

# Fair Trading Act 1987 No 68

[1987-68]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#), Sch 4.34 (not commenced)
  - [Licensing and Registration \(Uniform Procedures\) Amendment Act 2022 No 2](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2022 No 59](#) (not commenced — to commence on 13.1.2023)
  - [Medicines, Poisons and Therapeutic Goods Act 2022 No 73](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2021](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 November 2022

# 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 9B.

**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.

**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 site agreement (within the meaning of the *Residential (Land Lease) Communities Act 2013*), or
- (f) a service contract (within the meaning of the *Retirement Villages Act 1999*),

but does not include the supply of goods or the performance of work under a contract of employment.

**small business contract** has the same meaning as in section 23 (4) of the ACL.

**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 (except in Part 6A)—

- (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.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (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.

**Editorial note—**

References in this Act to any other Act or legislation administered by the Minister are to be construed in accordance with clause 4 of the [Administrative Arrangements \(Administration of Acts—Amendment No 4\) Order 2015](#).



## **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)–(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** (Renumbered as section 17AB)

## **9B Advisory committees**

- (1) The Minister may appoint such advisory committees as the Minister considers appropriate for the purpose of advising the Secretary in relation to matters arising under section 9 (2).
- (2) An advisory committee may include one or more employees.
- (3) An advisory committee has such functions in relation to the provision of advice as the Minister directs.
- (4) The Minister may, at any time, do the following—
  - (a) terminate the appointment of a person as a member of an advisory committee,
  - (b) dissolve an advisory committee.
- (5) 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.
- (6) Subject to any directions of the Minister, the procedure of an advisory committee appointed under this section is to be determined by the advisory committee.

## **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, or
  - (b) (Repealed)
  - (c) a member of an advisory committee,for any act done or omitted, or for any statement made or issued, by any of them or by an advisory committee 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.

### **Division 3 Disclosure and sharing of information**

**17AA Publication of certain information for public access**

- (1) The Secretary may from time to time publish any of the following information about a licence holder or trader on the internet for access by a member of the public free of charge—
  - (a) identifying particulars, including the name of the licence holder or trader, the licence number, class or type, the date of issue and expiry date of the licence and details of any licence conditions,
  - (b) information about the surrender, cancellation or suspension of a licence,
  - (c) information about any disciplinary action taken against a licence holder or trader under this Act or any other legislation administered by the Minister,
  - (d) information about any public warnings issued under this Act or any other legislation administered by the Minister,
  - (e) information about any undertakings given under section 86B of this Act,
  - (f) such other information as may be prescribed by the regulations.
- (2) The Secretary must not publish information under this section unless satisfied that it is in the public interest to do so.
- (3) The Secretary may at any time remove information from, or otherwise amend, information published under this section on the Secretary's own initiative or on the application of the person to whom the information relates if the Secretary is of the opinion that the information is false, misleading or unfairly prejudicial to the interests of the person concerned.
- (4) The Secretary may correct any error in or omission from the information published under this section.
- (5) Information published under this section may include information held by the Secretary before the commencement of this section.
- (6) The regulations may specify—
  - (a) the period within which information that is authorised to be published on the internet under this section must be removed from the information published on the internet, and
  - (b) the information that is not to be published on the internet under this section.
- (7) No liability (including liability in defamation) is incurred for publishing in good faith information under this section or a fair report or summary of that information.
- (8) In the event of any inconsistency between this section and any other provisions of this



Act or other legislation administered by the Minister, this section prevails to the extent of the inconsistency.

(9) In this section—

**licence** includes any licence, registration or other authority issued under this Act or any other legislation administered by the Minister.

**licence holder** includes a former licence holder.

**trader** means a person carrying on a business regulated under this Act or other legislation administered by the Minister but who does not hold a licence, and includes any such business that has ceased trading.

### **17AB 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, 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.

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

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

#### **17A Definition**

In this Part, **place** includes a vehicle, vessel or aircraft.

#### **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, stored 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,
  - (c1) seize, detain or remove any consumer goods in that place that—
    - (i) the investigator believes, on reasonable grounds, do not comply with a safety standard (within the meaning of section 2 (1) of the ACL), or
    - (ii) are the subject of an interim or permanent ban, or
    - (iii) are the subject of a recall notice, or
    - (iv) the investigator believes, on reasonable grounds, are or are likely to become unsafe,
  - (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 an investigator believes on reasonable grounds that there are on any premises documents evidencing—
  - (a) conduct in contravention of this Act or any other legislation administered by the Minister, or

(b) the inclusion of an unfair term in a consumer contract or small business contract that is a standard form contract (as referred to in Part 2-3 of the ACL),

the investigator may enter the premises and do any of the following—

(c) inspect any document,

(d) make a copy of, or take an extract from, any document,

(e) seize any document, if the investigator believes on reasonable grounds that it is necessary to prevent it being interfered with or to prevent its concealment, loss, deterioration or destruction.

(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.

(6) An investigator who seizes, detains or removes any goods, or partly manufactured goods, under this section must provide a receipt for the goods.

### **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](#).

(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

(a1) there is evidence relating to the inclusion of an unfair term in a consumer contract or small business contract that is a standard form contract (as referred to in Part 2-3 of the ACL), 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
  - (a1) the possible inclusion of an unfair term in a consumer contract or small business contract that is a standard form contract (as referred to in Part 2-3 of the ACL), or
  - (b) a matter that may lead to the reference of a question to 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 property**

- (1) This section applies to—
  - (a) anything seized under the authority of a search warrant issued for the purposes of section 19A, and
  - (b) anything that has been obtained by the Secretary or an investigator in the course of an investigation under this Act.
- (2) Anything to which this section applies must be returned to the person who had lawful possession of the thing before it was seized or obtained by the Secretary or an investigator 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, or obtained in the course of an investigation under this Act, 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 or obtained 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 or obtained in the course of an investigation under this Act.
- (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 (Repealed)**

## **Division 3 Embargo notices**

### **23D Embargo notices**

- (1) An investigator may give an embargo notice in relation to consumer goods to an occupier of premises if the investigator has reasonable grounds to believe that—
  - (a) the consumer goods are being manufactured, prepared, stored on or supplied from the premises in trade or commerce and the consumer goods—
    - (i) do not comply with a safety standard (within the meaning of section 2 (1) of the ACL), or
    - (ii) are the subject of an interim or permanent ban, or
    - (iii) are the subject of a recall notice, or
    - (iv) are or are likely to become unsafe, and
  - (b) it is not practicable to seize and remove the consumer goods or equipment used in the manufacturing, processing, storage or supply of the consumer goods.
- (1A) An investigator may give an embargo notice in relation to product related services to an occupier of premises if the investigator reasonably believes that—
  - (a) product related services are being supplied from the premises in trade or commerce, and
  - (b) the product related services are unsafe, and
  - (c) it is not practicable to seize and remove 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**

### **24-25L (Repealed)**

## **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**

### **42-44 (Repealed)**

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

## **Division 2A Provisions relating to disclosure requirements and information standards**

### **47A Disclosure of prejudicial terms relating to supply of goods or services**

- (1) A supplier must, before supplying a consumer with goods or services, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.
- (2) Without limiting subsection (1), a term or condition relating to the supply of goods or services to a consumer may substantially prejudice the interests of the consumer if—
  - (a) the term excludes the liability of the supplier, or
  - (b) the term provides that the consumer is liable for damage to goods that are delivered, or
  - (c) the term permits the supplier to provide data about the consumer, or data provided by the consumer, to a third party in a form that may enable the third party to identify the consumer, or
  - (d) the term requires the consumer to pay an exit fee, a balloon payment or other similar payment.
- (3) The regulations may provide for—
  - (a) what may or may not constitute reasonable steps taken by suppliers to ensure consumers are aware of the substance and effect of terms or conditions relating to the supply of goods or services, and
  - (b) the type of terms, or classes of terms, that may substantially prejudice the interests of consumers, and
  - (c) the type of terms, or classes of terms, that do not substantially prejudice the interests of consumers, and
  - (d) any other requirements in relation to the way in which consumers must be made aware of terms and conditions relating to the supply of goods or services that may substantially prejudice the interests of consumers, and
  - (e) exemptions from the requirements of this section.



#### **47B Disclosure of referral fees, commissions, etc**

- (1) An intermediary must, before acting under an arrangement that provides for the intermediary to receive a financial incentive, take reasonable steps to ensure the consumer who will be supplied with the goods or services to which the financial incentive relates is aware of the existence of the arrangement.
- (2) The regulations may provide for—
  - (a) what may or may not constitute reasonable steps taken by intermediaries to ensure consumers are aware of the existence of arrangements that provide for intermediaries to receive financial incentives, and
  - (b) any other requirements in relation to the way in which intermediaries must make consumers aware of the existence of arrangements under which intermediaries receive financial incentives.

- (3) In this section—

**financial incentive** means—

- (a) a commission or referral fee, or
- (b) another kind of payment prescribed by the regulations.

**intermediary**—

- (a) means a person—
  - (i) who, under an arrangement that provides for a financial incentive, arranges contracts for the supply of goods or services as an agent or refers consumers to another supplier of goods or services, or
  - (ii) who is prescribed by, or who belongs to a class of persons prescribed by, the regulations, but
- (b) does not include a person, or class of persons, excluded by the regulations.

#### **47C Information standards**

- (1) The regulations may prescribe information standards for the supply of goods and services.
- (2) A prescribed information standard may contain any of the following—
  - (a) requirements for certain information to be communicated to a person to whom the goods or 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) This section does not limit section 134 (Making information standards for goods and services) of the ACL.

(4) In this section, **supply** includes proposed and prospective supply and offer to supply.

#### **47D Compliance with information standard**

(1) A person who supplies goods or services that are intended to be used, or are of a kind likely to be used, by a consumer and in relation to which there is an information standard must comply with the standard in relation to the goods or services concerned.

Maximum penalty—50 penalty units.

(2) If—

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

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

the person who suffers the loss or damage is taken, for the purposes of this Act, to have suffered it by the supply of the goods or services.

### **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 (Repealed)**

### **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 4A Code of conduct for short-term rental accommodation industry**

### **54A Definitions**

In this Division—

**code of conduct** means a code of conduct declared under section 54B.

**residential premises** includes part of residential premises.

**short-term rental accommodation arrangement** means a commercial arrangement

for giving a person the right to occupy residential premises for a period of not more than 3 months at any one time, and includes any arrangement prescribed by the regulations to be a short-term rental accommodation arrangement, but does not include any arrangement prescribed by the regulations not to be a short-term rental accommodation arrangement.

***short-term rental accommodation industry participant*** means any of the following—

- (a) a person who, in trade or commerce, provides an online booking service that enables persons to enter into short-term rental accommodation arrangements,
- (b) a person who carries on business as an agent to enable persons to enter into short-term rental accommodation arrangements,
- (c) a person who, pursuant to a short-term rental accommodation arrangement, gives another person the right to occupy the residential premises to which the arrangement relates,
- (d) a person who, pursuant to a short-term rental accommodation arrangement, is given the right to occupy the residential premises to which the arrangement relates,
- (e) any other person who, in trade or commerce, facilitates short-term rental accommodation arrangements and who is prescribed by the regulations or is of a class of persons prescribed by the regulations.

**54B Declaration of code of conduct applying to short-term rental accommodation industry participants**

- (1) The regulations may declare that a code of conduct specified or referred to in the regulations is a code of conduct applying to short-term rental accommodation industry participants.
- (2) Without limiting the matters for or in respect of which a code of conduct may make provision, a code of conduct may—
  - (a) set out the rights and obligations of short-term rental accommodation industry participants, and
  - (b) provide for the administration of the code by a specified person or body, and
  - (c) provide for the registration of residential premises used for the purposes of short-term rental accommodation arrangements and for the registration system to include details about when residential premises are used for those purposes, and
  - (d) provide for warnings to be given to short-term rental accommodation industry participants who contravene the code, and
  - (e) require the provision of information or reports to the Secretary relating to the

- short-term rental accommodation industry and the operation of the code, and
- (f) provide for the resolution of disputes and complaints concerning the conduct of short-term rental accommodation industry participants, and
  - (g) authorise the keeping of a register (the **exclusion register**) containing the details of short-term rental accommodation industry participants who have failed to comply with the code, and
  - (h) regulate or restrict access to the exclusion register, and
  - (i) prohibit or restrict persons whose details are listed on the exclusion register from entering into, or participating in, short-term rental accommodation arrangements.
- (3) A regulation that declares a code of conduct may—
- (a) make provision for or with respect to appeals against the listing of a person's details on the exclusion register, and
  - (b) authorise the Secretary to recover from short-term rental accommodation industry participants the costs incurred by the Secretary in connection with the enforcement and administration of the code, and
  - (c) exclude a specified short-term rental accommodation industry participant or class of short-term rental accommodation industry participants from the application of the code or any part of the code, and
  - (d) contain provisions of a savings or transitional nature consequent on the declaration of the code.

#### **54C Offence**

A short-term rental accommodation industry participant who contravenes a provision of a code of conduct that is identified by the code as an offence provision is guilty of an offence.

Maximum penalty—1,000 penalty units in the case of a corporation or 200 penalty units in any other case.

#### **54D Civil penalty for contravention of code of conduct**

- (1) A court may, on application by the Secretary or a person authorised in writing by the Secretary, order a short-term rental accommodation industry participant to pay a monetary penalty if the court is satisfied that the participant has contravened a provision of a code of conduct that is identified by the code as a civil penalty provision.
- (2) A monetary penalty imposed under this section—

- (a) is not to exceed the amount prescribed by the regulations, and
  - (b) may be recovered from the person on whom it is imposed in any court of competent jurisdiction as a debt due to the Crown.
- (3) An application under this section may only be made within the period of 2 years of the date on which the contravention is alleged to have occurred.
  - (4) A short-term rental accommodation industry participant who contravenes a code of conduct is not liable to be both punished for an offence against section 54C and the subject of an order under this section if the contravention is essentially the same act or omission.
  - (5) A reference in this section to a court is a reference to a court prescribed by the regulations.
  - (6) The regulations may make further provision for or with respect to applications and orders for the payment of monetary penalties under this section.

#### **54E Code of conduct prevails over development consent conditions**

- (1) The provisions of a code of conduct prevail to the extent of any inconsistency with a condition of development consent imposed under the [Environmental Planning and Assessment Act 1979](#).
- (2) For the avoidance of doubt, subsection (1) does not in itself authorise the use of residential premises for the purposes of short-term rental accommodation if that use is prohibited by an environmental planning instrument.

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

#### **55, 56 (Repealed)**

#### **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.

### **Division 6 Publication of service station fuel prices**

#### **58 Scheme for publication of service station fuel prices**

- (1) The Secretary may, by order published on the NSW legislation website, establish a

scheme for the publication of standard retail prices of prescribed fuel available for the fuelling of motor vehicles at service stations on an ongoing and up-to-date basis.

- (2) Without limiting subsection (1), the order may—
  - (a) specify requirements for the registration of service stations or service station operators for the purposes of the scheme or apply the scheme to persons, or persons of a specified class, registered under the *Biofuels Act 2007*, and
  - (b) specify requirements for the notification of the standard retail price of each kind of fuel available at a service station for the fuelling of motor vehicles and the date and time from which the notified price is the standard retail price for the fuel.
- (3) The Secretary may arrange for information notified under the order to be published as the Secretary thinks fit, including by making it available on a website, through a telecommunication system or by any other means.
- (4) The operator of a service station is guilty of an offence if—
  - (a) the service station or operator is not registered as required by an order under this section, or
  - (b) a type of prescribed fuel is offered for retail sale for the fuelling of motor vehicles at the service station at a standard retail price other than the price notified as being in effect at the time of the offer in accordance with an order under this section.
- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that the commission of the offence was due to causes over which the defendant had no control and that the defendant took reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (6) In this section—

**biodiesel**, **biodiesel blend**, **ethanol** and **petrol-ethanol blend** have the same meanings as in the *Biofuels Act 2007*.

**prescribed fuel** means the following—

- (a) petrol, being a petroleum-based fuel (whether or not containing ethanol) for spark-ignition internal combustion engines that is sold as petrol or as petrol-ethanol blend, but does not include diesel fuel, aviation fuel or liquid petroleum gas,
- (b) diesel fuel, being a petroleum-based fuel (whether or not containing biodiesel) for internal combustion engines that is sold as diesel fuel or as a biodiesel blend,
- (c) liquefied petroleum gas,
- (d) liquefied natural gas,



- (e) compressed gas,
- (e1) hydrogen,
- (f) any fuel specified in a preceding paragraph that is combined with another such fuel or other substance,
- (g) electricity.

**service station** means a building or place used for the fuelling of motor vehicles involving the sale by retail of a prescribed fuel by a person operating or controlling the operation of the building or place, whether or not any other fuel or other product is sold there and whether or not the building or place is used for any other purpose, but does not include a building or place used primarily for the purpose of hiring, leasing or selling motor vehicles.

**service station operator** means a person who operates or controls the operation of a service station.

**standard retail price**, in relation to a prescribed fuel supplied by retail at a service station, means the price per litre (or, if the fuel is hydrogen or electricity, the price per kilogram or kilowatt hour) at which the fuel is available to retail customers without any discounts or special offers.

- (7) A reference in this section to the fuelling of a motor vehicle includes a reference to the charging of a battery, or other energy storage device, used to power the motor of an electric motor vehicle.

## Part 4A Regulation of event ticket transactions

### Division 1 Preliminary

#### 58A Definitions

In this Part—

**authorised seller**, in relation to an event or a ticket for an event, means—

- (a) if the event organiser has authorised a person to supply the ticket on behalf of the event organiser, or to resupply the ticket after acquiring it from the authorised seller—that person, or
- (b) in any other case—any event organiser for the event.

**event organiser**—see section 58C.

**resale restriction**—see section 58B.

### **58B Tickets to which Part applies**

- (1) This Part applies to tickets to sporting or entertainment events in New South Wales that are subject to a resale restriction.
- (2) A **resale restriction** is a term or condition of a ticket that limits the circumstances in which the ticket may be resold or prohibits resale of the ticket.
- (3) A term or condition that limits the circumstances in which a ticket may be resold or prohibits resale of the ticket includes a term or condition that provides for the ticket to be cancelled or rendered invalid if the ticket is resold, or if the ticket is resold in certain circumstances.

### **58C Event organisers**

- (1) The **event organiser**, in relation to an event, is the person who authorises the first supply of tickets for the event, whether or not that person is also the performer, the promoter of the event or the operator of the event venue.
- (2) The regulations may declare any other person (or class of persons) to be the event organiser in relation to the event or in relation to any class of events to which the event belongs.

## **Division 2 Resale of tickets**

### **58D Definitions**

In this Division—

**first purchaser**, in relation to a ticket, means the person to whom the ticket is first supplied by an authorised seller.

**original acquisition cost**—see section 58E.

**original supply cost**—see section 58E.

**prohibited advertisement**—see section 58F.

**sell** includes offer or advertise for sale.

**supply** includes offer to supply and advertise for supply.

**ticket resale advertisement** means an advertisement for the sale of a ticket by any person other than the authorised seller.

**transaction cost**—see section 58E.

### **58E Original supply cost and original acquisition cost—meaning**

- (1) The **original supply cost** of a ticket is the amount for which the ticket was sold to

the first purchaser by an authorised seller.

- (2) The **original acquisition cost** of a ticket is the original supply cost of the ticket, plus the transaction cost.
- (3) The **transaction cost** is the cost (not exceeding 10% of the original supply cost) of any commission, booking fee, payment surcharge or ticket delivery fee incurred by the first purchaser of the ticket in connection with the purchase of the ticket.
- (4) If no amount was paid by the first purchaser of the ticket in consideration for the acquisition of the ticket, the original supply cost and the original acquisition cost are each \$0.

#### **58F Prohibited advertisement—meaning**

- (1) A **prohibited advertisement** is a ticket resale advertisement that does not comply with this section.
- (2) A ticket resale advertisement must not specify an amount for the sale of the ticket that is more than 110% of the original supply cost of the ticket.
- (3) A ticket resale advertisement must specify the following particulars—
  - (a) the original supply cost of the ticket,
  - (b) details of the location from which the ticket holder is authorised to view the event (including, for example, any bay number, row number and seat number for the ticket).

#### **58G Prohibition on ticket resale profit**

- (1) The first purchaser of a ticket must not sell the ticket to any other person for an amount that exceeds the original acquisition cost of the ticket.  
  
Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).
- (2) A person (other than the first purchaser) must not sell a ticket to any other person for an amount that the person knows, or ought reasonably to know, exceeds the original acquisition cost of the ticket.  
  
Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

#### **58H Supply of tickets not to be made contingent on other purchases**

- (1) A person (the **supplier**) must not supply a ticket to any other person (the **recipient**) under an agreement that makes the liability of the supplier to supply the ticket to the recipient contingent on payment by the recipient to the supplier of any amount in

consideration for the provision to the recipient of any other goods or services.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (2) This section does not apply to the supply of a ticket under an agreement authorised by the event organiser or under any other agreement of a kind prescribed by the regulations.

### **58I Ticket resale advertising**

- (1) The owner of an advertising publication must ensure that no prohibited advertisement is published in the publication.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (2) It is a defence to a prosecution for an offence of failing to ensure that no prohibited advertisement is published in an advertising publication if the defendant establishes that—
- (a) the agreement between the defendant and the person placing the ticket resale advertisement was subject to terms or conditions prohibiting the publication of prohibited advertisements, and
  - (b) the defendant, as soon as practicable after becoming aware that the prohibited advertisement had been published in the publication, took reasonable steps to ensure that the advertisement was removed from the publication, and
  - (c) the defendant took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication.
- (3) The regulations may exclude an advertisement or publication of a kind described by the regulations from the application of this section.
- (4) In this section—

**advertisement** means any advertisement, whether paid or not.

**advertising publication** means any website, newspaper, magazine or other publication containing advertisements to which members of the public have access (whether or not a member of the public is first required to pay a fee or subscription, register or become a member).

**owner**, of an advertising publication, includes any person who conducts the business or undertaking of the advertising publication (but does not include any person of a class prescribed by the regulations).

### **58J Certain resale restrictions void**

A resale restriction is void to the extent that it provides for the ticket to be cancelled or rendered invalid if the ticket is resold for an amount not exceeding 110% of the original supply cost of the ticket.

## **Division 3 Online purchase of tickets**

### **58K Prohibited conduct in relation to use of ticketing websites**

- (1) A person must not engage in any prohibited conduct in relation to the use of a ticketing website.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (2) A person **engages in prohibited conduct** in relation to the use of a ticketing website if the person uses any software to enable or assist the person to circumvent the security measures of the website and to purchase tickets in contravention of the terms of use of the website that are published on the website.
- (3) The **security measures** of a website include any measures of a kind prescribed by the regulations.

## **Division 4 Public disclosure of ticketing information**

### **58L Minister may require notification of number of tickets available for general public sale**

- (1) The Minister may, by order published on the NSW legislation website, require a specified event organiser (or a specified class of event organisers) to give public notice of the total number of tickets for the event that are to be made available by authorised sellers for general public sale.
- (2) The notice must be given within the time and in the manner specified in the order.
- (3) The total number of tickets specified in a notice required under this section must be a number that the event organiser believes, on reasonable grounds, is not more than 10% greater or less than the total number of tickets that are to be made available for general public sale before the day on which the event is held (including any number of tickets made available before the notice is given).
- (4) A ticket is not made available by an authorised seller for **general public sale** if the authorised seller requires a person to do either of the following in order to acquire the ticket—
  - (a) pay a fee (in addition to the price of the ticket and any transaction cost such as a commission, booking fee, payment surcharge or ticket delivery fee),

- (b) register for access to any pre-sale, publication, competition or other special offer.
- (5) The regulations may make further provision for the circumstances in which a ticket is, or is not, made available for general public sale for the purposes of this section.
- (6) The Minister may not make an order under this section unless—
  - (a) the Minister is satisfied that each event organiser for an event to which the proposed order applies has been notified (whether by public notice or otherwise) of the Minister's intent to make the order, and
  - (b) the event organiser has been given a reasonable opportunity to make submissions in relation to the proposed order, and
  - (c) the Minister has considered any such submission, and
  - (d) the Minister is satisfied that it is in the public interest to make the order.
- (7) An event organiser must not fail to comply with a requirement made under this section.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

## Part 4B Gift cards

### 58M Interpretation and application

- (1) In this Part—
  - expiry date** of a gift card means the date on which the gift card ceases to be redeemable.
  - gift card** means a card or voucher (in hard copy or electronic form) that is redeemable for goods or services in New South Wales.
  - redeemable value** of a gift card means the value of the goods or services for which the gift card is redeemable.
- (2) For the purposes of this Part, a gift card is not sold to a consumer in New South Wales if the gift card is sold online or by phone and—
  - (a) the gift card is to be delivered to the consumer at an address that is outside New South Wales, or
  - (b) the contact details of the consumer provided in connection with the sale of the gift card include a residential address that is outside New South Wales.
- (3) This Part does not apply—

- (a) to any class of gift cards that may be prescribed by the regulations, or
- (b) to any class of persons that may be prescribed by the regulations, or
- (c) in any circumstances that may be prescribed by the regulations.

### **58N Prohibition on gift card expiry dates of less than 3 years**

- (1) A person must not sell to a consumer in New South Wales a gift card with an expiry date that is earlier than 3 years after the date of sale of the gift card.

Maximum penalty—50 penalty units.

- (2) A person who sells a gift card to a consumer in New South Wales, or who has agreed with the seller to redeem that gift card, must not impose any administrative charge or fee that reduces the redeemable value of the gift card after the sale of the gift card.

Maximum penalty—50 penalty units.

- (3) A term or condition of a gift card sold to a consumer in New South Wales is void to the extent that it would make the sale of the gift card, or the imposition of a charge or fee, an offence under this section.

- (4) If the expiry date of a gift card is void because of subsection (3), the expiry date is taken to be 3 years after the date of sale of the gift card.

## **Part 5 Regulation of commercial agents**

### **Division 1 Preliminary**

#### **59 Definitions**

In this Part—

**commercial agent activity**—see section 60.

**commercial agent licence** or **licence** means a commercial agent licence issued by the Secretary under section 60E.

**commercial agent rules** means the rules prescribed by the regulations under section 60K.

**disqualified person**—see section 60A.

**exclusion order**—see section 60G.

**officer** of a corporation has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

**relevant offence**—see section 60A.

**restriction order**—see section 60G.

**show cause notice**—see section 60F.

## 60 Commercial agent activity

(1) In this Part, **commercial agent activity** means any of the following activities—

(a) **debt collection**, which is—

- (i) any activity carried out by a person on behalf of a second person (not being his or her employer) in the exercise of the second person's rights under a debt owed by a third person, or
- (ii) any activity carried out by a person on his or her own behalf in the exercise of rights acquired from a second person (otherwise than in the course of an acquisition or merger of business interests) under a debt owed by a third person,

being an activity that involves finding the third person or requesting, demanding or collecting from the third person money due under the debt,

(b) **process serving**, which is any activity carried out by a person on behalf of a second person (not being his or her employer), being an activity that involves serving legal process on a third person in relation to legal proceedings to which the second and third persons are, or are intended to be, parties, regardless of which jurisdiction the legal proceedings are, or are intended to be, held in,

(c) **repossession of goods**, which is any activity carried out by a person on behalf of a second person (not being his or her employer), being an activity that involves finding goods held by a third person or requesting, demanding or seizing such goods.

(2) For the purposes of this Part—

- (a) if a commercial agent activity is carried out by an employee of a person, the activity is taken to have been carried out by the person, and
- (b) if a corporation carries out a commercial agent activity, each officer of the corporation is taken to have carried out the commercial agent activity.

## 60A Disqualified persons

(1) A person is a **disqualified person** for the purposes of this Part if—

- (a) the person is a natural person who is under 18 years of age, or
- (b) the person is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy, or



- (c) the person is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, unless the Secretary has made a determination under subsection (1A), or
- (d) the person has been convicted, within the last 5 years, of a relevant offence and a sentence of imprisonment or a fine of \$500 or more has been imposed on the person following that conviction, or
- (e) the person is subject to an exclusion order that is in force against the person, or
- (f) the person is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

(1A) The Secretary may determine that a corporation is not a disqualified person for the purposes of this Part, despite the corporation being the subject of a winding up order or being a corporation for which a controller or administrator has been appointed if, on the basis of information provided to the Secretary by the corporation, the Secretary considers it is appropriate to do so.

(2) In this Part—

**relevant offence** means any of the following offences whether occurring in New South Wales or elsewhere—

- (a) an offence involving violence, firearms, weapons, fraud, drugs or dishonesty,
- (b) an offence against section 12DJ (Harassment and coercion) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth,
- (c) an offence against section 50 (Harassment and coercion) or 168 (Harassment and coercion) of the ACL,
- (d) any other offence declared by the regulations to be a relevant offence for the purposes of this section,

but does not include an offence that the regulations declare not to be a relevant offence.

## Division 2 Carrying out commercial agent activities

### 60B Disqualified person must not carry out commercial agent activity

- (1) A person must not carry out a commercial agent activity if the person is a disqualified person.
- (2) A person that is a corporation must not carry out a commercial agent activity if an officer of the corporation is a disqualified person.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units

or imprisonment for 12 months, or both (in the case of an individual).

#### **60C Field agents and employers of field agents require licence**

- (1) A person must not do any of the following for the purposes of carrying out a commercial agent activity unless the person holds a commercial agent licence—
  - (a) approach or attempt to approach the person who is the subject of the commercial agent activity,
  - (b) enter or attempt to enter any premises at which the subject of the commercial agent activity resides, works or otherwise regularly frequents,
  - (c) approach or attempt to approach any property owned by or in the possession of the subject of the commercial agent activity.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 12 months, or both (in the case of an individual).

- (2) A person (the **employer**) must not employ a person (the **employee**) to carry out a commercial agent activity that requires the employee to hold a commercial agent licence unless the employer holds a commercial agent licence.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 12 months, or both (in the case of an individual).

- (3) A person who is carrying out a commercial agent activity under a commercial agent licence must produce the licence for inspection if requested to do so by an investigator or by a person who is the subject of the commercial agent activity.

Maximum penalty—50 penalty units.

- (4) An officer of a corporation is not required to hold a commercial agent licence merely because the corporation is required to hold a commercial agent licence.
- (5) No more than 1 partner in a firm that carries out commercial agent activities is required to hold a commercial agent licence.
- (6) In this section, the person who is the **subject** of a commercial agent activity means the person from whom a debt is to be recovered or goods are to be repossessed or on whom process is to be served.

#### **60D Fit and proper person**

- (1) A person may hold a commercial agent licence only if the person is a fit and proper person to hold the licence.
- (2) A person is not a fit and proper person to hold a commercial agent licence if—
  - (a) the person is a disqualified person, or

- (b) the Secretary makes a finding that the person is not a fit and proper person to hold a licence.
- (3) The Secretary may determine that a person is not a fit and proper person to hold a commercial agent licence on such grounds as the Secretary sees fit, including, but not limited to, the following grounds—
  - (a) the person has been authorised to carry out a commercial agent activity under a licence (however described) of another State or Territory and that licence—
    - (i) is suspended, or
    - (ii) has, within the previous 5 years, been cancelled and the person has not held a licence since the cancellation,
  - (b) the person has been authorised to carry out an activity under another Act administered by the Minister and that authorisation—
    - (i) is suspended, or
    - (ii) has, within the previous 5 years, been cancelled and the person has not held an authorisation since the suspension,
  - (c) the person has, within the previous 10 years, been convicted of a relevant offence,
  - (d) any ground prescribed by the regulations.
- (4) A corporation is not a fit and proper person to hold a commercial agent licence unless the corporation and each officer of the corporation is a fit and proper person to hold the licence.
- (5) A partner in a firm is not a fit and proper person to hold a commercial agent licence unless the partner and each other partner in the firm is a fit and proper person to hold a licence.

#### **60E Issue of commercial agent licence**

- (1) A person may apply to the Secretary for a commercial agent licence.
- (2) An application for a commercial agent licence or a renewal of a commercial agent licence is to nominate one of the following terms of duration for the licence (the **nominated term**)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2A) The Secretary may grant or renew a commercial agent licence for the nominated

term or, if satisfied that it is in the public interest to do so, a shorter term than the nominated term.

- (2B) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (2C) If a licence is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (3) Part 2 (other than section 10) of the *Licensing and Registration (Uniform Procedures) Act 2002* (the **Licensing Act**) applies to and in respect of a commercial agent licence, subject to the modifications and limitations prescribed by this Act or the regulations.
- (4) For the purpose of applying Part 2 of the Licensing Act to a commercial agent licence—
- (a) the licence may be amended but not transferred under that Act, and
  - (b) the references to 2 weeks, 4 weeks and 8 weeks in section 9 (1) (a), (b) and (c) of that Act are each to be read as references to 6 weeks, and
  - (c) (Repealed)
  - (d) an application is not required to be advertised, and
  - (e) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days, and
  - (f) the licence may be granted subject to such conditions as the Secretary thinks fit and the Secretary may subsequently impose, vary or revoke conditions at any time, and
  - (g) the licence is subject to any restriction order made under this Part against the holder of the licence.
- (5) The regulations may make provision for or with respect to such matters concerning a licence as are relevant to Part 2 of the Licensing Act including prescribing fees for applications.
- (6) This section does not affect the term of any commercial agent licence issued under this Act and in force immediately before the insertion of this section by the *Fair Trading Amendment (Commercial Agents) Act 2016* (as amended by the *Fair Trading Legislation Amendment (Reform) Act 2018*).

### **60EA Time period for restoration of commercial agent licences**

- (1) An application for the restoration of a commercial agent licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a commercial agent licence may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the commercial agent licence expired—the failure to apply for renewal of the commercial agent licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the commercial agent licence.
- (3) A commercial agent licence that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a commercial agent licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.
- (5) A commercial agent licence restored at any time is taken to have been restored from the day on which the licence expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a commercial agent licence in the same way as it applies to an application for a commercial agent licence.

## **Division 3 Enforcement**

### **60F Secretary may require person to show cause**

- (1) The Secretary may, by the giving of a notice (a ***show cause notice***) to a person, require the person to show cause why the Secretary should not, for the reason specified in the notice—
  - (a) make an exclusion order or restriction order against the person, or
  - (b) cancel a licence held by the person.
- (2) The show cause notice must be in writing and must specify the period (being at least

14 days after the notice is given) in which the person may show cause.

- (3) The person to whom a show cause notice has been given may, within the period specified in the notice, make a written submission to the Secretary in relation to the matters to which the notice relates.
- (4) The Secretary—
  - (a) is to consider any submission made within the period specified in the show cause notice, 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.

### **60G Exclusion orders and restriction orders**

- (1) The Secretary may, after giving a show cause notice to a person and taking into consideration any submissions made in relation to the matter, make an order—
  - (a) that prohibits the person from carrying out commercial agent activities (an **exclusion order**), or
  - (b) that imposes conditions, restrictions or limitations on the person in relation to the carrying out of commercial agent activities (a **restriction order**).
- (2) An order made under this section comes into force when a copy of the order is given to the person subject to the order.
- (3) An order made under this section remains in force for an indefinite period or for the period specified in the order.
- (4) A person who contravenes a restriction order is guilty of an offence.

Maximum penalty—1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 12 months, or both (in the case of an individual).

#### **Note—**

Contravention of an exclusion order is an offence under section 60B.

- (5) More than one order may be given to a person under this section.
- (6) Section 88 applies to the giving of an order under this section.

### **60H Cancelling commercial agent licence**

- (1) The Secretary must, after giving a show cause notice to a person and taking into consideration any submissions made in relation to the matter, cancel a commercial agent licence held by the person if satisfied that the person is not a fit and proper person to hold the licence.

- (2) The Secretary must cancel a licence if the holder of the licence is a disqualified person and is not required to give the person a show cause notice before doing so.

**Note—**

The making of an exclusion order against a person would require any licence held by the person to be cancelled.

## **Division 4 Miscellaneous**

### **60I Administrative review by Tribunal**

- (1) A person may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision by the Secretary—
- (a) to refuse to grant a commercial agent licence to the person, or
  - (b) to impose, vary or revoke a condition on a licence granted to the person, or
  - (c) to cancel a licence held by the person, or
  - (d) to make an exclusion order or restriction order against the person.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply in relation to a decision referred to in subsection (1).

### **60J Register**

- (1) The Secretary is to maintain a Register for the purposes of this Part and is to enter and keep in the Register particulars of such of the following as the regulations may require—
- (a) commercial agent licences,
  - (b) licence applications refused,
  - (c) prosecutions taken for offences under this Part and the result of those prosecutions,
  - (d) exclusion orders and restriction orders made,
  - (e) commercial agent licences cancelled,
  - (f) any other matter prescribed by the regulations.
- (2) The regulations may require all or part of the Register to be published on the internet for public access.
- (3) Any part of the Register not published on the internet may be inspected by a person on payment of such reasonable fee (if any) as the Secretary may determine.

### **60K Commercial agent rules**

- (1) The regulations may prescribe rules of conduct for the carrying out of commercial agent activities including by prohibiting certain practices.
- (2) Without limiting subsection (1), the rules may deal with the following matters—
  - (a) prohibited practices (including, but not limited to, the use of physical force, harassment, coercion, misrepresentation, making unreasonable threats, entering premises illegally, impersonating a Government employee, exposing a person to ridicule or employing or otherwise using disqualified persons),
  - (b) money held on trust including the keeping of trust accounts and the audit of those accounts,
  - (c) the keeping of records,
  - (d) the provision of information to the Secretary,
  - (e) the handling of complaints,
  - (f) advertising,
  - (g) the employment or use of persons.
- (3) A person must not carry out a commercial agent activity unless the person does so in compliance with the commercial agent rules.
- (4) An employer must take all reasonable steps to ensure that an employee does not carry out a commercial agent activity in the course of their employment unless the employee does so in compliance with the commercial agent rules.
- (5) Each officer of a corporation must take all reasonable steps to ensure that the corporation does not carry out a commercial agent activity unless it does so in compliance with the commercial agent rules.

Maximum penalty—100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

### **60L Exchange of information**

- (1) The Secretary may request and receive information from a law enforcement officer or regulatory officer for the purpose of assisting the Secretary in the exercise of functions under this Part.
- (2) The Secretary may enter into agreements and other arrangements for the sharing or exchange of information as authorised by this section.
- (3) In this section, **law enforcement officer** and **regulatory officer** have the same



meanings as they have in section 219 of the *Property and Stock Agents Act 2002*.

### **60M Part does not apply to certain persons**

This Part does not apply to or in respect of the following—

- (a) a police officer of New South Wales, the Commonwealth or any other State or Territory,
- (b) a member of the Australian Defence Force,
- (c) an officer or employee of the Public Service, or a public authority, of New South Wales, the Commonwealth or any other State or Territory,
- (d) a law practice or an Australian legal practitioner or a person undertaking practical legal training under the supervision of an Australian legal practitioner,
- (e) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth,
- (f) a general insurer within the meaning of the *Insurance Act 1973* of the Commonwealth, a **loss adjuster** (being a person carrying on the business of an insurance loss adjuster on behalf of a general insurer) or an employee of a general insurer or loss adjuster,
- (g) an officer or employee of an authorised deposit-taking institution,
- (h) a person of a class prescribed by the regulations.

### **60N Review of Part**

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Part.
- (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 5 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, Part 4A, Part 4B 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 or any other legislation administered by the Minister, the convicting court may order the offender to reimburse the Department for the costs and expenses reasonably incurred during the investigation of the offence in such amount as is fixed by the order.
- (4) In this section—

**costs and expenses**, in relation to the investigation of an offence, means the following costs and expenses incurred during the investigation of the offence—

- (a) the costs and expenses of purchasing or testing any goods to which the conviction relates,
  - (b) the costs and expenses in conducting any inspection, test, measurement or analysis,
  - (c) the costs and expenses of transporting, storing or disposing of evidence,
  - (d) the costs and expenses of any auditor or accountant conducting an examination of financial records in connection with the investigation of the offence,
- and includes any other costs and expenses prescribed by the regulations.

## **67 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) 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.
- (6) For the avoidance of doubt, a reference to any further proceedings for the alleged offence in section 22A (1) of the *Fines Act 1996* (being an offence against this Act or the regulations) 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) In this section, **authorised officer** means—
  - (a) the Secretary, or
  - (b) an investigator, or
  - (c) a person who is 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).
- (3) The following provisions of the ACL apply to a contravention of section 47A (1) or 47B (1) of this Act in the same way as they apply to a contravention of the ACL specified in those provisions—
  - (a) section 224 (Pecuniary penalties) to the extent that it relates to a provision of Part 3-1 (other than section 47(1)) of that Law,
  - (b) section 248 (Order disqualifying a person from managing corporations).

### **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) (Repealed)

(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 6A Jurisdiction of Tribunal in relation to consumer claims**

### **Note—**

For the purposes of comparison, provisions of this Part contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the [Consumer Claims Act 1998](#) (the **CC Act 1998**) or the [Consumer Claims Regulation 2014](#) (the **CC Reg 2014**), as in force before the enactment of this Part.

## Division 1 Preliminary

### 79B Objects of this Part (cf CC Act 1998, s 2A)

The objects of this Part are to provide for remedies for, and the straightforward resolution of, disputes concerning the supply of goods and services to consumers.

### 79C Conferral of jurisdiction under this or any other Act not affected

This Part does not affect any provision of this or any other Act that confers jurisdiction on the Tribunal.

### 79D Definitions (cf CC Act 1998, s 3 (1) and s 3 (3) (transferred to definition of “consumer”))

In this Part—

**consumer** means any of the following persons or bodies to whom or to which a supplier has supplied, or agreed to supply, goods or services (whether or not under a contract), or with whom or with which a supplier has entered into a contract that is collateral to a contract for the supply of goods or services—

- (a) a natural person,
- (b) a firm (within the meaning of the [Partnership Act 1892](#)),
- (c) a small proprietary company (within the meaning of the [Corporations Act 2001](#) of the Commonwealth),
- (d) an owners corporation constituted under the [Strata Schemes Management Act 2015](#),
- (e) a company that owns an interest in land and has a memorandum or articles of association conferring on each owner of shares in the company a right to occupy under a lease or licence a part or parts of a building erected on the land,
- (f) an incorporated association,
- (g) an unincorporated body whose members are associated for a common purpose,
- (h) a company limited by guarantee (other than a company limited both by shares and by guarantee).

**consumer claim**—see section 79E.

**goods** means any tangible thing that is or may be the subject of trade or commerce, but does not include money or an interest in land.

**services**—see section 79F.

**supplier** means a person who, in the course of carrying on (or purporting to carry on) a business, supplies goods or services.

**supply**—see section 79G.

**79E Meaning of “consumer claim”** (cf CC Act 1998, s 3A)

- (1) For the purposes of this Part, a **consumer claim** means a claim by a consumer, for one or more of the following remedies, that arises from a supply of goods or services by a supplier to the consumer (whether or not under a contract) or that arises under a contract that is collateral to a contract for the supply of goods or services—
  - (a) the payment of a specified sum of money,
  - (b) the supply of specified services,
  - (c) relief from payment of a specified sum of money,
  - (d) the delivery, return or replacement of specified goods or goods of a specified description.
- (2) For the avoidance of doubt, a reference in this Part to a consumer claim includes a reference to a claim by a consumer against a supplier (for example, a manufacturer or wholesaler) who is not the direct supplier of goods or services to the consumer if the claim arises from or in connection with the supply of those goods or services by the direct supplier to the consumer.

**79F Meaning of “services”** (cf CC Act 1998, s 3 (1), definition of “services”)

- (1) For the purposes of this Part, a reference to services is a reference to any of the following—
  - (a) the performance of work (including work of a professional nature), whether with or without the supply of goods,
  - (b) the provision of gas or electricity or the provision of any other form of energy,
  - (c) the provision, or the making available for use, of facilities for amusement, entertainment, recreation or instruction,
  - (d) the letting of premises for vacation or recreational purposes,
  - (e) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction,
  - (f) the provision of insurance cover,
  - (g) the rights or benefits provided, granted or conferred under 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,
  - (h) the provision of credit,



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

(2) However, a reference in this Part to services does not include a reference to any of the following—

(a) the supply of goods or the performance of work under a contract of employment,

(b) rights or benefits provided, granted or conferred under a service contract (within the meaning of the *Retirement Villages Act 1999*),

(c) the provision of assurance cover in respect of a person's life.

**79G Meaning of “supply”** (cf CC Act 1998, s 3 (1) (definition of “supply”) and s 3 (2))

(1) For the purposes of this Part, a reference to the supply of goods includes a reference to any of the following—

(a) supplying goods by way of sale, exchange, lease, hire or hire-purchase,

(b) resupplying goods,

(c) agreeing to supply goods,

(d) supplying goods together with services.

(2) For the purposes of this Part, a reference to the supply of services includes a reference to any of the following—

(a) providing, granting or rendering services for valuable consideration,

(b) agreeing to supply services,

(c) supplying services together with goods.

**79H Persons presumed to be consumers** (cf CC Act 1998, s 4)

For the purposes of this Part—

(a) a person or body claiming to be a consumer is to be presumed to be a consumer until the contrary is proved, and

(b) in any legal proceedings (including proceedings before the Tribunal), the onus of proving that a person or body claiming to be a consumer is not a consumer is on the party who seeks to establish that fact.

## **Division 2 Application to and jurisdiction of Tribunal**

**79I Consumer may apply to Tribunal** (cf CC Act 1998, s 6)

Any consumer may apply to the Tribunal for determination of a consumer claim.

**79J General statement of jurisdiction** (cf CC Act 1998, s 7 (1))

The Tribunal has jurisdiction, except as otherwise provided by this Division, to hear and determine a consumer claim the subject of an application under this Division.

**79K Supply or agreement made, or supply intended to be made, in New South Wales** (cf CC Act 1998, s 7 (2) and (3))

- (1) The Tribunal has jurisdiction to hear and determine a consumer claim only if—
  - (a) the goods or services to which the claim relates were supplied in New South Wales, or
  - (b) a contract or other agreement to which the claim relates contemplated that the goods or services would be supplied in New South Wales (whether or not they were so supplied), or
  - (c) a contract or other agreement to which the claim relates was made in New South Wales (whether or not the goods or services were supplied in New South Wales).
- (2) The Tribunal has such jurisdiction whether or not—
  - (a) a contract or other agreement to which the claim relates confers jurisdiction on any other court or tribunal (whether in New South Wales or elsewhere), or
  - (b) the rules of private international law require a law other than the law of New South Wales to be applied to the hearing or determination of the claim.

**79L Limitation periods** (cf CC Act 1998, s 7 (4) and (4A))

- (1) The Tribunal does not have jurisdiction to hear and determine a consumer claim if any of the following apply—
  - (a) the cause of action giving rise to the claim first accrued more than 3 years before the date on which the claim is lodged,
  - (b) the goods or services to which the claim relates were supplied (or, if made in instalments, were last supplied) to the claimant more than 10 years before the date on which the claim is lodged.
- (2) Nothing in this section affects any period of limitation under the [Limitation Act 1969](#).

**79M Claim relating to solicitor's or barrister's costs** (cf CC Act 1998, s 7 (5))

A matter arising in relation to the fairness or reasonableness of the costs charged by a barrister or solicitor for an item of business transacted by the barrister or solicitor is not

within the jurisdiction of the Tribunal if the costs can be the subject of a costs assessment under Part 3.2 of the *Legal Profession Act 2004*.

### **Division 3 Orders of Tribunal**

#### **79N Orders in favour of claimant** (cf CC Act 1998, s 8 (1))

In determining a consumer claim wholly or partly in favour of a claimant, the Tribunal may, subject to this Division, make any one or more of the following orders that it considers appropriate—

- (a) an order that requires a respondent to pay to the claimant a specified amount of money,
- (b) an order that requires a respondent to perform specified work in order to rectify a defect in goods or services to which the claim relates,
- (c) an order that requires a respondent to supply to the claimant specified services other than work,
- (d) in the case of a claim for relief from payment of money—an order declaring that a specified amount of money is not due or owing by the claimant to a respondent,
- (e) an order that requires a respondent to deliver to the claimant goods of a specified description,
- (f) an order that requires a respondent to return to the claimant specified goods which are in the possession or under the control of that respondent, whether the property in the goods has passed or not,
- (g) an order that requires a respondent to replace goods to which the claim relates,
- (h) an order that requires a respondent to refund all or part of the purchase price of specified goods that are in the possession (or under the control) of the claimant and the claimant to return all or part of those goods to the respondent (whether the property in the goods has passed or not).

#### **79O Orders in favour of respondent** (cf CC Act 1998, s 8 (2))

In determining a consumer claim wholly or partly in favour of a respondent to the claim, the Tribunal may make any one or more of the following orders that it considers appropriate—

- (a) an order dismissing the claim or a part of the claim,
- (b) an order that requires the claimant to pay to the respondent a specified amount of money,
- (c) an order that requires the claimant to return to the respondent specified goods which

are in the possession or under the control of the claimant, whether the property in the goods has passed or not.

**79P Orders where more than one respondent** (cf CC Act 1998, s 8 (2A))

Without limiting section 79N or 79O, in determining a consumer claim in which there is more than one respondent, the Tribunal may make any one or more of the following orders that it considers appropriate—

- (a) an order that requires a respondent to pay to another respondent a specified amount of money,
- (b) an order that requires a respondent to supply to another respondent specified services other than work,
- (c) an order that requires a respondent to deliver to another respondent goods of a specified description,
- (d) an order that requires a respondent (***the first respondent***) to return to another respondent specified goods that are in the possession or under the control of the first respondent, whether the property in the goods has passed or not.

**79Q Other matters relating to orders under section 79N, 79O or 79P** (cf CC Act 1998, s 8 (3)–(5))

- (1) In making an order under section 79N, 79O or 79P requiring a party to a consumer claim to pay a specified amount of money or to take any other specified action, the Tribunal must, unless it has good reason to the contrary, specify a period within which the money must be paid or the action must be taken.
- (2) The Tribunal may not make any of the orders referred to in this section unless the claimant's case has been presented to the Tribunal (whether or not in person) following the making of the relevant application under section 79I.
- (3) Nothing in subsection (2) prevents the Tribunal from dismissing or adjourning proceedings under section 55 of the [Civil and Administrative Tribunal Act 2013](#).

**79R Interim and ancillary orders** (cf CC Act 1998, s 10)

- (1) In the course of hearing a consumer claim, the Tribunal may make any interim order that appears to the Tribunal desirable to be made pending final determination of the claim.
- (2) When making an order for the determination of a consumer claim, the Tribunal may make such ancillary orders as it considers necessary for the purpose of enabling the order to have full effect.

**79S Monetary limit on Tribunal's jurisdiction to make orders** (cf CC Act 1998, s 14 and CC Reg

2014, cl 4)

- (1) The Tribunal has no jurisdiction to make, in respect of a particular consumer claim, an order or orders in favour of the claimant (or, where there are two or more claimants, in favour of those claimants) if the relevant total under or because of the order or orders would exceed the prescribed amount.
- (2) For the purposes of subsection (1), the **relevant total** is the total of—
  - (a) the amount or amounts (if any) of money to be paid, and
  - (b) the value or values (if any) of the work to be performed, or the services to be supplied, and
  - (c) the amount or amounts (if any) of money to be declared not to be due or owing, and
  - (d) the value or values of goods (if any) to be delivered or replaced.
- (3) The Tribunal has no jurisdiction to make in respect of a particular consumer claim an order or orders referred to in section 79O if the amount or the total of the amounts (if any) to be paid under or because of the order or orders would exceed the prescribed amount.
- (4) The Tribunal has no jurisdiction to make in respect of a particular consumer claim an order or orders under section 79P if the relevant total under or because of the order or orders would exceed the prescribed amount.
- (5) For the purposes of subsection (4), the **relevant total** is the total of—
  - (a) the amount or amounts (if any) of money to be paid, and
  - (b) the value or values (if any) of the services to be supplied, and
  - (c) the value or values of goods (if any) to be delivered.
- (6) Subsections (1), (3) and (4) do not apply in relation to a consumer claim—
  - (a) arising from the supply of a new motor vehicle that is used substantially for private purposes within the meaning of the [Motor Vehicles Taxation Act 1988](#), or
  - (b) relating to commission fees charged by agents licensed under the [Property and Stock Agents Act 2002](#).
- (7) In this section—

**new motor vehicle** means a motor vehicle that is not a second-hand motor vehicle within the meaning of the [Motor Dealers and Repairers Act 2013](#).

**prescribed amount** means \$40,000 or such other amount as is prescribed for the

purposes of this section.

**79T Suspension of orders** (cf CC Act 1998, s 11)

- (1) If the Tribunal has made an order under this Division that has not yet ceased to have effect, the Tribunal may (on the application of the person against whom or in whose favour the order was made or of its own motion) suspend the operation of the order by making a suspension order.
- (2) The Tribunal may make a suspension order for such reasons and for such period, or until the happening of such event or the fulfilment of such conditions, as the Tribunal specifies in the suspension order.
- (3) Nothing in this section limits the operation of section 43 (2) of the *Interpretation Act 1987*.

**79U Matters to be considered by Tribunal when making orders** (cf CC Act 1998, s 13)

- (1) When making any orders under this Division, the Tribunal must be satisfied that the orders will be fair and equitable to all the parties to the claim.
- (2) Without limiting subsection (1), when determining whether or not to make an order under this Division, the Tribunal is to take the following factors into consideration if they are material to the particular circumstances of the case—
  - (a) whether or not there was any material inequality in bargaining power between the parties to the claim,
  - (b) whether or not any party to the claim was not reasonably able to protect the party's interest because of the age or physical or mental capacity of that party,
  - (c) whether or not any person who represented any of the parties to the claim was not reasonably able to protect the interests of the party represented because of the age or physical or mental capacity of that person,
  - (d) the relative economic circumstances, educational background and literacy of the parties to the claim and of any person who represented any of those parties,
  - (e) whether or not and when independent legal or other expert advice was obtained by the claimant,
  - (f) whether any undue influence, unfair pressure or unfair tactic was exerted on or used against the claimant—
    - (i) by any other party to the claim, or
    - (ii) by any person acting or appearing or purporting to act on behalf of any other party to the claim, or

- (iii) by any person to the knowledge of any other party to the claim or of any person acting or appearing or purporting to act on behalf of any other party to the claim,
- (g) the conduct of the parties to the claim in relation to similar transactions to which any of them has been a party,
- (h) where the subject of the claim is a contract for the supply of goods or services or a contract collateral to such a contract—
  - (i) whether or not before or at the time when the contract was made its provisions were the subject of negotiation, and
  - (ii) whether or not it was reasonably practicable for the claimant to negotiate for the alteration of the contract or to reject any of its provisions, and
  - (iii) whether or not any provisions of the contract impose conditions that are unreasonably difficult to comply with or not reasonably necessary for the protection of the legitimate interests of any party to the claim, and
  - (iv) if the contract is wholly or partly in writing, the physical form of the contract and the intelligibility of the language in which it is expressed, and
  - (v) the extent (if any) to which the provisions of the contract and their legal effect were accurately explained by any person to the claimant and whether or not the claimant understood the provisions and their effect, and
  - (vi) the commercial or other setting, purpose and effect of the contract.
- (3) Without limiting subsection (1), when determining whether or not to make an order or orders under section 79N, 79O or 79P, it is appropriate for the Tribunal to consider (if relevant to the particular circumstances of the case)—
  - (a) any code of practice prescribed under this Act, and
  - (b) if the Secretary has brought to the attention of the Tribunal any other code of practice (whether or not prescribed by or under any other Act)—that code of practice.

**79V Joint liability** (cf CC Act 1998, s 12)

Section 95 of the [Civil Procedure Act 2005](#) applies to and in respect of an order of the Tribunal under this Division as if such an order were a judgment of the Supreme Court.

## **Division 4 Miscellaneous**

**79W Certain matters to be reported to President of Tribunal or to Minister** (cf CC Act 1998,

s 15)

- (1) Members of the Tribunal may give a written report to the President of the Tribunal concerning—
  - (a) any matter that arises out of the hearing or determination of a consumer claim by the Tribunal (constituted by those members) that they consider to be of importance as regards the relationship of consumer and supplier, or
  - (b) any matter that, in their opinion, is relevant to the administration of this Part and should be brought to the attention of the President of the Tribunal.
- (2) The President of the Tribunal may give a written report to the Minister concerning—
  - (a) any matter that arises out of the hearing or determination of a consumer claim by the Tribunal (constituted by the President) that the President considers to be of importance as regards the relationship of consumer and supplier, or
  - (b) any matter that, in the opinion of the President, is relevant to the administration of this Part and should be brought to the attention of the Minister, or
  - (c) any matter reported to the President by any member of the Tribunal in accordance with subsection (1) and that the President considers should be brought to the attention of the Minister.
- (3) If, in the course of, or as a result of, the hearing of a consumer claim by the Tribunal, it appears to the Tribunal that a supplier has, in the course of the supplier's dealings with the claimant, engaged in conduct that should be brought to the attention of the Secretary, the Tribunal may give a written report to the Secretary concerning that conduct.
- (4) The Secretary may give a copy of any report relating to a supplier that is given to the Secretary under this section (or any information contained in the report) to—
  - (a) any authority responsible for the administration of a law that appears to the Secretary to require the supplier (as a supplier of goods or services) to be the holder of a licence, certificate of registration, practising certificate, permit or other authority, or
  - (b) any trade organisation comprising persons (or mostly persons) who supply goods or services of the kind supplied by the supplier, but only if it appears to the Secretary that the supplier is a member of that organisation.
- (5) The Secretary has qualified privilege in proceedings for defamation arising out of a communication made under this section.

**79X Power of Secretary to establish and maintain list of unsatisfactory suppliers** (cf CC Act



1998, s 16)

- (1) The Secretary may establish and maintain for the purposes of this Part a list to be known as the ***unsatisfactory suppliers list***.
- (2) The Secretary may enter in the unsatisfactory suppliers list the name and any other prescribed particulars of—
  - (a) any supplier who has been the subject of an adverse report made under this Division, or
  - (b) any supplier who has failed to comply with the requirements of an order made under this Part within the period specified in the order, or
  - (c) any supplier against whom more than the prescribed number of orders has been made under this Part during the period prescribed for the purposes of this paragraph.
- (3) The Secretary must not enter the name and other particulars of a supplier in the unsatisfactory suppliers list unless the supplier has first been given an opportunity to show cause as to why the name and particulars of the supplier should not be entered in the list and, having been given such an opportunity, has not shown cause within such period (not less than 7 days after the opportunity was given) as the Secretary may allow.
- (4) The Secretary must remove the name and other prescribed particulars of a supplier from the unsatisfactory suppliers list at the end of the period prescribed for the purposes of this subsection, on the happening of a prescribed event or on fulfilment of prescribed conditions.
- (5) The Secretary may publish in such manner as the Secretary thinks fit a copy of the unsatisfactory suppliers list or of any particulars currently entered in the list.
- (6) The Secretary has qualified privilege in proceedings for defamation arising out of a publication made in accordance with subsection (5).

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

### **79Y 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—
- (a) if the Minister is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Minister is permitted to invest money under that Part, or
  - (b) if the Minister is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Treasurer.

## **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.

**86AA Publication of information about complaints**

(1) The Secretary may publish information about complaints received by the Secretary in the exercise of functions under this Act or any other legislation administered by the Minister.

(2) The information that can be published under this section includes information as to the identity of the persons or businesses about whom complaints have been made or about whom the greatest number of complaints have been received.

(3) Information published under this section can include the identity of a person or business complained about, but not the identity of the person who made a complaint.

(4) Information published under this section can include information about complaints made before the commencement of the section.

(5) The Secretary has qualified privilege in proceedings for defamation arising out of a publication made under this section.

**86AB Provision of information about complaints not affected by non-disclosure agreement**

(1) A provision of a non-disclosure agreement is void to the extent that it limits the consumer's ability to provide information to the Secretary about a complaint relating to the supply of goods or services by a person or business.

(2) A supplier who enters into a non-disclosure agreement with a consumer must, at the time of or before entering into the agreement, inform the consumer that the agreement does not limit the consumer's ability to provide information to the Secretary about a complaint relating to the supplier.

Maximum penalty—

(a) in the case of a corporation—200 penalty units, or

(b) in any other case—40 penalty units.

(3) In this section—

**consumer** includes the owners corporation of a strata scheme and a person or class of persons prescribed by the regulations.

**non-disclosure agreement** means a contract or agreement that restricts or prohibits the disclosure of information by a consumer in relation to the supply of goods or services by a person or business.

#### **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 made available, free of charge, on a NSW Government website.

(4) (Repealed)

#### **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,

(ii) by leaving it at the person's place of residence with someone who apparently resides there and has apparently reached the age of 16 years,

(iii) by leaving it at the person's 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 the person at the address last known to the Secretary of the person's place of residence, employment or business, or

(v) by email to an email address specified by the person for the service of notices or directions of that kind, or

(vi) by any other method authorised by the regulations for the service of notices or directions of that kind, 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, or

(iv) by sending the document to an email address specified by the body corporate for the service of notices or directions of that kind, or

(v) by any other method authorised by the regulations for the service of notices or directions of that kind.

(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) (Repealed)
  - (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,
  - (d) the waiver or refund of the whole or any part of a fee for any service provided by the Secretary under this Act or the regulations.

**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))

*Biosecurity Act 2015*  
*Civil Liability Act 2002*  
*Environmentally Hazardous Chemicals Act 1985*  
*Explosives Act 2003*  
*Food Act 2003*  
*Gas and Electricity (Consumer Safety) Act 2017*  
*Local Government Act 1993*  
*Poisons and Therapeutic Goods Act 1966*  
*Public Health Act 2010*  
*Radiation Control Act 1990*  
*Rice Marketing Act 1983*  
*Stock Medicines Act 1989*

## **Schedule 2 (Repealed)**

## Schedule 3 Consumer guarantee directions

### 1 Interpretation and application of Schedule

(1) In this Schedule—

**application for re-determination** means an application under clause 10.

**consumer guarantee direction** means a direction made under clause 3.

**dispute** means a dispute between a consumer and supplier relating to a matter that is the subject of a complaint received under section 9 (1) (c) of this Act.

**GST** has the same meaning as in the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth.

(2) This Schedule applies to a consumer good—

(a) that is of a kind prescribed by the regulations, and

(b) that has been sold by a supplier to a consumer ordinarily resident in New South Wales, and

(c) to which a guarantee under sections 54–57 of the ACL applies, and

(d) that is the subject of an unresolved dispute concerning the application of such a guarantee to the sale of the good.

(3) Until the regulations otherwise prescribe, a consumer good is taken to be of a kind prescribed for the purposes of subclause (2) (a) if the sale price of the good is \$25 or more but not more than \$3,000 (exclusive of GST), and the good is not—

(a) a motor vehicle or a component part of a motor vehicle, or

(b) a second-hand good, or

(c) a solar battery, or

(d) material to which a statutory warranty under Part 2C of the [Home Building Act 1989](#) applies, or

(e) the subject of pending proceedings in the Tribunal or a court.

### 2 Applications for consumer guarantee directions

(1) A consumer may, in the manner and form determined by the Secretary, apply to the Secretary for a consumer guarantee direction.

(2) A consumer may not make an application under this clause if the consumer's complaint under section 9 (1) (c) of this Act regarding the relevant sale of the

consumer good was made more than 6 months after the date of that sale (or such longer period as may be prescribed by the regulations). However, the Secretary may allow the application to be made if satisfied that it is justified because of special circumstances.

- (3) An application for a consumer guarantee direction may not be made in relation to the same subject-matter as has been determined in proceedings in the Tribunal under Part 6A of this Act.
- (4) A consumer may, in the manner and form determined by the Secretary, withdraw an application for a consumer guarantee direction made under this clause at any time before it is determined.

### **3 Making and content of consumer guarantee directions**

- (1) The Secretary may resolve a dispute to which an application under clause 2 relates by making a consumer guarantee direction.
- (2) The Secretary may, by notice in writing given to a supplier, direct the supplier—
  - (a) to repair a good, or
  - (b) to replace a good, or
  - (c) to refund to the consumer concerned—
    - (i) any money paid by the consumer for a good, and
    - (ii) an amount that is equal to the value of any other consideration provided by the consumer for a good.
- (3) A consumer guarantee direction must specify the period within which the direction must be complied with. However, the consumer guarantee direction must not specify—
  - (a) a period of less than 28 days, and
  - (b) a period of more than 90 days without the agreement of the consumer and supplier concerned.
- (4) A consumer guarantee direction to repair or replace a consumer good must also direct that, if the good is not repaired or replaced within the specified time, the supplier is to immediately refund to the consumer—
  - (a) any money paid by the consumer for the good, and
  - (b) an amount that is equal to the value of any other consideration provided by the consumer for the good.

- (5) A consumer guarantee direction must specify the total amount that is to be refunded to the consumer under subclause (2) (c) or (4), as relevant.

#### **4 Secretary may decline to accept application or make direction**

- (1) The Secretary may decline to accept an application for a consumer guarantee direction—
- (a) if the Secretary is of the opinion that—
- (i) the application is frivolous, vexatious, misconceived or without substance, or
  - (ii) the supplier concerned is bankrupt, in liquidation or under external administration, or
  - (iii) because of the complexity of the subject-matter of the application, the matter should be dealt with by the Tribunal, or
  - (iv) it would not be in the public interest to deal with the application under this Schedule, or
- (b) for any other reason prescribed by the regulations.
- (2) The Secretary may refuse to make a consumer guarantee direction—
- (a) if the Secretary is of the opinion that—
- (i) because of the complexity of the subject-matter of the application, the matter should be dealt with by the Tribunal, or
  - (ii) it would not be in the public interest to make the direction under this Schedule, or
  - (iii) it is fair and reasonable in the circumstances to do so, or
- (b) for any other reason prescribed by the regulations.

#### **5 Notice of consumer guarantee direction to be given to consumer**

The Secretary is to give a copy of a consumer guarantee direction to the consumer concerned at the same time as the direction is given to the supplier.

#### **6 Procedure for making consumer guarantee direction**

- (1) The Secretary may determine to make a consumer guarantee direction if the Secretary is satisfied that—
- (a) there has been a failure to comply with a guarantee under section 54, 55, 56 or 57 of the ACL, and
- (b) it is fair and reasonable in all the circumstances to do so.

- (2) The Secretary, in determining whether or not to make a consumer guarantee direction, is not bound by the rules of evidence, and may be informed in any manner that the Secretary thinks fit.
- (3) Before making a consumer guarantee direction, the Secretary—
  - (a) must give the consumer and the supplier an opportunity to make a written submission or give written evidence concerning the application, and
  - (b) may give the consumer and the supplier the following—
    - (i) an opportunity to make an oral submission or give oral evidence concerning the application,
    - (ii) a right of reply to the other party's submission and evidence (including the consumer's initial application),
    - (iii) an opportunity to comment on the content of a proposed direction.
- (4) The rules of procedural fairness are not breached if the Secretary complies with subclause (3) and the procedures for making consumer guarantee directions set out in the regulations (if any).

## **7 Regulations relating to consumer guarantee directions**

The regulations may make provision for or with respect to the following—

- (a) the procedures to be used by the Secretary in making consumer guarantee directions,
- (b) the written and oral submissions and evidence that the consumer and supplier may provide to the Secretary before the making of a consumer guarantee direction,
- (c) the provision of reasons for making or refusing to make a decision in relation to a consumer guarantee direction,
- (d) the making and withdrawal of applications for consumer guarantee directions.

## **8 Amendment of consumer guarantee directions**

- (1) The Secretary may, on the Secretary's own initiative, amend a consumer guarantee direction to correct a minor error in, or omission from, the direction.
- (2) The procedure that applies under this Schedule to the making of a consumer guarantee direction does not apply to an amendment under this clause.

## **9 Recovery of refund**

If a supplier fails to comply with a consumer guarantee direction, the amount directed to be refunded to the consumer may be registered as a judgment debt in a court of competent jurisdiction and is enforceable accordingly.

**10 Application to Tribunal for re-determination of making of consumer guarantee directions**

- (1) The following persons may apply to the Tribunal for a re-determination of the making of a consumer guarantee direction—
  - (a) the consumer who applied for the consumer guarantee direction,
  - (b) the supplier who is the subject of the consumer guarantee direction.
- (2) An application under this clause may not be made more than 28 days (or such other period as may be prescribed by the regulations) after the date on which notice of the direction was given to the supplier.
- (3) An application operates as a stay on the direction until the Tribunal determines the application or the application is withdrawn.

**11 Tribunal to re-determine consumer guarantee matter as a consumer claim**

- (1) The Tribunal is to deal with an application for re-determination as follows—
  - (a) the application for re-determination is to be dealt with by the Tribunal as if it were an application by the consumer concerned for the determination of a consumer claim under Part 6A of this Act relating to the sale of the consumer good concerned,
  - (b) the parties to the proceedings are the consumer and the supplier concerned and not the Secretary,
  - (c) subject to the regulations, the provisions of Part 6A of this Act apply, with any necessary modifications, to the determination of the application,
  - (d) the Tribunal may—
    - (i) make an order dismissing the application for re-determination, or
    - (ii) make such orders as it considers appropriate, including any order that the Tribunal may make under Division 3 of Part 6A of this Act.
- (2) If the Tribunal determines the application by making an order of the kind referred to in subclause (1) (d) (ii), the consumer guarantee direction concerned is terminated and ceases to have effect.
- (3) An application for re-determination is to be dealt with as a new hearing and evidence or information may be given in addition to, or in substitution for, the evidence or information given in relation to the making of the consumer guarantee direction concerned.
- (4) The Tribunal may have regard to the reasons given by the Secretary (if any) for



making the consumer guarantee direction concerned.

- (5) The Tribunal may, in relation to an application for re-determination, require evidence or argument to be presented only in writing.

## **12 Tribunal to give notice and reasons for decisions to Secretary**

- (1) The Tribunal is to ensure that the Secretary is given notice of any decision that it makes in determining an application for re-determination.
- (2) If the Tribunal has provided a written statement of reasons for its decision in determining an application for re-determination to a party to the proceedings, the Tribunal is also to provide a copy of that written statement of reasons to the Secretary.
- (3) The Secretary may, within 28 days after being given notice of a decision of the Tribunal, request the Tribunal to provide a written statement of reasons for its decision if a written statement of reasons has not been provided to the Secretary. The statement must be provided within 28 days after the request is made.
- (4) A written statement of reasons for the purposes of this clause must set out the matters referred to in section 62 (3) of the *Civil and Administrative Tribunal Act 2013*.

## **13 Competing proceedings in Tribunal on same subject-matter prohibited**

- (1) If an application for a consumer guarantee direction is pending, the consumer may not commence proceedings in the Tribunal under Part 6A of this Act in relation to the same subject-matter as the application.
- (2) If proceedings in the Tribunal under Part 6A are pending, the consumer may not make an application for a consumer guarantee direction under this Schedule in relation to the same subject-matter as those proceedings.
- (3) If an application for re-determination is pending, a consumer may not commence proceedings in the Tribunal under Part 6A in relation to the same subject-matter as the application.

## **14 Publication of information about consumer guarantee directions**

- (1) The Secretary may publish information about consumer guarantee directions made by the Secretary.
- (2) The information that can be published under this clause includes information as to the identities of suppliers to whom a consumer guarantee direction has been given, but not the identity of any consumer who has applied for a consumer guarantee direction.
- (3) The information that can be published under this clause includes information as to the identities of suppliers who have failed to comply with a consumer guarantee direction.

- (4) The Secretary has qualified privilege in proceedings for defamation arising out of a publication made under this clause.

## **Schedules 4, 4A (Repealed)**

## **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*

*Fair Trading Legislation (Repeal and Amendment) Act 2015*

any other Act that amends this Act

- (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.

### **Part 7 Provisions consequent on repeal of [Valuers Act 2003](#) by [Regulatory Reform and Other Legislative Repeals Act 2015](#)**

#### **42 Definition of “relevant valuer”**

In this Part—

**relevant valuer** means a person who was registered under the [Valuers Act 2003](#) as a valuer immediately before the repeal of that Act.

#### **43 References to qualified valuers**

- (1) Subject to the regulations, a reference in any Act or regulation to a qualified valuer is taken to include a reference to a relevant valuer.
- (2) Subclause (1) does not apply in relation to a person to whom an order that is in force under this clause applies.
- (3) The Secretary may, by order published in the Gazette, direct that a person who is a relevant valuer is not to be taken to be a qualified valuer under this clause if the Secretary is satisfied that—

- (a) the person is a disqualified person (within the meaning of the *Valuers Act 2003*, as in force immediately before the repeal of that Act), or
  - (b) the person was not eligible to be registered and was registered by mistake or as a result of any false representation concerning the person's age or qualifications for registration, or
  - (c) any circumstances prescribed by the regulations apply in relation to the person.
- (4) The Secretary may, by notice published in the Gazette, revoke an order under this clause.

#### **44 Conditions and undertakings to continue**

- (1) A relevant valuer must not practise as a valuer in contravention of any restriction on the valuer's practice as a valuer that was in force under the *Valuers Act 2003* immediately before the repeal of that Act.

Maximum penalty—100 penalty units.

- (2) A reference in this clause to a restriction on a valuer's practice is a reference to—
- (a) a condition imposed under section 11 of the *Valuers Act 2003* on the valuer's registration, or
  - (b) a written undertaking from the valuer accepted by the Secretary under section 18 of that Act.
- (3) The regulations may exempt any of the following from the application of this clause—
- (a) a relevant valuer or any class of relevant valuers,
  - (b) a condition or any class of conditions,
  - (c) a written undertaking or any class of written undertakings.

#### **45 Expiry of clauses 43 and 44**

Clauses 43 and 44 cease to have effect 3 years after the day on which the *Valuers Act 2003* is repealed.

#### **46 No compensation by State**

- (1) Compensation is not payable by or on behalf of the State because of the repeal of the *Valuers Act 2003* by the *Regulatory Reform and Other Legislative Repeals Act 2015*, or the enactment or operation of Schedule 1 to the *Regulatory Reform and Other Legislative Repeals Act 2015*, or for any consequence of that repeal, enactment or operation.
- (2) This clause does not prevent the regulations making provision for or with respect to



the refund of any application fees paid under the *Valuers Act 2003* before the repeal of that Act.

(3) 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 any employee or agent of the Crown.

## **Part 8 Provision consequent on repeal of *Emergency Services Levy Insurance Monitor Act 2016***

### **47 Secretary to succeed *Emergency Services Levy Insurance Monitor***

(1) This clause commences on the repeal date.

(2) The Secretary is substituted as a party to any proceedings pending in any court immediately before the repeal date to which the Monitor was a party.

(3) Any act, matter or thing that was commenced by the Monitor, but not completed, before the repeal date may be continued and completed by the Secretary.

(4) In this clause—

**Monitor** means the *Emergency Services Levy Insurance Monitor* appointed under the repealed Act.

**repeal date** means 1 January 2019.

**repealed Act** means the *Emergency Services Levy Insurance Monitor Act 2016*.

## **Part 9 Provision consequent on enactment of *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*—gift cards amendments**

### **48 Application of amendments**

Part 4B of this Act (as inserted by the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*) does not apply to a gift card sold before the commencement of that Part.

## **Part 10 Provision consequent on enactment of *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*—ticket scalping amendments**

### **49 Application of amendments**

Section 58G, 58H, 58I or 58J (as inserted by the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*) does not apply to a ticket sold or otherwise supplied to a first

purchaser by an authorised seller before the commencement of the section.

## **Part 11 Provisions consequent on repeal of Part 2B of Act by [Fair Trading Legislation Amendment \(Reform\) Act 2018](#)**

### **50 Dissolution of advisory bodies**

(1) The following bodies are dissolved on the repeal of Part 2B of this Act by the [Fair Trading Legislation Amendment \(Reform\) Act 2018](#)—

- (a) the Products Safety Committee,
- (b) the Fair Trading Advisory Council,
- (c) the Motor Vehicle Industry Advisory Council,
- (d) the Property Services Advisory Council,
- (e) the Retirement Villages Advisory Council.

(2) A person who held office as a member of a body dissolved by this clause before the repeal of Part 2B of this Act is not entitled to compensation or remuneration because of the dissolution of that body.

## **Part 12 Provision consequent on enactment of [Fair Trading Legislation Amendment \(Consumer Guarantee Directions\) Act 2018](#)**

### **51 Consumer guarantee directions**

Schedule 3 (Consumer guarantee directions) extends to the sale of a consumer good that occurred before the commencement of that Schedule, but only if the complaint under section 9 (1) (c) of this Act regarding that sale was first received by the Secretary after that commencement.

## **Part 13 Provisions consequent on enactment of [Fair Trading Amendment \(Commercial Agents\) Act 2016](#)**

### **52 Definitions**

In this Part—

**CAPI Act** means the [Commercial Agents and Private Inquiry Agents Act 2004](#).

**commercial agent licence** means the following licences under the CAPI Act—

- (a) master licences for process serving,
- (b) master licences for debt collection,

- (c) master licences for repossession of goods,
- (d) operator licences for process serving,
- (e) operator licences for debt collection,
- (f) operator licences for repossession of goods.

### **53 No compensation**

- (1) The purpose of this clause is to exclude the payment of compensation by or on behalf of the Crown for any deregulation of the commercial agent industry.
- (2) Compensation for deregulation is—
  - (a) compensation because of the enactment or operation of the *Fair Trading Amendment (Commercial Agents) Act 2016*, including the repeal of the CAPI Act, or for any consequence of that enactment or operation, or
  - (b) compensation because of the removal of the requirement for certain commercial agents to hold a licence or for any consequence of that removal, or
  - (c) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or (b) or to the deregulation of the commercial agent industry in connection with any such matter.
- (3) Compensation for deregulation is not payable by or on behalf of the Crown.
- (4) This clause applies to or in respect of any event, act, omission, statement or conduct whether occurring before or after the commencement of this clause.
- (5) In this clause—
  - compensation** includes damages or any other form of monetary compensation.
  - conduct** includes a representation of any kind—
    - (a) whether made verbally or in writing, and
    - (b) whether negligent, false, misleading or otherwise.
  - the Crown** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown.

### **54 Refund of licence fee for unused period of licence**

- (1) This clause applies to any commercial agent licence that ceases to have effect because of the repeal of the CAPI Act.
- (2) The Commissioner of Police is to refund to the holder of a licence a proportion of the

licence fee paid for the licence that is equivalent to the remaining period for which the licence would have been in force had the CAPI Act not been repealed.

- (3) Subclause (2) does not apply to any part of a fee that was declared to be a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

#### **55 Current applications, reviews and appeals**

- (1) Any application for a commercial agent licence that has not been finally determined before the repeal of the CAPI Act is taken to have been withdrawn and any application fee paid is to be refunded.
- (2) Any review or appeal in relation to a commercial agent licence (including a review or appeal in relation to an application for a licence) that has not been finally determined before the repeal of the CAPI Act is taken to have been withdrawn.

#### **56 Unclaimed trust money**

Subject to the regulations, Division 4 of Part 1 of Schedule 2 to the CAPI Act continues to apply in respect of any money referred to in an unclaimed money statement furnished, before the repeal of that Act, to the Commissioner of Police under clause 6 of that Schedule.

#### **57 Persons whose commercial agent licence has been cancelled or suspended**

The regulations may prescribe circumstances in which a person, whose commercial agent licence was cancelled or suspended under the CAPI Act, is taken to be a disqualified person or not to be a fit and proper person for the purposes of Part 5 of this Act.

#### **58 Applications for licences under Part 5 by former licence holders**

- (1) The regulations may modify (or remove the need for) the application process for a licence under Part 5 of this Act in the case of a person whose commercial agent licence ceases to have effect because of the repeal of the CAPI Act.
- (2) In such a case, the regulations may deem the person to be the holder of a licence under Part 5, or may require the Secretary to issue a licence to the person under that Part, unconditionally or subject to conditions and for such period (being no more than 3 years) as may be prescribed.

### **Schedule 6 (Repealed)**

### **Schedule 7 Provisions transferred by the [Fair Trading Legislation](#)**

## Amendment (Miscellaneous) Act 2018

### Part 1 Repeal and transfers

#### 1 Repeal of Acts

The *Innkeepers Act 1968* and the *Prices Regulation Act 1948* are repealed.

#### 2 Provisions transferred to this Schedule

Parts 2 and 3 re-enact the following provisions (with minor modifications) and are transferred provisions to which section 30A of the *Interpretation Act 1987* apply—

- (a) sections 5–8 of the *Innkeepers Act 1968*,
- (b) sections 41, 42 and 59 of the *Prices Regulation Act 1948*.

### Part 2 Innkeepers Act 1968 No 24

#### 3 Liability for damage to property

Subject to this Part, the keeper of an inn shall be under the like liability to make good damage to property brought to the inn by or on behalf of a traveller using its facilities as is imposed on him or her by law with respect to the loss thereof.

#### 4 Exclusion of liability in certain cases

The liability imposed by law on the keeper of an inn to make good the loss while at the inn, whether by theft or otherwise, of property brought to the inn by or on behalf of a traveller using its facilities, and the like liability imposed by clause 3 with respect to damage thereto, shall not be incurred by the innkeeper where—

- (a) the property lost or damaged is a vehicle or anything therein, or
- (b) the traveller is not a guest at the inn,

unless the cause of the loss or damage was some default, neglect or wilful act of the innkeeper or the innkeeper's employee or agent.

#### 5 Limitation of liability in certain cases

- (1) Subject to this clause and clause 4, the amount payable in respect of the liability of the keeper of an inn to any one traveller who is a guest at the inn with respect to property that, while at the inn, is lost, whether by theft or otherwise, or damaged shall not exceed \$300 or a higher amount prescribed by the regulations.
- (2) In subclause (1), **liability** means liability imposed by law and includes the like liability imposed by clause 3.
- (3) Subclause (1) shall not have effect where—

- (a) after the traveller became a guest at the inn—
  - (i) the property that was lost or damaged was deposited by the traveller or on his or her behalf expressly for safe custody with the innkeeper or the innkeeper's employee or agent authorised, or appearing to be authorised, for the purpose and, if so required by the innkeeper or that employee or agent, in a container fastened or sealed by the depositor, or
  - (ii) the traveller, or some person on his or her behalf, was unable to deposit the property as provided by subparagraph (i) by reason of the refusal of the innkeeper or such an employee or agent to receive it or by reason of some other default of the innkeeper or employee or agent, or
- (b) the cause of the loss or damage was some default, neglect or wilful act of the innkeeper or the innkeeper's employee or agent.

#### **6 Abolition of innkeeper's lien over certain property**

Without prejudice to any other right he or she may have with respect thereto, an innkeeper, in his or her capacity as an innkeeper, shall not have any lien on property referred to in clause 4 (a).

### **Part 3 Prices Regulation Act 1948 No 26**

#### **7 Speculating in goods**

- (1) A person, not being a bona fide wholesale or retail trader or a bona fide consumer or user, shall not purchase or agree to purchase or otherwise acquire (except by way of bona fide security only) any goods or any right or interest therein, and any goods so purchased or agreed to be purchased or acquired shall be liable to forfeiture.
- (2) In any prosecution for an offence against subclause (1) it shall be a sufficient defence to show that the purchase or agreement had not the object or the effect of increasing, directly or indirectly, the price of the goods to the consumer or user.
- (3) This clause shall not apply in relation to the purchase or acquisition of goods at a sale of those goods by auction upon the winding up of a business.

#### **8 Corners and restrictions on circulation of goods**

- (1) A person shall not, with intent to corner the market or restrain trade therein, hold or buy up any goods and store or retain them in his or her possession or under his or her control.
- (2) In addition to any penalty that may be imposed for an offence against subclause (1), the court may order that the whole of such goods, or such quantity thereof as the court so orders, shall be forfeited to the Crown.

## 9 Offences and penalties

- (1) Any person who contravenes or fails to comply with any provision of this Part shall be guilty of an offence.
- (2) No prosecution for an offence against this Part shall be instituted without the written consent of the Secretary or an authorised officer who is authorised by the Secretary for the purposes of this subclause.
- (3) A person who is guilty of an offence against this Part shall be liable—
  - (a) if a body corporate—to a penalty not exceeding 100 penalty units, or
  - (b) if any other person—to a penalty not exceeding 50 penalty units, or to imprisonment for a term not exceeding 12 months, or to both such penalty and imprisonment.
- (4) If a corporation contravenes, whether by act or omission, a provision of this Part, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

## Part 4 Consequential amendment to [Valuation of Land Act 1916 No 2](#)

### 10 Section 14BB Definitions

Omit the definition of *inn* from section 14BB (7). Insert instead—

*inn* means a common inn.