

# Fair Trading Act 1987 No 68

[1987-68]



New South Wales

## Status Information

### Currency of version

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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**
  - [Residential \(Land Lease\) Communities Act 2013 No 97](#) (not commenced)
  - [Fair Trading Legislation \(Repeal and Amendment\) Act 2015 No 12](#), Sch 1 [6]–[8] [10]–[12] and [18] (not commenced)

### Authorisation

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# Fair Trading Act 1987 No 68



New South Wales

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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 (other than the ACL) 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.

#### Note—

Division 4 of Part 3 provides for the application of the ACL to the Crown.

### 4 Definitions

- (1) In this Act, except the ACL:

**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 2–5 of Part 2B.

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

**authorised person** means a person authorised by the Secretary.

**banker** has the same meaning as in section 2 (1) of the ACL.

**business** includes:

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

**consumer** has the same meaning as in section 3 of the ACL.

**consumer contract** has the same meaning as in section 2 (1) of the ACL.

**consumer goods** has the same meaning as in section 2 (1) of the ACL.

**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.

**defective goods action** has the same meaning as in section 2 (1) of the ACL.

**Department** means the Department of Finance, Services and Innovation.

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

**document** has the same meaning as in section 2 (1) of the ACL.

**embargo notice** means a notice given under section 23D.

**employee** means:

- (a) the Secretary or any other Public Service employee employed in the Department,  
or
- (b) any person engaged by the Secretary (with the approval of the Minister and on such terms as the Minister thinks fit) to assist in the exercise of the Secretary's functions.

**goods** has the same meaning as in section 2 (1) of the ACL.

**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.

**interim ban** has the same meaning as in section 2 (1) of the ACL.

**investigator** means an employee appointed by the Secretary under section 18 as an investigator.

**permanent ban** has the same meaning as in section 2 (1) of the ACL.

**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 related service** has the same meaning as in section 2 (1) of the ACL.

**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) or a Public Service agency.

**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.

**recall notice** has the same meaning as in section 2 (1) of the ACL.

**regulations** means regulations made under section 92.

**rely on** has the same meaning as in section 2 (1) of the ACL.

**safety warning notice** means a notice published under section 129 of the ACL.

**Secretary** means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.

**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.

**the ACL** means the *Australian Consumer Law (NSW)*.

**this Act** includes regulations.

**trade or commerce** includes any business or professional activity.

**Tribunal** means the Civil and Administrative Tribunal.

**unsafe consumer goods** means consumer goods that will or may cause injury to any person or a foreseeable use (or misuse) of which will or may cause injury to any person.

**unsafe product related services** means product related services of a particular kind supplied in trade or commerce, a result of the supply of which is that:

- (a) any consumer goods will or may cause injury to any person, or
- (b) a reasonably foreseeable use (including misuse) of any consumer goods will or may cause injury to any person.

(2) Sections 2 (2) (Definitions), 11 (References to acquisition, supply and re-supply) and 13 (Loss or damage to include injury) of the ACL apply to all of the provisions of this Act in the same way as those sections apply to the provisions of the ACL.

(3)-(5) (Repealed)

(6) Where a provision of this Act (other than the ACL) 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.

(9) In this Act, a reference to a particular section of this Act does not include a reference to the same section of the ACL.

**Note—**

For example, a reference to section 66 of this Act does not include a reference to section 66 of the ACL.

(10) Notes included in this Act do not form part of this Act.

## **5 (Repealed)**

### **5A Extraterritorial application**

(1) This Act is intended to have extraterritorial application in so far as the legislative

powers of the State permit.

- (2) Without limiting subsection (1), this Act extends to conduct either in or outside the State that:
- (a) is in connection with goods or services supplied in the State, or
  - (b) affects a person in the State, or
  - (c) results in loss or damage in the State.

## **Part 2 Administrative matters**

### **Division 1 Secretary and staff**

#### **6 Control and direction by Minister**

The Secretary is, in the exercise of functions as Secretary, 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 Secretary**

- (1) The Secretary may delegate to any person or committee the exercise of any of the functions conferred or imposed on the Secretary by or under the following:
- (a) this Act,
  - (b) (Repealed)
  - (b1) *Fitness Services (Pre-paid Fees) Act 2000*,
  - (c)-(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 Secretary may sub-delegate a function if authorised in writing to do so by the Secretary.
- (3) This section does not apply to the functions of the Secretary under section 79A.

#### **9 Functions of Secretary**

- (1) The Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary by the Minister,
- and, for those purposes, may conduct research and make investigations.
- (3) Where a complaint is received under subsection (1) (c), the Secretary 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 Secretary.
- (4) The Secretary is to have regard, in carrying out his or her functions under this Act, to the need for communication, co-operation and co-ordination in relation to relevant co-operative legislative schemes.



## 9A Exchange of information

- (1) The Secretary may enter into, or approve of, an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the Secretary 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,
  - (d) any other information of a type prescribed by the regulations.
- (3) Under an information sharing arrangement, the Secretary 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:
  - (c) to assist in the exercise of functions (**existing NSW fair trading functions**) under this Act (or any other Act administered by the Minister for Fair Trading, whether solely or jointly with another Minister) or of the functions of the relevant agency concerned, or
  - (d) to assist in a proposed transfer of existing NSW fair trading functions to the relevant agency concerned or a proposed transfer of functions of the relevant agency concerned to the Minister, Secretary or other fair trading agency of the State.
- (4) The Secretary 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 Secretary or to conduct an investigation into the matter jointly with the Secretary.

(6) This section does not:

(a) limit the functions that may be exercised by the Secretary under section 9, or

(b) require the Secretary to provide information to a relevant agency only in accordance with an information sharing arrangement where that information can otherwise be lawfully provided, or

(c) limit the operation of any other Act or law 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.

**information** includes reports, recommendations, opinions, assessments and operational plans.

**law enforcement agency** means:

(a) the NSW Police Force 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 Secretary, an investigator or any other employee,
- (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 Secretary 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 Secretary 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 Secretary,

(b) include the particulars required to complete the form, and

(c) be verified in the manner required by the Secretary.

### **13 Grant of legal assistance**

(1) The Secretary may grant an application made under section 12 if:

(a) the Secretary is satisfied that the applicant has reasonable grounds for bringing, or being a party to, the proceedings to which the application relates,

(b) the Secretary 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 Secretary has received the written approval of the Minister to grant the assistance applied for.

(2) The Secretary may refuse assistance if of the opinion that it should not be granted because of the applicant's financial position.

(3) The Secretary 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 Secretary, 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 Secretary, interfere, or be involved, in the case, and

(c) the Secretary 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 Secretary 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 Secretary 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 head of another Public Service agency—to an Australian legal practitioner employed in that agency, or
  - (d) to an Australian legal practitioner practising on his or her own account who has indicated to the Secretary 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 Secretary, 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 Secretary.

#### **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 Secretary, 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 Secretary instead of the person in whose favour the order is made,

(b) the costs may be recovered by the Secretary as a debt due to the Crown, and

(c) the costs, upon being paid to or recovered by the Secretary, 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 Secretary.
- (4) Except in the case of costs payable to the Secretary, 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 Secretary and the Australian legal practitioner (if any) to whom the person's case is assigned under section 14,

and from the relationship between the Secretary and the Australian legal practitioner.

## **Part 2A Provisions relating to investigations**

### **Division 1 Powers relating to investigations**

#### **18 Office and identification of investigator**

- (1) The Secretary may, by order in writing, appoint an employee as an investigator for the purposes of this Act and of any other legislation administered by the Minister and shall provide the employee 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,
  - (d) make inquiries of any person employed or engaged in that place, or
  - (e) film, photograph, videotape or otherwise record a still or moving image of any thing (other than a document) for the purpose of the investigation of any matter relating to consumer goods or product related services.
- (4) If the Secretary 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 Secretary, 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:

(a) there is evidence of a contravention of a provision of this Act on any place or land,  
or

(b) there are consumer goods of a particular kind being supplied in trade or commerce in or from any place or land that will or may cause injury to any person or a reasonably foreseeable use (or misuse) of which will or may cause injury to any person, or

(c) there are product related services of a particular kind being supplied in trade or commerce in or from any place or land and, as a result of those services being supplied:

(i) any consumer goods will or may cause injury to any person, or

(ii) a reasonably foreseeable use (including misuse) of any consumer goods will or may cause injury to any person.

(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 any of the matters referred to in subsection (2), 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 any of the matters referred to in subsection (2), and

(b) seize anything (whether or not specified in the warrant) that the investigator

believes on reasonable grounds is connected with any of the matters referred to in subsection (2).

- (5) The power to seize anything that is connected with a matter referred to in subsection (2) includes a power to seize anything that will provide evidence of that matter.
- (6) An investigator who seizes any consumer goods, or equipment used in the manufacturing, processing or storage of consumer goods, under this section must provide a receipt for the goods or equipment.
- (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 Part.

## **20 Power to obtain information, documents and evidence**

- (1) This section applies only to a person who is, on reasonable grounds, believed by the Secretary 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, or
  - (c) a matter that is the subject of a complaint received by the Secretary under section 9 (1) (c), or
  - (d) a matter that is the subject of an investigation by the Secretary under section 9 (2), or
  - (e) unsafe consumer goods, or
  - (f) unsafe product related services.
- (2) An investigator or the Secretary may, by notice in writing served on a person to whom this section applies, require the person:
  - (a) to give an investigator or the Secretary, 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 or the Secretary, in accordance with the notice, any documents referred to in subsection (1), or

(c) to appear before an investigator, the Secretary 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).

(6) Despite section 8 of this Act, the Secretary may only delegate his or her functions under this section to a person who is an employee.

(7) If requested to do so by a person required to comply with a notice given under this section by a delegate of the Secretary, the delegate must provide the person with evidence of that person's identity and evidence of the delegation that enables the delegate to give the notice.

## **21 Inspection of documents by Secretary and others**

(1) The Secretary, an authorised person or an investigator may inspect a document produced in response to a notice under section 20 of this Act or section 219 of the ACL and may make copies of, or take extracts from, the document.

(2) The Secretary 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 of this Act or section 219 of the ACL if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an employee 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 of this Act or section 219 of the ACL 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 of this Act or section 219 of the ACL 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 Secretary 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 of this Act or section 219 of the ACL, 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 employees**

- (1) A person shall not:

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

## **Division 2 Seized property and disposal of certain property**

### **23A Dealing with seized property**

- (1) This section applies to anything seized under the authority of a search warrant issued for the purposes of section 19A.
- (2) Anything seized 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.
- (3) The Secretary may order that anything seized be sold, destroyed or otherwise disposed of if:
  - (a) the thing is no longer required to be retained as evidence in proceedings for an offence against this or any other Act, and
  - (b) the person who had lawful possession of the thing before it was seized cannot be found or does not wish to have the thing returned.
- (4) If the thing is disposed of by way of sale, the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.
- (5) This section does not apply to the following consumer goods:
  - (a) consumer goods that are the subject of an application under section 23B that has not been determined,
  - (b) consumer goods that are the subject of an order under that section authorising their disposal,
  - (c) consumer goods which the Secretary is satisfied are unsafe consumer goods.

### **23B Court orders relating to disposal of certain consumer goods**

- (1) This section applies to consumer goods if:
  - (a) the consumer goods do not comply with a safety standard that is in force for consumer goods of that kind and the cause of that non-compliance cannot be remedied, or
  - (b) a permanent ban on consumer goods of that kind is in force, or
  - (c) a recall notice for consumer goods of that kind is in force and a defect or dangerous characteristic of such consumer goods identified in the notice cannot be remedied, or
  - (d) the consumer goods are unsafe consumer goods.
- (2) A court may make an order under this section only on the application of the Secretary.
- (3) If the court is satisfied that a person possesses or has control of consumer goods of a particular kind to which this section applies for the purposes of trade or commerce, the court may make an order authorising one or more investigators to do the following in accordance with any requirements specified in the order:
  - (a) to enter the premises of the person that are specified in the order,
  - (b) to search the premises for consumer goods of a kind specified in the order and seize any such consumer goods that are found at those premises,
  - (c) to destroy or otherwise dispose of any such consumer goods that are so seized.
- (4) The court may make an order authorising an investigator to destroy or otherwise dispose of any consumer goods to which this section applies that have been seized by an investigator under the authority of a search warrant issued under section 19A.
- (5) Before making an application under this section, the Secretary must:
  - (a) take reasonable steps to discover who has an interest in the consumer goods, and
  - (b) if it is practicable to do so, notify each person whom the Secretary believes to have such an interest of the proposed application.
- (6) The Secretary must, in the application, identify each person who the Secretary believes has an interest in the consumer goods concerned and whom it was not considered practicable to notify.
- (7) A person who establishes to the satisfaction of the court that he or she has an interest in the consumer goods concerned is entitled to be heard in relation to the application.
- (8) If goods are seized and disposed of by an investigator in accordance with an order

under this section, the person from whom the goods were seized or, if that person was not entitled to possession of the goods, the owner of the goods is liable to pay the costs reasonably incurred by the investigator in seizing and disposing of the goods.

- (9) An amount payable by a person under this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

### **23C Disposal of property**

- (1) The Secretary may order that anything that the Secretary has obtained in the course of an investigation under this Act (other than anything seized by an investigator under the authority of a search warrant issued under section 19A) be sold, destroyed or otherwise disposed of if:
- (a) the thing is not required to be retained as evidence in proceedings for an offence against this or any other Act, and
  - (b) the person who had lawful possession of the thing before it came into the Secretary's possession cannot be found or does not wish to have the thing returned.
- (2) If the thing is disposed of by way of sale, the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.

## **Division 3 Embargo notices**

### **23D Embargo notices**

- (1) An investigator who enters premises under a search warrant may give an embargo notice to the occupier of the premises if the investigator reasonably believes that:
- (a) unsafe consumer goods or unsafe product related services are being supplied from the premises in trade or commerce, and
  - (b) it is not practicable to seize and remove:
    - (i) those unsafe consumer goods or equipment used in the manufacturing, processing or storage of those unsafe consumer goods, or
    - (ii) equipment used in connection with the supply of those unsafe product related services.
- (2) An embargo notice may do any one or more of the following:
- (a) require that specified consumer goods must not be:
    - (i) supplied in or from the premises, or
    - (ii) transferred, moved, altered, destroyed or otherwise interfered with,

- during the period specified in the notice,
- (b) require that specified equipment:
    - (i) used in the manufacturing, processing or storage of specified consumer goods, or
    - (ii) used in connection with the supply of specified product related services,must not be transferred, moved, altered, destroyed or otherwise interfered with during the period specified in the notice,
  - (c) require that specified product related services must not be supplied in or from the premises during the period specified in the notice.
- (3) An embargo notice must:
- (a) be in writing, and
  - (b) explain the effect of section 23G.
- (4) The investigator may give an embargo notice to the occupier of the premises:
- (a) by causing a copy of the notice to be served on the occupier, or
  - (b) if the occupier cannot be located after reasonable steps have been taken to do so, by causing a copy of the notice:
    - (i) to be served on a person on the premises who is reasonably believed to be in regular contact with the occupier, or
    - (ii) to be affixed to the premises, or to a thing on the premises, in a prominent position.
- (5) Despite anything in any other law, a contract for a supply of consumer goods or product related services that is prohibited by an embargo notice is void.
- (6) If consumer goods are supplied in contravention of an embargo notice:
- (a) the supplier must immediately return or refund to the person who acquired the goods any consideration (or the value of any consideration) that that person gave:
    - (i) under an agreement for the supply, or
    - (ii) under a related contract or instrument, and
  - (b) if the goods have been removed from the premises in which they were subject to the embargo notice, the person who acquired the goods must:
    - (i) return the goods to the premises, or



- (ii) notify the supplier of the place where the supplier may collect the goods, and
- (c) if paragraph (b) (ii) applies, the supplier must collect the goods from the place notified to the supplier and return them to the premises.

### **23E Embargo period for embargo notices**

- (1) The embargo period specified in an embargo notice must not be longer than:
  - (a) in a case where the investigator giving the notice secures consumer goods or equipment under this Division—24 hours, or
  - (b) in any other case—28 days.
- (2) However, an investigator may, before the embargo period ends, apply to a Magistrate for an extension of the period.
- (3) If an investigator intends to make an application to extend the embargo period, the investigator must, before making the application, notify the occupier of the premises to which the embargo notice relates of that intention.
- (4) The occupier of the premises is entitled to be heard in relation to the application.
- (5) The Magistrate may extend the embargo period for a specified period if satisfied that the extension is necessary in all the circumstances.

### **23F Multiple embargo notices for the same consumer goods or product related services**

An investigator must not give an embargo notice in relation to consumer goods, equipment or product related services of a particular kind if:

- (a) an embargo notice has already been given in relation to consumer goods, equipment or product related services of that kind, and
- (b) the embargo period for the embargo notice that has been given ended less than 5 days earlier.

### **23G Powers of investigators to secure consumer goods**

- (1) This section applies if:
  - (a) an embargo notice has been issued in relation to consumer goods or equipment, and
  - (b) the investigator who gave the notice believes on reasonable grounds that it is necessary to secure the consumer goods or equipment in order to ensure that the notice is complied with.
- (2) The investigator may, during the embargo period for the embargo notice, do anything that the investigator thinks is necessary to secure those consumer goods or that

equipment (whether by locking them up, placing a guard or otherwise).

### **23H Consent to deal with embargoed consumer goods or equipment or supply product related services**

- (1) If an embargo notice relating to consumer goods or equipment has been given, the owner of the goods or equipment or another person who has an interest in the goods or equipment may, in writing, request consent to do any of the following:
  - (a) to supply the goods,
  - (b) to transfer, move, alter, destroy or otherwise interfere with the goods or equipment.
- (2) If an embargo notice relating to product related services has been given, the following persons may, in writing, request consent to supply the services:
  - (a) the person who would, but for the embargo notice, supply the services,
  - (b) another person whose interests would be affected if the services were not supplied.
- (3) Consent under this section may only be given by the Minister, the Secretary or an investigator and must be in writing.

### **23I Compliance with embargo notices**

- (1) A person must not knowingly cause or permit anything to be done in contravention of an embargo notice.

Maximum penalty:

- (a) in the case of a person other than a body corporate—40 penalty units, or
  - (b) in the case of a body corporate—200 penalty units.
- (2) Subsection (1) does not apply in relation to:
    - (a) an act done in accordance with a consent given under section 23H, or
    - (b) if the embargo notice relates to consumer goods or equipment, an act done for the purpose of protecting or preserving the consumer goods or equipment.

## **Part 2B Products Safety Committee and advisory bodies**

### **Division 1 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 function of considering any questions referred to the Committee under section 42.
- (2) The Products Safety Committee shall consist of:
  - (a) an employee appointed by the Minister as Chairperson of the Committee,
  - (b) an employee 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 employee 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 Secretary 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 employee or employees,
  - (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 employee, is entitled to receive such fees for attending meetings and transacting business of the committee,as are fixed by the Minister.

## **Division 2 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 not less than 6, but not more than 16 members.
- (2) The members of the Fair Trading Advisory Council are:
  - (a) the Secretary or a nominee of the Secretary, and
  - (b) not less than 5, but not more than 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 3 Motor Vehicle Industry Advisory Council**

### **25D Establishment**

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

### **25E Membership**

- (1) The Motor Vehicle Industry Advisory Council is to consist of not less than 6, but not more than 16 members.
- (2) The members of the Motor Vehicle Industry Advisory Council are:
  - (a) the Secretary or a nominee of the Secretary, and
  - (b) not less than 5, but not more than 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 Vehicle Industry Advisory Council.

## **25F Functions**

- (1) The functions of the Motor Vehicle Industry 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** has the same meaning as it has in the [Motor Dealers and Repairers Act 2013](#).

## **Division 4 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 not less than 6, but not more than 16 members.
- (2) The members of the Property Services Advisory Council are:
  - (a) the Secretary or a nominee of the Secretary, and
  - (b) not less than 5, but not more than 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 2003](#),

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

## Division 5 Retirement Villages Advisory Council

### 25J Establishment

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

### 25K Membership

- (1) The Retirement Villages Advisory Council is to consist of not less than 6, but not more than 16 members.
- (2) The members of the Retirement Villages Advisory Council are:
  - (a) the Secretary or a nominee of the Secretary, and
  - (b) not less than 5, but not more than 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.

## 25L 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 The Australian Consumer Law

### Division 1 Definitions

#### 26 Definitions

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

**application law** means:

- (a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction, or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a), or

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

**Australian Consumer Law** means (according to the context):

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

**Australian Consumer Law text** means the text described in section 27.

**instrument** means any document whatever, including the following:

- (a) an Act or an instrument made under an Act,
- (b) a law of this jurisdiction or an instrument made under such a law,
- (c) an award or other industrial determination or order, or an industrial agreement,
- (d) any other order (whether executive, judicial or otherwise),
- (e) a notice, certificate or licence,
- (f) an agreement,
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose,
- (h) an indictment, presentment, summons or writ,
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding.

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

**jurisdiction** means a State or the Commonwealth.

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

**modifications** includes additions, omissions and substitutions.

**month** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.



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

**proclamation** means a proclamation of the Governor published on the NSW legislation website.

**State** includes a Territory.

**Territory** means the Australian Capital Territory or the Northern Territory of Australia.

**this jurisdiction** means New South Wales.

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

## **Division 2 Application of Australian Consumer Law**

### **27 The Australian Consumer Law text**

The Australian Consumer Law text consists of:

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

### **28 Application of Australian Consumer Law**

- (1) The Australian Consumer Law text, as in force from time to time:
  - (a) applies as a law of this jurisdiction, and
  - (b) as so applying may be referred to as the *Australian Consumer Law (NSW)*, and
  - (c) as so applying is a part of this Act.
- (2) This section has effect subject to sections 29, 30 and 31.

### **29 Future modifications of Australian Consumer Law text**

- (1) A modification made by a Commonwealth law to the Australian Consumer Law text after the commencement of this section does not apply under section 28 if the

modification is declared by a proclamation to be excluded from the operation of that section.

- (2) A proclamation under subsection (1) has effect only if published or notified no later than 2 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further proclamation so provides.
- (4) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is registered under the [Legislative Instruments Act 2003](#) of the Commonwealth.

### **30 Meaning of generic terms in Australian Consumer Law for purposes of this jurisdiction**

- (1) In the *Australian Consumer Law (NSW)*:

**regulator** means the Secretary.

- (2) For the purposes of the application of the *Australian Consumer Law (NSW)*, **court** means, unless otherwise expressly provided by this Act:

- (a) the Local Court, or
- (b) the District Court, or
- (c) the Supreme Court.

- (3) In the following provisions of the *Australian Consumer Law (NSW)*, **court** means the Supreme Court:

- (a) section 218,
- (b) Division 2 of Part 5-2,
- (c) Division 4 of Part 5-2,
- (d) sections 246, 247, 248 and 250.

- (4) In Part 2-3 of the *Australian Consumer Law (NSW)*, **court** includes the Tribunal.

- (5) Subsections (2)–(4) are subject to any jurisdictional limits on the court concerned or the Tribunal imposed by any other Act.

### **31 Interpretation of Australian Consumer Law**

- (1) The [Acts Interpretation Act 1901](#) of the Commonwealth applies as a law of this jurisdiction to the *Australian Consumer Law (NSW)*.

- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if:
  - (a) the statutory provisions in the *Australian Consumer Law (NSW)* were a Commonwealth Act, and
  - (b) the regulations in the *Australian Consumer Law (NSW)* or instruments under that Law were regulations or instruments under a Commonwealth Act.
- (3) The *Interpretation Act 1987* of New South Wales does not apply to:
  - (a) the *Australian Consumer Law (NSW)*, or
  - (b) any instrument under that Law.

### **32 Application of Australian Consumer Law**

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

## **Division 3 References to Australian Consumer Law**

### **33 References to Australian Consumer Law**

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

### **34 References to Australian Consumer Law of other jurisdictions**

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

## **Division 4 Application of Australian Consumer Law to Crown**

### **35 Division does not apply to Commonwealth**

In this Division, *participating jurisdiction* or *other jurisdiction* does not include the Commonwealth.

### **36 Application law of this jurisdiction**

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

### **37 Application law of other jurisdictions**

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

### **38 Activities that are not business**

- (1) For the purposes of sections 36 and 37, the following do not amount to carrying on a business:
  - (a) imposing or collecting:
    - (i) taxes, or
    - (ii) levies, or
    - (iii) fees for authorisations,
  - (b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions),
  - (c) a transaction involving:
    - (i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of a State), or
    - (ii) only persons who are all acting for the same authority of a State, or
    - (iii) only the Crown in right of a State and one or more non-commercial authorities of that State, or

- (iv) only non-commercial authorities of the same State,
- (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because:
  - (i) the body chooses to acquire the products, or
  - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 36 and 37.
- (3) In this section:

**acquisition of primary products by a government body under legislation** includes vesting of ownership of primary products in a government body by legislation.

**authorisation** means a licence, permit, certificate or other authorisation that allows the holder of the authorisation to supply goods or services.

**government body** means a State or an authority of a State.

**primary products** means:

- (a) agricultural or horticultural produce, or
  - (b) crops, whether on or attached to the land or not, or
  - (c) animals (whether dead or alive), or
  - (d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of a State is **non-commercial** if:
    - (a) it is constituted by only one person, and
    - (b) it is neither a trading corporation nor a financial corporation.

### **39 Crown not liable to pecuniary penalty or prosecution**

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

jurisdiction.

## **Division 5 Miscellaneous**

### **40 Conferral of functions and powers on certain bodies**

- (1) The authorities and officers of the Commonwealth referred to in the *Australian Consumer Law (NSW)* have the functions and powers conferred or expressed to be conferred on them under the *Australian Consumer Law (NSW)*.
- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.

### **41 No doubling-up of liabilities**

- (1) If:
  - (a) an act or omission is an offence against the *Australian Consumer Law (NSW)* and is also an offence against an application law of another participating jurisdiction, and
  - (b) the offender has been punished for the offence under the application law of the other jurisdiction,the offender is not liable to be punished for the offence against the *Australian Consumer Law (NSW)*.
- (2) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the *Australian Consumer Law (NSW)* in respect of the same conduct.

## **Part 4 NSW consumer safety and information requirements**

### **Note—**

The provisions of this Part supplement the provisions of Part 3-3 of the ACL. Part 3-3 of the ACL deals with the safety of consumer goods and product related services and includes provisions relating to safety standards, bans on the supply of certain consumer goods and product related services for safety reasons, recall of consumer goods, safety warning notices and reporting by suppliers of death, serious injury or illness associated with consumer goods or product related services.

## **Division 1 Provisions relating to supply of unsafe goods and services**

### **42 Reference of certain questions to Products Safety Committee**

- (1) The Minister, or the Secretary with the approval of the Minister, may refer to the Products Safety Committee for consideration any of the following questions:
  - (a) whether consumer goods of a particular kind supplied in trade or commerce, or a

- reasonably foreseeable use (or misuse) of any such goods, will or may cause injury to any person,
- (b) whether, as a result of the supply of product related services of a particular kind in trade or commerce, any consumer goods, or a reasonably foreseeable use (or misuse) of any such goods, will or may cause injury to any person,
  - (c) whether a compulsory recall notice in relation to specified consumer goods should be issued,
  - (d) whether an interim or permanent ban on specified consumer goods or product related services should be imposed,
  - (e) whether a safety warning notice in relation to specified consumer goods or product related services should be published,
  - (f) whether any other action should be taken in relation to the supply of consumer goods or product related services.
- (2) Subsection (1) does not apply to goods or services 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), (4) (Repealed)
- (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 imposition of an interim ban in relation to the goods or services to which the question relates.
- (7) The Secretary 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 Secretary which relates to the question, and
  - (b) any other assistance which the Committee may require, and which the Secretary 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.

(12) For the avoidance of doubt, the Minister may issue an interim ban in relation to consumer goods or product related services:

- (a) even if the matter has not been referred to the Products Safety Committee for consideration, or
- (b) even if the matter has been referred to the Products Safety Committee for consideration but it has not made its report, or
- (c) on the recommendation of the Products Safety Committee, whether or not it has made a report.

(13) The Minister may refer any report or recommendation of the Products Safety Committee made under this section to the Commonwealth Minister (within the meaning of the ACL) for information or if satisfied that the report or recommendation relates to a matter that could be dealt with more appropriately by the Commonwealth Minister.

**Note—**

There are certain powers under the ACL that may only be exercised by the Commonwealth Minister, for example, the imposition of permanent bans and the making of safety standards.



### **43 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.

### **44 Method of notifying safety warning notices**

In addition to being published on the internet, a safety warning notice may be published in any other manner that the Minister considers appropriate.

## **Division 2 Product recall etc**

#### **45 Requirement to notify recall of goods to persons outside New South Wales**

If any goods are recalled in accordance with a recall notice, 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.

#### **46 Certain amounts recoverable as debt or damages**

- (1) If a supplier fails to carry out an undertaking given under section 123 (1) (c) of the ACL 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 123 (1) (c) of the ACL to repair or replace goods, the supplier is taken to have given instead an undertaking, notified under section 123 (1) (c) of the ACL, 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 notice, or
    - (ii) supplies goods in contravention of a recall notice 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.

#### **47 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 employee information relating to any goods supplied or proposed to be supplied by the person.

## **Division 3 Employment placement services**

### **48 Interpretation**

- (1) In this Division, **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 Division does not apply to or in respect of:
  - (a) a model or modelling agency, or
  - (b) an entertainment industry representative within the meaning of the [Entertainment Industry Act 2013](#), or
  - (c) a person or class of persons exempted (conditionally or unconditionally) from this Division by the regulations.

### **49 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.

## **50 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.

## **Division 4 Industry code for motor vehicle insurers and repairers**

### **51 Definitions**

In this Division:

***applicable industry code of conduct*** means a code of conduct declared under section 53 (1).

***insurer*** means an insurer who is in the business of insuring motor vehicles in respect of property damage and who, in the course of that business, engages or authorises repairers to repair motor vehicles.

***repairer*** means a person who is in the business of repairing motor vehicles that have been damaged.

### **52 Object of Division**

The object of this Division is to provide for fair, timely and transparent conduct between insurers and repairers so that consumers with damaged motor vehicles are not unduly inconvenienced or unfairly treated as a result of the business practices in, or disputes between, the motor vehicle insurance and repair industries.

### **53 Declaration of industry code of conduct in relation to motor vehicle insurers and repairers**

- (1) The regulations may declare that a code of conduct specified or referred to in the regulations is an applicable industry code of conduct for the purposes of this Division in relation to the conduct of the business of insurers and repairers.

- (2) A regulation that declares a code of conduct under subsection (1) may:
  - (a) exclude any class of motor vehicles from the application of the code, and
  - (b) exclude any provision of the code that relates to the voluntary application of that code.
- (3) The regulations may contain provisions of a savings or transitional nature consequent on the declaration of an applicable industry code of conduct.

#### **54 Compliance with applicable industry code of conduct**

- (1) An insurer or repairer must, in trade or commerce, comply with an applicable industry code of conduct.
- (2) If an alleged contravention of an applicable industry code of conduct is the subject of a dispute between an insurer and repairer, the provisions of Part 6 for enforcement or remedies in respect of the contravention do not apply unless:
  - (a) the dispute resolution procedures under the code have been followed but the dispute has not been resolved, or
  - (b) the insurer or repairer refuses to take part in those procedures.
- (3) An insurer or repairer may only take action under Part 6 if the insurer or repairer is not the party refusing to take part in the dispute resolution procedures under the applicable industry code of conduct.
- (4) The Minister and the Secretary may decline to take action under Part 6 with respect to an alleged contravention of an applicable industry code of conduct if they consider that it is not in the public interest to take that action.

### **Division 5 Funeral goods and services**

#### **55 Provision of information to consumers**

- (1) The regulations may prescribe an information standard for funeral goods and services.
- (2) The information standard may make provision for or with respect to requiring information to be provided to a consumer by a supplier of funeral goods and services in connection with the supply in trade or commerce of funeral goods or services to the consumer.
- (3) The information standard may include requirements with respect to the form and manner in which information is to be provided to a consumer.
- (4) This section does not limit section 134 (Making information standards for goods and services) of the ACL.

- (5) In this Division, **supply** includes proposed and prospective supply and offer to supply, and **supplier** has a corresponding meaning.

## 56 Compliance

- (1) A person must not, in trade or commerce, in connection with the supply to a consumer of funeral goods or services fail to comply with an information standard prescribed under section 55.
- (2) If a person contravenes subsection (1) in connection with the supply of funeral goods or services by the person and another person suffers loss or damage as a result of the contravention, the person who suffers the loss or damage is deemed, for the purposes of this Act, to have suffered it by the supplying of the goods or services.

## 57 Review of Division

- (1) The Minister is to review the effectiveness of this Division and any information standard prescribed under this Division.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this Division.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

# Part 6 Enforcement and remedies

## Division 1 Interpretation and application

### 61 Interpretation

- (1) In this Part:

**local contravention** means a contravention of Part 4 or section 87 (1).

- (2) A reference in this Part to a person involved in a contravention of a provision of this Act is a reference to a person who:
- (a) has aided, abetted, counselled or procured the contravention, or
  - (b) has induced, whether by threats or promises or otherwise, the contravention, or
  - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention, or
  - (d) has conspired with others to effect the contravention.
- (3) A reference in this Part to a contravention of Part 2-3 of the ACL (or a provision of that Part) is a reference to applying or relying on, or purporting to apply or rely on, a term

of a consumer contract that the Supreme Court has declared under section 250 of the ACL to be an unfair term.

## **Division 2 Enforcement provisions applying to ACL offences and local offences**

### **62 Enforcement provisions of ACL that extend to local offences**

- (1) The following provisions of the ACL apply to an offence against a provision of Part 4 or section 87 (1) of this Act in the same way as they apply to a contravention of, or an offence against, a provision of Chapter 4 of the ACL:
  - (a) section 207 (Reasonable mistake of fact),
  - (b) section 208 (Act or default of another person etc.),
  - (c) section 209 (Publication of advertisements in the ordinary course of business),
  - (d) section 216 (Granting of injunctions etc.).
- (2) The following provisions of the ACL apply to an offence against section 20 (3), 22, 23, Part 4 or section 87 (1) of this Act in the same way as they apply to a contravention of, or an offence against, a provision of Chapter 4 of the ACL:
  - (a) section 212 (Prosecutions to be commenced within 3 years),
  - (b) section 214 (Penalties for contraventions of the same nature etc.),
  - (c) section 215 (Penalties for previous contraventions of the same nature etc.).

### **63 Offences against this Act**

- (1) A person is guilty of an offence against this Act if the person:
  - (a) contravenes a provision of this Act, or
  - (b) attempts to contravene a provision of this Act, or
  - (c) aids, abets, counsels or procures another person to contravene a provision of this Act, or
  - (d) induces, or attempts to induce, another person, whether by threats or promises or otherwise, to contravene a provision of this Act, or
  - (e) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by another person of a provision of this Act, or
  - (f) conspires with others to contravene a provision of this Act.
- (2) Subsection (1) does not apply to a contravention of section 54 of this Act or Chapter 2

or 3 of the ACL.

#### **64 Penalties for contraventions**

- (1) A person who is convicted of a second or subsequent offence against Division 1, 2 or 5 of Part 4-1 of the ACL 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.
- (2) However, the maximum term of imprisonment that the Local Court may impose for any such second or subsequent offence is 2 years.

#### **65 Compensation orders by Local Court on conviction of person**

- (1) If a person is convicted by the Local Court of an offence against this Act or the regulations and 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 the Local Court may order to be paid under this section is not to exceed the jurisdictional limit of the Local Court when sitting in its General Division within the meaning of the *Local Court Act 2007*.
- (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 2-1, 3-1 or 4-1 of the ACL, 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).

#### **66 Other orders that may be made by court on conviction**

- (1) If a person is, by any conviction or order of the Local Court, required to pay a fine, penalty, sum of money or costs in respect of an offence against this Act, the Court may, on the application of the Minister or the Secretary, order that the amount unpaid be recoverable as a judgment debt due to the Crown.
- (2) If an order is made under subsection (1):
  - (a) the order has effect according to its tenor, and



(b) the conviction or order ceases to be enforceable by imprisonment.

(3) 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.

## **67 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) For the avoidance of doubt, a reference to any further proceedings for the alleged offence in subsection (5) includes a reference to any further proceedings under section 224 of the ACL for a contravention of a provision of the ACL that has the same elements as the elements for the alleged offence.
- (7) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (8) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (9) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

(10) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(11) In this section:

**authorised officer** means:

(a) the Secretary, or

(b) an investigator, or

(c) a person appointed in writing by the Secretary as an authorised officer for the purposes of this section.

### **68 Proceedings for offences**

(1) Proceedings for an offence against this Act may be taken and prosecuted only by the Secretary or, in the name of the Secretary, by a person acting with the authority of the Secretary.

(2) Proceedings for an offence under this Act or the regulations may be dealt with:

(a) summarily before the Local Court, or

(b) summarily before the Supreme Court in its summary jurisdiction.

(3) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

(4) In proceedings for an offence against this Act, an authority to prosecute purporting to have been signed by the Secretary is evidence of that authority without proof of the signature of the Secretary.

## **Division 3 Enforcement provisions applying to local offences only**

### **69 Penalties for offences against this Act**

A person guilty of an offence against this Act (except the ACL) 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.

## **Division 4 Remedies applying to ACL matters and local matters**

## **70 Remedy provisions of ACL that extend to local matters**

- (1) Section 218 (Regulator may accept undertakings) of the ACL applies to a matter in relation to which the Minister or the Secretary has a function under this Act in the same way as it applies to a matter in relation to which the regulator has a power or function under the ACL.
- (2) The following provisions of the ACL apply to a local contravention in the same way as they apply to a contravention of the ACL specified in those provisions:
  - (a) Division 2 (Injunctions) of Part 5-2,
  - (b) Division 3 (Damages) of Part 5-2,
  - (c) Subdivision A (Compensation orders etc. for injured persons) of Division 4 of Part 5-2,
  - (d) section 246 (other than subsection (2) (a) and (b)) (Non-punitive orders),
  - (e) section 247 (Adverse publicity orders),
  - (f) section 251 (Publication of advertisement in the ordinary course of business).

## **71 Declarations by Supreme Court concerning unfair contract terms**

- (1) An application for a declaration under section 250 of the ACL may be made only by the Secretary or, with the leave of the Supreme Court, by a party to a consumer contract that is a standard form contract.

**Note—**

Section 86 enables the Minister to intervene in proceedings brought before the Supreme Court under this Act.

- (2) A declaration made under section 250 of the ACL that a particular term of a consumer contract that is a standard form contract is unfair binds all parties to consumer contracts of that kind, unless the Supreme Court orders otherwise.
- (3) This section does not:
  - (a) limit any other power of the Supreme Court to make declarations, or
  - (b) prevent a party to a consumer contract that is a standard form contract from bringing proceedings in a court or tribunal of competent jurisdiction for relief in respect of a term of a consumer contract that is void because it is unfair.

**Note—**

Section 23 of the ACL provides that an unfair term in a consumer contract that is a standard form contract is void, although the contract continues to bind the parties if it is capable of operating without the unfair term. If a contract claim in relation to a consumer contract containing such an unfair term is brought before a court or tribunal (such as the Civil and Administrative Tribunal) having jurisdiction to deal with the claim, the

court or tribunal will be required to treat the term as being void.

- (4) In this section, **consumer contract**, **standard form contract** and **unfair** have the same meanings as they have in the ACL.

## **72 Show cause action may be taken by Secretary**

- (1) In this section, **unlawful conduct** means any conduct that constitutes a contravention of a provision of this Act other than Part 2-3 of the ACL (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 Secretary 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 Secretary 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 Secretary:
- (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 Secretary thinks appropriate.
- (6) This section does not limit the operation of section 79 of this Act or Division 2 of Part 5-2 of the ACL.

## **73 Trading prohibition orders**

- (1) The Secretary may, after serving a notice on a person under section 72 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 Secretary 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 that section.
- (2) The Supreme Court may, on application by the Secretary under this section, 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 2-1, 3-1 or 4-1 of the ACL, 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 79 of this Act or Division 2 of Part 5-2 of the ACL.

#### **74 Actions for damages and compensation orders**

- (1) Sections 236 (2) and 237 (3) of the ACL do not apply to a cause of action to which Division 6 of Part 2 of the [Limitation Act 1969](#) applies.
- (2) The powers conferred on the Supreme Court under section 237, 238 or 243 of the ACL in relation to a contract or arrangement do not affect any powers that another court may have in relation to the contract or arrangement in proceedings instituted in that other court in respect of the contract or arrangement.
- (3) The Tribunal may decide the matter of whether a person has suffered loss or damage because of the conduct of another person that constitutes a local contravention or a contravention of Chapter 2 or 3 of the ACL if that matter arises in connection with another matter the subject of proceedings in the Tribunal. In deciding the matter of loss or damage, the Tribunal may award such sum, and make such ancillary orders, as it thinks fit.
- (4) A reference to loss or damage in section 236, 237 or 238 of the ACL and in this section does not, if the loss or damage arises from a contravention of Part 2-1, 3-1 or 4-1 of the ACL, 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).

#### **75 Contributory acts or omissions to reduce compensation in defective goods actions**

- (1) If the loss or damage to which a defective goods action under section 138 or 139 of the ACL relates was caused by both:
  - (a) an act or omission of the individual who suffers the injuries referred to in that

section or a person for whom that individual is responsible, and

(b) a safety defect of the goods to which the action relates,

the amount of the loss or damage is to be reduced to such extent (which may be to nil) as the court thinks fit having regard to that individual's share in the responsibility for the loss or damage.

(2) If the loss or damage to which a defective goods action under section 140 or 141 of the ACL relates was caused by both:

(a) an act or omission of the person who suffered the loss or damage or another person for whom that person is responsible, and

(b) a safety defect of the goods to which the action relates,

the amount of the loss or damage is to be reduced to such extent (which may be to nil) as the court thinks fit having regard to that person's share in the responsibility for the loss or damage.

## **76 Compensation orders etc arising out of unfair contract terms**

In determining whether to make an order under section 237 (1) or 238 (1) of the ACL in relation to:

(a) a contravention of a provision of Part 2-2 of the ACL, or

(b) a term of a consumer contract that has been declared under section 250 of the ACL to be an unfair term,

the court may have regard to the conduct of the parties to the proceeding referred to in that subsection since the contravention occurred or the declaration was made.

## **77 Remedy for supply of goods in contravention of certain provisions**

(1) This section applies if:

(a) goods are supplied to a person in contravention of section 106 or 118 of the ACL, or

(b) goods are supplied to a person and the supply of the goods is an offence under section 194 or 197 of the ACL (whether or not there has been a conviction for the offence).

(2) The person to whom the goods were supplied may recover from the supplier as a debt any money paid for the goods.

(3) If judgment is given for the plaintiff in an action under subsection (2), 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.

**78 Court may make orders for the purpose of preserving money or other property held by a person**

- (1) The Supreme Court may, on the application of the Minister or the Secretary, make an order or orders referred to in subsection (3) if:
  - (a) proceedings of a kind referred to in subsection (2) have been taken against a person, or proceedings of a kind referred to in subsection (2) (e) or (f) may be taken against a person, and
  - (b) the Court is satisfied that it is necessary or desirable to make the order or orders for the purpose of preserving money or other property held by, or on behalf of, the person if the person is liable, or may become liable, under this Act:
    - (i) to pay money by way of a fine, damages, compensation, refund or otherwise, or
    - (ii) to transfer, sell or refund other property, and
  - (c) the Court is satisfied that the making of such an order or orders will not unduly prejudice the rights and interests of any other person.
- (2) For the purposes of subsection (1) (a), the kinds of proceedings taken against the person are:
  - (a) proceedings against the person for an offence against this Act, or
  - (b) an application under section 232 of the ACL for an injunction against the person in relation to:
    - (i) a local contravention or a contravention of a provision of Chapter 2, 3 or 4 of the ACL, or
    - (ii) a term of a consumer contract in relation to which a declaration under section 250 of the ACL has been made, or
  - (c) an application under section 79 for an injunction against a person in relation to a contravention referred to in that section, or
  - (d) an action under section 236 (1) of the ACL against the person in relation to a local contravention or a contravention of a provision of Chapter 2 or 3 of the ACL, or

- (e) an application for an order under section 237 (1) or 239 (1) of the ACL against the person in relation to:
    - (i) a contravention of a provision of Chapter 2, 3 or 4 of the ACL, or
    - (ii) a term of a consumer contract in relation to which a declaration under section 250 of the ACL has been made, or
  - (f) an application for an order under section 237 (1) of the ACL in relation to a local contravention, or
  - (g) an application for an order under section 73 in relation to the person.
- (3) The Supreme Court may make the following orders under subsection (1) in relation to money or other property held by, or on behalf of, a person (**the respondent**):
- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the respondent, or to an associate of the respondent, from making a payment, in total or partial discharge of the debt:
    - (i) to the respondent, or
    - (ii) to another person at the direction or request of the respondent,
  - (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the respondent, or on behalf of an associate of the respondent:
    - (i) from paying all or any of the money to the respondent, or to another person at the direction or request of the respondent, or
    - (ii) from transferring the other property to the respondent, or to another person at the direction or request of the respondent, or otherwise parting with possession of that property,
  - (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the respondent, or of an associate of the respondent, to a place outside the State or Territory in which the money is held,
  - (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the respondent, or of an associate of the respondent, to a place outside the State or Territory in which that property is located,
  - (e) if the respondent is a natural person—an order appointing a receiver or trustee of the property, or of part of the property, of the respondent with such powers as are specified in the order.
- (4) If the Supreme Court makes such an order, the order operates:



- (a) for the period specified in the order (which must not be longer than 30 days if the application for the order was an *ex parte* application), or
  - (b) if proceedings in relation to which the order is made are concluded before the end of that period—until the conclusion of those proceedings.
- (5) A person who contravenes 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) This section does not affect any other powers of the Supreme Court.
- (7) A reference in this section to a person who is an associate of a respondent is a reference to:
- (a) a person holding money or other property on behalf of the respondent, or
  - (b) if the respondent is a body corporate—a wholly owned subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the respondent.

## **Division 5 Remedies applying to local matters only**

### **79 Other injunctions**

- (1) The Supreme Court may grant an injunction in such terms as the Court determines to be appropriate if satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes, or would constitute:
- (a) a contravention of:
    - (i) section 20 (3), 22 or 23 of this Act, or
    - (ii) a provision of the *Fitness Services (Pre-paid Fees) Act 2000*, or
    - (iii) a provision of any other legislation administered by the Minister or of an order made under any such legislation, or
  - (b) attempting to contravene such a provision, or
  - (c) aiding, abetting, counselling or procuring a person to contravene such a provision, or
  - (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene such a provision, or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the

contravention by a person of such a provision, or

(f) conspiring with others to contravene such a provision.

- (2) The Supreme Court may grant an injunction under this section only on the application of the Secretary made with the consent of the Minister.
- (3) An injunction may be granted under this section as an interim injunction without an undertaking being required as to damages or costs or may be granted as a permanent injunction.

### **79A 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 Secretary 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 Secretary 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 Secretary 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 Secretary, 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 Secretary 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 Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of a decision of the Secretary under this section.

## **Part 7 NSW Consumer Law Fund**

### **79B NSW Consumer Law Fund**

- (1) There is to be established in the Special Deposits Account a NSW Consumer Law Fund (**the Fund**).
- (2) There is payable into the Fund:
  - (a) any pecuniary penalty ordered by a court under section 224 of the ACL to be paid to the State, and
  - (b) any amount ordered by a court under section 239 (1) of the ACL to be paid into the Fund, and
  - (c) the proceeds of the investment of money in the Fund, and
  - (d) any money directed to be paid into the Fund by or under this or any other Act.
- (3) There is payable out of the Fund:
  - (a) money to non-party consumers in accordance with an order under section 239 (1) of the ACL, and
  - (b) special purpose grants for improving consumer well-being, consumer protection or fair trading, and

- (c) administrative expenses incurred in relation to the Fund, and
  - (d) money that is directed to be paid from the Fund by or under this or any other Act.
- (4) Subject to the regulations, money is to be paid out of the Fund in accordance with the directions of the Minister made on the recommendation of the Secretary.
- (5) Any amount ordered by a court under section 239 (1) of the ACL to be paid into the Fund must not be paid out of the Fund except in accordance with the terms of the order.
- (6) The Minister may, on the recommendation of the Secretary, invest money in the Fund in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

## **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 of consumer**

Section 3 (10) of the ACL extends to proceedings under provisions of this Act apart from

the ACL in the same way as it applies to proceedings under the ACL.

## **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) a registered laboratory of the National Association of Testing Authorities, or
- (b) any other body or person prescribed by the regulations.

## **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 Secretary 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 67, 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 Secretary 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 Secretary 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 Secretary has been given.

## **85A Findings in certain proceedings to be evidence**

- (1) In proceedings under section 236, 237 or 239 of the ACL or section 77 of this Act, or in an application under section 73 of this Act for an order against a person:
  - (a) a finding of fact by a court to which this section applies is evidence of that fact, and
  - (b) the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (2) This section applies to a finding of fact by a court in proceedings under section 228, 232, 246, 247 or 248 of the ACL or section 79 of this Act, or for an offence against this Act (other than the ACL) or Chapter 4 of the ACL, in which the person has been found:
  - (a) to have contravened a provision of this Act (other than the ACL) or of Chapter 2, 3 or 4 of the ACL, or
  - (b) to have attempted to contravene such a provision, or
  - (c) to have aided, abetted, counselled or procured a person to contravene such a provision, or
  - (d) to have induced or attempted to induce a person, whether by threats or promises or otherwise, to contravene such a provision, or
  - (e) to have been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision, or
  - (f) to have conspired with others to contravene such a provision.

## **Division 2 Miscellaneous**

### **86 Intervention by Minister or Secretary**

- (1) This section applies to proceedings brought before a court or tribunal under this Act or any other legislation administered by the Minister.

- (2) The Minister may, at any stage of proceedings to which this section applies, intervene in the proceedings.
- (3) The Secretary may, at any stage of proceedings to which this section applies, intervene in the proceedings but only if the Secretary is of the opinion that it would be in the public interest to do so.
- (4) The Secretary must intervene in proceedings to which this section applies if directed to do so by the Minister.
- (5) If the Minister or Secretary intervenes in proceedings, he or she:
  - (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 Secretary 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 (including the use of terms that are or may be unfair in consumer contracts that are standard form contracts within the meaning of Part 2-3 of the ACL) 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 Secretary is not to make or issue a statement under this section unless satisfied that it is in the public interest to do so.

#### **86B Register of undertakings**

- (1) The Secretary is to maintain a register that includes the following in relation to each undertaking accepted under section 218 of the ACL:
  - (a) a copy of the undertaking,
  - (b) a copy of each variation of the undertaking,
  - (c) the name and address of the person who gave the undertaking,

(d) the date of the undertaking.

- (2) The register is to be amended to remove information relating to undertakings that have been withdrawn.
- (3) The register is to be kept in the head office of the Department and is to be available for inspection during ordinary business hours free of charge.
- (4) The register may also be made available in electronic form.

#### **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 Secretary,
  - (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 in the Department, or by a person referred to in paragraph (d), or by or in 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.

#### **87A Conduct by directors, servants or agents (TPA s 84)**

- (1) If, in a proceeding under this Act 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 Act 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.

## **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 Secretary 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 Secretary 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.

#### **88A Relationship with certain provisions of other Acts**

- (1) Section 64 (Guarantees not to be excluded etc. by contract) of the ACL 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 of that Act.
- (2) Section 101 (Consumer may request an itemised bill) of the ACL does not apply to a bill of costs referred to in Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#) (see section 187 of that Law).

#### **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.

**Note—**

See also section 22 of the [Contracts Review Act 1980](#).

- (2) Section 16 (Severability) of the ACL applies to a contravention of a provision of this Act (other than the ACL) in the same way as it applies to a contravention of the ACL and as so applying is to be read as if a reference in that section to this Schedule were a reference to this Act.

#### **90 (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) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
- (a) the calling and holding of meetings of an advisory council,
  - (b) varying the times referred to in section 73 (1) of the ACL,
  - (c) the payment of money out of the NSW Consumer Law Fund established under section 79Y.

**Note—**

Section 73 (1) of the ACL specifies the times at which a dealer must not call on a person to negotiate an unsolicited consumer agreement or for related purposes. Section 131C (2) of the [Competition and Consumer Act 2010](#) of the Commonwealth winds back the operation of section 73 of the ACL to the extent that it is inconsistent with a provision of a State law.

- (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](#)  
[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 2010*  
*Radiation Control Act 1990*  
*Rice Marketing Act 1983*  
*Stock Foods Act 1940*  
*Stock Medicines Act 1989*

## **Schedule 2 Acts prohibiting or regulating supply of goods or services**

(Section 42)

*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 (Repealed)**

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

## **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, after having obtained the 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 42.
- (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)

### **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 *Government Sector Employment Act 2013* 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 21 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)

### **Part 1 Preliminary**

#### **1A Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Fair Trading (Lay-by) Amendment Act 1993*

*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*

*Fair Trading Amendment Act 2006* (but only to the extent that it amends this Act)

*Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Act 2006*

*Fair Trading Amendment (Funeral Goods and Services) Act 2007*

*Fair Trading Amendment (Unfair Contract Terms) Act 2010*

*Fair Trading Amendment (Australian Consumer Law) Act 2010*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (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, 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.
- (4) For the avoidance of doubt, any provision of the regulations made for the purposes of this clause may, if the regulations so provide, have effect despite any specified provision of this Act (including a provision of this Schedule).

## **Part 2 Provisions consequent on enactment of this Act**

### **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.

## Part 3 Provisions consequent on enactment of certain other Acts

### 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.

#### **11G Fair Trading Amendment Act 2006**

- (1) A person who, immediately before the commencement of Schedule 1 [10] to the *Fair Trading Amendment Act 2006*, held office as a member of the Motor Trade Advisory Council ceases to hold office on that commencement.
- (2) A person who ceases to hold office because of this clause is not entitled to any remuneration or compensation because of so ceasing to hold office.
- (3) A reference in any Act (other than this Act) or in any instrument made under any Act to the Motor Trade Advisory Council is to be read as a reference to the Motor Vehicle Industry Advisory Council established under this Act.

#### **11H Fair Trading Amendment (Funeral Goods and Services) Act 2007**

Part 5F, as inserted by the *Fair Trading Amendment (Funeral Goods and Services) Act 2007*, does not apply to a supply of funeral goods or services as referred to in that Part that occurs pursuant to an arrangement entered into with a consumer before an information standard that is relevant to the supply is first prescribed under that Part.

### 11I Fair Trading Amendment (Unfair Contract Terms) Act 2010

- (1) Part 5G (as inserted by the *Fair Trading Amendment (Unfair Contract Terms) Act 2010*) applies to a contract entered into on or after the day on which that Part commences (**the commencement day**) but before the day on which that Part is repealed by the *Fair Trading Amendment (Australian Consumer Law) Act 2010*.
- (2) Except as provided by subclauses (3)–(5), Part 5G does not apply to a contract entered into before the commencement day.
- (3) If a contract is renewed on or after the commencement day but before the day on which Part 5G is repealed by the *Fair Trading Amendment (Australian Consumer Law) Act 2010*, Part 5G applies to the contract as renewed, on and from the day (**the renewal day**) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day.
- (4) If a term of the contract is varied on or after the commencement day but before the day on which Part 5G is repealed by the *Fair Trading Amendment (Australian Consumer Law) Act 2010* and subclause (3) has not already applied in relation to the contract, Part 5G applies to the term as varied, on and from the day (**the variation day**) on which the variation takes effect, in relation to conduct that occurs on or after the variation day but before the day on which Part 5G is repealed by the *Fair Trading Amendment (Australian Consumer Law) Act 2010*.
- (5) If subclause (4) applies to a term of a contract, sections 60ZD (2) and 60ZH (as inserted by the *Fair Trading Amendment (Unfair Contract Terms) Act 2010*) apply to the contract.

### 11J Personal Property Securities Legislation Amendment Act 2010

Section 9A (as amended by the *Personal Property Securities Legislation Amendment Act 2010*) extends to information obtained before the commencement of the amendments to that section.

## Part 4 Provisions consequent on enactment of Fair Trading Amendment (Australian Consumer Law) Act 2010

### 12 Definitions

In this Part:

**amending Act** means the *Fair Trading Amendment (Australian Consumer Law) Act 2010*.

**commencement of the ACL** means 1 January 2011.

### 13 References to Trade Practices Act 1974 of the Commonwealth

On and from the commencement of item 2 of Schedule 5 to the *Trade Practices*



*Amendment (Australian Consumer Law) Act (No. 2) 2010* of the Commonwealth, a reference in any Act or instrument (other than this Schedule) to the *Trade Practices Act 1974* of the Commonwealth is to be read as a reference to the *Competition and Consumer Act 2010* of the Commonwealth.

#### **14 Products Safety Committee and advisory councils**

- (1) Any question that was referred to the Products Safety Committee under section 28 before its amendment by the amending Act, and in respect of which a report or recommendation had not been made by the Committee before that amendment, may continue to be dealt with by the Committee as if it were a question referred under that section as so amended.
- (2) A renumbering of any provision by the amending Act does not affect the establishment of any advisory council or the membership of any advisory council or any other matter relating to an advisory council.

#### **15 Product bans**

- (1) An interim order made under section 30 before its repeal and re-enactment by the amending Act, and still in force immediately before that repeal, is taken to be an interim ban made under section 109 of the ACL.
- (2) A reference in section 111 (1) (a) of the ACL to the start day is taken, in relation to an interim order referred to in subclause (1), to be a reference to the day on which the order was published in the Gazette or, if the order was not published in the Gazette, the day on which it was given to the supplier concerned.
- (3) Any order made under section 31, and in force immediately before the repeal of that section by the amending Act, is revoked on that repeal.

#### **16 Conduct and other matters occurring or arising before commencement of ACL**

- (1) Subject to the other provisions of this Part and the regulations, this Act, as in force before the commencement of the ACL, continues to apply to:
  - (a) acts or omissions that occurred before that commencement, and
  - (b) direct commerce contracts (within the meaning of Division 3 of Part 4 before its repeal by the amending Act) entered into before that commencement, and
  - (c) other contracts entered into before that commencement, and
  - (d) a lay-by (within the meaning of section 60E before its repeal by the amending Act) entered into before that commencement.
- (2) Section 101 of the ACL does not apply in relation to services to the extent that they were supplied before the commencement of the ACL.

- (3) The reference in section 224 (2) (c) of the ACL to proceedings under Chapter 4 or Part 5-2 includes a reference to proceedings commenced before the commencement of the ACL:
  - (a) under or in relation to Part VC or VI of the *Trade Practices Act 1974* of the Commonwealth, or
  - (b) under Part 6 of this Act.

## 17 Unfair contract terms

- (1) Part 2-3 of the ACL applies to a contract entered into on or after the commencement of the ACL.
- (2) Except as provided by subclauses (3)–(5), Part 2-3 of the ACL does not apply to a contract entered into before the commencement of the ACL.
- (3) If a contract is renewed on or after the commencement of the ACL, Part 2-3 of the ACL applies to the contract as renewed, on and from the day (**the renewal day**) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day.
- (4) If a term of the contract is varied on or after the commencement of the ACL and subclause (3) has not already applied in relation to the contract, Part 2-3 applies to the term as varied, on and from the day (**the variation day**) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.
- (5) If subclause (4) applies to a term of a contract, sections 23 (2) and 27 of the ACL apply to the contract.

## 18 Product information standards

- (1) Despite the repeal of section 38 by the amending Act, the regulations made under that section, and in force immediately before that repeal, continue in force and may be amended and repealed as if that section also continued in force.
- (2) Despite the repeal of section 39 by the amending Act, that section as in force before its repeal is taken to continue in force in relation to a product information standard prescribed by regulations referred to in subclause (1).

## Part 5 Provisions consequent on enactment of *Travel Agents Repeal Act 2014*

### 19 Definition

- (1) In this Part, **compensation scheme** means the scheme for compensating persons who suffer a pecuniary loss by reason of an act or omission by a person who carries on, or carried on, business as a travel agent prescribed under section 57 of the *Travel Agents Act 1986* immediately before the repeal of that Act (and as subsequently

amended in accordance with that scheme).

**Note—**

A copy of the compensation scheme trust deed can be found on the website of the Travel Compensation Fund at [www.tcf.org.au](http://www.tcf.org.au).

- (2) Expressions used in this Part have the same meanings as in the [Travel Agents Act 1986](#) immediately before the repeal of that Act.

## **20 No compensation payable by State**

- (1) Compensation is not payable by or on behalf of the State because of the enactment or operation of the [Travel Agents Repeal Act 2014](#), or for any consequence of that enactment or operation.

- (2) In this clause:

**compensation** includes damages or any other form of monetary compensation.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes a public sector agency of the State and an officer, employee or agent of the Crown or a public sector agency of the State.

## **21 Administrative reviews by Tribunal**

Division 4 of Part 2 of the [Travel Agents Act 1986](#), despite the repeal of that Act, continues to apply to and in respect of a decision made before that repeal.

## **22 Certain appeals rights continue**

Without limiting section 30 of the [Interpretation Act 1987](#), and despite the repeal of the [Travel Agents Act 1986](#), a right of appeal to the Tribunal continues to apply with respect to appeals against decisions of the administrators of the compensation scheme, and with respect to the determining of any such appeal, in accordance with the compensation scheme.

## **23 Certain rights of compensation scheme trustees to continue**

- (1) Section 40 (Compensation scheme trustees to have certain rights by subrogation and otherwise) of the [Travel Agents Act 1986](#), despite the repeal of that Act, continues to apply to and in respect of a payment made to a claimant under the compensation scheme whether the payment was made, or the act or omission concerned occurred, before or after that repeal.
- (2) Section 52 (Legal action by compensation scheme trustees) of the [Travel Agents Act 1986](#), despite the repeal of that Act, continues to apply.

## **24 Offences under [Travel Agents Act 1986](#)**

Section 49 of the [Travel Agents Act 1986](#) and clause 12 of the [Travel Agents Regulation](#)

2011, despite the repeal of that Act and that Regulation, continue to apply to and in respect of any act or omission occurring before that repeal.

## **25 Continuation of disqualification**

- (1) A person who was disqualified under section 21 of the *Travel Agents Act 1986* from holding a licence or from being involved in the direction, management or conduct of business as a travel agent immediately before the repeal of that Act, must not engage in any conduct that would have been a contravention of that disqualification during the period for which they were so disqualified.

Maximum penalty: 50 penalty units.

- (2) Section 4 of the *Travel Agents Act 1986* and clauses 4 and 5 of the *Travel Agents Regulation 2011*, despite the repeal of that Act and that Regulation, continue to apply for the purposes of this clause.

## **26 Part ceases to have effect**

This Part ceases to have effect on and from a day to be appointed by proclamation.

## **27 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Travel Agents Repeal Act 2014*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (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, 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.

## **Part 6 Provisions consequent on enactment of *Fair Trading Legislation (Repeal and Amendment) Act 2015***

### **Division 1 Provisions consequent on repeal and re-enactment of**

## Consumer Claims Act 1998

### 28 Definition of “former Act”

In this Division:

**former Act** means the *Consumer Claims Act 1998*.

### 29 Jurisdiction of Tribunal in relation to pre-existing consumer claims

- (1) Part 6A of this Act extends to a consumer claim arising before the commencement of that Part (except as provided by subclause (2)).
- (2) The former Act continues to apply in relation to a consumer claim the subject of an application made under section 6 of the former Act that is not finally determined.
- (3) For the purposes of this clause, an application is not finally determined if:
  - (a) any period for bringing an appeal as of right against a decision in respect of the claim the subject of the application has not expired (ignoring any period that may be available by way of extension of time to appeal), or
  - (b) any appeal against the decision is pending (whether or not it is an appeal brought as of right).

### 30 Exclusion from definition of “services”

Section 79F (2) (b) does not apply in relation to a consumer claim the subject of an application made under section 6 of the former Act before the commencement of that paragraph.

### 31 Matters reported to President of Tribunal or to Minister

- (1) A reference in section 79W to the hearing or determination of a consumer claim includes a reference to the hearing or determination of a consumer claim under the former Act.
- (2) A reference in section 79W to a report given to the Secretary under that section includes a reference to a report given to the Secretary under section 15 (3) of the former Act.

### 32 Unsatisfactory suppliers list

- (1) A list compiled under section 16 of the former Act is taken (as it stood immediately before the repeal of that section) to form part of any list compiled for the purposes of section 79X of this Act.
- (2) A reference in section 79X (2) (a) of this Act to a report made under Division 4 of Part 6A includes a reference to a report made under section 15 of the former Act.

- (3) A reference in section 79X (2) (b) or (c) of this Act to an order made under Part 6A includes a reference to an order made under the former Act.

### 33 Qualified privilege in proceedings for defamation

Despite the repeal of the former Act, the Secretary continues, because of the operation of section 30 of the *Interpretation Act 1987*, to have qualified privilege in proceedings for defamation arising out of:

- (a) a communication made under section 15 of the former Act, or
- (b) a publication made in accordance with section 16 (5) of the former Act.

## Division 2 Provisions consequent on repeal of **Fitness Services (Pre-paid Fees) Act 2000**

### 34 Definitions

In this Division:

**former Act** means the *Fitness Services (Pre-paid Fees) Act 2000*, as in force immediately before the repeal day.

**relevant fitness service agreement** means a fitness service agreement entered into before the repeal day and in force immediately before that day.

**repeal day** means the day on which the *Fitness Services (Pre-paid Fees) Act 2000* is repealed by the *Fair Trading Legislation (Repeal and Amendment) Act 2015*.

### 35 Refund of pre-paid fee if service not provided within 3 months

Section 10 (2) and (5) of the former Act continue to apply in relation to a fee accepted before the repeal day in the same way as those provisions would have applied if the former Act had continued in force.

### 36 Termination of fitness service agreement if service not commenced within 3 months

Section 10 (3) of the former Act continues to apply in relation to a relevant fitness service agreement in the same way as that provision would have applied if the former Act had continued in force.

### 37 Civil consequences of contravention

Section 17 of the former Act continues to apply in relation to a pre-paid fee accepted or received in contravention of section 10 (2) of the former Act (as continued by this Division), or under a relevant fitness service agreement terminated by the operation of section 10 (3) of the former Act (as continued by this Division), in the same way as that provision would have applied if the former Act had continued in force.

### **38 Pre-paid fees required to be held in trust account before service commenced**

Section 11 of the former Act and the regulations made under that section (as in force immediately before the repeal day) continue to apply in relation to money received before the repeal day for a pre-paid fee for the provision of a fitness service under a fitness service agreement.

### **39 Injunctions may be granted by Supreme Court**

Despite the repeal of section 79 (1) (a) (ii) of this Act and the repeal of the former Act, section 79 continues to apply in relation to conduct that constitutes or would constitute:

- (a) a contravention of section 10 (2) or 11 of the former Act (as continued by this Division), or
- (b) attempting to contravene that provision, or
- (c) aiding, abetting, counselling or procuring a person to contravene that provision, or
- (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene that provision, or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of that provision, or
- (f) conspiring with others to contravene that provision.

### **40 Penalty notices**

Section 16 of the former Act and the regulations made under that section continue to apply in relation to an alleged offence against section 10 (2) or 11 (7) of the former Act (as continued by this Division).

### **41 Operation of [Interpretation Act 1987](#)**

For the avoidance of doubt, nothing in this Division limits the operation of section 30 of the [Interpretation Act 1987](#) in relation to the repeal of the following:

- (a) the former Act,
- (b) section 79 (1) (a) (ii) of this Act.