the Director-General considers to be appropriate,

(d) investigate the matter the subject of a complaint received under paragraph (c) or refer the complaint to a public authority, or any other body, that the Director-General considers to be best able to take action, or provide advice, in relation to the complaint, and

(e) make known, for the guidance of consumers and persons dealing with consumers, the rights and obligations arising under laws relating to the interests of consumers.

(2) The Director-General shall:

(a) keep under critical examination, and from time to time report to the Minister on, the laws in force, and other matters, relating to the interests of consumers, and

(b) report to the Minister on matters relating to the interests of consumers that are referred to the Director-General by the Minister,

and, for those purposes, may conduct research and make investigations.

(3) Where a complaint is received under subsection (1) (c), the Director-General may:

(a) investigate the complaint even if it has been referred to a public authority or to

another body, or

- (b) refer the complaint to a public authority, or any other body, even if an investigation of the matter has been commenced or completed by the Director-General.

9A Exchange of information

- (1) The Director-General may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the Director-General and the agency.
- (2) The information to which an information sharing arrangement may relate is limited to the following:
 - (a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters,
 - (b) probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers,
 - (c) any other information affecting the interests of consumers.
- (3) Under an information sharing arrangement, the Director-General and the relevant agency are, despite any other Act or law of the State, authorised:
 - (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose information to the other party,but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act (or any other Act administered by the Minister for Fair Trading, whether solely or jointly with another Minister) or the functions of the relevant agency concerned.
- (4) The Director-General may also (whether as part of an information sharing arrangement or otherwise):
 - (a) refer any matter (including any complaint) with respect to fair trading or that affects the interests of consumers to a fair trading agency or law enforcement agency, and
 - (b) receive any such matter from a fair trading agency or law enforcement agency, and
 - (c) conduct a joint investigation into any such matter with a fair trading agency or law enforcement agency.

(5) Any such fair trading agency or law enforcement agency is, despite any other Act or law of the State, authorised to refer such a matter to the Director-General or to conduct an investigation into the matter jointly with the Director-General.

(6) This section does not limit:

- (a) the functions that may be exercised by the Director-General under section 9, or
- (b) the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body.

(7) In this section:

fair trading agency means an agency of the State, or of the Commonwealth, another State or Territory or an overseas jurisdiction, that exercises functions under an enactment with respect to fair trading.

law enforcement agency means:

- (a) NSW Police or the police force of another State or Territory or of an overseas jurisdiction, or
- (b) the Australian Federal Police, or
- (c) the New South Wales Crime Commission, or
- (d) the Australian Crime Commission, or
- (e) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction.

relevant agency means:

- (a) a fair trading agency, or
- (b) a law enforcement agency, or
- (c) any other agency of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction, or
- (d) any other person or body that exercises functions, in the public interest, that involve protecting the interests of consumers.

10 Exclusion of liability

(1) No liability is incurred by the Crown and no personal liability is incurred by:

- (a) the Minister, the Director-General, an investigator or any other officer,
- (b) a member of the Products Safety Committee, or

(c) a member of an advisory committee or advisory council,

for any act done or omitted, or for any statement made or issued, by any of them or by a committee or council referred to in paragraph (b) or (c) in good faith in the course of the administration or execution of this Act.

(2) No liability is incurred by a person for publishing in good faith:

- (a) a statement referred to in subsection (1), or
- (b) a fair report or summary of such a statement.

(3) In this section:

liability includes liability for defamation.

11 Annual report

The annual report of the Department prepared under the [Annual Reports \(Departments\) Act 1985](#) for a financial year shall include a report on the operations of the Director-General during that year.

Division 2 Legal assistance

11A Definition of court

In this Division:

court includes a tribunal.

12 Making of application for legal assistance

(1) A person who claims to be a consumer and who:

- (a) wishes to bring legal proceedings (other than criminal proceedings) arising out of the supply to the person of goods or services or the disposal to the person of an interest in land, or
- (b) wishes to make an appeal or seek judicial review in relation to legal proceedings of a kind referred to in paragraph (a), or
- (c) is a party to legal proceedings or proceedings relating to an appeal or review referred to in paragraph (a) or (b),

may apply to the Director-General for assistance in the conduct of the proceedings.

(2) An application under subsection (1) shall:

- (a) be in or to the effect of a form approved by the Director-General,
- (b) include the particulars required to complete the form, and

(c) be verified in the manner required by the Director-General.

13 Grant of legal assistance

- (1) The Director-General may grant an application made under section 12 if:
 - (a) the Director-General is satisfied that the applicant has reasonable grounds for bringing, or being a party to, the proceedings to which the application relates,
 - (b) the Director-General is of the opinion that it is desirable, in the general interests of consumers or of any class of consumers, that assistance should be granted, and
 - (c) (Repealed)
 - (d) the Director-General has received the written approval of the Minister to grant the assistance applied for.
- (2) The Director-General may refuse assistance if of the opinion that it should not be granted because of the applicant's financial position.
- (3) The Director-General shall notify an applicant under section 12 of the grant or refusal of the application and, where an application is granted:
 - (a) the applicant shall not, without the consent of the Director-General, withdraw from the proceedings or discharge any Australian legal practitioner to whom the case is assigned under section 14, or any Australian legal practitioner acting in the proceedings,
 - (b) the applicant shall not, except to the extent authorised or required by the Director-General, interfere, or be involved, in the case, and
 - (c) the Director-General has, to the exclusion of the successful applicant, the same control over and the same rights in respect of the case (including the right to settle or compromise any claim arising in the case) as, but for that exclusion, would have been available to the assisted person.
- (4) Assistance granted under this Division does not extend to expenses other than:
 - (a) the costs of legal representation, and
 - (b) prescribed expenses.
- (5) Expenses incurred in the provision of assistance under this Division, court fees and any costs required to be met by the Director-General under section 16 shall be met out of money to be provided by Parliament.

14 Assignment to Australian legal practitioner of case of assisted person

- (1) On granting assistance to a person under section 13, the Director-General shall assign

the person's case:

- (a) with the consent of the Legal Aid Commission of New South Wales—to the Chief Executive Officer of that Commission or a member of its staff,
- (b) to an Australian legal practitioner employed in the Department,
- (c) with the consent of the Department Head of another Government Department—to an Australian legal practitioner employed in that Government Department, or
- (d) to an Australian legal practitioner practising on his or her own account who has indicated to the Director-General a willingness to undertake the conduct of the cases of assisted persons,

and shall give to the assisted person written notification of the relevant particulars of the Australian legal practitioner to whom the case has been assigned.

- (2) The Australian legal practitioner to whom a person's case is assigned under this section may, on behalf of the person, appear in any court and conduct any matter or proceeding relating to the case, either personally or, with the consent of the Director-General, by another Australian legal practitioner.
- (3) An Australian legal practitioner to whom a case has been assigned under this section may not terminate the assignment without the leave of the Director-General.

15 Court proceedings to which assisted person is a party

- (1) If proceedings have been brought in a case to which an Australian legal practitioner has been assigned under section 14, the Australian legal practitioner shall, as soon as practicable after the assignment and before taking any other step in the proceedings:
 - (a) serve on the other party or parties to the proceedings, and
 - (b) file in the court in which the proceedings are pending,a notice to the effect that he or she is undertaking the conduct of the case.
- (2) If a notice is filed under subsection (1):
 - (a) the proceedings are stayed for a period of 14 days, and
 - (b) unless otherwise ordered by the court—time fixed for the doing of any act or taking any step in the proceedings does not run during that period.
- (3) The filing of a notice under subsection (1) does not prevent:
 - (a) the making of any interlocutory order which, in the opinion of the court, is necessary to prevent injustice, or
 - (b) unless otherwise ordered by the court, the institution or continuance of

proceedings to obtain, enforce or otherwise carry into effect any such order.

- (4) The period during which proceedings are stayed by subsection (2) may be reduced or extended by order of the court.
- (5) A fee is not payable for the filing of a notice under subsection (1).
- (6) If, in proceedings for which a person has been granted assistance under section 13:
 - (a) a party makes a counterclaim, or pleads a set-off, and
 - (b) the counterclaim or set-off does not relate to the supply of goods or services, or the disposal of an interest in land, to the assisted person,the court may, on the application of the Director-General, order that the counterclaim or set-off be dealt with separately, and may make such other orders or give such directions as it thinks fit.

16 Costs and expenses etc relating to proceedings to which assisted person is a party

- (1) If a person is granted assistance under section 13, the court shall, in making an order for costs:
 - (a) in favour of the assisted person—make the same order (except against another assisted person) as the court would have made in favour of the assisted person if the person had not been an assisted person, or
 - (b) against the assisted person—make the same order (except in favour of another assisted person) as the court would have made against the assisted person if the person had not been an assisted person.
- (2) If an order for costs is made in accordance with subsection (1) (a):
 - (a) the costs are payable to the Director-General instead of the person in whose favour the order is made,
 - (b) the costs may be recovered by the Director-General as a debt due to the Crown, and
 - (c) the costs, upon being paid to or recovered by the Director-General, shall be paid into the Consolidated Fund.
- (3) If an order for costs is made in accordance with subsection (1) (b), the costs shall be paid by the Director-General.
- (4) Except in the case of costs payable to the Director-General, money awarded by a court in favour of an assisted person is payable to the person without deduction.

17 Privilege attaching to certain relationships

The same privileges as those which arise from the relationship of client and Australian legal practitioner acting in his or her professional capacity and in the course of his or her professional employment arise from the relationship between:

- (a) a person who has applied for assistance under section 12 or who has been granted that assistance under section 13, and
- (b) the Director-General and the Australian legal practitioner (if any) to whom the person's case is assigned under section 14,

and from the relationship between the Director-General and the Australian legal practitioner.

Division 3 Investigators

18 Office and identification of investigator

- (1) The Director-General may, by order in writing, appoint an officer as an investigator for the purposes of this Act and of any other legislation administered by the Minister and shall provide the officer with a certificate of identification as an investigator.
- (2) An investigator who exercises in any place or on any land a function conferred by section 19, 19A or 20 shall produce his or her certificate of identification if requested so to do by a person apparently in charge there, or apparently in charge of any work being carried on there.
- (3) An investigator shall produce his or her certificate of identification if requested so to do by a person required to comply with a notice under section 20.
- (4) A requirement under any other legislation administered by the Minister that a person who is authorised to exercise a function under the legislation is to produce his or her certificate of identification (however described) before exercising the function is taken to have been complied with if:
 - (a) the person authorised is an investigator, and
 - (b) the person produces his or her certificate of identification as an investigator.

19 Powers of entry

- (1) The powers conferred by this section may be exercised for the purposes of this Act and any other legislation administered by the Minister but may not be exercised for any other purpose.
- (2) The power to enter a place or land conferred by this section does not include a power to enter a place that is a dwelling-house or other residential premises unless:

- (a) the occupier consents, or
 - (b) some manufacture, business or trade is carried on there.
- (3) An investigator may, at a reasonable time, enter any place that he or she believes on reasonable grounds to be a place where goods are manufactured, prepared or supplied or a place where services are supplied or arranged and:
- (a) inspect any goods or partly manufactured goods and make such other inspections as he or she considers to be necessary,
 - (b) take any goods, or partly manufactured goods, for which he or she pays a fair price,
 - (c) take a sample of anything from which goods are manufactured or produced in that place, or
 - (d) make inquiries of any person employed or engaged in that place.
- (4) If the Director-General believes on reasonable grounds that there are on any premises documents evidencing conduct in contravention of this Act or any other legislation administered by the Minister, an investigator may, with the written authority of the Director-General, enter the premises, inspect any documents and make copies of them or take extracts from them.
- (5) An investigator may:
- (a) at a reasonable time:
 - (i) enter any place that he or she believes on reasonable grounds to be a place where transactions involving the disposal of interests in land are effected, or
 - (ii) enter any land if he or she believes on reasonable grounds that an interest in the land is being, or is proposed to be, disposed of,
 - (b) inspect any documents that are in the place and relate to an interest in land or are on the land and relate to the disposal of an interest in the land, and
 - (c) make inquiries of any person employed or engaged in the place or on the land.

19A Powers of search and seizure under search warrant

- (1) In this section:

authorised officer has the same meaning as in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

place includes a vehicle, vessel or aircraft.

- (2) An investigator may apply to an authorised officer for the issue of a search warrant if

the investigator believes on reasonable grounds that there is evidence of a contravention of a provision of this Act on any place or land.

- (3) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any investigator:
 - (a) to enter the place or land specified in the warrant, and
 - (b) to search for evidence of a contravention of a provision of this Act, and
 - (c) to exercise the powers of an investigator under subsection (4).
- (4) An investigator executing a search warrant issued under this section may:
 - (a) examine anything (whether or not specified in the warrant) that the investigator believes on reasonable grounds may provide evidence of a contravention of a provision of this Act, and
 - (b) seize anything (whether or not specified in the warrant) that the investigator believes on reasonable grounds is connected with a contravention of a provision of this Act.
- (5) The power to seize anything that is connected with a contravention of a provision of this Act includes a power to seize anything that will provide evidence of the contravention.
- (6) Anything seized by an investigator under the authority of a search warrant issued under this section must be returned to the person who had lawful possession of the thing before it was seized if its retention as evidence in proceedings for an offence against this or any other Act is not required.
- (7) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (8) Nothing in this section limits any of the other functions that may be exercised by an investigator under this Division.

20 Power to obtain information, documents and evidence

- (1) This section applies only to a person who is, on reasonable grounds, believed by the Director-General to be capable of giving information, producing documents or giving evidence in relation to:
 - (a) a possible contravention of this Act or any other legislation administered by the Minister, or
 - (b) a matter that may lead to the reference of a question to the Products Safety Committee or an advisory committee.

- (2) An investigator may, by notice in writing served on a person to whom this section applies, require the person:
- (a) to give an investigator, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any information referred to in subsection (1) of which the person has knowledge,
 - (b) to produce to an investigator, in accordance with the notice, any documents referred to in subsection (1), or
 - (c) to appear before an investigator, the Director-General or an authorised person at a time and place specified in the notice and give either orally or in writing any evidence referred to in subsection (1) and produce any documents so referred to.
- (3) A person shall not:
- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a notice, knowingly give information or produce a document, or give evidence, that is false or misleading.

Maximum penalty: 20 penalty units.

- (4) A person is not excused from giving information or producing a document, or from giving evidence, in response to a notice under this section on the ground that the information, document or evidence may tend to incriminate the person.
- (5) Any information, document or evidence obtained from a person in response to a notice under this section is inadmissible against the person in criminal proceedings other than proceedings for a contravention of subsection (3).

21 Inspection of documents by Director-General and others

- (1) The Director-General, an authorised person or an investigator may inspect a document produced in response to a notice under section 20 or 23A and may make copies of, or take extracts from, the document.
- (2) The Director-General or an investigator may:
- (a) take possession, and
 - (b) retain possession for as long as is necessary for the purposes of this Act,
- of a document produced in response to a notice under section 20 or 23A if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an officer to be a true copy.

- (3) A certified copy provided under subsection (2) is receivable in all courts as if it were the original.
- (4) Until a certified copy of a document is provided under subsection (2), the person having possession of the document shall, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by the person so entitled, to inspect the document and make copies of, or take extracts from, the document.

22 Preservation of secrecy

- (1) Except as provided by subsection (4), a person engaged in the administration of this Act shall not:
 - (a) in the course of that administration, disclose to another person so engaged any information or evidence given, or the contents of any document produced, in response to a notice under section 20 or 23A without informing the other person that the information or evidence was so given, or the document so produced, or
 - (b) otherwise than in the course of that administration, disclose any such information, evidence or contents to any person without the written permission of the Minister given in relation to the disclosure.

Maximum penalty: 20 penalty units.

- (2) A person who was, but is no longer, engaged in the administration of this Act shall not, without the written permission of the Minister, disclose to any other person any information or evidence given, or the contents of any document produced, in response to a notice under section 20 or 23A that came to his or her knowledge in the course of that administration.

Maximum penalty: 20 penalty units.

- (3) The Minister may grant the permission referred to in subsection (1) or (2) only if the Minister is satisfied that to do so would be in the public interest.
- (4) It is not a contravention of subsection (1) or (2):
 - (a) if the Director-General communicates to the appropriate Minister or officer of the Crown in right of this or any other State, or of the Commonwealth or any of its Territories, any information or evidence given, or the contents of any document produced, in response to a notice under section 20 or 23A, or
 - (b) if, in any legal proceedings, a person discloses any such information, evidence or contents in answering a question that the person is compellable to answer in those proceedings.

23 Obstruction etc of officers

- (1) A person shall not:
 - (a) hinder or obstruct an officer in a manner that interferes with the performance by the officer of his or her duties,
 - (b) assault an officer performing his or her duties, or
 - (c) being the occupier or person in charge of any place or land entered by an officer under a power conferred by this Act, fail to provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under this Act.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

- (2) The reference in subsection (1) to an officer is a reference to any officer and is not limited to an officer who is an investigator.

Division 3A Substantiation of claims and representations

23A Power to require proof of claims and representations

- (1) The Director-General may require a person who, in trade or commerce, published or caused to be published a statement promoting, or apparently intended to promote, the supply of goods or services or the sale or grant of an interest in land, to provide the Director-General with proof of any claim or representation (express or implied) made in the statement.
- (2) Such a requirement is to be made by notice in writing served on the person.
- (3) The notice must:
 - (a) specify the claim or representation to which the notice applies, and
 - (b) specify a time within which the person is required to provide the Director-General with proof of the claim or representation, and
 - (c) indicate that it is an offence to:
 - (i) fail to provide proof sufficient to support the claim or representation, or
 - (ii) fail to provide that proof within the time specified in the notice, or
 - (iii) provide the Director-General with information that is false or misleading in a material particular.
- (4) The Director-General may, by a further notice in writing served on the person, extend the time within which the person is required to provide the Director-General with proof of the claim or representation concerned.

(5) (Repealed)

23B Implied representation that goods or services will be able to be supplied at advertised price

- (1) When a person, in trade or commerce, publishes or causes to be published a statement advertising goods or services for supply at a specified price, the statement is taken to include a representation that the person will be able to offer the goods or services for supply at the advertised price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.
- (2) Accordingly, a notice under section 23A can relate to such a representation.
- (3) The representation applies only for the purposes of this Division.
- (4) The claims and representations to which a notice under section 23A can apply are not limited by this section.

23C Offences in relation to failing to provide proof of claim or representation

- (1) A person on whom a notice under section 23A is served is guilty of an offence if the person:
 - (a) fails to provide proof sufficient to support the claim or representation, or
 - (b) fails to provide that proof within the time specified in the notice, or
 - (c) provides any information to the Director-General that is false or misleading in a material particular.
- (2) (Repealed)
- (3) It is a defence to a prosecution under subsection (1) (c) if the defendant proves that the defendant did not know and could not reasonably be expected to have known that the information was false or misleading.

23D Self incrimination

- (1) A person is not excused from providing information in response to a notice under section 23A on the ground that the information may tend to incriminate the person.
- (2) Any information provided by a person (whether a natural person or a corporation) in response to a notice under section 23A is inadmissible in criminal proceedings against the person other than proceedings for an offence under this Division.

23E Division does not prevent other action being taken

This Division does not prevent action being taken under any other provision of this Act or

any other law in relation to a claim or representation made in a published statement.

23F Certain publishers not affected

This Division does not apply to a person whose business it is to publish or arrange for the publication of advertisements in respect of the publication of a statement by the person that was received for publication in the ordinary course of that business.

23G Transitional

This Division does not apply to any statement published before the commencement of this Division.

Division 4 Products Safety Committee and advisory committees

24 Products Safety Committee

- (1) There shall be established a Products Safety Committee having the functions conferred or imposed on it by this Act.
- (1A) Without limiting subsection (1), the Products Safety Committee has the following functions:
 - (a) to provide advice to the Minister on such issues in relation to the operation of Divisions 2 and 3 of Part 3 as are referred to it by the Minister,
 - (b) to review recall orders made under Division 3 of Part 3.
- (2) The Products Safety Committee shall consist of:
 - (a) an officer appointed by the Minister as Chairperson of the Committee,
 - (b) an officer appointed by the Minister as Executive Officer of the Committee, and
 - (c) such other persons appointed by the Minister as, in the opinion of the Minister, have expertise in product safety.
- (3) If the Chairperson is unable to exercise the functions of Chairperson, they shall be exercised by an officer appointed by the Minister as acting Chairperson.
- (4) The provisions of Schedule 4 apply in relation to the Products Safety Committee.

25 Advisory committees

- (1) The Minister may appoint committees for the purpose of advising the Director-General in relation to matters arising under section 9 (2).
- (2) An advisory committee:
 - (a) shall comprise such number of persons as the Minister thinks fit,

- (b) may include an officer or officers,
 - (c) has such functions in relation to the provision of advice as the Minister directs, and
 - (d) may, except to the extent that the Minister otherwise directs, regulate its own procedure for the calling of meetings and the conduct of its business at those meetings.
- (3) The Minister may, at any time:
- (a) terminate the appointment of a person as a member of an advisory committee, or
 - (b) dissolve an advisory committee.
- (4) A member of an advisory committee:
- (a) is entitled to receive such travelling expenses, and
 - (b) except in the case of an officer, is entitled to receive such fees for attending meetings and transacting business of the committee,
- as are fixed by the Minister.

Division 5 Fair Trading Advisory Council

25A Establishment

There is established by this Act a council called the Fair Trading Advisory Council.

25B Membership

- (1) The Fair Trading Advisory Council is to consist of 16 members.
- (2) The members of the Fair Trading Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 15 persons appointed by the Minister and having, in the opinion of the Minister, expertise or qualifications appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Fair Trading Advisory Council.

25C Functions

The functions of the Fair Trading Advisory Council are to furnish advice to the Minister:

- (a) as to such fair trading and consumer protection issues as it thinks fit or as are referred to it by the Minister, and

- (b) in particular, as to any issues relevant to any legislation administered by the Minister (including issues about which any other advisory committee or advisory council has functions).

Division 6 Motor Trade Advisory Council

25D Establishment

There is established by this Act a council called the Motor Trade Advisory Council.

25E Membership

- (1) The Motor Trade Advisory Council is to consist of 16 members.
- (2) The members of the Motor Trade Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 15 other persons appointed by the Minister and having, in the opinion of the Minister, expertise appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Motor Trade Advisory Council.

25F Functions

- (1) The functions of the Motor Trade Advisory Council are to furnish advice to the Minister:
 - (a) as to any issues relevant to the motor trade as it thinks fit or as are referred to it by the Minister, and
 - (b) in particular:
 - (i) as to the development of policy relating to the motor trade, and
 - (ii) as to any issues relevant to any legislation administered by the Minister for Fair Trading and relating to the motor trade, and
 - (iii) as to education or research programs relating to the motor trade, that are or might be government funded.

- (2) In this section:

motor trade means the industry of trading motor vehicles and the motor vehicle repair and maintenance industry.

motor vehicle means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, and includes a trailer, but does not include:

- (a) a vehicle used on a railway or tramway, or
- (b) a vehicle that is constructed or adapted otherwise than for the carriage of passengers or goods over public roads, or
- (c) anything prescribed by the regulations for the purposes of this definition.

Division 7 Property Services Advisory Council

25G Establishment

There is established by this Act a council called the Property Services Advisory Council.

25H Membership

- (1) The Property Services Advisory Council is to consist of 16 members.
- (2) The members of the Property Services Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 15 persons appointed by the Minister and having, in the opinion of the Minister, expertise appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Property Services Advisory Council.

25I Functions

- (1) The functions of the Property Services Advisory Council are to furnish advice to the Minister:
 - (a) as to such issues relating to the property services industry as it thinks fit or as are referred to it by the Minister, and
 - (b) in particular:
 - (i) as to any issues relevant to any legislation administered by the Minister for Fair Trading and relating to the property services industry, and
 - (ii) as to education or research programs relating to the property services industry, that are or might be government funded.
- (2) In this section:
 - property services industry*** includes:
 - (a) the business of selling, managing, valuing or otherwise dealing with property (including businesses) that is subject to licensing, registration or regulation under the *Property, Stock and Business Agents Act 2002* or the *Valuers Act 2003*, or

(b) the carrying out of conveyancing work as defined by the [Conveyancers Licensing Act 1995](#),

and includes anything prescribed by the regulations as being within this definition, but does not include anything prescribed as excluded from it.

Division 8

25J-25L (Repealed)

Division 9 Retirement Villages Advisory Council

25M Establishment

There is established by this Act a council called the Retirement Villages Advisory Council.

25N Membership

- (1) The Retirement Villages Advisory Council is to consist of 16 members.
- (2) The members of the Retirement Villages Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 15 persons appointed by the Minister and having, in the opinion of the Minister, expertise appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Retirement Villages Advisory Council.

25O Functions

- (1) The functions of the Retirement Villages Advisory Council are to advise the Minister:
 - (a) as to such issues relating to retirement villages as it thinks fit or as are referred to it by the Minister, and
 - (b) in particular:
 - (i) as to the development of policy relating to retirement villages and the retirement village industry, and
 - (ii) as to any issues relevant to any legislation administered by the Minister for Fair Trading and relating to retirement villages or the retirement village industry.
- (2) In this section:

retirement village has the same meaning as it has in the [Retirement Villages Act 1999](#).

retirement village industry includes:

- (a) the businesses of designing, developing, managing, operating and providing services to retirement villages, and
- (b) any other business prescribed by the regulations for the purposes of this definition,

but does not include any business declared by the regulations to be excluded from this definition.

Part 3 Safe design and construction of goods

Division 1 Safety standards

26 Safety standards

- (1) The regulations may prescribe a product safety standard for a specified kind of goods.
- (2) A product safety standard for goods shall consist of such requirements as to:
 - (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods,
 - (b) the testing of the goods during, or after the completion of, manufacture or processing,
 - (c) the form and content of markings, warnings or instructions to accompany the goods or be placed on a vending machine for the goods or a display stand or sign adjacent to the goods, and
 - (d) equipment or accessories to be supplied with the goods,as are reasonably necessary to prevent or reduce risk of injury to a person.

27 Prohibition on supply of goods not complying with safety standards (TPA s 65C)

- (1) A person shall not, in trade or commerce, supply goods:
 - (a) that are intended to be used, or are of a kind likely to be used, by a consumer, and
 - (b) in relation to which there is a product safety standard,unless the goods comply with the standard.
- (2) If:
 - (a) a person supplies goods in contravention of subsection (1), and
 - (b) another person suffers loss or damage because of a defect in, or a dangerous

characteristic of, the goods, or by not having particular information in relation to the goods, but would not have suffered it if the goods had complied with the product safety standard,

the person who suffers the loss or damage shall be deemed, for the purposes of this Act, to have suffered it by the supplying of the goods.

Division 2 Prohibition or restriction on supply of dangerous goods

28 Reference of certain questions to Products Safety Committee

- (1) The Minister, or the Director-General with the approval of the Minister, may refer to the Products Safety Committee for consideration the question whether the supply of goods of a kind specified in the reference or any particular goods so specified should:
 - (a) because they are dangerous, or are a possible source of danger, be prohibited, or
 - (b) be allowed only subject to conditions or restrictions to be specified by the Committee.
- (2) Subsection (1) does not apply to goods the supply of which is prohibited or regulated by or under an Act specified in Schedule 2 or an Act prescribed for the purposes of this subsection.
- (3) (Repealed)
- (4) The Minister may, upon a question being referred under subsection (1), cause particulars of the question to be notified to the public in such manner as the Minister thinks fit.
- (5) The Committee shall consider any such question referred to it and make a report and recommendations to the Minister in relation to the question.
- (6) Even if the Committee has not completed consideration of a question, it may, in the interests of public safety, recommend to the Minister the making under section 30 of an interim order prohibiting or restricting supply of the goods to which the question relates.
- (7) The Director-General shall, if requested to do so by the Committee, give to the Committee to enable it to consider a question referred to it:
 - (a) any information in the possession of the Director-General which relates to the question, and
 - (b) any other assistance which the Committee may require, and which the Director-General has power to give, in relation to the question.
- (8) If a member of the Committee dissents from a decision of the Committee in respect of

a question referred to it, the Chairperson shall record in the report a note of that dissent and of any reasons for it.

- (9) The Committee, in considering a question referred to it:
- (a) may make such investigations as it considers necessary to enable it to make a recommendation with respect to the question,
 - (b) shall take into account any representations made to it by any person who, in its opinion, has a substantial interest in the subject-matter of the question or by any body which, in its opinion, represents a substantial number of persons who have such an interest, and
 - (c) unless the Committee does not consider that it is reasonably practicable to do so, shall permit any such person or body to be heard by the Committee, or by a member of the Committee nominated by it for the purpose.
- (10) The Committee may determine its own procedure for considering a question referred to it, and in particular may determine:
- (a) the extent, if any, to which persons interested or claiming to be interested in the question are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise participate in the consideration of the question, and
 - (b) the extent, if any, to which the Committee shall hold its proceedings in public.
- (11) In determining its procedure under subsection (10), the Committee shall act in accordance with Schedule 4 and any general directions which may be given it by the Minister.

29 Attendance of witnesses and production of documents

- (1) For the purpose of considering a question referred to it, the Products Safety Committee may, by notice in writing signed by the Chairperson or by a member of the Committee on behalf of the Chairperson:
- (a) require any person to attend at a time and place specified in the notice and to give evidence before the Committee or a member of the Committee nominated by it for the purpose, or
 - (b) require any person to produce, at a time and place specified in the notice, to the Committee or to a member of the Committee nominated by it for the purpose, any goods or documents described in the notice that are in the custody, or under the control, of the person and are relevant to the question.
- (2) The Products Safety Committee may take goods so produced, after paying a fair price for them, and cause to be conducted such tests and examinations with respect to

them as it considers necessary for the purpose of determining whether or not they may be dangerous.

- (3) A person is not compellable to give any evidence before, or produce any document to, the Products Safety Committee which the person could not be compelled to give or produce in civil proceedings before the Supreme Court.
- (4) A person is not required to attend in response to a notice under subsection (1) (a) unless the reasonable expenses of attendance are paid or tendered to the person.
- (5) A person shall not:
 - (a) without reasonable excuse, refuse or fail to do anything required of the person by a notice under subsection (1),
 - (b) in response to such a notice, knowingly give evidence that is false or misleading because it includes false or misleading matter or omits material matter, or
 - (c) alter, suppress or destroy any document which the person is required by such a notice to produce.

Maximum penalty (subsection (5)): 20 penalty units.

30 Interim order prohibiting or restricting the supply of goods

- (1) The Minister may make an interim order conditionally or unconditionally prohibiting or restricting the supply of specified goods or of goods of a specified kind if:
 - (a) the Minister or the Director-General has referred, or proposes to refer, to the Products Safety Committee a question relating to the goods,
 - (b) the Products Safety Committee recommends the making of such an order before completing its consideration of a question referred to it in relation to the goods, or
 - (c) if the supply or use of the goods has been prohibited or restricted on an interim basis under another law of the State, a law of the Commonwealth or a law in force elsewhere in Australia, in the interests of public safety,and the Minister considers that the goods are so dangerous that their supply should, in the interests of public safety, be prohibited or restricted immediately.
- (2) If an interim order is made under subsection (1), the Minister may:
 - (a) give a supplier written notice of the order,
 - (b) publish notice of the order in the Gazette, or
 - (c) do both.
- (3) If notice of an interim order:

- (a) has not been published in the Gazette and is given to a supplier—the order takes effect when the notice is given to the supplier and, unless sooner revoked, expires 42 days later, or
 - (b) is published in the Gazette (whether or not it has been, or is then or later, given to a supplier)—the order takes effect upon its publication and, unless sooner revoked, expires on a day specified in the Gazette notice that is not less than 42 days, and not more than 3 months, after its publication.
- (4) After being renewed once, an interim order may be replaced only by an order made under section 31 before the interim order expires or is revoked.
- (5) An order made under section 31 revokes an interim order that it replaces.

31 Order (other than interim order) prohibiting or restricting the supply of goods

- (1) The Minister may make a conditional or unconditional order prohibiting or restricting the supply of specified goods or goods of a specified kind:
- (a) after considering a report and any recommendation of the Products Safety Committee relating to the goods,
 - (b) after considering a report of an authority of the State relating to the goods and deciding to make the order without referring a question to the Products Safety Committee, or
 - (c) if a like prohibition or restriction is in force under another law of the State, a law of the Commonwealth or a law in force elsewhere in Australia because the goods are dangerous.
- (2) Sections 39, 40 and 41 of the *Interpretation Act 1987* apply to an order made under subsection (1) as if it were a statutory rule to which those sections apply.

Editorial note—

For orders under this section see the Historical notes at the end of this Act.

32 Offence to contravene certain orders

- (1) A person shall not supply goods in contravention of an order in force under section 30 of which the person has been given notice.
- (2) A person shall not supply goods in contravention of an order published in the Gazette and in force under section 30 or 31.
- (3) If:
- (a) a person supplies goods in contravention of subsection (1) or (2), and
 - (b) another person suffers loss or damage because of a defect in, or a dangerous

characteristic of, the goods or by not having particular information as to a characteristic of the goods,

the person who suffers the loss or damage shall be deemed, for the purposes of this Act, to have suffered it by the supplying of the goods.

33 (Repealed)

Division 3 Product recall etc

34 Definitions

In this Division:

defective goods means goods that:

- (a) do not comply with a product safety standard for the goods, or
- (b) are the subject of a banning order, or
- (c) are, in the opinion of the Director-General, of a kind that may cause death or injury to any person.

recall order means an order made by the Director-General under section 35.

35 Recall orders by Director-General

- (1) The Director-General may, by order published in the Gazette, require the supplier of defective goods to do any one or more of the following:
 - (a) recall the goods in the manner, and within the period, specified in the order,
 - (b) disclose to the public, or to a class of persons specified in the order, in the manner and within the period so specified, any one or more of the following:
 - (i) the nature of any defect in, or dangerous characteristic of, the goods identified in the order,
 - (ii) the circumstances in which the use of the goods is dangerous,
 - (iii) procedures for disposing of the goods,
 - (c) notify the public, or a class of persons specified in the order, in the manner and within the period so specified, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) except where the order 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) A recall order ceases to have effect at the end of the period of 28 days immediately following the date on which it was published in the Gazette unless the order is, before the end of that 28-day period, confirmed by the Minister by notice published in the Gazette.
- (3) Subsection (2) does not apply if a request is made under section 36 for a review of the recall order.
- (4) Sections 40 and 41 of the *Interpretation Act 1987* apply to a recall order as if it were a statutory rule to which those sections apply.

36 Review of recall orders

- (1) The Minister or the supplier of goods to which a recall order relates may, within 14 days of the date on which the order was published in the Gazette, request the Products Safety Committee to review the order.
- (2) If any such request is made, the Products Safety Committee is to conduct the review of the order and report to the Minister on the outcome of the review.
- (3) The provisions of sections 28 (7)–(11) and 29 apply to and in respect to the review of a recall order by the Products Safety Committee under this section in the same way as those provisions apply to the consideration of a question that is referred to the Committee under section 28 (1).
- (4) Accordingly:
 - (a) a reference in those provisions to a question that is referred to the Committee includes a reference to a recall order that the Committee has been requested to review, and
 - (b) a reference in those provisions to the consideration by the Committee of such a question includes a reference to the conducting of a review of a recall order.
- (5) On receiving the Committee's report in relation to a recall order, the Minister may, by order published in the Gazette:
 - (a) confirm the recall order, or
 - (b) amend the recall order in accordance with the terms of the Committee's report, or
 - (c) repeal the order.

36A Reduction of refund in certain circumstances

If:

- (a) in accordance with a recall order, a supplier undertakes to refund the price of goods, and
 - (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier,
- the amount of the refund may be reduced by an amount, calculated in accordance with the order, that is attributable to the use that a person has had of the goods.

36B Undertaking to repair or replace goods

- (1) If, in accordance with a recall order, a supplier undertakes to repair goods, the supplier must cause the goods to be repaired so that:
 - (a) any defect in the goods as identified in the order is rectified, and
 - (b) if there is a product safety standard for goods of that kind—the goods comply with the standard.
- (2) If, in accordance with a recall order, a supplier undertakes to replace goods, the supplier must replace the goods with like goods that:
 - (a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the order—do not contain that defect or have that characteristic, and
 - (b) if there is a product safety standard for goods of that kind—comply with the standard.
- (3) If, in accordance with a recall order, a supplier undertakes to repair or replace goods, the cost of the repair or replacement, including any necessary transportation costs, is to be borne by the supplier.

36C Compliance with recall order

A supplier of goods to which a recall order relates must not:

- (a) fail to comply with a requirement of the order, or
- (b) if the order identifies a defect in, or a dangerous characteristic of, the goods—supply goods of the kind to which the order relates and that contain that defect or have that characteristic, or
- (c) in any case other than a case referred to in paragraph (b)—supply goods of the kind to which the order relates, or
- (d) fail to carry out an undertaking given by the supplier under section 35 (1) (c), or
- (e) having given such an undertaking to repair or replace goods—fail to comply with section 36B.

36D Notification of voluntary recall

- (1) If a supplier takes action to recall goods otherwise than as required by a recall order, the supplier must, within 2 days after the action is taken, give the Director-General a notice in writing:
 - (a) stating that the goods are subject to recall, and
 - (b) if the goods contain a defect or have a dangerous characteristic—stating the nature of the defect or dangerous characteristic, and
 - (c) if the goods do not comply with a product safety standard for the goods—stating the nature of the non-compliance.

Maximum penalty: 100 penalty units in the case of a corporation or 20 penalty units in any other case.

- (2) If a person who would otherwise be required to give notice under subsection (1) has given notice of the matter under section 65R of the *Trade Practices Act 1974* of the Commonwealth, the person is not required to give notice under subsection (1).

36E Requirement to notify recall of goods to persons outside New South Wales

If any goods are recalled in accordance with a recall order or are voluntarily recalled under section 36D, a person who has supplied any of the goods to another person outside New South Wales must, as soon as practicable after the supply of those goods, give a notice in writing to that other person:

- (a) stating that the goods are subject to recall, and
- (b) if the goods contain a defect or have a dangerous characteristic—stating the nature of the defect or dangerous characteristic, and
- (c) if the goods do not comply with a product safety standard for the goods—stating the nature of the non-compliance.

Maximum penalty: 100 penalty units in the case of a corporation or 20 penalty units in any other case.

36F Certain amounts recoverable as debt or damages

- (1) If a supplier fails to carry out an undertaking given under section 35 (1) (c) to refund the price of goods, the amount that should have been refunded is recoverable as a debt due by the supplier to the person to whom the undertaking was given.
- (2) If a supplier fails to carry out an undertaking given under section 35 (1) (c) to repair or replace goods, the supplier is taken to have given instead an undertaking, notified under section 35 (1) (c), to refund the price of the goods within the period specified for the repair or replacement of the goods.

(3) If:

(a) a person:

- (i) fails to comply with a requirement of a recall order, or
- (ii) supplies goods in contravention of a recall order identifying a defect in, or dangerous characteristic of, the goods, and

(b) another person suffers loss or damage:

- (i) because of a defect in, or dangerous characteristic of, the goods, or
- (ii) by not having particular information as to a characteristic of the goods,

the person who suffered the loss or damage is, for the purposes of this Act, taken to have suffered the loss or damage because of the failure or contravention.

37 Certain action not to affect insurance contracts (TPA s 65T)

The liability of an insurer under a contract of insurance with a person, being a contract relating to the recall of goods supplied or proposed to be supplied by the person or to the liability of the person with respect to possible defects in goods supplied or proposed to be supplied by the person, shall not be affected only because the person gives to the Minister, to the Products Safety Committee or to an officer information relating to any goods supplied or proposed to be supplied by the person.

Part 4 Consumer protection

Division 1 Product information

38 Prescribing of product information standards

- (1) The regulations may prescribe a product information standard to be used for a specified kind of goods.
- (2) A product information standard for goods shall consist of requirements for, and for the form and manner of, disclosure of such information as to:
 - (a) the price, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods,
 - (b) the place of manufacture or production of the goods,
 - (c) the identity of the manufacturer, producer or supplier of the goods,
 - (d) the date of the manufacture or production, or the durable life, of the goods, and
 - (e) care and storage of the goods,

as is reasonably necessary to give persons using the goods information as to their origin, quantity, quality, nature, durability or value.

39 Compliance with product information standard

(1) A person shall not, in trade or commerce, supply goods:

(a) that are intended to be used, or are of a kind likely to be used, by a consumer, and

(b) in relation to which there is a product information standard,

unless the person has complied with the standard in relation to the goods.

(2) If:

(a) a person supplies goods in contravention of subsection (1), and

(b) another person suffers loss or damage by not having particular information relating to the goods but would not have suffered it if the product information standard had been complied with in relation to the goods,

the person who suffers the loss or damage shall be deemed, for the purposes of this Act, to have suffered it by the supplying of the goods.

Division 2 Dual pricing

40 Dual pricing

(1) A supplier shall not sell goods to which more than one price is appended at a price that is greater than the lower, or lowest, of the prices.

Maximum penalty: 50 penalty units.

(2) In subsection (1), a reference to a price appended to goods includes a reference to a price:

(a) that is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any band, ticket, covering, label, reel or thing used in connection with the goods,

(b) that is used in connection with the goods or anything on which the goods are mounted for display or exposed for sale,

(c) that is determined on the basis of anything encoded on or in relation to the goods,

(d) that is published in relation to the goods in a catalogue available to the public if:

(i) a time is specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed, or

- (ii) in any other case—the catalogue may reasonably be regarded as not out-of-date, or
 - (e) that is in any other way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods.
- (3) Where a price appended to goods is written, stamped or located wholly or partly over another price, or other prices, appended to the goods, all the prices are, for the purposes of subsection (1), prices appended to the goods.
- (4) In this section:

price includes any representation that may reasonably be inferred to be a representation of a price and does not include an amount expressed in a currency other than Australian currency.

Division 3 Direct commerce

40A Definitions

- (1) In this Division:

cooling-off period, in relation to a direct commerce contract, means the period within which the consumer is, under section 40E or under the contract, entitled to cancel the contract.

dealer means a person who, in the course of direct commerce:

- (a) enters into negotiations with another person with a view to the making of a contract for the supply of goods or services to that other person, or
- (b) calls on, or telephones, another person 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.

direct commerce means the practice under which:

- (a) a person:
 - (i) goes from place to place, or
 - (ii) makes telephone calls,seeking out persons who may be prepared to enter, as consumers, into contracts for the supply of goods or services, and
- (b) that person (or some other person) enters into negotiations with those prospective consumers with a view to the making of such contracts.

direct commerce contract—see section 40B.

negotiation includes any discussion or dealing directed towards the making of a contract (whether or not the terms of the contract are open to negotiation).

related contract or instrument, in relation to a direct commerce contract, means:

- (a) a contract of guarantee or indemnity that is related to the contract, or
- (b) an instrument related to the contract that creates a mortgage or charge in favour of the supplier or dealer (or a person nominated by the supplier or dealer), or
- (c) another contract or instrument (not being an instrument of the kind referred to in paragraph (b)) that is collateral or related to the contract.

(2) In this Division:

- (a) a reference to the consumer or supplier under a contract for the supply of goods or services extends to any person to whom the rights of the original consumer or supplier under the contract are assigned or transferred, or pass by operation of law, and
- (b) a reference to negotiation of a direct commerce contract is a reference to negotiation of a contract that would, when made, be a direct commerce contract.

(3) For the purposes of this Division, a contract is a contract for the supply of goods or services to a person who is a party to the contract if it provides for the supply of goods or services either to that person or to someone else but on the order of that person.

40B Meaning of “direct commerce contract”

(1) For the purposes of this Division, a contract is a **direct commerce contract** if:

- (a) it is for the supply of goods or services to a consumer who is an individual, and
- (b) negotiations leading to the making of the contract (whether or not they are the only negotiations that precede the making of the contract) take place between the dealer and the consumer:
 - (i) in each other’s presence at a place other than the business or trade premises of the supplier, or
 - (ii) over the telephone, and
- (c) the dealer has called at that place or made that telephone call in the course of direct commerce, and
- (d) the consumer did not invite the dealer to call at that place or make that telephone call for the purpose of entering into those negotiations, and

(e) the total consideration payable by the consumer under the contract:

(i) is not ascertainable at the time of the making of the contract, or

(ii) is ascertainable at the time of the making of the contract (but is more than \$100 or such other amount as may be prescribed by the regulations for the purposes of this section).

(2) Despite subsection (1), a direct commerce contract does not include any contract of a kind that is excluded from the operation of this Division by the regulations.

(2A) The regulations may also exempt any direct commerce contract or class of direct commerce contracts from the operation of particular provisions of this Division.

(3) If:

(a) 2 or more contracts relate substantially to the same transaction, and

(b) the transaction could have been effected by a single contract that would, in that case, have constituted a direct commerce contract,

then each of the contracts that would not, if it stood alone, constitute a direct commerce contract becomes a direct commerce contract and, for the purpose of ascertaining the cooling-off period in relation to such a contract, the contract is taken to have been made when the last of the contracts was made.

40C Prohibition of certain contractual terms

(1) A direct commerce contract must not contain any provision that purports:

(a) to exclude, restrict or modify any right conferred on a consumer under this Division, or

(b) to provide that the contract, or any proceedings arising from the contract, is governed by the law of a jurisdiction other than New South Wales.

(2) If a direct commerce contract contains a provision contrary to subsection (1), the provision is void and the supplier and dealer are each guilty of an offence.

Maximum penalty: 100 penalty units.

(3) For the purposes of this section, a reference to a direct commerce contract includes a related contract or instrument.

40D Consumer must be informed of right to cancel direct commerce contract

(1) Before a direct commerce contract is made, the consumer must be given information as to the following:

(a) that the consumer has a right to cancel the contract during the cooling-off period,

- (b) the manner in which that right may be exercised by the consumer,
 - (c) such other matters as may be prescribed by the regulations for the purposes of this section.
- (2) In the case of a direct commerce contract that is made in the presence of both the dealer and the consumer, the information referred to in subsection (1) must be given to the consumer in writing.
- (3) In the case of a direct commerce contract that is made over the telephone, the information referred to in subsection (1) must:
- (a) be given to the consumer over the telephone, and
 - (b) be subsequently given to the consumer in writing.
- (4) The regulations may make provision for or with respect to the form and manner in which the information referred to in subsection (1) must be given.
- (5) If this section and any regulation made under subsection (4) are not complied with in relation to a direct commerce contract, the supplier and the dealer are each guilty of an offence.

Maximum penalty: 100 penalty units.

- (6) The supplier under a direct commerce contract cannot enforce the contract against the consumer if this section and any regulation made under subsection (4) are not complied with.

40E Right of consumer to cancel direct commerce contract during cooling-off period

- (1) The consumer under a direct commerce contract may cancel the contract by giving written notice of cancellation to the supplier:
- (a) in the case of a contract that is made in the presence of both the dealer and the consumer—within 5 clear business days from the day on which the contract was made, or
 - (b) in the case of a contract that is made over the telephone—within the period commencing on the day the contract was made and ending 5 clear business days from the day on which the information referred to in section 40D (1) is given to the consumer in writing, or
 - (c) in the case of either such contract—within such longer period as the contract may provide.
- (2) A notice of cancellation may be given:
- (a) by delivering it personally to the supplier, or

- (b) by delivering it, or sending it by post, in an envelope addressed to the supplier, to the supplier's address, or
 - (c) by faxing it to the supplier's address, or
 - (d) in such other manner as may be prescribed by the regulations.
- (3) A notice of cancellation sent by post to a supplier is taken to have been given to the supplier at the time of posting.
- (4) A right of cancellation conferred by this section may be exercised:
- (a) despite affirmation of the contract by the consumer, and
 - (b) even though the contract has been fully executed.
- (5) If a direct commerce contract is cancelled by the consumer under this section, any related contract or instrument is void.

40F Consequences of cancellation of direct commerce contract

- (1) If a direct commerce contract is cancelled by the consumer during the cooling-off period under this Division:
- (a) the consumer must immediately:
 - (i) return to the supplier any goods received from the supplier under the contract, or
 - (ii) notify the supplier of the place where the supplier may collect the goods, and
 - (b) the supplier must, after receiving the goods or any such notice, immediately return or refund to the consumer any consideration (or the value of any consideration) given by the consumer under the contract or a related contract or instrument.
- (2) If:
- (a) the consumer gives notice to the supplier under subsection (1) (a) (ii), and
 - (b) the supplier does not collect the goods within 28 days after the cancellation of the contract,
- the goods become the property of the consumer free of any other right or interest.
- (3) If the consumer returns goods to the supplier under this section but 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. However, the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or circumstances beyond the control of the consumer.

- (4) The obligations imposed by this section may be enforced by action in any court of competent jurisdiction.
- (5) A court that convicts a supplier of an offence against this Division may, on the application of the prosecutor, make orders for the enforcement of obligations imposed by this section.
- (6) A person who fails to comply with an order under subsection (5) is guilty of an offence.

Maximum penalty: 100 penalty units.

40G Waiver of rights

A consumer under a direct commerce contract is not competent to waive any right conferred by this Division.

40H Fees for services during cooling-off period prohibited

A supplier or dealer must not, in relation to a direct commerce contract or a related contract or instrument, collect any fees during the cooling-off period for services provided by the dealer or supplier during that period.

Maximum penalty: 100 penalty units.

40I Prohibited hours for direct commerce

A dealer must not call on, or telephone, any person:

- (a) after 8 pm on any day, or
- (b) before 9 am on any day,

for the purpose of negotiating a direct commerce contract (or for an incidental or related purpose) unless the dealer has made an appointment with the person.

Maximum penalty: 100 penalty units.

40J Other requirements in relation to dealers

- (1) A dealer who is carrying on negotiations on the telephone with a person (***the prospective consumer***) for the purpose of making a direct commerce contract (or for an incidental or related purpose) must cease those negotiations immediately on the request of the prospective consumer.
- (2) If any such request is made by the prospective consumer:
 - (a) the dealer, or
 - (b) if the dealer was acting on behalf of a supplier when carrying on negotiations with

the prospective consumer—the supplier or any other person acting on behalf of the supplier,

must not contact the prospective consumer for the purpose of negotiating a direct commerce contract (or for an incidental or related purpose) for at least 30 days after the prospective consumer made the request.

- (3) A dealer who calls at any premises for the purpose of negotiating a direct commerce contract (or for an incidental or related purpose) must leave the premises at the request of the occupier of the premises as soon as it is practicable to do so.
- (4) A dealer who calls on any person for the purpose of negotiating a direct commerce contract (or for an incidental or related purpose) must, as soon as it is practicable to do so:
 - (a) advise the person of the purpose of the call, and
 - (b) produce to the person a document setting out:
 - (i) the dealer's full name, and
 - (ii) the supplier's address (not being a post office box address) and, if the dealer is not the supplier, the supplier's full name.

Maximum penalty: 100 penalty units.

40K Prohibition of certain actions

- (1) If a direct commerce contract has been cancelled (or is capable of being cancelled) by the consumer under this Division, a person must not, for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument:
 - (a) bring, or assert an intention to bring, legal proceedings against the consumer, or
 - (b) place the name of the consumer, or cause the name of the consumer to be placed, on any list of defaulters or debtors, or assert an intention of placing the name of the consumer, or causing the name of the consumer to be placed, on any such list, or
 - (c) take any other action against the consumer.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (a) does not prohibit:
 - (a) the bringing of, or the asserting of an intention to bring, legal proceedings to determine whether or not a direct commerce contract has been, or is capable of being, cancelled under this Division, or

- (b) the continuation of such proceedings (for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument) where it is determined that the contract has not been, or is not capable of being, so cancelled, or
 - (c) the bringing of, or the asserting of an intention to bring, legal proceedings as referred to in section 40F (4).
- (3) If a person is convicted of an offence against subsection (1) (b), the court may order the person responsible for keeping any list on which the name of the consumer has been wrongfully placed to remove the name from that list.
- (4) A person who fails to comply with an order under subsection (3) is guilty of an offence.

Maximum penalty: 100 penalty units.

Division 4 Conditions and warranties in consumer transactions

40L Interpretation and application (TPA s 66)

- (1) A reference in this Division to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (2) In this Division:
 - (a) a reference to the quality of goods includes a reference to the state or condition of the goods, and
 - (b) a reference to negotiations in relation to a contract for the supply by a person of goods to a consumer is a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person in respect of which the consumer was induced to make the contract or that otherwise promoted the transaction to which the contract relates.
- (3) For the purposes of this Division, goods of any kind are of **merchantable quality** if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect, having regard to any description applied to them, the price (if relevant) and all other relevant circumstances.
- (4) This Division does not apply to or in respect of a contract made before the commencement of this Division.

40M Application of provisions not to be excluded or modified (TPA s 68)

- (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) that purports to exclude,

restrict or modify or has the effect of excluding, restricting or modifying:

- (a) the application of all or any of the provisions of this Division, or
- (b) the exercise of a right conferred by such a provision, or
- (c) any liability of a person for breach of a condition or warranty implied by such a provision, or
- (d) the application of section 40N,

is void.

- (2) A term of a contract is not to be considered as excluding, restricting or modifying the application of a provision of this Division or the application of section 40N unless the term does so expressly or is inconsistent with that provision or section.
- (3) This section is, with respect to a term of a contract for the supply of recreation services within the meaning of section 5N of the *Civil Liability Act 2002*, subject to that section.

40N Rescission of contracts (TPA s 75A)

- (1) If:
 - (a) a person (***the supplier***) supplies goods to a consumer in the course of a business, and
 - (b) there is a breach of a condition that is, by reason of a provision of this Division, implied in the contract for the supply of the goods,the consumer is, subject to this section, entitled to rescind the contract by:
 - (c) causing to be served on the supplier a notice in writing signed by the consumer giving particulars of the breach, or
 - (d) causing the goods to be returned to the supplier and giving to the supplier, either orally or in writing, particulars of the breach.
- (2) If a consumer purports to rescind under this section a contract for the supply of goods by a person, the purported rescission does not have any effect if:
 - (a) the notice is not served or the goods are not returned within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods, or
 - (b) in the case of a rescission effected by service of a notice—after the delivery of the goods to the consumer but before the notice is served:
 - (i) the goods were disposed of by the consumer, were lost, or were destroyed otherwise than by reason of a defect in the goods, or

- (ii) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable, or
 - (iii) the goods were damaged by abnormal use, or
- (c) in the case of a rescission effected by return of the goods—while the goods were in the possession of the consumer:
 - (i) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable, or
 - (ii) the goods were damaged by abnormal use.
- (3) If a contract for the supply of goods by a person (***the supplier***) to a consumer has been rescinded in accordance with this section:
 - (a) if the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to, the supplier—the property in the goods re-vests in the supplier on the service of the notice or the return of the goods, and
 - (b) the consumer may recover from the supplier, as a debt, the amount or value of any consideration paid or provided by the consumer for the goods.
- (4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under this or any other Act or law.

400 Implied undertakings as to title, encumbrances and quiet possession (TPA s 69)

- (1) In a contract for the supply of goods by a person (***the supplier***) to a consumer (other than a contract to which subsection (3) applies) there is:
 - (a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass, and
 - (b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made, and
 - (c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer—an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.

- (2) A person is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in subsection (1) (c) by reason only of the existence of a floating charge over assets of the person unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.
- (3) In a contract for the supply of goods to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the supplier should transfer only such title as the supplier or a third person may have, there is:
 - (a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made, and
 - (b) an implied warranty that:
 - (i) the supplier, and
 - (ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have—that person, and
 - (iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made,will not disturb the consumer's quiet possession of the goods.

40P Supply by description (TPA s 70)

- (1) In a contract for the supply (otherwise than by way of sale by auction or sale by competitive tender) by a person in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.
- (2) A supply of goods is not prevented from being a supply by description for the purposes of this section by reason only that, being exposed for sale or hire, they are selected by the consumer.

40Q Implied undertakings as to quality or fitness (TPA s 71)

- (1) If a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by reason only of this section:
 - (a) as regards defects specifically drawn to the consumer's attention before the

contract is made, or

(b) if the consumer examines the goods before the contract is made—as regards any defect that the examination ought to have revealed.

(2) If a person (**the supplier**) supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known:

(a) to the supplier, or

(b) to the person by whom any negotiations are conducted,

any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that purpose is one for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the skill or judgment of the supplier or the person conducting the negotiations.

(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for the supplier in the same way as they apply to a contract for the supply of goods made by a person in the course of a business, except where that person is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.

40R Supply by sample (TPA s 72)

If in a contract for the supply (otherwise than by way of sale by auction or sale by competitive tender) by a person in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample:

(a) there is an implied condition that the bulk will correspond with the sample in quality, and

(b) there is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample, and

(c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.

40S Warranties in relation to supply of services (TPA s 74)

(1) In every contract for the supply by a person in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due

care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

- (2) If a person supplies services (other than services of a professional nature provided by a qualified architect or engineer) to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the person any particular purpose for which the services are required or the result that the consumer desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result.
- (3) Subsection (2) does not apply if the circumstances show:
 - (a) that the consumer does not rely, or
 - (b) that it is unreasonable for the consumer to rely, on the skill or judgment of the person.

Division 5 Actions against manufacturers and importers of goods

40T Interpretation (TPA s 74A)

- (1) In this Division:

express warranty, in relation to goods, means an undertaking, assertion or representation in relation to:

- (a) the quality, performance or characteristics of the goods, or
- (b) the provision of services that are or may at any time be required in respect of the goods, or
- (c) the supply of parts that are or may at any time be required for the goods, or
- (d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made form part,

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, the natural tendency of which is to induce persons to acquire the goods.

manufactured includes grown, extracted, produced, processed and assembled.

- (2) In this Division:

- (a) a reference to goods is a reference to goods of a kind ordinarily acquired for

personal, domestic or household use or consumption, and

- (b) a reference to a person who acquires goods from a consumer does not include a reference to a person who acquires goods for the purpose of re-supply, and
- (c) a reference to the quality of goods includes a reference to the state or condition of the goods, and
- (d) a reference to negotiations in relation to the acquisition of goods by a consumer is a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person in respect of which the consumer was induced to acquire the goods or which otherwise promoted the acquisition of the goods by the consumer.

(3) If a person:

(a) holds himself, herself or itself out to the public as the manufacturer of goods, or

(b) causes or permits:

(i) the name of the person, or

(ii) a name by which the person carries on business, or

(iii) a brand or mark of the person,

to be applied to goods supplied by the person, or

(c) causes or permits another person:

(i) in connection with the supply or possible supply of goods by that other person,
or

(ii) in connection with the promotion by that other person by any means of the supply or use of goods,

to hold out the person to the public as the manufacturer of the goods,

the person is, for the purposes of this Division, taken to have manufactured the goods.

(4) If:

(a) goods are imported into this State by a person who was not the manufacturer of the goods, and

(b) at the time of the importation the manufacturer of the goods does not have a place of business in this State,

the person is, for the purposes of this Division, taken to have manufactured the goods.

- (5) For the purposes of subsection (3) (b):
- (a) a name, brand or mark is taken to be applied to goods if it:
 - (i) is woven in, impressed on, worked into or annexed or affixed to the goods, or
 - (ii) is applied to a covering, label, reel or thing in or with which the goods are supplied, and
 - (b) if the name of a person, a name in which a person carries on business or a brand or mark of a person is applied to goods, it is to be presumed, unless the contrary is established, that the person caused or permitted the name, brand or mark to be applied to the goods.
- (6) The reference in subsection (5) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and the reference in that subsection to a label includes a reference to a band or ticket.
- (7) If goods are imported into this State on behalf of a person, the person is, for the purposes of this Division, taken to have imported the goods into this State.
- (8) For the purposes of this Division, goods are taken to be supplied to a consumer despite the fact that, at the time of the supply, they are affixed to land or premises.

40U Actions in respect of unsuitable goods (TPA s 74B)

- (1) If:
- (a) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply, and
 - (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer, and
 - (c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the supplier, either directly, or through the person from whom the consumer acquired the goods or a person by whom any negotiations in connection with the acquisition of the goods were conducted, and
 - (d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, and
 - (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose,

the supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

(2) Subsection (1) does not apply:

- (a) if the goods are not reasonably fit for the purpose referred to in that subsection by reason of:
 - (i) an act or default of any person (not being the supplier or an employee or agent of the supplier), or
 - (ii) a cause independent of human control, occurring after the goods have left the control of the supplier, or
- (b) if the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the supplier.

40V Actions in respect of false descriptions (TPA s 74C)

(1) If:

- (a) a person (**the supplier**), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply, and
- (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer by description, and
- (c) the goods do not correspond with the description, and
- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods do not correspond with the description,

the supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

(2) Subsection (1) does not apply if the goods do not correspond with the description referred to in that subsection by reason of:

- (a) an act or default of any person (not being the supplier or an employee or agent of the supplier), or

- (b) a cause independent of human control,

occurring after the goods have left the control of the supplier.

(3) A supplier is not liable to compensate a person for loss or damage suffered by the person by reason that goods do not correspond with a description unless the description was applied to the goods:

- (a) by or on behalf of the supplier, or
 - (b) with the consent of the supplier, whether express or implied.
- (4) If the goods referred to in subsection (1) are supplied to the consumer by reference to a sample as well as by description, it is not a defence to an action under this section that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.
- (5) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

40W Actions in respect of goods of unmerchantable quality (TPA s 74D)

(1) If:

- (a) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply, and
- (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer, and
- (c) the goods are not of merchantable quality, and
- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not of merchantable quality,

the supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

(2) Subsection (1) does not apply:

- (a) if the goods are not of merchantable quality by reason of:
 - (i) an act or default of any person (not being the supplier or an employee or agent of the supplier), or
 - (ii) a cause independent of human control, occurring after the goods have left the control of the supplier, or
- (b) as regards defects specifically drawn to the consumer's attention before the making of the contract for the supply of the goods to the consumer, or
- (c) if the consumer examines the goods before that contract is made, as regards defects that the examination ought to reveal.

- (3) For the purposes of this section, goods of any kind are of **merchantable quality** if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to:
- (a) any description applied to the goods by the supplier, and
 - (b) the price received by the supplier for the goods (if relevant), and
 - (c) all the other relevant circumstances.

40X Actions in respect of non-correspondence with samples etc (TPA s 74E)

(1) If:

- (a) a person (**the supplier**), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply, and
- (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer, and
- (c) the goods are supplied to the consumer by reference to a sample, and
- (d) the bulk of the goods does not correspond with the sample in quality or the goods have a defect, rendering them unmerchantable, that is not, or would not be, apparent on reasonable examination of the sample, and
- (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the bulk does not correspond with the sample in quality or by reason that the goods have that defect,

the supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the loss or damage by action against the supplier in a court of competent jurisdiction.

(2) Subsection (1) does not apply if:

- (a) the sample is not supplied by the supplier, or
- (b) the supply by sample is made without the express or implied concurrence of the supplier, or
- (c) the failure of the bulk of the goods to correspond with the sample in quality or the existence of the defect is due to:
 - (i) an act or default of any person (not being the supplier or an employee or agent of the supplier), or a cause independent of human control, occurring after the goods have left the control of the supplier, or

- (ii) other circumstances that were beyond the control of the supplier and that it could not reasonably be expected to have foreseen.

40Y Actions in respect of failure to provide facilities for repairs or parts (TPA s 74F)

(1) If:

- (a) a person (**the supplier**), in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the supplier to a consumer, or
- (b) a person (**the supplier**), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer,

and:

- (c) at a time (in this section referred to as the **relevant time**) after the acquisition of the goods by the consumer:
 - (i) the goods need to be repaired but facilities for their repair are not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer, or
 - (ii) a part is required for the goods but the part is not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer, and
- (d) the supplier acted unreasonably in failing to ensure that facilities for the repair of the goods were, or that the part was, reasonably available to the consumer or that other person at the relevant time, and
- (e) the consumer or that other person suffers loss or damage by reason of the failure of the supplier to ensure that facilities for the repair of the goods were, or that the part was, reasonably available to the consumer or that other person at the relevant time,

the supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

- (2) Subsection (1) does not apply if the supplier took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when the consumer acquired the goods that:
 - (a) the supplier did not promise that facilities for the repair of the goods, or that parts for the goods, would be available, or

(b) the supplier did not promise that facilities for the repair of the goods, or that parts for the goods, would be available after a specified period, being a period that expired before the relevant time.

(3) If the supplier took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when the consumer acquired the goods that the supplier did not promise that:

(a) facilities for the repair of the goods, being facilities of a kind specified in the notice, would be available, or

(b) parts for the goods, being parts of a kind specified in the notice, would be available, or

(c) facilities for the repair of the goods would be available at, or parts for the goods would be available from, a place or places specified in the notice,

the supplier is not liable to compensate the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer for loss or damage suffered by the consumer or that other person by reason of the failure of the supplier to ensure that facilities of the kind specified in the notice, or parts of the kind specified in the notice, were available, or that facilities for the repair of the goods were available at, or parts for the goods were available from, a place or places specified in the notice, as the case may be.

(4) In determining whether a supplier acted unreasonably in failing to ensure that facilities for the repair of goods were, or that a part was, reasonably available to a person at the relevant time, a court is to have regard to all the circumstances of the case, and in particular to the existence, at the relevant time, of circumstances that prevented those facilities or that part being so available, being circumstances beyond the control of the supplier.

40Z Actions in respect of non-compliance with express warranty (TPA s 74G)

(1) If:

(a) a person (***the supplier***), in trade or commerce:

(i) supplies goods (otherwise than by way of sale by auction) manufactured by the supplier to a consumer, or

(ii) supplies goods manufactured by the supplier to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer, and

(b) the supplier fails to comply with an express warranty given or made by the supplier in relation to the goods, and

- (c) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason of the failure,

the supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

- (2) For the purposes of any action instituted by a person against a supplier under this section, if:

- (a) an undertaking, assertion or representation was given or made in connection with the supply of goods or in connection with the promotion by any means of the supply or use of goods, and
- (b) the undertaking, assertion or representation would, if it had been given or made by the supplier or a person acting on the supplier's behalf, have constituted an express warranty in relation to the goods,

it is to be presumed that the undertaking, assertion or representation was given or made by the supplier or a person acting on the supplier's behalf unless the supplier proves that the supplier did not give or make, and did not cause or permit the giving or making of, the undertaking, assertion or representation.

40ZA Right to recover against manufacturer or importer (TPA s 74H)

If:

- (a) a person (**the seller**) is under a liability to another person (**the consumer**) in respect of loss or damage suffered by the consumer as a result of a breach of a condition or warranty implied by a provision of Division 4 in a contract for the supply of goods by the seller to the consumer, and
- (b) a third person (**the manufacturer**) is liable to compensate the consumer in respect of the same loss or damage by reason of a provision of this Division,

the manufacturer is liable to indemnify the seller in respect of the liability of the seller to the consumer and the seller may, in respect of the manufacturer's liability to indemnify the seller, institute an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the seller could have obtained if the liability of the manufacturer to indemnify the seller had arisen under a contract of indemnity made between the manufacturer and the seller.

40ZB Time for commencing actions (TPA s 74J)

- (1) This section does not apply to a cause of action to which Division 6 of Part 2 of the [Limitation Act 1969](#) applies.

- (2) An action under a provision of this Division may be commenced at any time within 3 years after the day on which the cause of action accrued.
- (3) For the purposes of this section, a cause of action is taken to have accrued:
- (a) in the case of an action other than an action under section 40ZA, on the day on which the consumer or a person who acquired the goods from, or derived title to the goods through or under, the consumer first became aware, or ought reasonably to have become aware:
- (i) in the case of an action under section 40U—that the goods were not reasonably fit for the purpose referred to in that section, or
 - (ii) in the case of an action under section 40V—that the goods did not correspond with the description referred to in that section, or
 - (iii) in the case of an action under section 40W—that the goods were not of merchantable quality, or
 - (iv) in the case of an action under section 40X—that the bulk of the goods did not correspond with the sample in quality or the goods had the defect referred to in that section, or
 - (v) in the case of an action under section 40Y—that the goods needed to be repaired or that the part was required for the goods, as the case may be, or
 - (vi) in the case of an action under section 40Z—of the failure of the supplier to comply with the express warranty referred to in that section, or
- (b) in the case of an action under section 40ZA, on:
- (i) the day, or the first day, as the case may be, on which the seller referred to in that section made a payment in respect of, or otherwise discharged in whole or in part, the liability of that seller to the consumer referred to in that section, or
 - (ii) the day on which a proceeding was instituted by that consumer against that seller in respect of that liability or, if more than one such proceeding was instituted, the day on which the first such proceeding was instituted,
- whichever was the earlier.
- (4) In an action under a provision of this Division, it is a defence if the defendant proves that the action was not commenced within 10 years after the time of the first supply to a consumer of the goods to which the action relates.

40ZC Application of Division not to be excluded or modified (TPA s 74K)

- (1) Any term of a contract (including a term that is not set out in the contract but is

incorporated in the contract by another term of the contract) that:

(a) purports to exclude, restrict or modify, or

(b) has the effect of excluding, restricting or modifying,

any liability of a person to compensate or indemnify another person that may arise under this Division, is void.

- (2) A term of a contract is not to be taken to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with that provision.

Part 5 Fair trading

41 Interpretation (TPA s 51A)

- (1) For the purposes of this Part, where a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.
- (2) The onus of establishing that a person had reasonable grounds for making a representation referred to in subsection (1) is on the person.
- (3) Subsection (1) shall not be taken to limit by implication the meaning of a reference in this Part to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

42 Misleading or deceptive conduct (TPA s 52)

- (1) A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) Nothing in this Part shall be taken as limiting by implication the generality of subsection (1).

43 Unconscionable conduct (TPA s 52A)

- (1) A supplier shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a consumer, engage in conduct that is, in all the circumstances, unconscionable.
- (2) Without limiting the matters to which the Supreme Court may have regard for the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services, the Court may have regard to:
- (a) the relative strengths of the bargaining positions of the supplier and the

consumer,

- (b) whether, as a result of conduct engaged in by the supplier, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier,
 - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services,
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer (or a person acting on behalf of the consumer) by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services, and
 - (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the supplier.
- (3) A supplier shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a consumer only because the supplier institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.
- (4) For the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services to a consumer:
- (a) the Supreme Court shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention, and
 - (b) the Court may have regard to conduct engaged in, or circumstances existing, before the commencement of this Act.
- (5) (Repealed)
- (6) A reference in this section to the supply or possible supply of goods includes a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

44 False representations (TPA s 53)

A person shall 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) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use,

- (b) falsely represent that services are of a particular standard, quality, value or grade,
- (c) falsely represent that goods are new,
- (d) falsely represent that a particular person has agreed to acquire goods or services,
- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have,
- (f) represent that the person has a sponsorship, approval or affiliation the person does not have,
- (g) make a false or misleading representation concerning the price of goods or services,
- (h) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods,
- (i) make a false or misleading representation concerning the place of origin of goods,
- (j) make a false or misleading representation concerning the need for any goods or services,
- (k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy,
- (l) make a false or misleading representation concerning a person's rights or obligations under a residential tenancy agreement (within the meaning of the [Residential Parks Act 1998](#)) under which the residential premises consist of a residential site in a residential park or a moveable dwelling on such a residential site (within the meaning of that Act), or
- (m) make a false or misleading representation concerning a person's rights or obligations under a village contract (within the meaning of the [Retirement Villages Act 1999](#)), or
- (n) make a false or misleading representation concerning a person's rights or obligations under an occupation agreement (within the meaning of the [Holiday Parks \(Long-term Casual Occupation\) Act 2002](#)) under which the residential premises consist of a site in a holiday park (within the meaning of that Act).

44A Country of origin representations

- (1) If:
 - (a) a person makes a representation as to the country of origin of goods, and
 - (b) the goods have been substantially transformed in that country, and
 - (c) 50% or more of the cost of producing or manufacturing the goods is attributable to production or manufacturing processes that occurred in that country, and

(d) the representation is not a representation referred to in subsection (2) or (3),
the person does not contravene section 42 or 44 (i) by reason only of making the representation.

(2) If:

- (a) a person makes a representation that goods are the produce of a particular country (whether the representation uses the words “product of”, “produce of” or any other grammatical variation of the word “produce”), and
- (b) the country was the country of origin of each significant ingredient or significant component of the goods, and
- (c) all, or virtually all, processes involved in the production or manufacture occurred in that country,

the person does not contravene section 42 or 44 (i) by reason only of making the representation.

(3) If:

- (a) a person makes a representation as to the country of origin of goods by means of a logo specified in the regulations made under subsection (4), and
- (b) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods, and
- (c) the prescribed percentage of the cost of producing or manufacturing the goods is attributable to production or manufacturing processes that occurred in that country,

the person does not contravene section 42 or 44 (i) by reason only of making the representation.

(4) The regulations may, in relation to a specified logo, prescribe a percentage in the range of 51% to 100% as the percentage applicable to the goods for the purposes of subsection (3) (c).

(5) For the purposes of this section, goods are **substantially transformed** in a country if they undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

(6) Without limiting subsection (5), the regulations may prescribe:

- (a) changes (whether in relation to particular classes of goods or otherwise) that are not fundamental changes for the purposes of that subsection, and

(b) examples (in relation to particular classes of goods or otherwise) of changes that are fundamental changes for the purposes of that subsection.

- (7) For the purposes of this section, the cost of producing or manufacturing goods is to be determined in accordance with the regulations.
- (8) If in any proceedings against a person for an offence under section 42 or 44 (i) the person seeks to rely on a provision of this section or the regulations made under this section, the onus is on the person to establish the matters set out in the provision on which the person seeks to rely.

45 False representations and other misleading or offensive conduct in relation to land (TPA s 53A)

- (1) A person shall not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:
- (a) represent that the person has a sponsorship, approval or affiliation the person does not have,
 - (b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land, or
 - (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.
- (2) A person shall not use physical force or undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.
- (3) Nothing in this section shall be taken as implying that other provisions of this Act do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

46 Misleading conduct in relation to employment (TPA s 53B)

A person shall 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 the availability, nature, terms or conditions of, or any other matter relating to, the employment.

47 Cash price to be stated in certain circumstances (TPA s 53C)

A person shall 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, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies the cash price for the goods or services.

48 Offering gifts and prizes (TPA s 54)

A person shall 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, offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

49 Certain misleading conduct in relation to goods (TPA s 55)

A person shall 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.

50 Certain misleading conduct in relation to services (TPA s 55A)

A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

51 Bait advertising (TPA s 56)

- (1) A person shall not, in trade or commerce, advertise goods or services for supply at a specified price if there are reasonable grounds, of which the person is aware, or ought reasonably to be aware, 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 the nature of the market in which the person carries on business and the nature of the advertisement.
- (2) A person who has, in trade or commerce, advertised goods or services for supply at a specified price shall offer the goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.
- (3) In a prosecution of a person under Part 6 in relation to a failure to offer goods or services to a person (in this subsection referred to as the **customer**) in accordance with subsection (2), it is a defence if it is established that:
 - (a) the defendant offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price, or
 - (b) the defendant offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a

reasonable quantity and at the price at which the first-mentioned goods or services were advertised,

and, in either case, where the offer was accepted by the customer, the defendant has so supplied, or procured another person to supply, goods or services.

51A Prohibition on mock auctions

- (1) A person must not promote or conduct or assist in the promotion or conduct of an auction:
 - (a) at which:
 - (i) goods are sold to a person at a price lower than the highest bid for the goods, or
 - (ii) part of the price for the sale of goods to a person is repaid or credited to the person or is stated to be so repaid or credited, or
 - (b) at which the right to bid for goods is restricted or is stated to be restricted to persons who have bought or agreed to buy other goods, or
 - (c) at which any goods or services are given away or offered as gifts.
- (2) Subsection (1) (a) does not apply if the lower price, repayment or credit is because of:
 - (a) a defect that the person conducting the auction became aware of after the highest bid was made, or
 - (b) damage sustained after the bid was made.
- (3) For the purposes of this section:
 - (a) any bid stated to have been made at an auction is, in the absence of evidence to the contrary, taken to have been made and to have been a bid of the amount stated, and
 - (b) a reference to the sale of goods to a person who has made a bid for them includes a reference to a purported sale of those goods to a person stated to have made a bid for them (whether or not that person exists), and
 - (c) anything done in or about the place where an auction is held, if done in connection with the auction, is taken to be done at the auction whether or not it is done at the time of the auction or before or after the auction.
- (4) In this section:

auction means any sale of goods at which some or all of the persons present compete for the purchase of goods, whether by way of increasing bids or by the offer of goods to be bid for at successively decreasing prices or otherwise.

stated in relation to an auction means stated by or on behalf of the person conducting the auction by way of an announcement made to the persons for the time being present at the auction.

52 Referral selling (TPA s 57)

A person shall not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving the person the names of prospective customers or otherwise assisting the person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

53 Accepting payment without intending or being able to supply as ordered (TPA s 58)

A person shall not, in trade or commerce, accept payment or other consideration for goods or services where, at the time of the acceptance:

- (a) the person intends:
 - (i) not to supply the goods or services, or
 - (ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted, or
- (b) there are reasonable grounds, of which the person is aware, or ought reasonably to be aware, for believing that the person will not be able to supply the goods or services within the period specified by the person or, if no period is specified, within a reasonable time.

54 Misleading statements about certain business activities (TPA s 59)

- (1) A person shall not, in trade or commerce, make a representation that is false or misleading in a material particular concerning the profitability or 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 any place of residence.
- (2) Where a person, in trade or commerce, invites, whether by advertisement or otherwise, other persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring the performance by the other persons of work, or the investment of money by the other persons and the performance by them of work associated with the investment, the inviter shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

55 Harassment and coercion (TPA s 60)

A person shall not use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

56 (Repealed)

57 Unsolicited credit and debit cards (TPA s 63A)

- (1) A person shall not send a prescribed card to another person except:
 - (a) in pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card, or
 - (b) in renewal or replacement of, or in substitution for:
 - (i) a prescribed card of the same kind previously sent to that other person in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card, or
 - (ii) a prescribed card of the same kind previously sent to that other person and used for a purpose for which it was intended to be used.
- (2) Subsection (1) applies only in relation to the sending of a prescribed card by or on behalf of the person who issued the card.
- (3) A person shall not take any action that enables another person who has a credit card or a debit card to use the card as a debit card or a credit card, as the case may be, except in accordance with a request in writing by the other person.
- (4) In this section:

article includes a token, card and document.

credit card means an article of a kind commonly known as a credit card or a similar article intended for use in obtaining cash, goods or services on credit, and includes an article of a kind commonly issued by persons carrying on business to customers or prospective customers of those persons for use in obtaining goods or services from those persons on credit.

debit card means an article intended for use by a person in obtaining access to an account held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services.

prescribed card means a credit card, a debit card or an article that may be used as a credit card and a debit card.

58 Assertion of right to payment for unsolicited goods or services, or for making entry in directory (TPA s 64)

- (1) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the person asserting the right has reasonable cause to believe that there is a right to payment.
- (2) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the person asserting the right has reasonable cause to believe that there is a right to payment.
- (3) A person shall not assert a right to payment from another person of a charge for the making in a directory of an entry relating to the other person, or to the profession, business, trade or occupation of the other person, unless the person asserting the right knows, or has reasonable cause to believe, that the other person has authorised the making of the entry.
- (4) A person is not liable to make any payment to another person, and is entitled to recover by action in a court of competent jurisdiction against another person any payment made by the person to the other person, in full or part satisfaction of a charge for the making of an entry in a directory unless the first-mentioned person has authorised the making of the entry.
- (5) For the purposes of this section, a person shall be taken to assert a right to payment from another person for unsolicited goods or unsolicited services, or of a charge for the making of an entry in a directory, if the first-mentioned person:
 - (a) makes a demand for the payment or asserts a present or prospective right to the payment,
 - (b) threatens to bring any legal proceedings with a view to obtaining the payment,
 - (c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment,
 - (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment, or
 - (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.
- (6) A person shall not be taken for the purposes of this section to have authorised the making of an entry in a directory unless:
 - (a) a document authorising the making of the entry has been signed by, or with the authority of, the person,

- (b) the document specifies:
 - (i) the name of the directory,
 - (ii) the name and address of the person publishing the directory,
 - (iii) particulars of the entry, and
 - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated, and
 - (c) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted.
- (7) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person shall be deemed to have been sent by that person unless the contrary is established.
- (8) In a proceeding against a person in respect of a contravention of this section:
- (a) in the case of a contravention constituted by asserting a right to payment from another person for unsolicited goods or unsolicited services—the burden lies on the defendant of proving that the defendant had reasonable cause to believe that there was a right to payment, or
 - (b) in the case of a contravention constituted by asserting a right to payment from another person of a charge for the making of an entry in a directory—the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the other person had authorised the making of the entry.
- (9) In this section:
- directory** includes any publication of a similar nature to a directory but does not include a newspaper published in good faith as a newspaper at regular intervals or a publication published, or to be published, by or under the authority of the Australian Telecommunications Commission.
- making**, in relation to an entry in a directory, means including, or arranging for the inclusion of, the entry.

59 Liability of recipient of unsolicited goods (TPA s 65)

- (1) A person to whom unsolicited goods are supplied by another person, in trade or commerce, is not liable to make any payment for the goods and is not liable for the loss of or damage to the goods other than loss or damage resulting from the doing of a wilful and unlawful act in relation to the goods during the period specified in subsection (4).
- (2) Subject to subsection (3), where a person sends, in trade or commerce, unsolicited

goods to another person:

- (a) neither the person who sent the goods nor any person claiming under that person is entitled after the expiration of the period specified in subsection (4) to take action for the recovery of the goods from the person to whom the goods were sent, and
- (b) upon the expiration of that period the goods become, by force of this section, the property of the person to whom the goods were sent freed and discharged from all liens and charges of any description.

(3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if:

- (a) the person has at any time during the period specified in subsection (4) unreasonably refused to permit the sender or the owner of the goods to take possession of the goods,
- (b) the sender or the owner of the goods has within that period taken possession of the goods, or
- (c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for the person.

(4) The period referred to in subsections (1), (2) and (3) is:

- (a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (5):
 - (i) the period of 1 month next following the day on which the notice is given, or
 - (ii) the period of 3 months next following the day on which the person received the goods,

whichever first expires, and

- (b) in any other case—the period of 3 months next following the day on which the person received the goods.

(5) A notice referred to in subsection (4) shall be in writing and shall:

- (a) state the name and address of the person who received the goods,
- (b) state the address at which possession may be taken of the goods if it is an address other than that of the person, and
- (c) contain a statement to the effect that the goods are unsolicited goods.

60 Application of certain provisions to prescribed information providers (TPA s 65A)

(1) Nothing in section 42, 44, 45, 49, 50 or 54 applies to a prescribed publication of matter by a prescribed information provider, other than:

(a) a publication of matter in connection with:

- (i) the supply or possible supply of goods or services,
- (ii) the sale or grant, or possible sale or grant, of interests in land,
- (iii) the promotion by any means of the supply or use of goods or services, or
- (iv) the promotion by any means of the sale or grant of interests in land,

where:

- (v) the goods or services were relevant goods or services, or the interests in land were relevant interests in land, as the case may be, in relation to the prescribed information provider, or
- (vi) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:
 - (A) a person who supplies goods or services of that kind, or who sells or grants interests in land, being interests of that kind, or
 - (B) a body corporate that is related to a body corporate that supplies goods or services of that kind, or that sells or grants interests in land, being interests of that kind, or

(b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:

- (a) in any case—the publication was made by the prescribed information provider in the course of carrying on a business of providing information, or
- (b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of **prescribed information provider** in subsection (3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section:

consortium has the same meaning as it has in Part IIIB of the *Broadcasting and Television Act 1942* of the Commonwealth.

prescribed information provider means a person who carries on a business of providing information and, without limiting the generality of the foregoing, includes:

- (a) a person to whom, or each of the members of a consortium to which, a licence has been granted under Part IIIB of the *Broadcasting and Television Act 1942* of the Commonwealth,
- (b) the Australian Broadcasting Corporation, and
- (c) the Special Broadcasting Service.

relevant goods or services, in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

relevant interests in land, in relation to a prescribed information provider, means interests in land, being interests of a kind sold or granted by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

Part 5A Trading stamp schemes and similar schemes

60A Definitions

- (1) In this Part:

stamp includes any coupon, voucher, token or similar device, but does not include money.

- (2) For the purposes of this Part, a **trading stamp scheme** is an arrangement by which:

- (a) a purchaser of goods or services (in this Part called the **primary goods or services**) is given one or more stamps as a consequence of the purchase, and
- (b) stamps obtained in that way are able to be traded:
 - (i) for additional goods or services (in this Part called the **secondary goods or services**) supplied by persons under the arrangement, or
 - (ii) for some discount, concession or advantage in connection with obtaining goods or services so supplied.

60B Unlawful trading stamp schemes

- (1) A trading stamp scheme is unlawful unless:

- (a) the supplier of the secondary goods or services is a person carrying on a genuine business of supplying those goods by retail, or of supplying those services, otherwise than under the scheme, or

(b) it is lawful according to subsection (2).

(2) A trading stamp scheme is lawful:

- (a) if, under the scheme, the supplier of the primary goods or services is the supplier of the secondary goods or services, or
- (b) if the stamps form part of, or are contained in, a newspaper or other periodical, or
- (c) if it is prescribed by the regulations as a lawful trading stamp scheme.

60C Other unlawful schemes

- (1) The regulations may declare a scheme of a kind described in the regulations to be an unlawful scheme.
- (2) A regulation is not to be made for the purposes of this section except on the recommendation of the Director-General, who must be satisfied that the scheme concerned:
 - (a) operates in a way similar to a trading stamp scheme, and
 - (b) is likely:
 - (i) to have an inflationary effect on retail prices, or
 - (ii) to promote unfair competition between a retailer who is a participant in the scheme and one who is not, or
 - (iii) to be prejudicial, in any other respect, to fair trading or to the public interest.
- (3) A declaration, in a regulation made for the purposes of this section, that it was made on the recommendation of the Director-General is prima facie evidence that the recommendation was duly made.
- (4) A scheme may be declared to be an unlawful scheme even though, while operating in a way similar to a trading stamp scheme, it employs some electronic means or other technique in addition to, or instead of, the issue of stamps.
- (5) Except to the extent to which the scheme is rendered lawful by or under section 60B (2), a scheme declared by the regulations to be an unlawful scheme is to be regarded, for the purposes of this Part, as an unlawful trading stamp scheme.

60D Offences

A person must not:

- (a) act as a promoter of an unlawful trading stamp scheme, or
- (b) deliver or offer to deliver to another person any stamps or equipment intended for use

in an unlawful trading stamp scheme, or

- (c) supply any goods or services in exchange for stamps or credits, or partly in exchange for stamps or credits, in accordance with an unlawful trading stamp scheme, or
- (d) publish an advertisement, or cause an advertisement to be published, which is intended or apparently intended:
 - (i) to induce persons to obtain, give out or trade stamps or credits in accordance with an unlawful trading stamp scheme, or
 - (ii) otherwise to further the promotion or operation of such a scheme.

Part 5B Lay-by sales

60E Meaning of “lay-by”

- (1) A lay-by is the supply of goods on terms (express or implied) which provide that:
 - (a) the goods will not be delivered to the consumer until the whole of the price has been paid, and
 - (b) the price is required or allowed to be paid by 3 or more instalments (for this purpose a deposit is considered to be an instalment).
- (2) The fact that the purchase price is allowed to be paid by less than 3 instalments does not prevent there being a lay-by, so long as payment by 3 or more instalments is allowed also.
- (3) A supply of goods which would be a lay-by except for the fact that the price is required to be paid by less than 3 instalments is taken to be a lay-by if the supplier has described, represented or advertised it as being a lay-by.
- (4) The goods need not be in existence or in the supplier’s possession when a lay-by is entered into.

60F Consumer must be given written statement of lay-by terms

- (1) The consumer under a lay-by must be given a written statement (a **lay-by statement**) containing the terms or a summary of the terms of the lay-by.
- (2) The statement must be given to the consumer when the lay-by is entered into and must be clearly legible, readily understandable and written in the English language. The statement may be written in another language if that language is understood by the consumer.
- (3) The following are examples of some of the matters that the terms of a lay-by would provide for and which would appear in the lay-by statement:

- the purchase price of the goods
- any deposit paid and balance outstanding
- the dates on which instalments are due
- any cancellation charge payable
- the date by which the final instalment must be paid.

60G Consumer can cancel lay-by

- (1) The consumer can cancel a lay-by by notifying the supplier in writing that the consumer wants to cancel, but this can only be done before the goods are delivered.
- (2) The supplier can accept the cancellation of a lay-by even if cancellation is not notified in writing.
- (3) Section 60I provides for refunds, cancellation charges and other matters when a lay-by is cancelled.

60H Supplier can cancel if consumer breaches lay-by term

- (1) The supplier can cancel a lay-by if the consumer breaches a term of the lay-by (for example, by being late with a payment).
- (2) However, the supplier must first give the consumer notice that the lay-by will be cancelled if the consumer does not rectify the breach within a specified period (in the example, by making the payment). The period specified must not be less than 7 days.
- (3) The notice to the consumer must be in writing unless the consumer accepts notice given in some other way (such as by telephone), but it must not be a term of the lay-by that the consumer agrees to accept notice given other than in writing.
- (4) The lay-by is cancelled at the end of the period specified in the notice unless the consumer rectifies the breach before then or the supplier agrees not to cancel.
- (5) Section 60I provides for refunds, cancellation charges and other matters when a lay-by is cancelled.

60I What happens when a lay-by is cancelled

- (1) When a lay-by is cancelled (whether by the supplier or the consumer):
 - (a) the supplier must refund to the consumer all money paid by the consumer under the lay-by (except any amount that the supplier is allowed to keep under paragraph (b)), and
 - (b) the supplier is allowed to keep the **cancellation charge** (the amount specified in the lay-by statement as the amount the consumer must pay if the consumer

cancels or the lay-by is cancelled because the consumer fails to make a payment), and

(c) the supplier is entitled to recover any unpaid cancellation charge from the consumer as a debt if the amounts paid by the consumer under the lay-by are not enough to cover the cancellation charge.

(2) However, the supplier cannot keep or recover any cancellation charge (or any other money) if:

(a) the supplier has breached any term of the lay-by, or

(b) the goods were not available for delivery to the consumer when the terms of the lay-by indicated they would be available, or

(c) the lay-by statement given to the consumer does not comply with section 60F, is misleading or deceptive or contains a material false representation as to the terms of the lay-by.

(3) A lay-by statement can provide that the cancellation charge is to be an amount calculated in a particular way (rather than by providing that it is to be a particular amount).

60J Supplier's only remedies are those provided by this Part

(1) If a term of a lay-by is breached by the consumer or the lay-by is cancelled, the supplier is not entitled to damages or to enforce any other remedy in respect of the breach or cancellation except the remedies specifically provided by this Part.

(2) In particular, the supplier is not entitled to keep or recover any money from the consumer except as specifically provided by this Part.

60K Supplier cannot demand early payment

If it is a term of a lay-by that payment in full must be made by a fixed or ascertainable date, the supplier is not entitled to demand payment before that date.

60L Cancellation charge cannot exceed a reasonable amount

(1) The cancellation charge that a supplier is allowed to keep or recover under this Part is not to exceed the sum of the following amounts:

(a) an amount sufficient to recoup the supplier for reasonable selling costs (including storage costs and administrative expenses) in respect of the lay-by,

(b) an amount that equates to any loss of value of the goods (whether due to deterioration or otherwise) between when the lay-by was entered into and when the lay-by was cancelled.

- (2) The supplier has the onus of establishing any loss of value of the goods and his or her reasonable selling costs.
- (3) The supplier must also establish that any loss of value could not have been avoided by the exercise of reasonable diligence on the supplier's part, otherwise the loss of value is to be disregarded.

60M Contracting out etc prohibited

- (1) A term of a lay-by is void to the extent that it would operate to exclude, modify or restrict the operation of this Part.
- (2) A supplier must not enter into a lay-by if a term of the lay-by would (but for subsection (1)) operate to exclude, modify or restrict the operation of this Part.

Maximum penalty: 50 penalty units.

60N Other rights of consumer not affected

This Part does not affect any rights that a consumer may have otherwise than under this Part, such as the right to sue for damages for breach of a term of the lay-by.

60O Other laws not affected

- (1) This Part does not affect the operation of any other Act or law (for example, the [Sale of Goods Act 1923](#)) with respect to a lay-by, to the extent that does not exclude, modify or restrict the operation of this Part.
- (2) The terms of a lay-by are not limited by this Part and include any terms implied by any other Act or law, to the extent that does not exclude, modify or restrict the operation of this Part.

Part 5C Employment placement services

60P Interpretation

- (1) In this Part, **employment placement service** means a service provided by a person as an agent for the purpose of:
 - (a) finding or assisting to find a person to carry out work for a person seeking to have work carried out, or
 - (b) finding or assisting to find employment for a person seeking to be employed,whether or not the employment or work is to be undertaken or carried out pursuant to a contract of employment.
- (2) However, **employment placement service** does not include the publication of an advertisement for a person who is seeking to have work carried out or to be employed

if that publication is the only service of a kind referred to in subsection (1) (a) or (b) that is provided to the person by the person arranging the publication.

(3) This Part does not apply to or in respect of:

(a) a model or modelling agency, or

(b) a licensee under the *Entertainment Industry Act 1989*, or

(c) a person or class of persons exempted (conditionally or unconditionally) from this Part by the regulations.

60Q Certain fees and charges prohibited in connection with employment placement services

(1) A person must not demand or receive any fee, charge or other remuneration from a person seeking employment for the provision of employment placement services to the person in relation to the seeking of employment.

Maximum penalty: 50 penalty units.

(2) It is immaterial whether the employment is to be carried out or undertaken pursuant to a contract of employment.

(3) If any fee, charge or other remuneration is received in contravention of this section, the amount concerned may be recovered from the person to whom it was paid in a court of competent jurisdiction as a debt due to the person who paid the amount.

60R Information standards

(1) The regulations may prescribe an information standard for employment placement services.

(2) A prescribed information standard may contain either or both of the following:

(a) requirements for information relating to employment placement services to be communicated to a person to whom the services are to be supplied,

(b) requirements with respect to the type and form of information to be so communicated and the manner of communication.

(3) A person who provides employment placement services must comply with the requirements of any information standard prescribed in accordance with this section.

Part 5D Pyramid selling

60S Definitions

In this Part:

new participant, in a pyramid selling scheme, includes a person who has applied, or been invited, to participate in the scheme.

participant in a pyramid selling scheme means a person who participates in the scheme.

participate in a pyramid selling scheme means:

- (a) establish or promote the scheme (whether alone or together with another person), or
- (b) 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 otherwise takes part in the scheme).

payment, to a person or received by a person, means:

- (a) the provision of a financial or non-financial benefit to or for the benefit of the person, or
- (b) the provision of a financial or non-financial benefit partly to or for the benefit of the person, and partly to or for the benefit of someone else.

pyramid selling scheme—see section 60T.

60T Meaning of “pyramid selling scheme”

- (1) For the purposes of this Part, a **pyramid selling scheme** is a scheme that has both of the following characteristics:
 - (a) to take part in the scheme, some or all new participants must make a payment (a **participation payment**) to another participant or participants in the scheme,
 - (b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled to a payment (a **recruitment payment**) in relation to the introduction to the scheme of further new participants.
- (2) A scheme may be a pyramid selling scheme:
 - (a) no matter who holds out to new participants the prospect of entitlement to recruitment payments, and
 - (b) no matter who is to make recruitment payments to new participants, and
 - (c) no matter who is to make introductions to the scheme of further new participants.
- (3) A scheme may be a pyramid selling scheme even if it has any or all of the following characteristics:
 - (a) the participation payments may (or must) be made after the new participants begin to take part in the scheme,

- (b) making a participation payment is not the only requirement for taking part in the scheme,
 - (c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right,
 - (d) arrangements for the scheme are not recorded in writing (whether entirely or partly),
 - (e) the scheme involves the marketing of goods or services (or both).
- (4) In deciding whether a scheme that involves the marketing of goods or services (or both) is a pyramid selling scheme, a court may have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:
- (a) the extent to which the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere),
 - (b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods and services by comparison with the emphasis given to their entitlement to recruitment payments.
- (5) Subsection (4) does not limit the matters to which the court may have regard in deciding whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

60U Prohibition on participating in pyramid selling scheme

- (1) A person must not participate in a pyramid selling scheme.
- (2) A person must not induce, or attempt to induce, a person to participate in a pyramid selling scheme.

Part 6 Enforcement and remedies

61 Interpretation (TPA s 75B)

A reference in this Part to a person involved in a contravention of a provision of this Act shall be read as a reference to a person who:

- (a) has aided, abetted, counselled or procured the contravention,
- (b) has induced, whether by threats or promises or otherwise, the contravention,
- (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.

62 Offences against this Act (TPA s 79)

(1) A person who:

(a) contravenes,

(b) aids, abets, counsels or procures a person to contravene,

(c) induces, or attempts to induce, a person whether by threats or promises or otherwise, to contravene,

(d) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of, or

(e) conspires with others to contravene,

a provision of this Act other than section 42 or 43 is guilty of an offence against this Act.

(2) A person guilty of an offence against this Act for which a penalty is not otherwise provided is liable:

(a) in the case of a person other than a body corporate—to a penalty not exceeding 200 penalty units, or

(b) in the case of a body corporate—to a penalty not exceeding 1,000 penalty units.

(2A) A person who is convicted of a second or subsequent offence against Part 5 is, in addition to, or as an alternative to, any monetary penalty that may be imposed in relation to the offence, liable to imprisonment for a term not exceeding 3 years. However, the maximum term of imprisonment that a Local Court may impose for any such second or subsequent offence is 2 years.

(3) If an act or omission is both an offence against this Act and an offence under a law of the Commonwealth or a law in force elsewhere in Australia, a person convicted of an offence under that law is not liable to be convicted of the offence against this Act.

(4) Where a person is convicted of 2 or more offences constituted by, or relating to, contraventions of the same provision of this Act, being contraventions that appear to the sentencing court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time (whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time), the court shall not, in respect of the first-mentioned offences, impose on the person fines that, in the aggregate, exceed the maximum fine

that would be applicable in respect of one offence by the person against that provision.

(5) Where:

- (a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of this Act, and
- (b) a fine has, or fines have, previously been imposed on the person by the sentencing court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision, being a contravention that, or contraventions each of which, appears to the court to have been of the same nature as, or of a substantially similar nature to, and to have occurred at or about the same time as, the first-mentioned contravention (whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time),

the court shall not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence under subsection (1) is greater than the amount of the fine, or the sum of the amounts of the fines, first referred to in paragraph (b).

- (6) In proceedings in the Supreme Court in its summary jurisdiction against a person for contravening, or being involved in a contravention of, a provision of Part 3, 4, 5, 5A, 5B, 5C, 5D or 8, the Court may:
 - (a) grant an injunction under section 65 against the person in relation to:
 - (i) the conduct that constitutes, or is alleged to constitute, the contravention, or
 - (ii) other conduct of that kind, or
 - (b) make an order under section 67 in relation to the contravention.
- (7) Where a person is, by any conviction or order of a Local Court, adjudged to pay a fine, penalty, sum of money or costs in respect of an offence against this Act, the Court by which the conviction or order was effected or made may, on the application of the Minister or the Director-General, 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.
- (8) Where an order is made under subsection (7):
 - (a) the order has effect according to its tenor, and
 - (b) the conviction or order ceases to be enforceable by imprisonment.

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

63 Disposal of proceedings for offences

- (1) Proceedings for an offence against this Act may be taken and prosecuted only by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General.
- (2) Proceedings for an offence against this Act (other than a breach of the regulations) shall be disposed of summarily before:
- (a) a Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (3) Proceedings for a breach of the regulations shall be disposed of summarily before a Local Court.
- (4) In proceedings for an offence against this Act, an authority to prosecute purporting to have been signed by the Director-General is evidence of that authority without proof of the signature of the Director-General.
- (5) Notwithstanding any other provision of this Act, the maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 100 penalty units or the maximum monetary penalty provided by this Act for the offence, whichever is the lesser.
- (6) Proceedings for an offence against this Act may be commenced within 3 years after the alleged commission of the offence.

63A Compensation orders by Local Court on conviction of person

- (1) If:
- (a) a person is convicted by a Local Court of an offence against this Act or the regulations, and
 - (b) the Court is satisfied that another person has sustained loss or damage as a result of the conduct of the convicted person,
- the Court may, in addition to any penalty it may impose in respect of the offence, order the convicted person to compensate the other person for the loss or damage.
- (2) The compensation that a Local Court may order to be paid under this section is not to exceed the jurisdictional limit of a Local Court when sitting in its General Division within the meaning of the *Local Courts Act 1982*.

(3) In this section:

- (a) a reference to the conviction of a person includes a reference to the making of an order in respect of a person under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, and
- (b) a reference to loss or damage does not, if the loss or damage arises from a contravention of Part 5 (section 43 excepted), include a reference to:
 - (i) the death of a person, or
 - (ii) personal injury to a person (including any pre-natal injury, any impairment of the person's physical or mental condition and any disease).

64 Penalty notices for certain offences

(1) In this section:

authorised officer means:

- (a) the Director-General,
 - (b) an investigator, or
 - (c) a person appointed in writing by the Director-General as an authorised officer for the purposes of this section.
- (2) Where it appears to an authorised officer that any person has committed an offence prescribed for the purposes of this section, the authorised officer may serve a notice on the apparent offender to the effect that if it is not desired to have the matter determined by a court, the person served may pay to the Director-General within the time specified in the notice the amount of the penalty prescribed for the offence if dealt with under this section.
- (3) A notice under subsection (2) may be served personally or by post.
- (4), (5) (Repealed)
- (6) Where the amount of any penalty prescribed for an alleged offence is paid pursuant to this section, no person is liable to any further proceedings for the alleged offence.
- (7) Payment of the amount of a penalty pursuant to this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (8) The regulations may prescribe an offence for the purposes of this section by setting out the offence or by a reference to the provision of this Act or the regulations creating the offence.

- (9) An amount of penalty prescribed under this section for any offence shall not exceed any maximum amount of penalty which could be imposed for the offence by a court.
- (10) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.

64A Suspension of licences

- (1) In this section, **licence** means any licence, permit or other authority granted or issued (whether before or after the commencement of this section) under any legislation administered by the Minister, and **licensee** means the holder of the licence, permit or authority.
- (2) If the Director-General is of the opinion that there are reasonable grounds to believe that:
 - (a) a licensee has engaged in conduct that, under legislation administered by the Minister, constitutes grounds for suspension or cancellation of the licence, and
 - (b) it is likely that the licensee will continue to engage in that conduct, and
 - (c) there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of that conduct unless action is taken urgently,

the Director-General may, by notice served on the licensee, suspend the licence for a period of not more than 60 days specified in the notice, commencing on service of the notice.

- (3) A notice under subsection (2) has effect according to its terms, whether or not the licensee has been afforded an opportunity to be heard as to whether the licence should be suspended.
- (4) Within 7 days after a licence has been suspended under this section, the licensee must:
 - (a) lodge the suspended licence at an office of the Department, or
 - (b) if unable to lodge the suspended licence, lodge at an office of the Department a statement signed by the licensee and providing accurate and complete details of why the licence cannot be lodged.

Maximum penalty: 10 penalty units.

- (5) If, during the suspension of a licence under this section, the Director-General is satisfied that the facts and circumstances that gave rise to the suspension have so

altered that the suspension should be terminated, it is the duty of the Director-General, by further notice specifying the date of termination, to terminate the suspension without delay and restore the licence to the licensee.

- (6) Without affecting the generality of subsection (2):
 - (a) a second or subsequent notice may be served on a licensee under that subsection in respect of conduct of the kind to which that subsection refers, and
 - (b) any such notice may be served during a period of suspension of the licence concerned.
- (7) This section has effect despite the provisions of any other Act, and the power conferred by this section is in addition to, and does not limit or displace, a power conferred by or under any other Act that authorises the Director-General or any other person to suspend or cancel a licence or take other action in respect of a licence or in respect of the conduct concerned.
- (8) A licensee may apply to the Administrative Decisions Tribunal for a review of a decision of the Director-General under this section.

65 Injunctions (TPA s 80)

- (1) Where, on the application of the Minister, the Director-General or any other person, the Supreme 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 Part 3, 4, 5, 5A, 5B, 5C, 5D or 8,
 - (b) attempting to contravene such a provision,
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision,
 - (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene such a provision,
 - (e) being in a 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,the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Without prejudice to the generality of subsection (1), an injunction granted under that subsection may be, or include, an injunction restraining a person from carrying on a business of supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business):

- (a) for a specified period, or
 - (b) except on specified terms and conditions.
- (3) Where an application for an injunction under subsection (1) has been made, the Supreme Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind specified in subsection (1).
- (4) Where in the opinion of the Supreme Court it is desirable to do so, the Court may grant an injunction pending determination of an application under subsection (1).
- (5) The Supreme Court may rescind or vary an injunction granted under subsection (1), (3) or (4).
- (6) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind,
 - (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 person if the first-mentioned person engages in conduct of that kind.
- (7) The power of the Supreme Court to grant an injunction 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,
 - (b) whether or not the person has previously refused or failed to do that act or thing, and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (8) Where the Minister or the Director-General makes an application to the Supreme Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages or costs.
- (9) If:
- (a) in a case to which subsection (8) does not apply, the Court would, but for this subsection, require a person to give an undertaking as to damages or costs, and

(b) the Minister gives the undertaking,

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person.

(10) If the Court grants an injunction in relation to goods the supply of which would constitute an offence under Part 3, the Court may make such order as it thinks fit with respect to disposal of the goods.

66 Other injunctions

(1) If, on the application of the Director-General with the consent of the Minister, the Supreme Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes, or would constitute:

(a) a contravention of:

(i) a provision of this Act other than a provision of Part 3, 4, 5, 5A, 5B, 5C, 5D or 8,
or

(ia) a provision of the *Fitness Services (Pre-paid Fees) Act 2000*, or

(ii) a provision of any other legislation administered by the Minister or of an order made under any such legislation,

(iii), (iv) (Repealed)

(b) attempting to contravene such a provision,

(c) aiding, abetting, counselling or procuring a person to contravene such a provision,

(d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene such a provision,

(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,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) An injunction under subsection (1) may be granted as an interim injunction without an undertaking being required as to damages or costs or may be granted as a permanent injunction.

66A Show cause action may be taken by Director-General

(1) In this section:

unlawful conduct means any conduct that constitutes a contravention of a provision of this Act (or would constitute such a contravention if the conduct occurred in New South Wales), whether or not any proceedings have been brought in respect of the contravention.

- (2) If the Director-General is satisfied that a person has, in trade or commerce, engaged in any unlawful conduct on more than one occasion (whether in New South Wales or in any other place), the Director-General may, by notice in writing served on the person, call on the person to show cause why the person should not, for the reason specified in the notice, be prevented from carrying on a business of supplying goods or services.
- (3) The notice must specify the period (being at least 14 days after the notice is served) in which the person may show cause.
- (4) The person on whom a notice to show cause has been served under this section may, within the period specified in the notice, make a written submission in relation to the matters to which the notice relates.
- (5) The Director-General:
 - (a) is to consider any such submission, and
 - (b) may conduct such inquiries, or make such investigations, in relation to the matters to which the notice relates as the Director-General thinks appropriate.
- (6) This section does not limit the operation of section 65 or 66.

66B Trading prohibition orders

- (1) The Director-General may, after issuing a notice under section 66A to a person and taking into consideration any submissions made in relation to the matter, apply to the Supreme Court for an order under this section in respect of the person if the Director-General is of the opinion that the person is likely to engage again, or to continue to engage, in any unlawful conduct within the meaning of section 66A.
- (2) The Supreme Court may, on application by the Director-General under subsection (1), make an order prohibiting the person who is the subject of the application (**the relevant person**) from carrying on a business of supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business) for an indefinite period or for a period specified in the order.
- (3) In making any such order, the Supreme Court may, if the Court is satisfied that a person has sustained loss or damage as a result of the unlawful conduct of the relevant person, order the relevant person to compensate the other person for the loss or damage.

- (4) A reference in subsection (3) to loss or damage does not, if the loss or damage arises from a contravention of Part 5 (section 43 excepted), include a reference to:
- (a) the death of a person, or
 - (b) personal injury to a person (including any pre-natal injury, any impairment of the person's physical or mental condition and any disease).
- (5) This section does not limit the operation of section 65 or 66.

67 Order to disclose information or publish advertisement (TPA s 80A)

Without limiting the generality of section 65, where, on the application of the Minister or the Director-General, the Supreme Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Part 3, 4, 5 (section 43 excepted), 5A, 5B, 5C, 5D or 8 the Court may make either or both of the following orders:

- (a) an order requiring that person or a person involved in the contravention to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that last-mentioned person has access,
- (b) an order requiring the person or a person involved in the contravention to publish, at the person's own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order.

68 Actions for damages (TPA s 82)

- (1) A person who suffers loss or damage by conduct of another person that is in contravention of a provision of Part 3, 4, 5 (section 43 excepted), 5A, 5B, 5C or 5D may recover the amount of the loss or damage by action against the other person or against any person involved in the contravention.
- (1A) A reference to loss or damage in subsection (1) does not, if the loss or damage arises from a contravention of Part 5 (section 43 excepted), include a reference to:
- (a) the death of a person, or
 - (b) personal injury to a person (including any pre-natal injury, any impairment of the person's physical or mental condition and any disease).
- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.
- (2A) Subsection (2) does not apply to a cause of action to which Division 6 of Part 2 of the

Limitation Act 1969 applies.

- (3) If the matter of such loss or damage arises in connection with a matter the subject of proceedings in the Tribunal, the Tribunal may proceed to decide it, and in so doing may award such sum, and make such ancillary orders, as it thinks fit.

68A Remedy for supply of goods in contravention of certain provisions

(1) If:

- (a) goods are supplied to a person in contravention of section 27, or
- (b) goods are supplied to a person and the supply of the goods is an offence under section 32 (whether or not there has been a conviction for the offence),

the person may recover from the supplier as a debt any money paid for the goods.

(2) If judgment is given for the plaintiff in an action under subsection (1), the judgment debt may, if the court so directs, be satisfied by repair or modification of the goods in such a manner that:

- (a) the contravention relied on by the plaintiff would not have occurred if the goods had been supplied as repaired or modified, or
- (b) the repaired or modified goods are accepted by the plaintiff on or before a day specified in the direction.

69 Finding in proceedings to be evidence (TPA s 83)

In any proceedings under section 68 or 68A or in an application under section 66B or 72 (2) for an order against a person, a finding of any fact by a court made in proceedings under section 65, 66 or 67, or for an offence against this Act, in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of Part 3, 4, 5, 5B, 5C or 5D is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

70 Conduct by directors, servants or agents (TPA s 84)

- (1) If, in a proceeding under this Part in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority, or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant 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, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) If, in a proceeding under this Part in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate:

(a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent, or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

71 Defences (TPA s 85)

(1) Subject to subsection (3), in a prosecution under this Part in relation to a contravention of a provision of Part 3, 4, 5, 5A, 5B, 5C, 5D or 8 it is a defence if the defendant establishes:

(a) that the contravention in respect of which the proceedings were instituted was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person, or

(b) (Repealed)

(c) that:

(i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control, and

(ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) In subsection (1), **another person** does not include a person who was:

(a) a servant or agent of the defendant, or

(b) in the case of a defendant being a body corporate, a director, servant or agent of the defendant,

at the time when the contravention occurred.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.

(4) In a proceeding under this Part in relation to a contravention of a provision of this Act committed by the publication of an advertisement, it is a defence if it is established that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the defendant received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Act.

72 Other orders (TPA s 87)

(1A) A reference in this section to loss or damage does not, if the loss or damage arises from a contravention of Part 5 (section 43 excepted), include a reference to:

(a) the death of a person, or

(b) personal injury to a person (including any pre-natal injury, any impairment of the person's physical or mental condition and any disease).

(1) Without limiting the generality of section 65, if, in a proceeding instituted under this Part, or for an offence against Part 3, 4, 5, 5B, 5C, 5D or 8, the Supreme Court finds that a person has sustained, or is likely to sustain, loss or damage by conduct of another person that contravened a provision of Part 3, 4, 5, 5B, 5C, 5D or 8, the Court may, whether or not it grants an injunction under section 65 or makes an order under section 67 or 68, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders specified in subsection (5)) if the Court considers that the order or orders concerned will compensate the first-mentioned person wholly

or in part for the loss or damage or will prevent or reduce the loss or damage.

- (2) Without limiting the generality of section 65, the Supreme Court may, on the application of a person who has sustained, or is likely to sustain, loss or damage by conduct of another person that contravened a provision of Part 3, 4, 5, 5B, 5C, 5D or 8 or on the application of the Director-General in accordance with subsection (4) on behalf of such a person or 2 or more such persons, 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 (including all or any of the orders specified in subsection (5)) if the Court considers that the order or orders concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, wholly or in part for the loss or damage or will prevent or reduce the loss or damage.
- (3) An application may be made under subsection (2) in relation to a contravention of Part 3, 4, 5, 5B, 5C, 5D or 8 even if a proceeding has not been instituted under another provision of this Part in relation to the contravention.
- (4) Where, in a proceeding instituted for an offence against Part 3, 4, 5, 5B, 5C, 5D or 8 or instituted by the Minister or the Director-General under section 65, a person is found to have engaged in conduct in contravention of a provision of Part 3, 4, 5, 5B, 5C, 5D or 8, the Director-General may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but the Director-General shall not make such an application except with the consent in writing given before the application is made by the person, or by each of the persons, on whose behalf the application is made.
- (5) The orders referred to in subsections (1) and (2) are:
 - (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 Supreme Court thinks fit, to have been void from its beginning or at all times on and after such date before the date on which the order is made as is specified in the order,
 - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date before the date on which the order is made as is so specified,
 - (c) an order refusing to enforce any or all of the provisions of such a contract or arrangement,
 - (d) an order directing the person who engaged in the conduct or a person who was

involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage,

- (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage,
- (f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage,
- (g) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage, and
- (h) an order, in relation to an instrument creating or transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that:
 - (i) varies, or has the effect of varying, the first-mentioned instrument, or
 - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.

(6) An application under subsection (2) may be made at any time within 6 years after the date on which the cause of action that relates to the conduct accrued.

(6A) Subsection (6) does not apply to a cause of action to which Division 6 of Part 2 of the [Limitation Act 1969](#) applies.

(7) For the purpose of determining whether to make an order under this section in relation to a contravention of section 43, the Court may have regard to the conduct of the parties to the proceedings since the contravention occurred.

(8) The powers conferred on the Supreme 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.

73 Power of Supreme Court to prohibit payment or transfer of money or other property (TPA s 87A)

(1) Where:

- (a) proceedings have been commenced in the Supreme Court against a person for an

offence against this Act, or

- (b) an application has been made under section 65 or 66 for an injunction against a person in relation to a contravention of a provision of this Act, or
- (b1) an application for an order under section 66B has been made in relation to a person, or
- (c) an action has been commenced under section 68 (1) against a person in relation to a contravention of a provision of this Act, or
- (d) an application for an order under section 72 (2) or (4) has been or may be made against a person in relation to a contravention of a provision of this Act,

the Court may, on the application of the Minister or the Director-General, make an order or orders specified in subsection (2) if the Court is satisfied that:

- (e) it is necessary or desirable to do so for the purpose of preserving money or other property held by or on behalf of a person referred to in paragraph (a), (b), (b1), (c) or (d), as the case may be (in this section referred to as the **relevant person**), if the relevant person is liable or may become liable under this Act to pay money by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or return other property, and
- (f) it will not unduly prejudice the rights and interests of any other person.

(2) The orders referred to in subsection (1) are:

- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed,
- (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or on behalf of an associate of the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property is held,
- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the relevant person or of an associate of the relevant person to a place outside the State,
- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the relevant person or of an associate of the relevant person to a place outside the State, and

- (e) an order appointing, where the relevant person is a natural person, a receiver or trustee of the property or of part of the property of the relevant person with such powers as are specified in the order.
- (3) Subject to subsection (4), an order under this section may be expressed to operate:
 - (a) for a period specified in the order, or
 - (b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.
- (4) An order under this section made in the absence of the person against whom the order is sought shall not be expressed to operate for a period exceeding 30 days.
- (5) A person who contravenes or fails to comply with an order by the Supreme Court under this section that is applicable to the person is guilty of an offence punishable on conviction:
 - (a) in the case of a person other than a body corporate—by a fine not exceeding 200 penalty units, or
 - (b) in the case of a body corporate—by a fine not exceeding 1,000 penalty units.
- (6) Nothing in this section affects the powers that the Court has apart from this section.
- (7) A reference in this section to a person who is an associate of a relevant person is a reference to:
 - (a) a person holding money or other property on behalf of the relevant person, or
 - (b) if the relevant person is a body corporate—a wholly owned subsidiary of the relevant person.

73A Enforcement of undertakings (TPA ss 87B and 87C)

- (1) The Director-General 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 Director-General has a function under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Director-General. The consent of the Director-General is required even if the undertaking purports to authorise a withdrawal or variation of the undertaking without that consent.
- (3) If the Director-General considers that the person who gave the undertaking has breached any of its terms, the Director-General may apply to the Supreme Court for an order under subsection (4).
- (4) If the Supreme Court is satisfied that the person has breached a term of the

undertaking, the Court may make all or any of the following orders:

- (a) an order directing the person to comply with that term of the undertaking,
- (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
- (d) any other order that the Court considers appropriate.

Part 7

74-79A (Repealed)

Part 8 General

Division 1 Evidence

80 Evidence as to publication

(1) In any proceedings under this Act:

- (a) where a published statement is intended, or apparently intended, to promote the supply or use of any goods or services, or the sale or grant of an interest in land, and
- (b) a name, business name, address, telephone number, post office box number or newspaper office reply number specified in the statement is that of a person, or the agent of a person, who:
 - (i) is the owner, whether alone or jointly with another person or other persons, of the goods or interest in land,
 - (ii) is the supplier of the goods or services,
 - (iii) has an interest, otherwise than as owner, in the goods, or
 - (iv) has an interest, otherwise than as supplier, in the supply of the services,

it shall be presumed, unless the contrary is established, that the person or agent, as the case may be, caused the statement to be published.

(2) For the purposes of subsection (1), a person who causes a statement to be published shall be deemed to have done so on each day on which the statement is published.

81 Allegation as to consumer

If it is alleged in any proceedings under this Act, or in any other proceedings in respect of a matter arising under this Act, that a person was at any time a consumer in relation to any particular goods, services or land, it shall be presumed, unless the contrary is proved, that the person was at that time a consumer in relation to the goods, services, or land.

82 Certificate of analyst

(1) In any proceedings under this Act, a certificate purporting to have been signed by a prescribed authority, or by an officer on behalf of the prescribed authority, is, without proof of the signature or of the official character of the person by whom the certificate was signed, evidence of the facts certified unless the defendant requires the person who signed the certificate to be called as a witness in the proceedings.

(2) In this section:

prescribed authority means:

- (a) the Government Analyst, or
- (b) a registered laboratory of the National Association of Testing Authorities.

83 Evidence of standards etc

In any proceedings under this Act, a printed document that purports:

- (a) to be a standard, rule, code or specification of an association or body referred to in, or prescribed under, section 92 (2), and
 - (b) to have been published or issued by or on behalf of that association or body,
- is evidence of that standard, rule, code or specification.

84 Evidence as to certain matters

In any legal proceedings, whether or not they are proceedings under this Act:

- (a) a certificate purporting to have been signed by the Director-General and to the effect:
 - (i) that a specified person was, during a specified period, an investigator or an authorised person,
 - (ii) that a specified person was, during a specified period, an authorised officer for the purposes of section 64, or
 - (iii) that specified legislation was, during a specified period, administered by the Minister,

is evidence of the matter certified without proof of the signature or of the official character of the person by whom the certificate purports to have been signed, and

- (b) it shall be presumed, unless the contrary is proved, that the opinion of the Director-General necessary for any of the purposes of this Act was duly formed.

85 Permission, consent or approval of Minister

- (1) In any legal proceedings a certificate purporting to have been signed by the Minister or the Director-General and to the effect that a specified authority, permission or consent of the purported signatory was or was not given is, without proof of the signature or official character of the person by whom the certificate was signed, evidence of the matter certified.
- (2) In any legal proceedings, it shall be presumed, unless evidence is given to the contrary, that any authority, permission or consent of the Minister required before the exercise of a function by the Director-General has been given.

Division 2 Miscellaneous

86 Intervention by Minister

- (1) The Minister may, at any stage of proceedings brought before a Court under:
- (a) this Act, or
 - (b) any other legislation administered by the Minister,
- intervene in the proceedings.
- (2) Where the Minister intervenes in proceedings, the Minister:
- (a) becomes a party to the proceedings, and
 - (b) has all the rights, including rights of appeal, of a party to the proceedings.

86A Public warning statements

- (1) The Minister or the Director-General may make or issue a public statement identifying and giving warnings or information about any of the following:
- (a) goods that are unsatisfactory or dangerous and persons who supply those goods,
 - (b) services supplied in an unsatisfactory manner and persons who supply those services,
 - (c) unfair business practices and persons who engage in those practices,
 - (d) any other matter that adversely affects or may adversely affect the interests of persons in connection with the acquisition by them of goods or services from suppliers.
- (2) Such a statement can identify particular goods, services, business practices and

persons.

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

87 Publication of certain statements prohibited

- (1) Except in the case of a statement published with the consent of the Minister, or of a person authorised by the Minister to give the consent, a person shall not publish, or cause to be published, a statement that is intended, or apparently intended, to promote the supply or use of goods or services, or the sale or grant of interests in land, if the statement makes reference to:
- (a) the Minister,
 - (b) the Department,
 - (c) the Director-General,
 - (d) a person or organisation prescribed by the regulations for the purposes of this section, being a person or organisation in existence at, or at any time before, the prescription, or
 - (e) a person who is, or was, employed by the Department, or by a person referred to in paragraph (d), or by an organisation so referred to.

Maximum penalty: 20 penalty units.

- (2) A reference in subsection (1) (d) to a person or organisation includes a reference to a person appointed, or an organisation constituted, under an Act of the Commonwealth or of a State or Territory of the Commonwealth.

88 Service of notices etc

- (1) A notice or direction in writing that is required or permitted to be given under this Act may be given:
- (a) to a person other than a body corporate:
 - (i) by giving it to the person himself or herself,
 - (ii) by leaving it at his or her place of residence with someone who apparently resides there and has apparently reached the age of 16 years,
 - (iii) by leaving it at his or her place of employment or business with someone who is apparently employed there and has apparently reached the age of 16 years, or
 - (iv) by posting it in a letter addressed to him or her at the address last known to

the Director-General of his or her place of residence, employment or business,
or

(b) to a body corporate:

- (i) by giving it to the secretary of the body corporate, or any other person concerned in the management of the body corporate, personally,
- (ii) by leaving it at the body corporate's only or principal place of business with someone who is apparently employed there and has apparently reached the age of 16 years, or
- (iii) by posting it in a letter addressed to the body corporate at the address last known to the Director-General of its only or principal place of business.

(2) Subsection (1) (b) does not limit anything in section 109X or 601CX of the [Corporations Act 2001](#) of the Commonwealth.

89 Saving of rights and remedies

- (1) Except to the extent that this Act otherwise expressly provides, this Act does not limit, restrict or otherwise affect any right or remedy a person would have had if this Act had not been enacted.
- (2) Subject to any order under section 72, if the making of a contract contravenes a provision of this Act by reason of the inclusion in the contract of a provision that is severable, nothing in this Act affects the validity or enforcement of the contract otherwise than in relation to that provision.

90 Repeals

Each Act specified in Schedule 3 is, to the extent specified in that Schedule, repealed.

91 Savings and transitional provisions

Schedule 5 has effect.

92 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (1A) The regulations may make provision for or with respect to the procedure for the calling and holding of meetings of an advisory council.
- (2) A regulation may apply, adopt or incorporate, wholly or in part, and with or without modification, any standard, rule, code or specification of Standards Australia, the British Standards Institution or any other association or body and may classify or

describe anything by reference to a diagram, illustration or photograph.

- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (4) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) may authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.

93 (Repealed)

Schedule 1 Paramount legislation

(Section 4 (6))

Civil Liability Act 2002
Dairy Industry Act 2000
Electricity (Consumer Safety) Act 2004
Environmentally Hazardous Chemicals Act 1985
Explosives Act 2003
Fertilisers Act 1985
Food Act 2003
Local Government Act 1993
Plant Diseases Act 1924
Poisons and Therapeutic Goods Act 1966
Public Health Act 1991
Radiation Control Act 1990
Rice Marketing Act 1983
Stock Foods Act 1940
Stock Medicines Act 1989

Schedule 2 Acts prohibiting or regulating the supply of goods

(Section 28)

Environmentally Hazardous Chemicals Act 1985
Explosives Act 2003
Fertilisers Act 1985
Food Act 2003
Plant Diseases Act 1924
Poisons and Therapeutic Goods Act 1966
Radiation Control Act 1990
Seeds Act 1982

[Stock Foods Act 1940](#)
[Stock Medicines Act 1989](#)

Schedule 3 Repeals

(Section 90)

[Consumer Protection Act 1969 No 28](#)—the whole Act
[Supreme Court Act 1970 No 52](#)—so much of the Second Schedule as amended Act No 28, 1969
[Dangerous Goods Act 1975 No 68](#)—so much of Schedule 2 as amended Act No 28, 1969
[Metric Conversion Act 1975 No 72](#)—Items 166, 167 and 168 of the Schedule
[Pyramid Sales Act 1974 No 33](#)—the whole Act
[Unsolicited Goods and Services Act 1974 No 89](#)—the whole Act
[Referral Selling Act 1974 No 102](#)—the whole Act
[Pesticides and Allied Chemicals Act 1978 No 57](#)—section 78
[Consumer Protection \(Amendment\) Act 1978 No 60](#)—the whole Act
[Consumer Protection \(Amendment\) Act 1981 No 12](#)—the whole Act
[Miscellaneous Acts \(Companies\) Amendment Act 1981 No 123](#)—so much of Schedule 8 as amended Act No 28, 1969 and Act No 89, 1974
[Miscellaneous Acts \(Local Courts\) Amendment Act 1982 No 168](#)—so much of Schedule 1 as amended Act No 33, 1974
[Miscellaneous Acts \(Credit\) Repeal and Amendment Act 1984 No 100](#)—so much of Schedule 2 as amended Act No 28, 1969
[Statute Law \(Miscellaneous Amendments\) Act 1984 No 153](#)—so much of Schedule 16 as amended Act No 60, 1978
[Consumer Protection \(Motor Dealers\) Amendment Act 1985 No 105](#)—the whole Act
[Statute Law \(Miscellaneous Provisions\) Act 1985 No 231](#)—so much of Schedule 31 as amended Act No 28, 1969

Schedule 4 Provisions applicable to Products Safety Committee

(Section 24)

1 Appointment and tenure of office of members

- (1) Subject to subclauses (3), (4) and (5), a member of the Committee holds and vacates office in accordance with the terms of the appointment or reappointment of the member.
- (2) On the expiration of any period of appointment or reappointment, a member of the Committee may be reappointed for a further period.
- (3) A member of the Committee may at any time resign from the Committee by notice in writing addressed to the Minister and delivered to the Director-General.
- (4) The Minister may at any time remove from office a member of the Committee by notice in writing addressed and delivered to the member.
- (5) The Chairperson of the Committee vacates office as a member of the Committee on ceasing to be an officer.

- (6) The Executive Officer of the Committee vacates office as a member of the Committee on ceasing to be an officer.

2 Deputies of members

If a member referred to in section 24 (2) (c) is unable to carry out duties as a member of the Committee for any period, the Minister may appoint another person who, in the opinion of the Minister, has expertise in product safety to act in the place of the member for that period, and a person so appointed shall, during that period, be deemed to be a member of the Committee.

3 Co-opted members

- (1) The Committee, with the prior approval of the Minister, may co-opt any person who, in its opinion, has expertise in relation to a question referred to it under section 28 or in relation to the subject-matter of a review by the Committee under section 36.
- (2) A person co-opted under subclause (1) shall, when attending a meeting of the Committee, be deemed to be a member of the Committee and has a right to vote and participate in the Committee's proceedings.

4 Remuneration

A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Effect of certain other Acts

Where by or under any other Act provision is made requiring a person who is the holder of an office specified in the Act to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member of the Committee.

6 General procedure

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall be as determined by the Committee.

7 Voting

A decision supported by a majority of the votes cast at a meeting of the Committee shall be the decision of the Committee.

8 Minutes

The Committee shall cause full and accurate minutes to be kept of the proceedings at

each meeting of the Committee.

Schedule 4A Provisions relating to advisory councils

(Sections 25B, 25E, 25H, 25K, 25N)

1 Chairperson

- (1) The Minister may appoint an appointed member of an advisory council as its Chairperson.
- (2) An appointment of an appointed member of an advisory council as its Chairperson may be for a specified or unspecified term, but may be revoked at any time by the Minister in writing for any or no reason.
- (3) Such a revocation of appointment as Chairperson of an advisory council does not of itself affect a person's tenure of office as an appointed member of the advisory council.

2 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member of an advisory council during the illness or absence of the member. The person, while so acting, has and may exercise all the functions of the appointed member and is taken to be an appointed member of the council.
- (2) Subclause (1) extends to the office and functions of Chairperson of an advisory council, but the Minister may instead appoint another appointed member of the council to act in the office of Chairperson.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause at any time for any or no reason.
- (4) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence from office of the member.

3 Terms of office

Subject to this Schedule, an appointed member of an advisory council holds office for such period not exceeding 3 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

4 Allowances

A member of an advisory council is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

5 Vacancies

- (1) The office of an appointed member of an advisory council becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by letter addressed to the Minister, or
 - (d) is removed by the Minister from office under this clause, or
 - (e) is absent from 3 consecutive meetings of the council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office as a member of an advisory council at any time for any or no reason.

6 Filling of vacancy

- (1) If the office of an appointed member of an advisory council becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.
- (2) The appointment must be made within 2 months of the office becoming vacant, or such longer time as the Minister considers appropriate in the circumstances.

7 Disclosure of pecuniary interests

- (1) A member of an advisory council:
 - (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the council, and
 - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council.

- (2) A disclosure by a member of an advisory council at a meeting of the council that the member:
- (a) is a member, or in the employment, of a specified company or other body, or
 - (b) is a partner, or in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to the company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under this clause.

- (3) Particulars of any disclosure made under this clause must be recorded by the members of the advisory council in a book to be kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members.

8 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of an appointed member of an advisory council. An appointed member is not, as an appointed member, subject to that Act.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of an advisory council or from accepting and retaining any remuneration payable to the person under this Act as a member of an advisory council.

- (3) The office of appointed member of an advisory council is for the purposes of any Act taken not be an office or place of profit under the Crown.

9 General procedure

The procedure for the calling of meetings of an advisory council and the conduct of those meetings of the council is, subject to this Act and the regulations and any directions of the Minister, to be determined by the council. The Minister may give such directions for this

purpose as the Minister thinks fit.

10 Meetings

An advisory council is required to meet 4 times during each calendar year. However, an advisory council may hold additional meetings as approved by the Minister, and is required to do so as directed by the Minister.

11 Quorum

The quorum for a meeting of an advisory council is a majority of its members for the time being.

12 Presiding member

- (1) A meeting of an advisory council is to be chaired by:
 - (a) the Chairperson of the council, or
 - (b) in the absence of the Chairperson (including a person appointed under clause 2 to act as Chairperson), another appointed member of the council elected to chair the meeting by a majority of the members of the council present.
- (2) The member chairing any meeting of an advisory council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of an advisory council at which a quorum is present is the decision of the council.

14 Transaction of business outside meetings or by telephone or other means

- (1) An advisory council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the council for the time being. A resolution in writing approved by a majority of those members is taken to be a decision of the council.
- (2) An advisory council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, close-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an

ordinary meeting of the council.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the advisory council.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 Minutes

- (1) An advisory council must cause full and accurate minutes to be kept of the proceedings of each meeting of the council.
- (2) The advisory council is to cause a copy of the minutes of each meeting to be forwarded to the Minister within 14 days after the meeting.

16 First meeting

The first meeting of an advisory council is to be called in such manner as the Minister determines.

Schedule 5 Savings and transitional provisions

(Section 91)

1 Interpretation

In this Schedule:

appointed day means the day appointed and notified under section 2 (2).

repealed Act means the [Consumer Protection Act 1969](#) as in force immediately before the appointed day.

2 Commissioner for Consumer Affairs

The person who, immediately before the appointed day, held office under the [Public Service Act 1979](#) as Commissioner for Consumer Affairs continues on and after the appointed day to hold that office subject to that Act and to the terms and conditions applicable immediately before that day in relation to the office.

3 Delegation

A delegation in force immediately before the appointed day under section 15A of the repealed Act continues in force on and after that day as if it were a delegation under section 8 of this Act.

4 Investigating officers and inspectors

- (1) For the purposes of this Act, an investigating officer or inspector holding office under

the repealed Act immediately before the appointed day shall be deemed to have been appointed as an investigator by order of the Minister under this Act.

- (2) If the repealed Act had continued in force on and after the appointed day and an investigating officer or inspector holding office under that Act could have exercised a function in relation to a matter arising under it, an investigator may act in relation to the matter as if it had arisen under this Act.

5 Products Safety Committee

Where, immediately before the appointed day, a person held office:

- (a) as Chairperson of the Products Safety Committee under the repealed Act, or
(b) as a member (not being the Chairperson) of that Committee,

the person continues on and after that day as Chairperson or member of the Products Safety Committee under and subject to this Act on the terms and conditions on which the office was held immediately before that day.

6 Enforcement of certain convictions or orders

Section 57A of the repealed Act as in force at the time of a conviction or order before the appointed day under that Act or any other Act administered by the Minister continues on and after the appointed day to apply in relation to the conviction or order as if this Act had not been enacted and, for that purpose, that section shall be deemed to have operated as if such a conviction or order made by the District Court under section 125 (1) of the [Justices Act 1902](#) had been made by a court of petty sessions or Local Court at the place at which it was made by the District Court.

7 Regulations etc under repealed Act

- (1) Where a regulation or order in force under the repealed Act immediately before the appointed day could have been made under this Act if this Act had been in force at the time the regulation or order was made, the regulation or order continues in force on and after the appointed day as if it had been made under this Act and may be revoked or varied by a regulation or order made under this Act.
- (2) A regulation or order continued in force by subsection (1) shall be construed as if a reference in the regulation or order to a provision of the repealed Act were a reference to the corresponding provision of this Act.

8 Effect of [Interpretation Act 1897](#)

Section 91 and this Schedule have effect in addition to, and do not derogate from, the operation of section 8 of the [Interpretation Act 1897](#) or section 30 of the [Interpretation Act 1987](#).

9 References to repealed Acts

A reference in any other Act or instrument to the repealed Act or any other Act repealed by this Act shall be read as a reference to this Act.

10 General

- (1) Where anything done or commenced under the repealed Act before the appointed day and still having effect or not completed immediately before that day could have been done or commenced under this Act if it had been in force at the time the thing was done or commenced, the thing done continues to have effect, or the thing commenced may be completed, as if it had been done or commenced under this Act.
- (2) Subclause (1) does not apply to anything in relation to which other provision is made by this Schedule.

11 Interpretation Act 1987

A reference in a provision of this Act to sections 40 and 41 of the *Interpretation Act 1987* shall, until the commencement of that Act, be read as a reference to section 41 of the *Interpretation Act 1897* and a reference in the provision to a statutory rule shall be read as a reference to a regulation.

11A Fair Trading (Lay-by) Amendment Act 1993

Part 5B (Lay-by Sales) of this Act does not apply to a lay-by sale within the meaning of the *Lay-by Sales Act 1943* made before the repeal of that Act and that Act continues to apply to the sale as if it had not been repealed.

11B Fair Trading Amendment Act 1995

- (1) A person may make an application under section 12, and the Commissioner may grant an application under section 13, as amended by the *Fair Trading Amendment Act 1995*, in relation to acts, matters or things arising, and legal proceedings commenced but not completed, before the commencement of that Act.
- (2) However, a person may not apply for, and the Commissioner may not grant, legal assistance in relation to any such act, matter or thing or proceedings if the Commissioner has previously refused to grant the legal assistance.

11C Fair Trading Legislation Amendment Act 1997

- (1) In this clause, **amending Act** means the *Fair Trading Legislation Amendment Act 1997*.
- (2) The Property Services Council, Home Building Advisory Council and Motor Dealers Council are abolished on the commencement of the provisions of the amending Act repealing the provisions that respectively constitute them.

- (3) A person ceases to hold office as member or Chairperson of such a council on the abolition of the council concerned. The person is not entitled to be paid any remuneration or compensation by reason of ceasing to hold any such office.
- (4) The Property Services Council Statutory Interest Account is to be closed on the establishment of the Property Services Statutory Interest Account under the *Property, Stock and Business Agents Act 1941*, as amended by the amending Act.
- (5) The Property Services Council Compensation Fund is to be closed on the establishment of the Property Services Compensation Fund under the *Property, Stock and Business Agents Act 1941*, as amended by the amending Act.
- (6) The Property Services Council Administration Account is to be closed by the Director-General on the repeal by the amending Act of section 25 of the *Property, Stock and Business Agents Act 1941*, and the amount standing to its credit is to be paid to the Department of Fair Trading Operating Account.
- (7) Section 64C of the *Property, Stock and Business Agents Act 1941*, as inserted by the amending Act, extends to claims, expenses and costs incurred in connection with the Property Services Council Compensation Fund before the commencement of that section.

11D Fair Trading Amendment Act 2003

- (1) In this clause, **amending Act** means the *Fair Trading Amendment Act 2003*.
- (2) The amendments made to sections 23A and 23C by the amending Act do not apply to or in respect of a notice served on a person under section 23A before the commencement of those amendments, and sections 23A and 23C (as in force immediately before that commencement) apply in relation to a person on whom such a notice has been served as if those amendments had not been made.
- (3) Division 3 of Part 3, as amended by the amending Act, does not apply to or in respect of an order made under section 34 (as in force immediately before the commencement of the amendments to that Division), and the provisions of that Division (as in force immediately before that commencement) apply to any such order as if those amendments had not been made.
- (4) Division 3 of Part 4, as inserted by the amending Act, does not apply to or in respect of a credit purchase agreement (within the meaning of the *Door-to-Door Sales Act 1967*) made before the repeal of that Act by the amending Act, and the repealed Act continues to apply to any such agreement as if the repealed Act had not been repealed.
- (5) Section 66A, as inserted by the amending Act, extends to unlawful conduct occurring before the commencement of that section.

- (6) Section 68 (2), as amended by the amending Act, does not apply to a cause of action accruing before the commencement of the amendment to that subsection.
- (7) Section 68 (2), as in force immediately before the commencement of the amendment to that section by the amending Act, continues to apply to or in respect of a cause of action accruing before that commencement as if the amendment had not been made.

11E Fair Trading Amendment Act 2004

- (1) In this clause, **amending Act** means the *Fair Trading Amendment Act 2004*.
- (2) Part 5D, as inserted by the amending Act, applies only to conduct engaged in after the commencement of that Part.
- (3) Section 71 (1) (a), as substituted by the amending Act, applies only in relation to a contravention that occurs after the commencement of that amendment.

11F Home Building Amendment Act 2004

- (1) In this clause, **amending Act** means the *Home Building Amendment Act 2004*.
- (2) A person ceases to hold office as a member or Chairperson of the Home Building Advisory Council constituted under this Act on the repeal of Division 8 of Part 2 by the amending Act. The person is not entitled to any remuneration or compensation by reason of ceasing to hold any such office.

12 Regulations

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act or the *Fair Trading (Lay-by) Amendment Act 1993* or the following Acts:

Fair Trading Amendment Act 1995

Fair Trading Legislation Amendment Act 1997

Fair Trading Amendment (Employment Placement Services) Act 2002

Fair Trading Amendment Act 2003

Fair Trading Amendment Act 2004

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the appointed day or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State), the rights of that person existing before the date of its publication therein, 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 date of its publication therein.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.