

Queensland



FAIR TRADING ACT 1989

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Also see endnotes for information about—

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FAIR TRADING ACT 1989

[as amended by all amendments that commenced on or before 24 September 2002]

An Act to make provision with respect to certain unfair or undesirable trade practices, to regulate the supply of goods and services, to provide for consumer authorities and for related purposes

PART 1—PRELIMINARY

1 Short title and citation

This Act may be cited as the *Fair Trading Act 1989*.

3 Objective of this Act

The principal objective of this Act is to provide for an equitable, competitive, informed and safe market place.

4 Application of Act

(1) This Act applies to every person who does an act or makes an omission in Queensland that constitutes a contravention of this Act.

(2) Where acts or omissions occur that would constitute a contravention of this Act if they all occurred in Queensland and any of the acts or omissions occur in Queensland, the person who does the act or makes the omission shall be taken to have committed that contravention of this Act.

(3) Subsections (1) and (2)—

- (a) shall not be construed as limiting any application that this Act has apart from this section; and
- (b) shall be construed subject to any provisions of this Act expressly to the contrary.

5 Definitions

In this Act—

“acquire” includes—

- (a) in relation to goods—acquire by purchase or exchange or by taking on lease, on hire or on hire-purchase; and
- (b) in relation to services—accept.

“approved form” see section 114.

“auction” means a sale at which prospective purchasers are invited to bid, and includes a sale at which bids are suggested and the suggested amounts progressively reduced until a bid is actually made.

“business” includes—

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

“code of practice” means a code of practice prescribed by regulation under section 88A.

“commissioner” means the commissioner for fair trading.

“committee” means the Consumer Safety Committee established under this Act.

“component part” includes an accessory.

“consumer” has the meaning given by section 6.

“council” means the Consumer Affairs Council established under this Act.

“court” in sections 98, 100 and 102 has the meaning given by section 103.¹

“credit” includes any form of financial accommodation.

“giving effect to”, in relation to a provision of a contract, agreement or understanding, includes doing an act or thing in pursuance of or in accordance with or enforcing or purportedly enforcing.

“goods” includes—

- (a) ships, aircraft and other vehicles; and

¹ Sections 98 (Injunctions—TPA ss 79(4), 80 and 80A), 100 (Compensation and other remedial orders—TPA s 87), 102 (Power of court to prohibit payment or transfer of money or other property—TPA s 87A) and 103 (Jurisdiction)

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

“hire-purchase agreement” means a letting of goods with an option to purchase.

“inspector” means—

- (a) the commissioner; or
- (b) an inspector appointed for the purposes of this Act; or
- (c) an inspector as defined by the *Trade Measurement Administration Act 1990*, section 3.

“interest” in land includes a right to occupy the land, or a building or part of a building on the land, conferred by shares, or under a contract to purchase shares, in a corporation that owns the land or building.²

“office” means the Office of Fair Trading established under this Act.

“premises” includes land.

“price” includes a charge of any description, the cost of obtaining credit and an ingoing contribution under the *Retirement Villages Act 1999*.

“provision”, in relation to an understanding, means any matter forming part of the understanding.

“published”, in relation to a statement, includes—

- (a) inserted in a publication; and
- (b) publicly exhibited in any place; and
- (c) contained in a document or other thing capable of providing information that is given or sent to any person or left at the person’s address; and
- (d) broadcast by radio or television or otherwise publicly announced by any means; and
- (e) reproduced electronically.

² See also definition of “interest” in the *Acts Interpretation Act 1954*, section 36.

“**records**” includes any record of information however compiled, recorded or stored and any books, documents or writings.

“**send**” includes deliver.

“**services**” includes any rights (including rights about, 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, includes, for example, 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 building work and work of a professional nature), whether with or without the supply of goods; or
 - (ii) a contract for, or involving, the provision of gas or electricity or the provision of any other form of energy; or
 - (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; or
- (b) a contract of insurance; or
- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- (d) a contract for or in relation to the lending of money;

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

“**small claims tribunal**” means a tribunal properly constituted under the *Small Claims Tribunals Act 1973*.

“**supply**” includes—

- (a) for goods—
 - (i) supply (including resupply) by way of exchange, hire, hire-purchase, lease and sale; and

- (ii) in part 4, divisions 1, 2 and 3 and part 5, division 1A³—exhibit, expose, and have in possession for supply; and
- (b) for services—
 - (i) provide, grant and confer; and
 - (ii) in part 4, divisions 1, 2 and 3 and part 5, division 1A—offer to supply.

“trade or commerce” includes any business or professional activity.

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

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

5A Meaning of “engaging in conduct” and “conduct”

In this Act—

- (a) a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding; and
- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), shall be read as a reference to the doing of or the refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding; and
- (c) a reference to refusing to do an act includes a reference to—
 - (i) refraining (otherwise than inadvertently) from doing that act; or
 - (ii) making it known that that act will not be done; and

³ Part 4 (Information, safety and codes of practice), divisions 1 (Information provisions), 2 (Safety provisions) and 3 (Ministerial prohibition) and part 5 (Enforcement and remedies), division 1A (General power of inspectors to seize goods)

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

5B Effect of provision dealing with enforceability of a contract

Where a provision of this Act is expressed to render a provision of a contract unenforceable if the provision of the contract has or is likely to have a particular effect, that provision of this Act applies in relation to the provision of the contract at any time when the provision of the contract has or is likely to have that effect even though—

- (a) at an earlier time the provision of the contract did not have that effect or was not regarded as likely to have that effect; or
- (b) the provision of the contract will not or may not have that effect at a later time.

5C Further meaning of acquisition, supply or resupply of goods or services

In this Act—

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods; and
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services; and
- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both; and
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and
- (e) a reference to the resupply of goods acquired from a person includes a reference to—
 - (i) a supply of the goods to another person in an altered form or condition; and

- (ii) a supply to another person of goods in which the first goods have been incorporated.

5D Meaning of “loss or damage” and “amount of loss or damage”

In this Act—

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

5E Meaning of “making of a representation”

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

5F Meaning of persons involved in contravention

In sections 99, 100 and 112,⁴ a reference to a person involved in a contravention of a provision of this Act is a reference to a person who—

- (a) aids, abets, counsels or procures the contravention; or
- (b) induces (by threats, promises or in any other manner) a person to commit the contravention; or
- (c) conspires to effect the contravention; or
- (d) is in any way directly or indirectly, knowingly concerned in, or party to, the contravention.

5G Meaning of related corporation

For the purposes of this Act, a corporation is related to another corporation if it is related to the other corporation for the purposes of the Corporations Act.

⁴ Sections 99 (Actions for damages—TPA s 82), 100 (Compensation and other remedial orders—TPA s 87) and 112 (Evidence)

6 Meaning of “consumer”

(1) In this Act—

“**consumer**” means a person who, in a particular transaction, whether a separate contract or separate transaction within a contract, acquires goods or services or an interest in land as a consumer.

(2) A person acquires goods or services or an interest in land as a consumer under subsection (1) if—

(a) the person—

(i) is an individual; and

(ii) acquires the goods, services or interest otherwise than for a business carried on by the person, whether as an individual or a member of a business partnership; or

(b) the price of the goods, services or interest is not more than \$40 000, after discounting for any GST payable on the supply of the goods, services or interest.

(3) If a person acquires goods for resupply by way of sale, exchange, lease, hire or hire-purchase, the person does not acquire the goods as a consumer.

(4) For the purposes of subsection (2)(b), if the price of goods or services or an interest in land cannot be decided by reference to a cash price specified in the contract concerned, the price is taken to be the reasonable cash price having regard to the circumstances of the case.

(5) If it is claimed in a proceeding or about an issue under this Act that a person is a consumer of particular goods or services or an interest in land, it must be presumed unless the contrary is proved that the person is a consumer of the goods, services or interest.

7 Crown bound

This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities, subject to the following—

(a) the Crown shall not be liable to a penalty for a contravention of this Act;

- (b) an agent of the Crown who contravenes this Act shall be liable for any penalty prescribed by this Act in relation to such a contravention.

PART 2—CONSUMER AUTHORITIES

Division 1—Consumer Affairs Council

8 Establishment and function of council

There shall be a committee called the Consumer Affairs Council the functions of which shall be—

- (a) to make such recommendations to the Minister as it considers necessary or desirable in the interests of consumers; and
- (b) to advise the Minister on such matters affecting the interests of consumers as the Minister refers to it; and
- (c) to make recommendations to the Minister for the establishment and maintenance of means by which matters that affect the interests of consumers and of persons engaged in the production, manufacture, preparation or supply of goods or services may receive adequate consideration and by which information concerning such matters and considerations may be disseminated at large.

9 Membership of council

(1) The council shall consist of the commissioner for consumer affairs, who shall be a member of the council because of his or her office and—

- (a) such number of other members as the Minister specifies who shall have such qualifications for membership as the Minister specifies; or
- (b) in the absence of specification by the Minister, 12 other members of whom—
 - (i) 2 shall be representative of consumers, of whom 1 shall also be representative of women engaged in home duties; and

- (ii) 2 shall be currently engaged in the manufacture of goods or in the business of advertising and promotion of the supply of goods or services; and
- (iii) 1 shall be currently engaged in the supply of goods or services to the public; and
- (iv) 1 shall be representative of consumers resident outside the area of the City of Brisbane as constituted and declared under the *City of Brisbane Act 1924*; and
- (v) 2 shall be members of an industrial union or industrial unions of employees; and
- (vi) 1 shall be representative of persons engaged in the supply of professional services in Queensland; and
- (vii) 1 shall be a person whose name is enrolled in Queensland as a barrister-at-law or a solicitor; and
- (viii) 1 shall be or have been engaged in primary production; and
- (ix) 1 shall be a person expert in the field of economics or finance.

(2) In making a specification as to the number or qualifications of members of the council the Minister shall have regard to the interest in consumer affairs of all sections of the community and shall, so far as possible, ensure—

- (a) that the membership of the council is representative of the whole field of such community interest; and
- (b) that the membership of the council includes representatives of producers, manufacturers and suppliers of goods and services (both as employers and employees) and of consumers of goods and services.

(2A) It shall not be competent to the Minister to make a specification with respect of the number of members of the council so as to vary the constitution of the council during the term of appointment of the whole number of members of the council (other than the commissioner) current at the time the specification is made.

(3) Members of the council other than the commissioner shall be appointed by the Governor in Council and such members are referred to in this division as “**appointed members**”.

(4) Subject to section 13,⁵ each appointed member shall be appointed for a term of 3 years ending on the same day as every other appointed member.

10 Chairperson

(1) The council shall have a chairperson who shall be a member of the council appointed by the Governor in Council as chairperson.

(2) A member appointed to be chairperson shall be chairperson of the council until the expiration of the current term of the member's office as a member of the council unless before the expiration of that term—

- (a) the member resigns as chairperson by written notice given to the Minister; or
- (b) the member vacates the member's office as member of the council; or
- (c) the Governor in Council removes the member from office as chairperson.

(3) The Governor in Council may remove the chairperson from office as such for any cause that appears to the Governor in Council to be sufficient.

11 Deputy chairperson

(1) The council shall have a deputy chairperson who shall be a member of the council other than the chairperson elected by the council as deputy chairperson as soon as practicable after the appointment of the whole council to its current term or after the office falls vacant.

(2) A member elected to be deputy chairperson shall be deputy chairperson of the council for the current term of the member's office as a member of the council unless before the expiration of that term—

- (a) the member resigns the member's office as deputy chairperson by written notice given to the Minister; or
- (b) the member vacates the member's office as member of the council; or
- (c) the member is appointed chairperson of the council.

(3) The deputy chairperson is to act as chairperson during—

5 Section 13 (Vacating office of member of council)

- (a) all vacancies in the office of chairperson; or
- (b) all periods when the chairperson is absent from duty or, for another reason, cannot perform the functions of the office.

12 Deputy members

(1) The Governor in Council may appoint a person who is not a member of the council to be the deputy of an appointed member who is, or is likely to be, prevented by absence, illness or otherwise from performing the member's duties as a member.

(2) The Governor in Council shall not appoint a person as deputy of an appointed member unless the member has like qualifications for membership of the council as that member.

(3) If the appointed member is absent from a meeting of the council, the deputy may attend and act as the appointed member.

(4) However, the deputy cannot act as chairperson or deputy chairperson.

13 Vacating office of member of council

(1) A member of the council shall be taken to have vacated the member's office if the member—

- (a) dies; or
- (b) resigns the member's office by written notice given to the Minister; or
- (c) is absent from 3 consecutive meetings of the council and is not excused by the council for the member's absence at any time before the end of the meeting next following the third absence; or
- (d) is removed from office by the Governor in Council.

(2) The Governor in Council may remove any member of the council from office as such for any cause that appears to the Governor in Council to be sufficient.

(3) When a vacancy happens in the office of a member of the council before the expiration of the member's term of appointment the Governor in Council may appoint in the member's place as member a person having a like qualification for membership of the council to that of the person's predecessor.

(4) Unless the person sooner vacates the person's office as prescribed by this Act, the person appointed shall hold office as a member of the council for the balance of the person's predecessor's term of office.

14 Meetings of council

(1) The council shall meet at such times and places and conduct its business in such way as is prescribed or, so far as not prescribed, as it determines from time to time.

(2) Any 6 members of the council shall be a quorum for the purpose of a meeting of the council and shall be competent to transact the business of the council and to discharge the functions of the council under this Act.

(3) The chairperson of the council, or if the chairperson is not present, the deputy chairperson shall preside at all meetings of the council.

(3A) If both the chairperson and the deputy chairperson are absent from a meeting of the council the members present at the meeting shall elect a member from amongst those present to preside at the meeting during the absence of the chairperson and the deputy chairperson and whilst so doing the person so elected shall be taken to be chairperson of the council.

(4) A matter before a meeting of the council shall be determined by vote of the majority of the members of the council present and voting on the matter in question and in the event of an equality of votes the person who presides at the meeting shall have a second or casting vote.

(5) A member of the council who, being present at a meeting and entitled to vote on a matter, abstains from voting on the matter shall be taken to have voted in the negative.

16 Fees and allowances for council members

A council member is entitled to be paid fees and allowances the Governor in Council may decide.

17 Cooperation with other organisations or persons

For the purpose of discharging its functions and to generally advance the interests of consumers, the council with the prior approval of the Minister, may cooperate or affiliate with or extend recognition of any kind to any person or other organisation in Queensland or elsewhere.

18 Secretary

The commissioner shall as the occasion requires it appoint an officer of the office to be the secretary of the council.

Division 2—Commissioner for fair trading and Office of Fair Trading

19 Commissioner and other officers

(1) A commissioner for fair trading and the inspectors and other officers necessary to assist the commissioner are to be appointed under the *Public Service Act 1996*.

(2) Judicial notice must be taken of the appointment of the commissioner and of the commissioner's signature.

19A Delegation by commissioner

The commissioner may delegate the commissioner's powers under this or another Act to a public service officer employed in the department.

20 Office of Fair Trading

(1) There shall be maintained, in the charge, and subject to the direction, of the Minister, an Office of Fair Trading comprised of the commissioner and the other officers appointed to assist the commissioner.

(2) Subject to subsection (1), the office shall discharge its functions under the direction and control of the commissioner.

21 Functions of office

(1) The functions of the office shall be—

- (a) to administer the provisions of this Act and to facilitate its operation; and
- (b) to promote the interests of consumers and persons negotiating or considering the acquisition of goods or services as consumers and to assist them to a greater awareness in relation to their assessment and use of goods or services; and

- (c) to collect, examine and disseminate information in respect of matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers; and
- (d) to receive and consider complaints concerning matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and, if the commissioner is of the opinion that such action is warranted, to investigate the complaints and take such action in respect of the matter as seems proper to the commissioner; and
- (e) to investigate fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and to take such action in respect of the practices as seems proper to the commissioner; and
- (f) to advise and assist persons who seek from the bureau information or guidance on matters affecting or likely to affect their interests as consumers or as persons negotiating or considering the acquisition of goods or services as consumers; and
- (g) to investigate matters or to arrange for the investigations of matters on behalf of the council or the committee; and
- (h) to collect, collate and furnish, or to arrange for the collection, collation and furnishing, to the council or the committee of data to assist the council or committee in the discharge of their functions; and
- (i) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services; and
- (j) to take action to promote and ensure safety in the supply of goods and services; and
- (k) to administer such provisions of other Acts and discharge such other functions as the Minister may direct it to administer or discharge.

(2) Subsection (1) shall not be construed to require the commissioner or any officer of the office to give, or hold himself or herself out as ready or competent to give, to any person advice concerning the rights and liabilities

in law of the person concerning any matter, or to aid in the enforcement of the rights of the person.

22 Acting inspectors

The Minister or the commissioner may appoint in writing any person who holds for the time being any office under the Crown in right of the State to act as an inspector for the purposes of this Act.

23 Aid by government departments in supplying information

Except in respect of information which under any Act is not to be divulged, the chief executive of each department shall cooperate and shall cause the officers under the chief executive's control to cooperate with the commissioner and shall render assistance in the provision of information required by the commissioner for the purposes of this Act.

Division 3—Consumer Safety Committee

24 Consumer Safety Committee

(1) There shall be a committee called the Consumer Safety Committee.

(2) The committee shall consist of—

- (a) the commissioner, who shall be a member because of his or her office; and
- (b) such number of other members as the Minister appoints.

(3) The members referred to in subsection (2)(b) are in this division referred to as the “**appointed members**”.

(4) The commissioner shall because of his or her office be chairperson of the committee.

(5) The appointed members of the committee shall be persons who, in the Minister's opinion, have expertise in relation to the safe supply of goods or services.

25 Term of appointment

(1) Subject to section 26, each appointed member shall be appointed for a term of 3 years ending on the same day as every other appointed member.

(2) Each appointed member shall, subject to this Act, hold office as a member until the appointed member's term of appointment expires or until the appointed member's successor's appointment as a member takes effect, whichever is the later date.

(3) The Minister for any reason appearing to the Minister to be sufficient, may remove an appointed member from office.

26 Casual vacancies

(1) Where a vacancy happens in the office of an appointed member during the currency of the appointed member's term of office as such member, the Minister may appoint another person to fill that vacancy.

(2) A person appointed to fill a casual vacancy shall, subject to this Act, be appointed and hold office for the balance of the person's predecessor's term of office or until the person's successor's appointment as a member takes effect, whichever is the later date.

27 Vacation of office

The office of an appointed member shall become vacant if the member—

- (a) dies; or
- (b) resigns the appointed member's office by written notice given to the Minister; or
- (c) is absent from 3 consecutive meetings of the committee and is not excused by the committee for the absence at any time before the end of the next meeting after the third absence; or
- (d) is removed from office as a member by the Minister.

28 Meetings of the committee

(1) The chairperson of the committee shall preside at all meetings of the committee.

(2) The committee shall meet at such times and places and conduct its business in such manner as is prescribed or, in so far as not prescribed, as it determines.

(3) A quorum of the committee is a majority of its members.

(3A) Business may be conducted at a meeting of the committee only if a quorum is present.

(4) All matters before a meeting of the committee shall be determined by the majority vote of its members present at the meeting and in the event of an equality of votes the chairperson shall have a casting vote.

(5) A member of the committee who is present at a meeting and abstains from voting shall be taken to have voted in the negative.

(6) The committee may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another type of communication.

(7) A member who takes part in a meeting under subsection (6) is taken to be present at the meeting.

30 Fees and allowances of committee members

A committee member is entitled to be paid fees and allowances the Governor in Council may decide.

31 Committee may obtain advice

(1) The committee may coopt any person who in its opinion has expertise in relation to the safe supply of goods or services to advise it in relation to any question referred to it by the Minister or the commissioner.

(2) A person coopted under subsection (1) shall for the purposes of this division be taken to be a member of the committee during the period the person is coopted.

32 Reference to the committee

The Minister or the commissioner may request the committee to consider whether the supply of any goods or services or goods or services of a particular class should be prohibited or only authorised subject to conditions or restrictions on the ground that they are likely to cause the

death of a person or to injure a person or to adversely affect a person's health or well being whether physical, mental or psychological.

33 Committee to report to Minister or commissioner

(1) The committee shall, on reference of any matter to it by the Minister or the commissioner, conduct investigations in respect of that matter and make recommendations in a report to the person who referred the matter to it.

(2) Where a member or members of the committee disagree with the recommendations of the committee, this fact, and the reasons (if any) for the disagreement shall be included in the report to the Minister or the commissioner.

(3) Any report or recommendation made to the Minister or the commissioner shall be confidential and shall not, except with the consent of the Minister or the commissioner, be disclosed or made available to any person.

34 Commissioner to assist investigations

(1) The commissioner shall, if so requested by the committee, provide it with—

- (a) all documentation and information that relates to the matter being considered; and
- (b) any other assistance which the commissioner is able to give regarding the matter being considered.

(2) The commissioner shall assign an officer of the office to perform the duties of secretary to the committee.

35 Powers of committee to investigate matters

The committee shall in considering any matter—

- (a) take into account any representations made to it by any person who, in its opinion, has a substantial interest in the matter; and
- (b) conduct such other investigations as it considers necessary to enable it to make a recommendation with respect to the matter.

36 Appointment of deputies

(1) The Minister may appoint a person who is not a member of the committee to be the deputy of an appointed member.

(2) If the appointed member is absent from a meeting of the committee, the deputy may attend and act as the appointed member.

PART 3—TRADE PRACTICES*Division 1—General rules***37 Interpretation for div 1—TPA s 51A**

(1) For the purposes of this division, where a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

(2) The onus of establishing that a person had reasonable grounds for making a representation referred to in subsection (1) is on the person.

(3) Subsection (1) shall not be taken to limit by implication the meaning of a reference in this division to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

38 Misleading or deceptive conduct—TPA s 52

(1) A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in this division shall be taken as limiting by implication the generality of subsection (1).

39 Unconscionable conduct—TPA s 51AB

(1) A supplier shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person (the

“customer”), engage in conduct that is, in all the circumstances, unconscionable.

(2) Without limiting the matters to which regard may be had for the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services, regard may be had to—

- (a) the relative strengths of the bargaining positions of the supplier and the customer; and
- (b) whether, because of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
- (c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services; and
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer (or person acting on behalf of the customer) by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and
- (e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier.

(3) A supplier shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a customer only because the supplier institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services to a customer—

- (a) regard shall not be had to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) regard may be had to conduct engaged in, or circumstances existing, before the commencement of this Act.

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of resupply, or for the purpose of using them up or transforming them, in trade or commerce.

40 False or misleading representations—TPA s 53

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services—

- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
- (b) falsely represent that services are of a particular standard, quality, value or grade; or
- (c) falsely represent that goods are new; or
- (d) falsely represent that a particular person has agreed to acquire goods or services; or
- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have; or
- (f) represent that the person has a sponsorship, approval or affiliation the person does not have; or
- (g) make a false or misleading representation concerning the price of goods or services; or
- (h) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
- (i) make a false or misleading representation concerning the place of origin of goods; or
- (j) make a false or misleading representation concerning the need for any goods or services; or

- (k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Maximum penalty—540 penalty units.

40A False representations and other misleading or offensive conduct in relation to land—TPA s 53A

(1) A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion in any way of the sale or grant of an interest in land—

- (a) represent that the person has a sponsorship, approval or affiliation the person does not have; or
- (b) make a false or misleading representation about—
 - (i) the nature of the interest in land; or
 - (ii) the price payable for the land; or
 - (iii) the location of the land; or
 - (iv) the characteristics of the land; or
 - (v) the use to which the land is capable of being put or may lawfully be put; or
 - (vi) the existence or availability of facilities associated with the land; or
- (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered; or
- (d) in Queensland do anything to cause a representation mentioned in paragraph (a) or (b), or an offer mentioned in paragraph (c), to be made outside Queensland.

Maximum penalty—540 penalty units.

(2) A person must not use physical force, undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.

Maximum penalty—540 penalty units.

(3) This section does not imply that other provisions of this Act do not apply to the supply or acquisition, or the possible supply or acquisition, of interests in land.

41 Misleading conduct in relation to employment—TPA s 53B

A person shall not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment.

Maximum penalty—540 penalty units.

42 Cash price to be stated in certain circumstances—TPA s 53C

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies the cash price for the goods or services.

Maximum penalty—540 penalty units.

43 Offering gifts and prizes—TPA s 54

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

Maximum penalty—540 penalty units.

44 Certain misleading conduct in relation to goods—TPA s 55

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

Maximum penalty—540 penalty units.

45 Certain misleading conduct in relation to services—TPA s 55A

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

Maximum penalty—540 penalty units.

46 Bait advertising—TPA s 56

(1) A person shall not, in trade or commerce, advertise goods or services for supply at a specified price if there are reasonable grounds, of which the person is aware, or ought reasonably to be aware, for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Maximum penalty—540 penalty units.

(2) A person who has, in trade or commerce, advertised goods or services for supply at a specified price shall offer the goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Maximum penalty—540 penalty units.

(3) In proceedings for an offence in relation to a failure to offer goods or services to a person (the “**customer**”) in accordance with subsection (2), it is a defence if it is established that—

- (a) the defendant offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
- (b) the defendant offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first goods or services were advertised;

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

47 Referral selling—TPA s 57

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

Maximum penalty—540 penalty units.

48 Accepting payment without intending or being able to supply as ordered—TPA s 58

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

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

Maximum penalty—540 penalty units.

49 Misleading representation about certain business activities—TPA s 59

(1) A person shall not, in trade or commerce, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from any place of residence.

Maximum penalty—540 penalty units.

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

Maximum penalty—540 penalty units.

50 Harassment and coercion—TPA s 60

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

Maximum penalty—540 penalty units.

51 Application of certain provisions to prescribed information providers—TPA s 65A

(1) Nothing in section 38, 40, 40A, 44, 45 or 49⁶ applies to a prescribed publication of matter by a prescribed information provider, other than—

- (a) a publication of matter in connection with—
 - (i) the supply or possible supply of goods or services; or
 - (ii) the promotion by any means of the supply or use of goods or services;
 - (iii) the sale or grant, or possible sale or grant, of interests in land; or
 - (iv) the promotion by any means of the sale or grant of interests in land;

where—

6 Section 38 (Misleading or deceptive conduct—TPA s 52), 40 (False or misleading representations—TPA s 53), 40A (False representations and other misleading or offensive conduct in relation to land—TPA s 53A), 44 (Certain misleading conduct in relation to goods—TPA s 55), 45 (Certain misleading conduct in relation to services—TPA s 55A) or 49 (Misleading representation about certain business activities—TPA s 59)

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- (v) the goods or services were relevant goods or services, or the interests in land were relevant interests in land, in relation to the prescribed information provider; or
- (vi) the publication was made on behalf of, or under a contract, arrangement or understanding with—
 - (A) a person who supplies goods or services of that kind, or who sells or grants interests of that kind in land; or
 - (B) a body corporate that is related to a body corporate that supplies goods or services of that kind, or that sells or grants interests of that kind in land; or
- (b) a publication of an advertisement.

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

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

(3) In this section—

“**consortium**” has the same meaning as that expression has in the *Broadcasting Act 1942* (Cwlth), part IIIB.

“**prescribed information provider**” means a person who carries on a business of providing information, and includes—

- (a) a person to whom, or each of the members of a consortium to which, a broadcasting or television licence has been granted under a law of the Commonwealth; and
- (b) the Australian Broadcasting Corporation; and
- (c) the Special Broadcasting Service Corporation.

“**relevant goods or services**”, in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is

a body corporate, by a body corporate that is related to the prescribed information provider.

“relevant interests in land”, for a prescribed information provider, means land interests of a kind sold or granted by the prescribed information provider or, if the prescribed information provider is a body corporate, by a body corporate related to the prescribed information provider.

Division 2—Unsolicited goods and services

52 Assertion of right to payment for unsolicited goods or services, or for making entry in directory—TPA s 64

(1) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the person asserting the right has reasonable cause to believe that there is a right to payment.

Maximum penalty—540 penalty units.

(2) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the person asserting the right has reasonable cause to believe that there is a right to payment.

Maximum penalty—540 penalty units.

(3) A person shall not assert a right to payment from another person of a charge for the making in a directory of an entry relating to the other person, or to the profession, business, trade or occupation of the other person, unless the person asserting the right knows, or has reasonable cause to believe, that the other person has authorised the making of the entry.

Maximum penalty—540 penalty units.

(4) A person is not liable to make any payment to another person, and is entitled to recover by action in a court of competent jurisdiction against another person any payment made by the person to the other person, in full or part satisfaction of a charge for the making of an entry in a directory unless the first person has authorised the making of the entry.

(5) For the purposes of this section, a person shall be taken to assert a right to payment from another person for unsolicited goods or unsolicited services, or of a charge for the making of an entry in a directory, if the first person—

- (a) makes a demand for the payment or asserts a present or prospective right to the payment; or

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- (b) threatens to bring any legal proceedings with a view to obtaining the payment; or
- (c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends an invoice or other document stating the amount of the payment or stating the price of the goods or services or the charge for making the entry, unless the document contains a warning statement complying with subsection (5A).

(5A) For subsection (5)(e), a warning statement must—

- (a) be printed, at the top of the first page of the document, in upper case and a type not smaller than 18-point; and
- (b) state ‘THIS IS A SOLICITATION, NOT AN INVOICE FOR A DEBT INCURRED BY YOU.’

(6) A person shall not be taken for the purposes of this section to have authorised the making of an entry in a directory unless—

- (a) a document authorising the making of the entry has been signed by, or with the authority of, the person; and
- (b) the document specifies—
 - (i) the name of the directory; and
 - (ii) the name and address of the person publishing the directory; and
 - (iii) particulars of the entry; and
 - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated; and
- (c) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted.

(7) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person shall be taken to have been sent by that person unless the contrary is established.

(8) In a proceeding against a person in respect of a contravention of this section—

- (a) in the case of a contravention constituted by asserting a right to payment from another person for unsolicited goods or unsolicited services—the burden lies on the defendant of proving that the defendant had reasonable cause to believe that there was a right to payment; or
- (b) in the case of a contravention constituted by asserting a right to payment from another person of a charge for the making of an entry in a directory—the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the other person had authorised the making of the entry.

(9) In this section—

“**directory**” includes a journal, magazine, and similar publication, but does not include—

- (a) a publication published in good faith as a newspaper at regular intervals; and
- (b) a publication published, or to be published, by or under the authority of the Australian and Overseas Telecommunications Corporation.

“**entry**”, in a directory, includes an advertisement promoting a business.

“**making**”, in relation to an entry in a directory, means including, or arranging for the inclusion of, the entry.

53 Liability of recipient of unsolicited goods—TPA s 65

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

(2) Subject to subsection (3), where a person sends, in trade or commerce, unsolicited goods to another person—

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

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sent freed and discharged from all liens and charges of any description.

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

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

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

- (a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (5)—
 - (i) the period of 1 month next following the day on which the notice is given; or
 - (ii) the period of 3 months next following the day on which the person received the goods;whichever first expires; and
- (b) in any other case—the period of 3 months next following the day on which the person received the goods.

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

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

54 False orders

(1) A person shall not make a request in the name of another person that goods be sent to that other person where, if those goods were sent to that other person, those goods would be unsolicited goods.

Maximum penalty—100 penalty units.

(2) In a prosecution for an offence against this section, the burden lies on the defendant to prove the defendant's authority to make the request.

55 Obscene material not to be sent

(1) A person, for the purpose of encouraging any order for goods or the dispatch of money shall not send, or cause to be sent, directly or indirectly to any person any obscene material or material in any form which advertises the existence or availability of any obscene material where that other person has not requested that such goods or goods of a kind similar to the goods be so sent to the other person.

Maximum penalty—100 penalty units.

(2) A recording shall be taken to be obscene if the words or sounds capable of being reproduced from it are obscene.

(3) A document that is composed of words, photographs or drawings, or any 2 of them, shall be taken to be a writing.

(4) For the purposes of this section—

“**money**” includes bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests, for the payment of money.

“**obscene**” includes, but without limiting the generality of its meaning, emphasising matters of sex or calculated to encourage depravity.

“**obscene material**” includes—

- (a) any obscene book, paper, newspaper, or printed matter of any kind whatsoever, and any obscene writing, print, picture, photograph, photographic negative, photographic plate, photographic slide or film, transparency, lithograph, drawing or any form of recording; or
- (b) any figure, representation, object or substance (liquid or solid) suggested for use in or in association with any form of sexual conduct.

Division 2A—Pyramid selling**55A Definitions for div 2A**

In this division—

“benefits” means payments or benefits, whether or not as a legally enforceable right.

“payments”, to or for the benefit of a person, see section 55C.

“promoter”, of a trading scheme, means a person who, alone or with someone else, promotes the scheme.

“trading scheme” see section 55B.

55B Meaning of “trading scheme”—TPA s 61

(1) A **“trading scheme”** is a scheme that includes the following elements—

- (a) goods, services or both goods and services are to be provided by a promoter of the scheme;
- (b) the goods or services are to be supplied to or for other persons under transactions arranged or effected by participants in the scheme, not all of whom are promoters of it.

(2) For this section—

- (a) a scheme is taken to include the element mentioned in subsection (1)(b) even if a participant who is not a promoter acts in relation to a transaction mentioned in the paragraph as an agent or employee of a promoter or in another capacity; and
- (b) a scheme includes an arrangement made in connection with the carrying on of a business, whether or not all or part of the arrangement is made or recorded in writing; and
- (c) a reference to the provision of goods or services by a person is taken to include a reference to the provision of goods or services under an arrangement to which the person is a party.

55C Meaning of “payment to or for the benefit of” a person—TPA s 61

A reference in this division to making a payment to or for the benefit of a person includes making a payment partly to or for the benefit of the person and partly to or for the benefit of 1 or more other persons.

55D Offences about pyramid selling—TPA s 61

(1) A person commits an offence if—

- (a) the person is a promoter of, or participant in, a trading scheme (the “**payee**”); and
- (b) someone else who is, or has applied or been invited to become, a participant in the scheme (the “**payer**”) makes a payment to or for the benefit of the payee; and
- (c) the payment is made under an inducement of a prospect held out to the payer of receiving benefits for the introduction, by the payer or someone else, of other persons who become participants in the scheme.

Maximum penalty—540 penalty units.

(2) A person commits an offence if the person—

- (a) is a promoter of, or a participant in, or is otherwise acting in accordance with, a trading scheme; and
- (b) by holding out to someone else (the “**payer**”) the prospect of receiving benefits for the introduction, by the payer or someone else, of other persons who become participants in the scheme, attempts to induce the payer—
 - (i) if the payer is already a participant in the scheme—to make a payment to or for the benefit of a promoter or participant in the scheme; or
 - (ii) if the payer is not already a participant in the scheme—to become a participant and to make a payment to or for the benefit of a promoter or participant in the scheme.

Maximum penalty—540 penalty units.

(3) A person commits an offence if—

- (a) the person promotes or takes part in the promotion of a scheme (the “**payee**”); and

- (b) a payment under the scheme is to be made by someone else who participates, or has applied or been invited to participate, in the scheme (the **“payer”**) to or for the benefit of—
 - (i) the payee or someone else who takes part in the promotion; or
 - (ii) someone else who participates in the scheme; and
- (c) the inducement under the scheme for making the payment is the holding out to the payer the prospect of receiving benefits from other persons who may participate in the scheme.

Maximum penalty—540 penalty units.

(4) For this section, an inducement or attempt to induce is made by holding out a prospect of a type mentioned in the section if the prospect is or would be a substantial part of the inducement.

Division 2B—Loan fund schemes

55E Definitions for div 2B

In this division—

“loan fund scheme” means a scheme that, in substance and regardless of its form—

- (a) involves the contribution or subscription of an amount, directly or indirectly, by persons to a fund; and
- (b) confers on each of the persons, or on each of a substantial proportion of them, an entitlement to receive a loan out of the fund at some date, whether ascertainable or not; and
- (c) provides for the amount of the loan to be determined by reference to the amount each person contributes or subscribes, or agrees to contribute or subscribe, to the fund;

and includes—

- (d) all activities, matters and things associated with a scheme; and
- (e) any part of a scheme.

“operate”, a loan fund scheme, includes manage or control the scheme.

55F Operating a loan fund scheme

A person must not—

- (a) operate a loan fund scheme; or
- (b) promote the operation of a loan fund scheme; or
- (c) invite another person, by an advertisement or another means, to contribute or subscribe to or participate in a loan fund scheme.

Maximum penalty—540 units.

55G Implying that a loan fund scheme is operating

A person must not—

- (a) if the person is carrying on a business, use words or references in the name or description of the business to represent or imply the person is operating a loan fund scheme; or
- (b) display information at any place that would represent or imply that the person is operating a loan fund scheme.

Maximum penalty—540 units.

Division 3—Mock auctions**56 Prohibition on mock auctions**

(1) A person shall not promote or conduct a mock auction of goods.

Maximum penalty—100 penalty units.

(2) Subject to subsection (3) an auction of goods is a mock auction if, but only if, during the course of the auction—

- (a) goods are sold for less than the highest bid made by the purchaser, or part of the purchase price is repaid or credited to the purchaser; or
- (b) the right to bid for any lot is restricted to persons who have bought or agreed to buy other goods; or
- (c) any goods are given away or offered as gifts.

(3) An auction is not a mock auction under subsection (2)(a) if it is proved that the reduction in price or the repayment or credit, as the case may be, was made—

- (a) because of a defect of which the auctioneer became aware after the highest bid was made; or
- (b) because of damage sustained after that bid was made.

(4) For the purposes of proceedings for an offence against this section—

- (a) a statement, purporting to be a statement of fact, made by or on behalf of the auctioneer during the course of an auction of goods and tending to show that the auction is a mock auction is admissible as conclusive evidence of the fact stated; and
- (b) anything done, before or after an auction, in or about the place where the auction has been or is to be held, if done in connection with the auction, shall be taken to be done during the course of the auction.

Division 4—Door-to-door sales

57 Definitions for div 4

In this division—

“consumer” means a consumer within the meaning of section 6 who—

- (a) is an individual; and
- (b) acquires goods or services otherwise than for a business carried on by the person, whether as an individual or a member of a business partnership.

“contract to which this division applies” means a contract to which this division applies because of section 58.

“cooling-off period”, in relation to a prescribed contract, means the period of 10 days starting on and including the day on which the contract is made.

“dealer” means a person who in the course of door-to-door trading—

- (a) enters into negotiations with another person with a view to the making of a contract for the supply of goods or services to that other person; or

- (b) calls on another person for the purpose of entering into such negotiations;

whether or not that person is or is to be the supplier of the goods or services.

“door-to-door trading” means the trading practice under which—

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

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

“prescribed contract” has the meaning assigned by section 60.

“related contract or instrument”, in relation to a contract to which this division applies, means—

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

57A References to consumer or supplier under a contract for the supply of goods or services

A reference in this division to the consumer or supplier under a contract for the supply of goods or services extends to any person to whom the rights of the original consumer or supplier under the contract are assigned or transferred, or pass by operation of law.

57B References to contract for the supply of goods or services to a person who is a party to the contract

For this division, a contract is a contract for the supply of goods or services to a person who is a party to the contract if it provides for the supply of goods or services to the person or to someone else but on the order of the person.

57C References to negotiation of a contract to which this division applies

A reference in this division to negotiation of a contract to which this division applies is a reference to negotiation of a contract that would, on its formation, be a contract to which this division applies.

58 Contracts to which this division applies

(1) Subject to this section, this division applies to a contract for the supply of goods or services to a consumer (whether or not the law of Queensland is the proper law of the contract) if the following conditions are satisfied—

- (a) negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the consumer and a dealer in each other's presence in Queensland at a place other than trade premises of the supplier;
- (b) the dealer attends at that place—
 - (i) in the course of door-to-door trading; and
 - (ii) otherwise than at the unsolicited invitation of the consumer.

(2) For the purposes of subsection (1)(b)—

- (a) in determining whether an invitation is solicited or unsolicited, any solicitation by way of—
 - (i) printed or written material delivered but not addressed personally to the consumer which contains a readily legible and easily understood statement soliciting an invitation; or
 - (ii) advertisement addressed to the public or a substantial section of the public;

shall be disregarded; but

- (b) except as provided in paragraph (a), where an invitation arises from a communication initiated by the supplier or dealer, or a person acting on behalf of the supplier or dealer, the invitation shall not be regarded as unsolicited.

58A Contracts to which this division does not apply

(1) This division does not apply to a contract to supply goods or services for emergency repairs to a person's property damaged by a major incident.

(2) In this section—

“major incident” means an accident, earthquake, fire, flood, storm or similar event.

59 Prohibition of certain contractual terms

(1) A contract to which this division applies shall not contain—

- (a) a provision purporting to provide that the contract, or any proceeding arising from the contract, is governed by the law of a place other than Queensland; or
- (b) a provision purporting to provide that legal proceedings arising out of, or in relation to, the contract are justiciable only by the courts of a place other than Queensland; or
- (c) a provision purporting to exclude, restrict, or modify any right conferred on a consumer by this division; or
- (d) a provision of a kind prohibited by regulation.

(2) Where a contract to which this division applies contains a provision contrary to subsection (1), the provision is void and the supplier and the dealer each commit an offence against this Act.

Maximum penalty—100 penalty units.

(3) In this section—

“contract to which this division applies” includes a related contract or instrument.

60 Meaning of “prescribed contract”

(1) Subject to this section, a contract to which this division applies is a prescribed contract if the total consideration payable by the consumer under, or in respect of, the contract—

- (a) is not ascertainable at the time of the making of the contract; or
- (b) is ascertainable at the time of the making of the contract and exceeds the prescribed amount.

(2) Where—

- (a) 2 or more contracts relate to substantially the same transaction; and
- (b) the transaction could have been effected by a single contract which would, in that case, have constituted a prescribed contract;

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

(3) The following are not prescribed contracts—

- (a) a contract of insurance;
- (b) a contract solely for the provision of credit.

(4) In this section—

“the prescribed amount” means \$50 or, if another amount is prescribed by regulation, that other amount.

61 Requirements in relation to prescribed contracts

(1) The following requirements shall be complied with in relation to a prescribed contract—

- (a) the contract shall set out in full all the contractual terms, including—
 - (i) the total consideration to be paid or provided by the consumer or, if the total consideration is not ascertainable at the time the contract is made, the manner in which it is to be calculated; and

- (ii) if the contract provides for the carrying out of work of a prescribed nature—detailed particulars of the work (including any such particulars required by regulation);
- (b) the contractual terms shall be printed or typewritten (apart from any insertions or amendments to the printed or typewritten form, which may be handwritten);
- (c) the making of the contract shall be completed by the consumer signing the contract after it has already been executed by or on behalf of the supplier;
- (d) the consumer shall be given a duplicate of the contract immediately after the making of the contract;
- (e) where the dealer is not the supplier—the contract shall set out the full name and address of the dealer and identify that person as the dealer;
- (f) the contract shall contain immediately above the place provided for the signature of the consumer the statement ‘THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF 10 DAYS’ printed in upper case in type not smaller than 18-point;
- (g) the consumer shall be given 2 notices at or immediately before the making of the contract—
 - (i) one being a notice, in the approved form, explaining the right of the consumer to rescind the contract; and
 - (ii) the other being a notice, in the approved form, that may be used by the consumer to rescind the contract;
- (h) the notices referred to in paragraph (g) shall—
 - (i) be printed or typewritten (apart from any insertion, which may be handwritten); and
 - (ii) set out the full name and address of the supplier and identify that person as the supplier; and
 - (iii) be separate from, and not attached to, any other document;
- (i) the printing or typewriting of the contract, the statement referred to in paragraph (f), and the notices referred to in paragraph (g), shall be readily legible and conform with the requirements of the regulations;

- (j) any handwriting (apart from a signature or initial) in the contract or a notice referred to in paragraph (g) shall be readily legible.

(2) If any of the requirements of subsection (1) is not complied with, the supplier and the dealer each commit an offence against this Act.

Maximum penalty—100 penalty units.

(3) Where a consumer acknowledges, in writing, receipt of a document required to be given under subsection (1), the acknowledgment is evidence, but not conclusive evidence, that the document was given to the consumer as required by that subsection.

62 No consideration during cooling-off period

(1) If a supplier or dealer accepts any money or other consideration from a consumer under a prescribed contract or a related contract or instrument before the expiration of the cooling-off period, the supplier and the dealer each commit an offence against this Act.

Maximum penalty—100 penalty units.

(2) If services are supplied under a prescribed contract before the expiration of the cooling-off period, the supplier commits an offence against this Act.

Maximum penalty—100 penalty units.

63 Prohibited hours

Except by prior appointment, a dealer shall not call on a person—

- (a) at any time on a Sunday or a public holiday; or
- (b) on a Saturday—
 - (i) between midnight and 9.00 a.m.; or
 - (ii) between 5.00 p.m. and midnight; or
- (c) on any other day—
 - (i) between midnight and 9.00 a.m.; or
 - (ii) between 6.00 p.m. and midnight;

for the purpose of negotiating a contract to which this division applies or for an incidental or related purpose.

Maximum penalty—100 penalty units.

64 Duties of dealers

(1) A dealer who calls at premises for the purpose of negotiating a contract to which this division applies or for an incidental or related purpose shall leave the premises at the request of the occupier of the premises or any person acting with the actual or implied authority of the occupier.

Maximum penalty—100 penalty units.

(2) A dealer who calls on a person for the purpose of negotiating a contract to which this division applies or for an incidental or related purpose shall, as soon as it is practicable to do so—

- (a) make known to that person the purpose of the call; and
- (b) produce to that person an identity card setting out—
 - (i) the dealer's full name and address; and
 - (ii) if the dealer is not the supplier—the supplier's full name and address.

Maximum penalty—100 penalty units.

65 Harassment or coercion

A dealer or other person shall not harass or coerce a consumer for the purpose of dissuading or preventing the consumer from exercising a right conferred on the consumer by this division.

Maximum penalty—100 penalty units.

66 Right of rescission

(1) A consumer may rescind a contract to which this division applies (whether or not the contract is a prescribed contract) within 6 months of the date of the contract—

- (a) if the contract or a related contract or instrument contains a provision contrary to section 59;⁷ or

⁷ Section 59 (Prohibition of certain contractual terms)

- (b) if the supplier or a dealer commits an offence against section 50, 63 or 64⁸ in the course of, or in relation to, the negotiations leading to the formation of the contract.
- (2) A consumer may rescind a prescribed contract—
- (a) at any time before the expiration of the cooling-off period; or
- (b) if there has been a failure to comply with any of the requirements of section 61 in relation to the contract—within 6 months of the date of the contract; or
- (c) if the supplier or dealer commits an offence against section 62⁹ in relation to the prescribed contract or a related contract or instrument—within 6 months of the date of the prescribed contract.
- (3) A right of rescission conferred by this section may be exercised—
- (a) despite affirmation of the contract by the consumer; and
- (b) even though the contract has been fully executed.

67 Exercise of right of rescission

(1) A consumer exercises a right of rescission conferred by this division by giving to the supplier a notice of rescission—

- (a) in writing in the approved form or in a form that clearly indicates an intention on the part of the consumer to rescind the contract; and
- (b) (except in the case of a notice in respect of a prescribed contract during the cooling-off period) stating the ground of rescission.

(2) A notice of rescission sent by post to a supplier in accordance with section 111 shall be taken to have been given to the supplier at the time of posting.

8 Section 50 (Harassment and coercion—TPA s 60), 63 (Prohibited hours) or 64 (Duties of dealers)

9 Section 62 (No consideration during cooling-off period)

68 Restitution

(1) Where a contract to which this division applies is rescinded under this division, restitution shall be made by the parties to the contract as follows—

- (a) the supplier shall return or refund to the consumer any consideration or the value of any consideration given by the consumer under the contract or a related contract or instrument;
- (b) the consumer shall—
 - (i) return or refund to the supplier any goods or the value (as at the date of supply) of any goods received from the supplier under the contract; and
 - (ii) pay to the supplier the value of any services supplied under the contract up to the time of rescission (but not including the value of any such services supplied under a prescribed contract before the expiration of the cooling-off period in contravention of this division).

(2) Where the consumer makes goods available for collection by the supplier at the place at which they were received from the supplier for the period of 28 days from the date of rescission of the contract and the supplier fails to collect the goods before the expiration of that period, the consumer shall be deemed to have made restitution in respect of those goods as required by subsection (1) and the goods shall become the property of the consumer free of any other right or interest.

(3) Where the consumer returns goods to the supplier under this section but has failed to take reasonable care of the goods, the consumer is liable to pay compensation to the supplier, together with an amount for GST payable on any supply relating to the payment of the compensation, for the damage to or depreciation in the value of the goods, but the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or circumstances beyond the control of the consumer.

(4) Where restitution of goods is not possible (because the goods have been consumed or affixed to land, because a third party has acquired an interest in the goods, or for any other reason), the impossibility of restitution of the goods is not a bar to rescission under this division but, in that event, the consumer is liable to pay to the supplier the value of the goods as at the date of supply, together with an amount for GST payable on any supply relating to the payment of the value.

(5) The obligations imposed by this section may be enforced by action in any court of competent jurisdiction.

(6) A court convicting a supplier of an offence against this division is competent to make orders, on the application of the prosecutor, for the enforcement of obligations imposed by this section.

(7) A person who fails to comply with an order under subsection (6) commits an offence against this Act.

Maximum penalty for subsection (7)—100 penalty units.

69 Related contracts or instruments

Where a contract to which this division applies is rescinded under this division, any related contract or instrument is void.

70 No waiver of rights

The consumer under a contract to which this division applies is not competent to waive any right conferred by this division.

71 Prohibition of certain actions

(1) Where a contract to which this division applies has been rescinded, or is capable of being rescinded, under this division, no person shall, for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument—

- (a) bring, or assert an intention to bring, legal proceedings against the consumer; or
- (b) place the name of the consumer, or cause the name of the consumer to be placed, on any list of defaulters or debtors, or assert an intention of placing the name of the consumer, or causing the name of the consumer to be placed, on any such list; or
- (c) take any other action against the consumer.

Maximum penalty—100 penalty units.

(2) Subsection (1)(a) does not prohibit—

- (a) the bringing of, or the asserting of an intention to bring, legal proceedings to determine whether or not a contract to which this

division applies has been, or is capable of being, rescinded under this division; or

- (b) the continuation of such proceedings (for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument) where it is determined that the contract has not been, or is not capable of being, so rescinded.

(3) Where a person is convicted of an offence against subsection (1)(b), the court may order the person responsible for keeping any list on which the name of the consumer has been wrongfully placed to remove the name from that list.

(4) A person who fails to comply with an order under subsection (3) commits an offence against this Act.

Maximum penalty—100 penalty units.

71A Exemptions from division for particular contracts or types of contract

(1) A dealer or supplier of goods or services may apply to the chief executive for an exemption for all or any of the provisions of this division for a particular contract or a particular type of contract to be entered into by the dealer or supplier.

(2) The application must—

- (a) be written; and
- (b) state the provisions of the division, and the period, for which the exemption is sought and why it is sought; and
- (c) be accompanied by the fee prescribed under a regulation.

(3) An exemption may be sought for a limited or unlimited period.

(4) If the chief executive is satisfied that the rights of consumers under the contract or type of contract will not be adversely affected if the exemption is given, the chief executive may, by written notice to the applicant, give the exemption.

(5) The notice must state the period of the exemption and the provisions of the division for which, and the conditions (if any) on which, it is given.

(6) Without limiting the conditions that may be imposed on an exemption, a condition of the exemption may be that the applicant enter

into a written undertaking with the commissioner under section 91H¹⁰ about the exemption.

(7) To the extent that a contract is exempted from the provisions of this division, the contract is not a contract to which this division applies.

(8) If a person to whom an exemption is given fails to comply with a condition of it, the chief executive may revoke the exemption by written notice given to the person.

(9) The chief executive may delegate the chief executive's powers under this section to a public service officer employed in the department.

71B Register of exemptions

(1) The chief executive must keep a register containing a copy of each exemption notice given under section 71A.

(2) A person may, on payment of the fee prescribed under a regulation—

- (a) inspect the register at the chief executive's office when the office is open to the public; and
- (b) obtain a copy of a notice in the register.

72 Evidentiary matters concerning this division

Where it is alleged in any proceedings that—

- (a) a contract for the supply of goods or services is a contract to which this division applies or a prescribed contract, it shall be presumed, unless the contrary is proved, that the contract is such a contract; or
- (b) a contract is a related contract to a contract to which this division applies, it shall be presumed, unless the contrary is proved, that the contract is such a contract; or
- (c) a person was acting as a dealer within the meaning of this division, it shall be presumed, unless the contrary is proved, that the person was so acting.

10 Section 91H (Undertaking under a condition of an exemption)

Division 5—Express warranties concerning defective goods or services**73 Definitions for div 5**

In this division—

“document” includes a label, sticker or writing on goods and any article or thing capable of evidencing a representation.

“warranty” means any representation communicated to a consumer in connection with a supply of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions)—

- (a) repair or replace the goods or part of them; or
- (b) provide afresh or rectify the services or part of them; or
- (c) recompense the consumer, wholly or partially;

in the event that the goods or services or part of them prove to be defective, and includes any document by which such a representation is evidenced.

74 Definition of persons associated with warranty

For the purposes of this division—

- (a) the person who communicates a warranty to a consumer shall, subject to section 95,¹¹ be taken to be the person who gives to a consumer, in connection with a supply of goods or services, any document that evidences a warranty or who represents directly to a consumer that the goods or services in question are goods or services to which a warranty relates; and
- (b) the person who issues a warranty shall be taken to be the person who, according to the warranty communicated to a consumer, makes the representation that constitutes the warranty.

75 Offence to issue warranty lacking prescribed particulars

Where there is communicated to a consumer a warranty that is not in accordance with the requirements prescribed for a warranty—

¹¹ Section 95 (Conduct by directors, servants or agents—TPA s 84)

- (a) the person who communicates the warranty to the consumer commits an offence against this Act; and
- (b) the person who issued the warranty that is so communicated by such issue commits an offence against this Act, which for the purpose of laying and prosecuting a charge for the offence, shall be taken to have been committed at the place where, and the time when, the warranty is so communicated.

Maximum penalty—100 penalty units.

76 Requirements prescribed for a warranty

(1) The requirements prescribed for a warranty for the purposes of section 75 are that a warranty—

- (a) shall be evidenced by a document given to the consumer; and
- (b) shall be so worded as to express as tersely as possible, clearly and accurately every act required to be performed by the person by whom it is issued to honour the warranty, and every act required to be performed by the consumer to entitle the consumer to claim that the warranty should be honoured; and
- (c) shall clearly and prominently specify the name and place of business of the person by whom it is issued; and
- (d) shall clearly specify the period or periods within which a defect must appear in the goods or services to which it relates if the consumer is to be entitled to claim that the warranty should be honoured; and
- (e) shall clearly specify the procedure for claiming that the warranty should be honoured including the designation of an address in Australia to which claims may be sent; and
- (f) shall clearly specify the manner in which expenses incurred in connection with making a claim that the warranty should be honoured are to be borne; and
- (g) shall clearly state that the benefits conferred by the warranty on the consumer are in addition to all other rights and remedies had by the consumer in law in respect of the goods or services to which it relates; and
- (h) shall comply with any requirements prescribed by regulation.

(2) A regulation may prescribe that a warranty shall be given in the form of a written or printed document or may otherwise regulate the form in which a warranty shall be given.

77 Use as warranties of deficient documents prohibited

(1) A document—

- (a) that bears a heading that includes the word ‘warranty’ or the word ‘guarantee’ or any derivative of either word; or
- (b) that contains the word ‘warranty’ or the word ‘guarantee’ or any derivative of either word in such a manner as to be reasonably likely to induce a consumer who reads the same to believe that the document is a warranty;

shall not be given to a consumer in connection with a supply of goods unless it expresses a warranty that applies to—

- (c) every major component of the goods; and
- (d) if installation is arranged in connection with the supply of the goods—the installation.

(2) Where a document is given to a consumer in contravention of subsection (1)—

- (a) the person who gives the document to the consumer commits an offence against this Act; and
- (b) the person who issued the document so given by such issue commits an offence against this Act, which, for the purpose of laying and prosecuting a charge for the offence, shall be taken to have been committed at the place where and the time when the document is so given.

Maximum penalty for subsection (2)(a) and (b)—100 penalty units.

78 Belief that warranty will be honoured

(1) A person shall not communicate to a consumer a warranty unless the person has at the time of communication an honest and reasonable belief that the business affairs of the person who issues or issued the warranty are such as to raise a reasonable expectation that the warranty will be honoured according to its terms if the goods or services to which it relates should prove to be defective.

Maximum penalty—100 penalty units.

(2) Subsection (1) applies whether or not the person who communicates the warranty to a consumer is identical with the person who issues or issued the warranty.

79 Benefits under warranty additional to legal rights

The issue of a warranty, its communication to a consumer, or its completion by or on behalf of a consumer shall not derogate from the right of the consumer to enforce any contractual warranty or condition, express or implied, that affects the goods or services to which the warranty communicated to the consumer relates.

PART 4—INFORMATION, SAFETY AND CODES OF PRACTICE

Division 1—Information provisions

81 Information standards

(1) A regulation may prescribe an information standard for a specified kind of goods or services.

(2) A prescribed information standard for goods shall consist of requirements for, and for the form and manner of disclosure of, such information as to—

- (a) the price, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) the place of manufacture or production of the goods; and
- (c) the identity of the manufacturer, producer or supplier of the goods; and
- (d) the date of the manufacture or production, and the durable life, of the goods; and
- (e) use, care and storage of the goods;

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

(3) A prescribed information standard for services shall consist of requirements for, and the form and manner of disclosure of, such information to be communicated to a person to whom the services are supplied as is reasonably necessary to give the person information as to the nature, the characteristics or the suitability for purpose (including the proper use) of the services.

(4) A regulation under this section may be made to apply subject to—

- (a) the means of supply or the class of contract, agreement or act that constitutes the supply; or
- (b) the persons to whom goods or services are supplied or by whom they are likely to be used; or
- (c) the purpose for which goods or services are acquired; or
- (d) in the case of the supply of goods, whether or not the goods are to be used in Queensland or elsewhere; or
- (e) any exemption or circumstance defined in the regulation.

82 Compliance with information standard

(1) A person must not, in trade or commerce, supply goods or services for which there is an information standard prescribed by regulation unless the person complies with the prescribed information standard.

Maximum penalty—540 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 it if the prescribed information standard had been complied with;

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

(3) If a person is found guilty of the offence of supplying goods in contravention of subsection (1), any court before which the person is found

guilty, in addition to imposing any penalty, may order the goods to be forfeited to the Crown.

(3A) Goods forfeited to the Crown under this subsection may be disposed of in such manner as the Minister directs.

Division 2—Safety provisions

83 Safety standards

(1) A regulation may prescribe a safety standard for a specified kind of goods or services.

(2) A prescribed safety standard for goods shall consist of such requirements as to—

- (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) the testing of the goods during, or after the completion of, manufacture or processing; and
- (c) the form and manner of disclosure of warnings, instructions or other information to accompany the goods or to be communicated to a person to whom the goods are supplied; and
- (d) equipment or accessories to be supplied with the goods;

as are reasonably necessary to prevent or reduce risk of injury, including physical, mental or psychological injury, to any person.

(3) A prescribed safety standard for services shall consist of such requirements as to—

- (a) the manner in which services are to be supplied; and
- (b) the form and manner of disclosure of warnings, instructions or other information to be communicated to a person to whom services are to be supplied;

as are reasonably necessary to prevent or reduce risk of injury, including physical, mental or psychological injury, to any person.

(4) A regulation under this section may be made to apply subject to—

- (a) the means of supply or the class of contract, agreement or act that constitutes the supply; or

- (b) the persons to whom goods or services are supplied or by whom they are likely to be used; or
- (c) the purpose for which goods or services are acquired; or
- (d) in the case of the supply of goods, whether or not the goods are to be used in Queensland or elsewhere; or
- (e) any exemption or circumstance defined in the regulation.

84 Compliance with safety standard

(1) A person shall not, in trade or commerce, supply goods or services in relation to which there is a prescribed safety standard unless that safety standard is complied with.

Maximum penalty—540 penalty units.

(2) If—

- (a) a person supplies goods or services in contravention of subsection (1); and
- (b) another person suffers loss or damage because of a defect in, or a dangerous characteristic of, the goods or services, or by not having particular information in relation to the goods or services, but would not have suffered it if the prescribed safety standard had been complied with;

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

(3) Any court that hears and determines any charge for an offence that a person supplied goods in contravention of subsection (1), whether or not the defendant is convicted of the offence, may order the goods to be forfeited to the Crown.

(3A) Goods forfeited to the Crown under this subsection may be disposed of in such manner as the Minister directs.

Division 3—Ministerial prohibition

84A Definition for div 3

In this division—

“regulating instrument” means—

- (a) an order made under section 85 (including an interim order mentioned in section 85A); or
- (b) a regulation—
 - (i) prohibiting the supply of goods or services; or
 - (ii) authorising the supply of goods or services subject to conditions or restrictions prescribed in the regulation.

85 Minister may make orders prohibiting or restricting supply of dangerous or undesirable goods or services

(1) The Minister, if in the Minister's opinion any goods or services of any kind are likely to cause the death of any person or to injure or adversely affect the health or well being of any person whether physical, mental or psychological, may by order—

- (a) prohibit the supply of those goods or services; or
- (b) authorise supply of those goods or services subject to conditions or restrictions prescribed in the order.

(2) An order made under subsection (1) is subordinate legislation.

(3) The Minister shall, before the Minister makes an order under subsection (1), cause to be given to every person that in the Minister's opinion has a substantial interest in the matter, a written notice accompanied by a copy of the order the Minister intends to make calling on that person to show cause in writing why the Minister should not make that order.

(4) A person called upon to show cause by the Minister, if the person wishes to show cause, shall make written submissions to the Minister so that these submissions are received by the Minister within 7 days of receipt by that person of the notice and copy of the order from the Minister.

(4A) The Minister shall consider any such submissions before making the order under subsection (1).

(5) An order made under this section after the commencement of this subsection expires 18 months after the order commences, and may not be renewed.

85A Interim orders

(1) The Minister may make an interim order under section 85(1).

(2) Section 85(2) to (4A) does not apply to an interim order.

(3) The Minister may make an interim order only if—

- (a) the committee, after a reference is made to it under section 32, recommends to the Minister or commissioner that an order under section 85(1) be made about the goods or services concerned; or
- (b) the supply of the goods or services concerned is prohibited or restricted on a permanent or interim basis under a law of the Commonwealth, another State or a Territory corresponding to this division.

(4) To give effect to an interim order, the Minister may—

- (a) if the order relates to goods or services supplied by a particular supplier—give written notice of the interim order to the supplier; or
- (b) in any case—publish the interim order in the gazette.

(5) An interim order stops having effect at the end of 42 days.

(6) An interim order may be renewed on the recommendation of the committee.

(7) An interim order may only be renewed once.

(8) The *Statutory Instruments Act 1992*, sections 49 to 51¹² apply to an interim order published in the gazette as if it were subordinate legislation.¹³

86 Offence

A person must not supply goods or services—

- (a) if the supply of the goods or services is prohibited under a regulating instrument; or
- (b) if the supply of the goods or services is, under a regulating instrument, authorised subject to conditions or restrictions

12 *Statutory Instruments Act 1992*, sections 49 (Subordinate legislation must be tabled), 50 (Disallowance) and 51 (Limited saving of operation of subordinate legislation that ceases to have effect)

13 This means that the interim order must be tabled in the Legislative Assembly and may be disallowed.

prescribed in the regulating instrument—other than subject to the conditions or restrictions.

Maximum penalty—540 penalty units.

87 Seizure etc. of goods in certain cases

(1) An inspector may at any time seize and detain goods that the inspector suspects on reasonable grounds are intended for supply or have been supplied in contravention of section 86.

(2) Where a person is charged with an offence against section 86, the court before which the complaint is heard, if it is satisfied that any goods that are the subject of the charge are goods in respect of which a regulating instrument is in force, may, whether or not that person is convicted of the offence charged, order the goods to be forfeited to the Crown.

(3) A person claiming to be entitled to goods that have been seized and detained under subsection (1) may, within 28 days after the date of the seizure of the goods, apply to a magistrate for an order for the delivery to the person of those goods.

(3A) Notice of the application shall be served by the applicant on the commissioner before the hearing of the application.

(3B) The commissioner shall be entitled to appear at the hearing of the application as respondent and may be represented at the hearing either by an inspector appointed by the commissioner or by counsel or solicitor.

(4) In a proceeding upon an application under subsection (3)—

- (a) if the magistrate is satisfied that any of the goods in question are goods in respect of which a regulating instrument is in force, the magistrate may order them to be forfeited to the Crown; and
- (b) if the magistrate is not so satisfied, the magistrate may order them to be delivered to any person that appears to the magistrate to be entitled to them.

(5) Upon the expiration of 28 days after the date of seizure of goods under subsection (1), if no application for the delivery of the goods has been properly made, the goods shall be forfeited to the Crown.

(6) Where an application for delivery of those goods has been made under subsection (3), but has been withdrawn before it is heard, then, upon—

- (a) the withdrawal of the application; or

(b) the expiration of 28 days after the date of seizure of the goods; whichever is the later, the goods shall be forfeited to the Crown.

(7) Goods forfeited to the Crown under this section may be disposed of in such way as the Minister directs.

Division 4—Codes of practice

88A Codes of practice

A regulation may prescribe a code of practice for fair dealing—

- (a) between a particular type of supplier and consumer; or
- (b) by a particular type of person in relation to consumers.

PART 5—ENFORCEMENT AND REMEDIES

Division 1—Powers of commissioner and inspectors

88B Commissioner's power to ask for substantiation of claims about the supply of goods or services

(1) This section applies if the commissioner believes, on reasonable grounds, that—

- (a) a person has caused a statement to be published promoting or apparently intended to promote, the supply of goods or services; and
- (b) the statement is false or misleading.

(2) The commissioner may, by written notice, ask the person to give to the commissioner written proof that supports any representation made in the statement.

(3) The notice must—

- (a) state a day, at least 14 days after the day the notice is served on the person, by which the person must give the proof to the commissioner; and

- (b) warn the person it is an offence to fail to respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

(4) The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

Maximum penalty—100 penalty units.

(5) It is not a reasonable excuse for the person to fail to respond to the notice on the ground that information given in the response might tend to incriminate the person.

(6) However, information mentioned in subsection (5) is not admissible in evidence against the person—

- (a) for an individual—in any criminal proceedings; or
- (b) for a body corporate—in any criminal proceedings, other than proceedings under this Act.

(7) If—

- (a) the person responds to the notice by the stated day; and
- (b) the commissioner is not satisfied that the proof given supports the representation;

the person does not commit an offence under this section.

(8) However, further action under this Act may be taken against the person in relation to the statement mentioned in subsection (1).

Example—

An inspector may exercise the inspector's powers under this Act to enter premises and seize things, and obtain information or records.¹⁴

89 Powers of inspectors

(1) For the purpose of the discharge by the office of any of its functions under this Act, or for any other purposes of this Act, an inspector may at all reasonable times—

- (a) enter any premises the inspector knows or reasonably suspects—

14 See section 89 (Powers of inspectors).

Fair Trading Act 1989

- (i) are being used for the production, manufacture, assembly, preparation, storage or supply of goods or the supply of services; or
 - (ii) have been or are being or are likely to be used by any person in connection with a contravention of this Act; and
- (b) enter any premises where the inspector knows or reasonably suspects that records are kept relating to the supply of goods or services or relating to a contravention of this Act; and
- (c) enter any premises that the inspector knows or reasonably suspects to be used by any person for printing or as an office in connection with the trade or commerce of printing any newspaper or other publication, which the inspector knows or reasonably suspects to be associated with any contravention of this Act; and
- (d) enter any commercial broadcasting or television station, which the inspector knows or reasonably suspects to be associated with any contravention of this Act; and
- (e) in any premises entered by the inspector—
 - (i) search for, examine, take possession of or make copies of or extracts from records relating to goods or services supplied or to be supplied or relating to any matter the subject of an investigation under this Act; and
 - (ii) search for and examine goods found on the premises; and
 - (iii) exercise any power under this Act to seize goods without payment or take any goods found on the premises, on payment or tendering of a reasonable price for them; and
 - (iv) seize without payment any brochures, leaflets, books, writings, documents or other materials that the inspector knows or reasonably suspects have been, are being, or are likely to be used to advertise, promote or make representations with respect to any matter in contravention of this Act; and
 - (v) open any room, place or container or package that the inspector knows or reasonably suspects to contain goods; and
 - (vi) question with respect to matters under this Act any person the inspector finds on the premises; and

- (f) make such inquiry and examination as the inspector believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act or to ascertain whether any contravention of this Act has been, is being, or is likely to be committed.

(1A) Subsection (1) does not authorise forcible entry by an inspector to any premises other than under the authority of a warrant obtained by the inspector under subsection (3).

(2) Before an inspector enters any part of premises which part is used as a dwelling the inspector shall, unless the inspector has the permission of the occupier of that part to the inspector's entry, obtain from a justice a warrant to enter.

(3) A justice who is satisfied upon the complaint of an inspector that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Act or for the keeping of records relating to a contravention of this Act may issue the justice's warrant directed to the inspector to enter the place specified in the warrant for the purpose of the inspector exercising in the premises the powers conferred on an inspector by this Act.

(4) A warrant issued under this section shall be, for a period of 1 month from its issue, sufficient authority—

- (a) to the inspector to whom it is directed and to all persons acting in aid of the inspector to enter the place specified in the warrant; and
- (b) to the inspector to whom it is directed and to all persons acting in aid of the inspector to exercise in respect of the place specified in the warrant all the powers conferred on an inspector by this Act.

(5) For the purpose of gaining entry to any place, an inspector may call to the inspector's aid such persons as the inspector considers necessary and such persons, while acting in aid of an inspector in the lawful exercise by the inspector of the inspector's power of entry, shall have a like power of entry.

(6) Where an inspector has taken possession of records or of other property for the purposes of this Act the inspector may—

- (a) in the case of any records—retain the same for so long as is necessary for those purposes, but the person otherwise entitled to possession of the records, if the person so requests it is entitled to be furnished as soon as practicable with a copy of the records

certified by the commissioner to be a true copy and such a certified copy shall be received in all courts and elsewhere as evidence of the matters contained in the copy as if it were the original; and

- (b) in the case of other property—subject to the express provisions of this Act, retain the property for so long as is necessary for those purposes, and afterwards dispose of it as the commissioner directs.

90 Power to obtain information

(1) In relation to any matter relevant to the operation or enforcement of this Act, an inspector may require a person (either by oral or written requisition) to furnish—

- (a) any information; and
- (b) any records or a copy of them;

in the person's possession.

(2) For the purpose of subsection (1), a person shall be taken to be in possession of—

- (a) information, if the person has the information or is entitled to access to the information; and
- (b) records, if the person has them in the person's possession or if the person has them under control in any place, whether for the person's own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.

(3) A requisition made under subsection (1) may require that the information or records or copy of them be furnished—

- (a) to the inspector or another inspector or to an officer of the office specified; or
- (b) at the place the requisition is made or at another place; or
- (c) immediately or at, by or within a time specified; or
- (d) in person, or by certified mail or in another way specified; or
- (e) by means of, or accompanied by, verification in the form of, a statutory declaration; or

(f) in the case of information, orally or in writing.

(4) A person must not, without reasonable excuse—

- (a) refuse or fail to furnish any information, records or a copy of them as required of the person under this section; or
- (b) in response to a requisition made under this section furnish information, records or copies that is or are false or misleading in a material particular.

Maximum penalty—100 penalty units.

(5) It is not a reasonable excuse for a person to refuse or fail to furnish information, a record or copy of a record on the ground that the information, record or copy might tend to incriminate the person.

(6) However, information mentioned in subsection (5) is not admissible in evidence against the person—

- (a) for an individual—in any criminal proceedings; or
- (b) for a body corporate—in any criminal proceedings, other than proceedings under this Act.

(6A) Subsection (6) does not apply to information as to the name and address of the person or as to the person's ownership of, control over or position in, any business.

(7) Where a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters shall be construed as including a duty to produce the matters in written form if that is demanded.

(7A) The duty imposed by this section to produce a copy of any records shall be construed as a duty to produce a clear reproduction.

(8) An inspector or officer of the office may take notes or copies of or extracts from records or a copy of them produced under this section.

(9) Records furnished under this section may be retained for so long as it is necessary to do so for the purposes of this Act, but the person otherwise entitled to possession of them, if the person so requests it, is entitled to be furnished as soon as practicable with a copy of them certified by the commissioner to be a true copy and such a certified copy shall be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original.

91 Obstruction

(1) A person shall not obstruct an inspector in the exercise of powers under this Act.

Maximum penalty—100 penalty units.

(2) For the purposes of this Act a person shall be taken to obstruct an inspector in the exercise of powers under this Act if the person—

- (a) assaults, abuses, intimidates or insults an inspector or any other person assisting an inspector in the exercise of powers under this Act; or
- (b) directly or indirectly deliberately prevents any person from being questioned by an inspector or from furnishing under this Act any information or records or copies or attempts to do so; or
- (c) in any other way obstructs or attempts to obstruct an inspector in the exercise of powers under this Act.

Division 1A—General power of inspectors to seize goods***Subdivision 1—Seizing and returning goods*****91A General power to seize goods**

(1) This division applies if an inspector reasonably believes goods have been supplied in contravention of this Act, other than section 86.¹⁵

(2) The inspector may seize enough of the goods—

- (a) to decide whether the contravention has happened; or
- (b) to be used as evidence in a proceeding under this Act about the contravention.

Example of operation of paragraph (a)—

An inspector may seize a quantity of fabric to test its fibre content and to work out whether its labelling complies with the prescribed information standard about fibre content.

15 Section 86 is about supplying goods or services to which a regulating instrument applies. Section 87 deals with seizure of those goods.

(3) If the goods are in a container and it is not practicable to seize them without the container, the inspector may seize the container and its contents.

91B Returning the seized goods

(1) The commissioner must return the seized goods to their owner at the end of—

- (a) 9 months; or
- (b) if a prosecution for an offence involving the seized goods is started within the 9 months—the prosecution for the offence and any appeal from the prosecution.

(2) Despite subsection (1), the commissioner must return the seized goods to their owner immediately if the commissioner is not satisfied or stops being satisfied the retention of the goods as evidence is necessary.

Subdivision 2—Appealing against seizure of the goods

91C Where and how to start appeal

(1) A person whose goods have been seized under this division may appeal to the Magistrates Court nearest where the goods were seized.

(2) The appeal is started by—

- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and
- (b) giving a copy of the notice to the commissioner.

(3) Without limiting subsection (2)(b), the commissioner is given a copy of the notice if a copy is given to the inspector who seized the goods.

(4) The notice of appeal must state the grounds of the appeal.

91D Hearing procedures

(1) The power to make rules of court under the *Magistrates Courts Act 1921* includes power to make rules of court for appeals to Magistrates Courts under this Act.

(2) The procedure for an appeal to a Magistrates Court under this Act is to be—

- (a) in accordance with the rules made under the *Magistrates Courts Act 1921*; or
- (b) in the absence of relevant rules, as directed by a magistrate.

(3) In deciding the appeal, the Magistrates Court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice; and
- (c) may hear the appeal in court or chambers.

91E Powers of Magistrates Court on appeal

In deciding the appeal, the Magistrates Court may—

- (a) confirm the seizure of the goods; or
- (b) set aside the seizure and order the return of the goods.

91F Appeal to District Court on questions of law only

A party dissatisfied by the decision of the Magistrates Court may appeal to the District Court, but only on a question of law.

Subdivision 3—Forfeiting the goods

91G Court hearing offence proceeding may order forfeiture of seized goods

(1) If, in proceedings for an offence for which goods were seized, the court finds the offence proved and that the offence concerned goods seized and retained by an inspector, the court may order that the goods be forfeited to the Crown.

(2) The forfeited goods may be disposed of in any way the Minister directs.

Division 1B—Commissioner’s power to accept undertakings**91H Undertaking under a condition of an exemption**

(1) The commissioner may accept an undertaking from a person as a condition of exemption under section 71A.¹⁶

(2) The undertaking binds the person to terms decided by the chief executive about the person’s acts or omissions in relation to the exemption.

91I Undertaking about contravention of Act

(1) If the commissioner reasonably believes a person has contravened or been involved in a contravention of a provision of this Act or a code of practice, the commissioner may, by written notice given to the person—

- (a) state the act or omission the commissioner reasonably believes is the contravention; and
- (b) ask the person to give the commissioner a written undertaking that the person will not continue or repeat the act or omission.

(2) If—

- (a) the person gives the undertaking, and if the contravention is conduct consisting of a series of acts or omissions, the person stops the conduct; and
- (b) the commissioner accepts the undertaking;

the commissioner can not start an offence proceeding against the person for the contravention, unless the commissioner withdraws the undertaking under section 91J.

91IA Undertaking about other matter

Without limiting section 91H or 91I, the commissioner may accept an undertaking given by a person for this section in relation to any matter in relation to which the office or the commissioner has a function or the commissioner or an inspector has a power.

¹⁶ Section 71A (Exemptions from division for particular contracts or types of contract)

91J Variation and withdrawal of undertakings

(1) If the commissioner accepts an undertaking under this division, it may be varied or withdrawn at any time by—

- (a) the person who gave it, but only if the commissioner agrees to the variation or withdrawal; or
- (b) the commissioner, if the commissioner reasonably believes that before it was accepted—
 - (i) the person who gave it contravened this Act in a way unknown to the commissioner; and
 - (ii) had the commissioner known about the contravention, the commissioner would not have accepted the undertaking or would not have accepted it unless its terms were changed.

(2) The commissioner may also withdraw the undertaking if the commissioner reasonably believes it is no longer necessary.

(3) If the commissioner varies or withdraws the undertaking, the commissioner must give the person who gave it written notice of its variation or withdrawal.

91K Enforcement of undertakings

(1) If the commissioner reasonably believes a person has contravened a term of an undertaking, the commissioner may apply to the court for an order under this section.

(2) If the court is satisfied that the person has contravened the term, the court may make 1 or more of the following orders—

- (a) an order directing the person to comply with the term;
- (b) an order directing the person to pay to the Crown an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the breach;
- (c) an order directing the person to pay compensation to someone else who has suffered loss or damage because of the breach;
- (d) an order directing the person to give a security bond to the Crown for a stated period;
- (e) any other order the court considers appropriate.

(3) The Supreme Court or a District Court may order the forfeiture to the Crown of all or part of a security bond given by a person under subsection (2)(d) if—

- (a) the commissioner applies to the court for the order; and
- (b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

91L Register of undertakings

(1) The commissioner is to keep a register of each undertaking given to the commissioner by a person under this division.

(2) The register is to contain a copy of the undertaking.

(3) A person may, on payment of the fee prescribed under a regulation—

- (a) inspect the register at the commissioner's office when the office is open to the public; and
- (b) obtain a copy of an undertaking in the register.

Division 2—Offences, court enforcement and remedies

92 Offences

(1) A person who—

- (a) contravenes; or
- (b) aids, abets, counsels or procures a person to contravene; or
- (c) induces a person whether by threats or promises or otherwise to contravene; or
- (d) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
- (e) conspires with others to contravene;

a provision of this Act for which a penalty is provided, commits an offence against this Act.

(2) Each of the persons mentioned in subsection (1)(a) to (d) is taken to have committed the offence that is the contravention of the provision and may be charged with actually committing the offence.

(3) A person who counsels, procures, or induces another person to contravene the provision may be charged with committing the offence or with counselling, procuring or inducing the commission of the offence.

(4) A conviction of counselling, procuring or inducing the commission of the offence, or conspiring to commit the offence, has the same consequences in all respects as a conviction of committing the offence.

(5) Subsection (1)(b) to (d) only applies when a provision of this Act is contravened.

(6) This section is in addition to, and does not limit, the Criminal Code, chapter 2 and the *Acts Interpretation Act 1954*, section 41A.¹⁷

92A Aggregate penalties limited

Where—

- (a) a person is guilty of 2 or more offences against the same provision of this Act; and
- (b) the offences are of the same or a substantially similar nature and occur at or about the same time;

the aggregate penalty for all those offences shall not exceed the maximum penalty for a single offence.

92B Attempts to commit offences

(1) A person who attempts to commit an offence mentioned in subsection (2) commits an offence.

Maximum penalty—the maximum penalty for committing the offence attempted.

(2) Subsection (1) applies to an offence against any of the following provisions—

- section 40A(2)
- section 41
- section 44

17 Criminal Code, chapter 2 (Parties to offences)

Acts Interpretation Act 1954, section 41A (Penalty other than at end of provision)

- section 45
- section 47
- section 48
- section 50
- section 55(1)
- section 56(1)
- section 62(1) or (2)
- section 65
- section 82(1)
- section 84(1)
- section 86.¹⁸

18 Section 40A (False representations and other misleading or offensive conduct in relation to land—TPA s 53A)

Section 41 (Misleading conduct in relation to employment—TPA s 53B)

Section 44 (Certain misleading conduct in relation to goods—TPA s 55)

Section 45 (Certain misleading conduct in relation to services—TPA s 55A)

Section 47 (Referral selling—TPA s 57)

Section 48 (Accepting payment without intending or being able to supply as ordered—TPA s 58)

Section 50 (Harassment and coercion—TPA s 60)

Section 55 (Obscene material not to be sent)

Section 56 (Prohibition on mock auctions)

Section 62 (No consideration during cooling-off period)

Section 65 (Harassment or coercion)

Section 82 (Compliance with information standard)

Section 84 (Compliance with safety standard)

Section 86 (Offence)

(3) The Criminal Code, section 4,¹⁹ applies to subsection (1).

(4) A person charged with an offence mentioned in subsection (2) may be convicted of attempting to commit the offence.

93 Continuing offences

Where a person commits an offence defined in section 90,²⁰ by failing to furnish information or to produce records or a copy of them—

- (a) the person's obligation to furnish the information or produce the records or a copy of them, as the case may be, continues until the person complies with the requirement even though in a particular case a time was specified at, by or within which compliance was required and that time has passed; and
- (b) the person shall commit a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues; and
- (c) the person shall be liable to a penalty of 2 penalty units for each day during which the offence continues; and
- (d) the person may be prosecuted from time to time in respect of the offence.

94 Proceedings for offences

(1) Proceedings for an offence against this Act for which the maximum penalty is 100 penalty units or less shall be taken in a summary way under the *Justices Act 1886*.

(2) Proceedings for an offence against the Act for which the maximum penalty is greater than 100 penalty units may be prosecuted either in a summary way under the *Justices Act 1886* or on indictment, at the election of the prosecution.

(3) If, under subsection (2), the prosecution elects to prosecute an offence against this Act in a summary way under the *Justices Act 1886*—

- (a) the maximum penalty that may be imposed for that offence is 270 penalty units; and

19 Criminal Code, section 4 (Attempts to commit offences)

20 Section 90 (Power to obtain information)

- (b) for all purposes the offence alleged shall be taken to be a simple offence and not an indictable offence.

(4) If, under subsection (2), the prosecution elects to prosecute an offence against this Act on indictment—

- (a) the tribunal of fact as well as law shall consist of a judge of the court in which the trial takes place sitting alone; and
- (b) the Criminal Code with all necessary adaptations shall be read and construed with this Act.

(5) The maximum term of imprisonment that a court may order in default of payment of a penalty imposed under this Act is 1 year.

(6) Proceedings for an offence against this Act—

- (a) may be started only by an inspector appointed for this Act or with the commissioner's consent; and
- (b) must be started within 3 years after the offence is committed.

95 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 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 taken, for the purposes of this Act, to have been engaged in also by the first 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.

(6) For the purposes of this section—

“**conduct**” also includes the making of any omission, inadvertently or otherwise.

96 Vicarious liability

(1) If a body corporate commits an offence against this Act, each director or member of the governing body of the body corporate shall, subject to section 97, be taken also to have committed the offence and is liable to be proceeded against and punished accordingly.

(2) However, it is a defence in a proceeding against a director or member of the governing body of a body corporate under subsection (1) for the director or member to prove that information that tended to incriminate the body corporate was obtained under section 88B or 90.²¹

21 Section 88B (Commissioner's power to ask for substantiation of claims about the supply of goods or services) or 90 (Power to obtain information)

97 Defences in proceedings for an offence against this Act—TPA s 85

(1) Subject to subsection (3), in a prosecution for an offence against this Act, it is a defence if the defendant establishes—

- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake; or
- (b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or
- (c) that—
 - (i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) In subsection (1)(b) and (c)—

“another person” does not include a person who was—

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

at the time when the contravention occurred.

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

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

that its publication would amount to a contravention of a provision of this Act.

(5) The provisions of the Criminal Code, section 23 to the extent that it provides exculpation from criminal responsibility for an act or omission that constitutes an offence against this Act, and the provisions of the Criminal Code, section 24²² do not apply in respect of any offence against this Act.

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

98 Injunctions—TPA ss 79(4), 80, 80A

(1) An injunction under this section may be granted by the court—

- (a) against a person in the course of proceedings against that person for an offence against this Act; or
- (b) at any other time.

(2) If the court is satisfied, on the application of the Minister, the commissioner or any other person that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of a provision of this Act or a code of practice or a term of an undertaking given under section 91H;²³ or
- (b) attempting to contravene a provision of this Act or a code of practice or a term of an undertaking given under section 91H; or
- (c) aiding, abetting, counselling or procuring a person to contravene a provision of this Act or a code of practice or a term of an undertaking given under section 91H; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a provision of this Act or a code of practice or a term of an undertaking given under section 91H; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a provision of this

22 Criminal Code, sections 23 (Intention—motive) and 24 (Mistake of fact)

23 Section 91H (Undertaking under a condition of an exemption)

Act or a code of practice or a term of an undertaking given under section 91H; or

- (f) conspiring with others to contravene a provision of this Act or a code of practice or a term of an undertaking given under section 91H;

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

(3) The power of the court conferred by subsection (2) to grant an injunction restraining a person from engaging in conduct—

- (a) includes, but is not limited to, the power to grant an injunction restraining a person from carrying on a business of supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business)—
 - (i) for a specified period; or
 - (ii) except on specified terms and conditions; and
- (b) does not include the power to grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention solely of section 38 or 39²⁴ or a code of practice unless—
 - (i) the application is made by the Minister or the commissioner on the grounds that a consumer is, or consumers generally are, or would be, adversely affected by the conduct; or
 - (ii) the application is made by a person who is, or would be, adversely affected by the conduct as a consumer.

(4) If the court is satisfied, on application by the Minister or the commissioner, that a person has engaged in conduct constituting a contravention of a provision of this Act or a code of practice or a term of an undertaking given under section 91H, the court may grant an injunction requiring that person to take specified action (which may include the disclosure of information or the publication of advertisements) to remedy any adverse consequences of the person contravening any provision of this Act or a code of practice or a term of an undertaking given under section 91H.

²⁴ Section 38 (Misleading or deceptive conduct—TPA s 52) or 39 (Unconscionable conduct—TPA s 51AB)

(4A) Subsection (4) does not apply in relation to conduct that constitutes a contravention solely of section 39.

(5) The power of the court to grant an injunction restraining a person from engaging in conduct may be exercised—

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

(6) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do that act or thing; and
- (b) whether or not the person has previously failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first person fails to do that act or thing.

(7) An interim injunction may be granted under this section pending the final determination of the application.

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

(9) Where the Minister or the commissioner applies for an injunction under this section, no undertaking as to damages or costs will be required.

(10) The Minister may give an undertaking as to damages or costs on behalf of some other applicant and, in that event, no further undertaking will be required.

(11) An injunction under this section may be rescinded or varied at any time.

99 Actions for damages—TPA s 82

(1) A person who suffers loss or damage by an act or omission of another person that is a contravention of part 3 or 4²⁵ or of an injunction granted under section 98 may recover the amount of the loss or damage by action against the other person or against any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.

(3) Subsection (1) does not apply—

- (a) in relation to a contravention of section 38 unless the loss or damage is suffered by a consumer; or
- (b) in relation to a contravention of section 39.

100 Compensation and other remedial orders—TPA s 87

(1) If in proceedings instituted under, or for an offence against, this Act, the court is satisfied that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of a contravention of this Act, then, whether or not any other order is made or relief granted in those proceedings, the court may, for the purpose of compensating that person or preventing or reducing the extent of the loss or damage, make orders under this section against the person who committed the contravention or a person involved in the contravention.

(2) Whether or not other proceedings have been instituted under this Act in relation to a contravention of this Act, the court may—

- (a) on the application of a person who has suffered, or is likely to suffer, loss or damage because of the contravention; or
- (b) on the application of the commissioner on behalf of 1 or more such persons made with the written consent of each such person;

make orders under this section, for the purpose of compensating such a person or preventing or reducing the extent of the loss or damage, against the person who committed the contravention or a person involved in the contravention.

(2A) Without limiting subsection (2), an application referred to in subsection (2)(b) may be brought in the course of proceedings in which a

25 Part 3 (Trade Practices) or 4 (Information, safety and codes of practice)

person is found guilty of an offence against this Act constituted by the contravention.

(3) An application under subsection (2) may be commenced—

- (a) in the case of a contravention of section 39—at any time within 2 years after the day on which the cause of action accrued; or
- (b) in any other case—at any time within 3 years after the day on which the cause of action accrued.

(4) For the purpose of determining whether to make an order under this section in relation to a contravention of section 39, the court may have regard to the conduct of the parties to the proceedings since the contravention occurred.

(5) The orders that may be made under this section are of the following kinds—

- (a) an order for payment of the amount of the loss or damage;
- (b) an order avoiding, or refusing to enforce, in whole or part, a contract or instrument;
- (c) an order for the variation of a contract or instrument;
- (d) an order directing the refund of money or the return of property;
- (e) an order directing the repair of, or provision of parts for, goods or the supply of specified services;
- (f) an order directing the payment of an amount of money instead of some other act required by an order being done;
- (g) any other order the court thinks appropriate.

(5A) An order may be expressed to take effect from a date before the making of the order.

(6) It shall not be competent to the court to make an order under this section merely because of loss or damage suffered or likely to be suffered by a person because of a contravention of section 38 or 39 or a code of practice unless the person is a consumer.

101 Mode of enforcement of compensation

Without derogating from any other right to enforce an order made under section 100—

- (a) if an order made under section 100 orders a person to pay an amount of money—on the filing of that order in the registry of a court that has jurisdiction in an action for debt for that amount, the order shall be enforceable as an order made by that court; and
- (b) any other amount of money a person is liable to pay as a consequence of an order made under section 100 may be recovered from the person by action as for a debt in any court of competent jurisdiction.

102 Power of Court to prohibit payment or transfer of money or other property—TPA s 87A

(1) Where—

- (a) proceedings have been brought in the court against a person for an offence against this Act; or
- (b) an application has been made under section 98 for an injunction against a person in relation to a contravention of a provision of this Act; or
- (c) an action has been commenced under section 99 against a person in relation to a contravention of a provision of this Act; or
- (d) an application for an order under section 100 has been or may be made against a person in relation to a contravention of a provision of this Act;

the court may, on the application of the Minister or the commissioner, make an order or orders specified in subsection (2) if the court is satisfied that—

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

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

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

(3) Subject to subsection (4), an order under this section may be expressed to operate—

- (a) for a period specified in the order; or
- (b) until proceedings under any other provision of this Act in relation to which the order was made have been concluded.

(4) An order under this section made on an application *ex parte* shall not be expressed to operate for a period exceeding 30 days.

(5) A person who contravenes an order by the court under this section that is applicable to the person commits an offence against this Act.

(6) Nothing in this section affects the powers that the court has apart from this section.

(7) A reference in this section to a person who is an associate of a relevant person is a reference to—

- (a) a person holding money or other property on behalf of the relevant person; or
- (b) if the relevant person is a body corporate—a wholly-owned subsidiary of the relevant person.

103 Jurisdiction

(1) Jurisdiction is conferred upon the Supreme Court and, subject to subsection (1A), the District Court to hear and determine applications and to make orders under sections 98, 100 and 102 and a reference in those sections to ‘the court’ shall be construed as a reference to the District Court, or the Supreme Court, a District Court or Supreme Court judge.

(1A) An application for an order against a person under section 98 or 100 may be made in the District Court in the course of proceedings against the person pending in that court under section 99(1) or for an offence against this Act and, subject to the provisions of any other Act, may not otherwise be so made.

(2) For the purpose of exercising any jurisdiction conferred by subsection (1) or for enforcing any order made in the exercise of that jurisdiction, the District Court and a District Court judge shall have and may exercise all of the powers and authorities of a judge of the Supreme Court in like circumstances.

(3) A Magistrates Court, in proceedings for an offence against this Act, may make orders defined in section 100(5)(a), (d), (e) and (f) ordering—

- (a) the payment or refund of an amount of money; or
- (b) the doing of any act or instead of the doing of an act, the payment of an amount of money;

and for this purpose a reference in section 100(1) shall be read and construed as including a Magistrates Court.

103A Examination costs

(1) In this section—

“**examination**” includes test and analysis.

“**supplies**” includes—

- (a) offer to supply; and

- (b) in relation to the supply of goods—expose, exhibit or possess for supply.

(2) The commissioner may recover from a person who supplies goods or services the commissioner's reasonable costs of an examination of the goods or services if the examination—

- (a) assists in establishing that the goods or services do not comply with an information or safety standard applying to their supply; or
- (b) results in an order being made under section 85²⁶ about the goods or services.

(3) Also, the commissioner may recover from a person who gives to an inspector false or misleading information, records or a copy of records in contravention of this Act the commissioner's reasonable costs of an examination that assists in establishing the contravention had happened.

(4) Costs recoverable under this section may be recovered—

- (a) as a debt payable to the commissioner; or
- (b) in a proceeding mentioned in subsection (6).

(5) Before starting a proceeding to recover costs from a person under this section, the commissioner must give the person the commissioner's signed certificate—

- (a) outlining the examination; and
- (b) stating the amount of the costs of the examination.

(6) On application by the commissioner, a court that finds a person guilty of an offence against this Act may order the person to pay the commissioner the cost of an examination that assisted in establishing that the offence had happened.

26 Section 85 (Minister may make orders prohibiting or restricting supply of dangerous or undesirable goods or services)

PART 6—GENERAL

104 Impersonation

A person shall not falsely represent that the person is an inspector or that the person is an officer of the office.

Maximum penalty—100 penalty units.

105 Reference to consumer authorities and other matters restricted

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services—

- (a) refer to the council, the committee, the office, a member of the council or committee, an inspector, the commissioner or an officer of the office without the Minister's prior consent; or
- (b) falsely represent that any goods or services are produced or provided—
 - (i) by a person holding a royal warrant; or
 - (ii) for any government or department of any government or for the service of Her Majesty.

Maximum penalty—100 penalty units.

106 Savings of rights and remedies

Nothing in this Act derogates from any right of action or other right or remedy that a person has apart from this Act.

107 Contracting out prohibited

This Act has effect even though any provision in any contract or agreement purportedly provides expressly or impliedly to the contrary.

108 Severability

If the making of a contract contravenes this Act because the inclusion of a particular provision in the contract, then, subject to any rights arising under part 3, division 4 or any order made under section 100,²⁷ nothing in this Act affects the validity or enforceability of a contract otherwise than in relation to that provision in so far as that provision is severable.

109 Limitation of action

(1) No liability shall be incurred by the Crown or any person—

- (a) because of any disclosure made to the council, the committee, the commissioner, any officer of the office or any inspector; or
- (b) on account of any disclosure or publication made in good faith by the Minister, the commissioner or by someone on the commissioner's behalf, concerning any of the following matters if the Minister or the commissioner is satisfied it is in the public interest to make the disclosure or publication—
 - (i) the supply of goods or services;
 - (ii) the commercial or business reputation of any person associated with the supply of goods or services;
 - (iii) the quality or standard of goods or services supplied by any person;
 - (iv) a contravention or alleged contravention of this Act or the operation or enforcement of this Act.

(2) Without limiting subsection (1), no liability shall be incurred by the Crown, the Minister, the commissioner, a person acting on the commissioner's behalf, an officer of the office or an inspector on account of any act or thing—

- (a) done or omitted to be done under this Act; or
- (b) done or omitted to be done genuinely for the purposes of this Act and without negligence.

(3) This section does not affect the liability of a person to disciplinary action under the *Public Service Act 1996*.

²⁷ Part 3 (Trade practices), division 4 (Door-to-door sales) or section 100 (Compensation and other remedial orders—TPA s 87)

(4) The provisions of this Act shall be read and construed subject to the provisions of any other Act that limit the liability of the Crown or any other person.

109A Insurance contracts—limitation on effect of information disclosure

(1) This section applies to an insurance contract about—

- (a) the recall of goods the person insured under the contract (the “insured”) has supplied or may supply; and
- (b) the liability of the insured for possible defects in goods the insured has supplied or may supply.

(2) Despite the terms of the insurance contract, the liability of the insurer under the contract is not affected merely because the insured gives information about the supply or possible supply of goods to the Minister, the committee or an inspector.

110 Preservation of secrecy

(1) A person who is or was at any time a member of the council, or the committee, or the commissioner, an assistant commissioner or an officer of the office, or an inspector shall not, other than in the course of the person’s duty under this Act or where it is competent to the person so to do because of a provision of this Act, directly or indirectly, communicate information that came to the person’s knowledge as a consequence of the person holding that appointment or position.

(2) It is competent—

- (a) to the commissioner, an officer of the office, and an inspector to communicate to a person whose complaint concerning any matter has been investigated by the bureau, or to a Small Claims Tribunal, information concerning that matter, which has come to his or her knowledge because of the investigation and which is of a class of information that the commissioner has authorised, either generally or in a particular case, to be so communicated; and
- (b) to the commissioner or a person authorised in that behalf by the commissioner to make a disclosure or publication concerning any of the matters referred to in section 109(1)(b); and

- (c) to the commissioner or a person authorised in that behalf by the commissioner to communicate to the appropriate Minister or official of the Crown in right of the Commonwealth or of Queensland or of any other State or of a Territory information which the commissioner considers should be communicated for the purpose of the administration of any law of the Commonwealth or of Queensland or of any other State or of a Territory.

(2A) The commissioner may communicate to the appropriate Minister or official of another country information that the commissioner considers should be communicated for the administration of the law of the other country.

(3) Subsection (1) shall not be construed to prohibit any person referred to in that subsection when called as a witness in any legal proceedings from answering any question that the person is compellable to answer in those proceedings.

(4) In no case shall a person referred to in subsection (1) disclose or be compelled to disclose the source of information that came to the person's knowledge in consequence of the person holding an appointment or position under this Act.

(5) Subsection (4) does not apply in any case where the person or the body that is the source of the information consents to the disclosure.

111 Service of documents etc.

(1) Where under this Act a document or a notice may be, or is required to be, given to a person, the document or notice may be given—

- (a) in the case of a person who is neither a body corporate nor a firm—
- (i) by delivering it to the person personally; or
 - (ii) by leaving it at that person's place of residence last known to the person giving the document or notice with someone who apparently resides there, or at that person's place of business or employment last known to the person giving the document or notice with someone who is apparently employed there, being in either case a person who apparently has attained the age of 16 years; or

- (iii) by sending it by post to that person's place of residence, business or employment last known to the person giving the document or notice; or
- (b) in the case of a body corporate—
 - (i) by delivering it to the secretary of the body corporate personally; or
 - (ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Queensland with a person apparently employed there, being a person who apparently has attained the age of 16 years; or
 - (iii) by sending it by post to the registered office of the body corporate or to the place or principal place of business of the body corporate; or
- (c) in the case of a firm—
 - (i) by delivering it to a member of the firm personally; or
 - (ii) by leaving it at the place or principal place of business of the firm in Queensland last known to the person giving the document or notice with a person apparently employed there, being a person who apparently has attained the age of 16 years; or
 - (iii) by sending it by post to the place or principal place of business of the firm in Queensland last known to the person giving the document or notice.

(2) A reference in subsection (1) to the registered office of a body corporate includes a reference to a registered office that is outside Queensland.

112 Evidence

- (1) In any proceedings under this Act—
- (a) where—
 - (i) a published statement is intended, or apparently intended, to promote the supply or use of any goods or services; and
 - (ii) a name, business name, address, telephone number, post office box number, facsimile number, telex number, or

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newspaper office reply number specified in the statement is that of a person, or the agent of a person, who—

- (A) is the owner, whether alone or jointly with another person or other persons, of such goods; or
- (B) is a supplier of such goods or services; or
- (C) has an interest, otherwise than as owner, in such goods; or
- (D) has an interest, otherwise than as supplier, in the supply of such services;

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

- (b) in which it is alleged that a person in contravention of section 40²⁸ falsely represented that a vehicle as at a particular time had not travelled more than a specified distance—
 - (i) the distance shown on the odometer of the vehicle at any time shall be taken, unless the contrary is proved, to be a representation to all persons that the vehicle had not travelled more than the distance so shown; and
 - (ii) evidence that at any time before the representation was made that the distance shown on the odometer of the vehicle was greater than the distance specified in the representation shall be evidence and, unless the contrary is proved, conclusive evidence that the representation was false; and
- (c) in relation to an offence against section 90²⁹ in respect of a failure to furnish information or to produce records or a copy of them, an allegation or averment in a charge that a person failed as required to furnish information, or produce records or a copy of them shall be evidence and, unless the contrary is proved, conclusive evidence of the matter so alleged or averred; and
- (d) it shall not be necessary to prove the appointment of an inspector or other officer or the authority of the inspector or officer to do any act, make any requirement or give any order; and

28 Section 40 (False or misleading representations—TPA s 53)

29 Section 90 (Power to obtain information)

- (e) the authority of any person to take any proceeding shall be presumed unless the contrary is proved; and
- (f) a printed document that purports—
 - (i) to be a standard, rule, code or specification of an association or body referred to in, or prescribed under, the regulations; and
 - (ii) to have been published or issued by or on behalf of that association or body;

is evidence of that standard, rule, code or specification.

(2) In a proceeding against a person under section 99 or in an application under section 100(2)³⁰ for an order against a person, a finding of any fact by a court made in proceedings under section 98³¹ or for an offence against this Act in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of this Act is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

(3) In a proceeding to recover costs under section 103A,³² a document that purports to be—

- (a) a certificate mentioned in section 103A(5); and
- (b) endorsed with the commissioner's signed statement that the certificate was given to a person on a specified date;

is evidence of the matters stated in the certificate and the endorsement.

113 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made for or about a matter mentioned in the schedule.

(3) A regulation may provide for an offence punishable by a maximum penalty of 20 penalty units.

30 Section 99 (Actions for damages—TPA s 82) or 100 (Compensation and other remedial orders—TPA s 87)

31 Section 98 (Injunctions—TPA ss 79(4), 80, 80A)

32 Section 103A (Examination costs)

114 Approval of forms

The chief executive may approve forms for use under this Act.

**PART 7—TRANSITIONAL PROVISIONS FOR EQUITY
AND FAIR TRADING (MISCELLANEOUS
PROVISIONS) ACT 1999****115 Transitional provision for references to commissioner for
consumer affairs**

A reference in any Act or document to the commissioner for consumer affairs may, if the context permits, be taken to be a reference to the commissioner for fair trading.

**116 Transitional provision for references to Office of Consumer
Affairs**

A reference in any Act or document to the Office of Consumer Affairs may, if the context permits, be taken to be a reference to the Office of Fair Trading.

SCHEDULE 1

SUBJECT MATTERS FOR REGULATIONS

section 113

1 Functions, powers and duties

The discharge of any function and the exercise of any powers by any body or person appointed under this Act.

2 Qualifications and appointments

The qualifications required before a person is appointed under this Act.

3 Supply of goods and services

Prohibiting the supply of goods or services mentioned in the regulation, and authorising the supply of goods or services mentioned in the regulation subject to conditions or restrictions prescribed in the regulation.

4 Fees etc.

The fees or other amounts payable in respect of any matter under this Act, including fees payable with respect to any testing or inspection required or authorised under this Act.

5 Advertisements

Particulars to be shown or given in statements made or published in connection with the supply or possible supply or promotion of goods or services.

6 Prevention of injury

Any matter of any kind relating to the prevention of injury to any person from the supply or use of goods or services under any circumstances.

SCHEDULE 1 (continued)

7 Prevention of deception of consumers

Any matter relating to the prevention of deception of consumers in relation to the supply to them of goods or services or relating to the suppression of practices in trade or commerce that in the opinion of the commissioner are undesirable having regard to the interests of consumers.

8 Matters ancillary to Act

Any matter relating to the manufacture or marketing of goods or services where regulation facilitates the operation or enforcement of this Act.

9 Shoes

The regulation of the materials that may be used in the manufacture of shoes.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 24 September 2002. Future amendments of the Fair Trading Act 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 97 of 1991	1 September 1992
2	to Act No. 68 of 1992	9 December 1992
3	to Act No. 36 of 1994	26 August 1994
4	to Act No. 58 of 1995	7 June 1996
4A	to Act No. 37 of 1996	4 February 1997
4B	to Act No. 82 of 1997	2 February 1998
5	to Act No. 82 of 1997	4 December 1998
5A	to Act No. 19 of 1999	10 August 1999
5B	to Act No. 71 of 1999	10 March 2000
5C	to Act No. 24 of 2000	7 July 2000
6	to Act No. 24 of 2000	3 November 2000
6A	to Act No. 45 of 2001	14 September 2001
6B	to Act No. 13 of 2002	7 June 2002
6C	to Act No. 13 of 2002	1 July 2002

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1, 4

6 List of legislation

Fair Trading Act 1989 No. 84

date of assent 21 September 1989

ss 1–2 commenced on date of assent

remaining provisions commenced 9 October 1989 (proc pubd gaz 7 October 1989 p 1003)

amending legislation—

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2

date of assent 17 December 1991

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1

date of assent 7 December 1992

commenced on date of assent

Fair Trading Amendment Act 1994 No. 36

date of assent 12 August 1994

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 1

date of assent 1 December 1994

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced on date of assent

Fair Trading Amendment Act 1997 No. 12 pts 1–2

date of assent 15 May 1997

ss 6, 28–29, 41 and 50 commenced 16 May 1998 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82
pts 1, 12, sch**

date of assent 5 December 1997

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Equity and Fair Trading (Miscellaneous Provisions) Act 1999 No. 63 pts 1, 6

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 10 March 2000 (2000 SL No. 36)

Retirement Villages Act 1999 No. 71 ss 1–2, 239 sch 1

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 119)

GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

Equity and Fair Trading (Miscellaneous Provisions) Act 2000 No. 24 pts 1, 9

date of assent 27 June 2000

commenced on date of assent

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 ss 1, 2(3), pt 10

date of assent 24 April 2002

ss 1–2 commenced on date of assent

ss 37–40 commenced 1 July 2002 (2002 SL No. 149)

remaining provisions commenced 7 June 2002 (2002 SL No. 133)

Tourism, Racing and Fair Trading (National Competition Policy) Amendment Act 2002 No. 52 ss 1–2(1), 19 sch

date of assent 24 September 2002

commenced on date of assent

7 List of annotations

Commencement

s 2 amd 1994 No. 36 s 2 sch
om R4 (see RA s 37)

Definitions

prov hdg sub 1997 No. 12 s 4(1)

s 5 amd 1991 No. 97 s 3 sch 2; 1992 No. 68 s 3 sch 1; 1994 No. 36 s 2 sch
def “**approved form**” ins 1995 No. 58 s 4 sch 1
def “**assistant commissioner**” sub 1992 No. 68 s 3 sch 1
om 1997 No. 12 s 4(2)
def “**bureau**” om 1997 No. 82 s 3 sch
def “**code of practice**” ins 1994 No. 36 s 3(1)
def “**commissioner**” sub 1992 No. 68 s 3 sch 1
amd 1999 No. 63 s 54(1)
def “**consumer**” ins 1994 No. 36 s 3(1)
def “**Court**” ins 1994 No. 36 s 3(1)
def “**inspector**” amd 1994 No. 36 s 3(2); 1997 No. 12 s 4(3)
sub 2002 No. 52 s 19 sch
def “**interest**” ins 1994 No. 36 s 3(1)
def “**Minister**” om 1991 No. 97 s 3 sch 2
def “**office**” ins 1997 No. 82 s 3 sch
amd 1999 No. 63 s 54(2)
def “**price**” amd 1999 No. 71 s 239 sch 1
def “**services**” amd 1992 No. 68 s 3 sch 1; 1994 No. 36 s 2 sch
def “**shoes**” om 1997 No. 12 s 4(2)
def “**sole**” om 1997 No. 12 s 4(2)
def “**supply**” sub 1992 No. 68 s 3 sch 1; 1997 No. 12 s 4(4)

Meaning of “engaging in conduct” and “conduct”

prov hdg ins 1994 No. 36 s 2 sch
s 5A (prev 5(2)) renum 1994 No. 36 s 2 sch

Effect of provision dealing with enforceability of a contract

prov hdg ins 1994 No. 36 s 2 sch
s 5B (prev 5(3)) renum 1994 No. 36 s 2 sch

Further meaning of acquisition, supply or resupply of goods or services

prov hdg ins 1994 No. 36 s 2 sch
s 5C (prev 5(4)) renum 1994 No. 36 s 2 sch

Meaning of “loss or damage” and “amount of loss or damage”

prov hdg ins 1994 No. 36 s 2 sch
s 5D (prev 5(5)) renum 1994 No. 36 s 2 sch

Meaning of “making of a representation”

prov hdg ins 1994 No. 36 s 2 sch
s 5E (prev 5(6)) renum 1994 No. 36 s 2 sch

Meaning of persons involved in contravention

prov hdg ins 1994 No. 36 s 2 sch
s 5F (prev 5(9)) renum 1994 No. 36 s 2 sch
 amd 1997 No. 12 s 5

Meaning of related corporation

prov hdg ins 1994 No. 36 s 2 sch
s 5G (prev 5(11)) renum 1994 No. 36 s 2 sch
 amd 2001 No. 45 s 29 sch 3

Meaning of “consumer”

s 6 sub 1994 No. 36 s 4
 amd 2000 No. 20 s 29 sch 3

Membership of council

s 9 amd 1994 No. 36 s 2 sch

Chairperson

s 10 amd 1992 No. 68 s 3 sch 1; 1994 No. 36 s 2 sch

Deputy chairperson

s 11 amd 1992 No. 68 s 3 sch 1; 1994 No. 36 s 2 sch

Deputy members

s 12 amd 1994 No. 36 s 2 sch

Vacating office of member of council

s 13 amd 1992 No. 68 s 3 sch 1; 1994 No. 36 s 2 sch

Validity of proceedings

s 15 om 1994 No. 36 s 2 sch

Fees and allowances for council members

s 16 sub 1994 No. 36 s 2 sch

Secretary

s 18 amd 1997 No. 82 s 3 sch

PART 2—CONSUMER AUTHORITIES**Division 2—Commissioner for fair trading and Office of Fair Trading**

div hdg amd 1997 No. 82 s 3 sch
 sub 1999 No. 63 s 55

Commissioner and other officers

s 19 amd 1996 No. 37 s 147 sch 2
 sub 1997 No. 12 s 6
 amd 1999 No. 63 s 56

Delegation by commissioner

s 19A ins 1997 No. 12 s 7

Office of Fair Trading

- prov hdg** sub 1997 No. 82 s 3 sch
amd 1999 No. 63 s 57(1)
- s 20** amd 1997 No. 82 s 3 sch
(3)–(6) exp 5 December 1998 (see s 20(6))
amd 1999 No. 63 s 57(2)

Functions of office

- prov hdg** amd 1997 No. 82 s 3 sch
- s 21** amd 1997 No. 82 s 3 sch

Acting inspectors

- s 22** amd 1994 No. 36 s 2 sch

Consumer Safety Committee

- s 24** amd 1994 No. 36 s 2 sch

Term of appointment

- s 25** amd 1994 No. 36 s 2 sch

Meetings of the committee

- s 28** amd 1994 No. 36 s 5

Validity of acts

- s 29** om 1994 No. 36 s 2 sch

Fees and allowances of committee members

- s 30** sub 1994 No. 36 s 2 sch

Commissioner to assist investigations

- s 34** amd 1997 No. 82 s 3 sch

Appointment of deputies

- s 36** amd 1994 No. 36 s 2 sch

Interpretation for div 1—TPA s 51A

- s 37 prov hdg** amd 1997 No. 12 s 8

Unconscionable conduct—TPA s 51AB

- s 39 prov hdg** amd 2002 No. 13 s 35

False or misleading representations—TPA s 53

- s 40** amd 1994 No. 36 ss 6, 2 sch; 1997 No. 12 s 9

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

- s 40A** ins 1994 No. 36 s 7
amd 1994 No. 87 s 3 sch 1; 1997 No. 12 s 10

Misleading conduct in relation to employment—TPA s 53B

- s 41** amd 1994 No. 36 s 2 sch; 1997 No. 12 s 11

Cash price to be stated in certain circumstances—TPA s 53C

- s 42** amd 1994 No. 36 s 2 sch; 1997 No. 12 s 12

Offering gifts and prizes—TPA s 54

- s 43** amd 1994 No. 36 s 2 sch; 1997 No. 12 s 13

Certain misleading conduct in relation to goods—TPA s 55

s 44 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 14

Certain misleading conduct in relation to services—TPA s 55A

s 45 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 15

Bait advertising—TPA s 56

s 46 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 16

Referral selling—TPA s 57

s 47 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 17

Accepting payment without intending or being able to supply as ordered—TPA s 58

s 48 amd 1994 No. 36 s 2 sch; 1999 No. 63 s 58

Misleading representation about certain business activities—TPA s 59

s 49 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 19

Harassment and coercion—TPA s 60

s 50 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 20

Application of certain provisions to prescribed information providers—TPA s 65A

s 51 amd 1992 No. 68 s 3 sch 1; 1994 No. 87 s 3 sch 1

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

s 52 amd 1992 No. 68 s 3 sch 1; 1994 No. 36 s 2 sch; 1997 No. 12 s 21

PART 3—TRADE PRACTICES**Division 2A—Pyramid selling**

div hdg ins 1997 No. 12 s 22

Definitions for div 2A

s 55A ins 1997 No. 12 s 22

Meaning of “trading scheme”—TPA s 61

s 55B ins 1997 No. 12 s 22

Meaning of “payment to or for the benefit of” a person—TPA s 61

s 55C ins 1997 No. 12 s 22

Offences about pyramid selling—TPA s 61

s 55D ins 1997 No. 12 s 22

Division 2B—Loan fund schemes

div 2B (ss 55E–55G) ins 2002 No. 13 s 36

Definitions for div 4

prov hdg sub 1997 No. 12 s 23(1)

s 57 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 23(2)–(4)

References to consumer or supplier under a contract for the supply of goods or services

s 57A ins 1997 No. 12 s 24

References to contract for the supply of goods or services to a person who is a party to the contract

s 57B ins 1997 No. 12 s 24

References to negotiation of a contract to which this division applies

s 57C ins 1997 No. 12 s 24

Contracts to which this division applies

s 58 amd 1997 No. 12 s 25

Contracts to which this division does not apply

s 58A ins 1997 No. 12 s 26

Meaning of “prescribed contract”

prov hdg sub 1997 No. 12 s 27(1)

s 60 amd 1997 No. 12 s 27(2)

Requirements in relation to prescribed contracts

s 61 amd 1995 No. 58 s 4 sch 1

No consideration during cooling-off period

s 62 amd 1997 No. 12 s 28

Prohibited hours

s 63 amd 2000 No. 24 s 38

Exercise of right of rescission

s 67 amd 1995 No. 58 s 4 sch 1

Restitution

s 68 amd 1994 No. 36 s 2 sch; 2000 No. 20 s 29 sch 3

Exemptions from division for particular contracts or types of contract

s 71A ins 1997 No. 12 s 29

Register of exemptions

s 71B ins 1997 No. 12 s 29

Definitions for div 5

s 73 hdg amd 1997 No. 12 s 30

Use as warranties of deficient documents prohibited

s 77 amd 1994 No. 36 ss 8, 2 sch

Belief that warranty will be honoured

s 78 amd 1994 No. 36 s 2 sch

Division 6—Provisions affecting manufacture and sale of shoes

div hdg om 1997 No. 12 s 31

Admixture of weighting substances prohibited

s 80 om 1997 No. 12 s 31

PART 4—INFORMATION, SAFETY AND CODES OF PRACTICE

pt hdg sub 1994 No. 36 s 9

Compliance with information standard

s 82 amd 1994 No. 36 s 10; 1997 No. 12 s 32; 1997 No. 82 s 38

Compliance with safety standard

s 84 amd 1994 No. 36 s 2 sch; 1997 No. 12 s 33; 1997 No. 82 s 39

Definition for div 3

- prov hdg** sub 1997 No. 12 s 34(1)
s 84A ins 1995 No. 58 s 4 sch 1
 amd 1997 No. 12 s 34(2)

Minister may make orders prohibiting or restricting supply of dangerous or undesirable goods or services

- s 85** amd 1992 No. 68 s 3 sch 1; 1995 No. 58 s 4 sch 1

Interim orders

- s 85A** ins 1994 No. 36 s 11; 1995 No. 58 s 4 sch 1

Offence

- s 86** amd 1994 No. 36 s 2 sch
 sub 1995 No. 58 s 4 sch 1
 amd 1999 No. 63 s 59

Seizure etc. of goods in certain cases

- s 87** amd 1995 No. 58 s 4 sch 1

Division 4—Codes of practice

- div hdg** prev div 4 hdg om 1997 No. 12 s 35
 pres div 4 hdg (prev div 5 hdg) renum 1997 No. 12 s 36

Refrigerators, ice chests and iceboxes

- s 88** amd 1994 No. 36 s 2 sch
 om 1997 No. 12 s 35

Division 5—Codes of practice

- div hdg** ins 1994 No. 36 s 12
 renum as div 4 hdg 1997 No. 12 s 36

Codes of practice

- s 88A** ins 1994 No. 36 s 12

PART 5—ENFORCEMENT AND REMEDIES**Division 1—Powers of commissioner and inspectors**

- div hdg** sub 1997 No. 12 s 37

Commissioner's power to ask for substantiation of claims about the supply of goods or services

- s 88B** ins 1997 No. 12 s 38

Powers of inspectors

- s 89** amd 1997 No. 82 s 3 sch; 1999 No. 63 s 60

Power to obtain information

- s 90** amd 1992 No. 68 s 3 sch 1; 1997 No. 12 s 39; 1997 No. 82 s 3 sch

Obstruction

- s 91** amd 1994 No. 36 s 2 sch

Division 1A—General power of inspectors to seize goods

- div hdg** ins 1997 No. 12 s 40

Subdivision 1—Seizing and returning goods

- sdiv hdg** ins 1997 No. 12 s 40

General power to seize goods

s 91A ins 1997 No. 12 s 40

Returning the seized goods

s 91B ins 1997 No. 12 s 40

Subdivision 2—Appealing against seizure of the goods

sdiv hdg ins 1997 No. 12 s 40

Where and how to start appeal

s 91C ins 1997 No. 12 s 40

Hearing procedures

s 91D ins 1997 No. 12 s 40

Powers of Magistrates Court on appeal

s 91E ins 1997 No. 12 s 40

Appeal to District Court on questions of law onlys 91F ins 1997 No. 12 s 40
amd 1999 No. 19 s 3 sch**Subdivision 3—Forfeiting the goods**

sdiv hdg ins 1997 No. 12 s 40

Court hearing offence proceeding may order forfeiture of seized goods

s 91G ins 1997 No. 12 s 40

Division 1B—Commissioner's power to accept undertakings

div hdg ins 1997 No. 12 s 41

Undertaking under a condition of an exemption

s 91H ins 1997 No. 12 s 41

Undertaking about contravention of Act

s 91I ins 1997 No. 12 s 41

Undertaking about other matter

s 91IA ins 2002 No. 13 s 37

Variation and withdrawal of undertakingss 91J ins 1997 No. 12 s 41
amd 2002 No. 13 s 38**Enforcement of undertakings**

s 91K ins 1997 No. 12 s 41

Register of undertakings

s 91L ins 1997 No. 12 s 41

Offencess 92 amd 1994 No. 36 ss 13, 2 sch
(3) renum as 92A 1997 No. 12 s 42(2)
amd 1997 No. 12 s 42(3)–(5)**Aggregate penalties limited**prov hdg ins 1997 No. 12 s 42(1)
s 92A (prev 92(3)) renum 1997 No. 12 s 42(2)

Attempts to commit offences

s 92B ins 1997 No. 12 s 43

Proceedings for offences

s 94 amd 1992 No. 68 s 3 sch 1; 1997 No. 12 s 44; 1999 No. 63 s 61; 2002 No. 13 s 39

Vicarious liability

s 96 amd 1997 No. 12 s 45

Injunctions—TPA ss 79(4), 80, 80A

s 98 amd 1994 No. 36 s 14; 1997 No. 12 s 46

Actions for damages—TPA s 82

s 99 amd 1994 No. 36 s 15

Compensation and other remedial orders—TPA s 87

s 100 amd 1994 No. 36 s 16

Jurisdiction

s 103 amd 1992 No. 68 s 3 sch 1; 1999 No. 19 s 3 sch

Examination costs

s 103A ins 1994 No. 36 s 17

Impersonation

s 104 amd 1997 No. 82 s 3 sch

Reference to consumer authorities and other matters restricted

s 105 amd 1997 No. 12 s 47; 1997 No. 82 s 3 sch

Limitation of action

s 109 amd 1992 No. 68 s 3 sch 1; 1996 No. 37 s 147 sch 2; 1997 No. 12 s 48; 1997 No. 82 s 3 sch; 2002 No. 13 s 40

Insurance contracts—limitation on effect of information disclosure

s 109A ins 1994 No. 36 s 18

Preservation of secrecy

s 110 amd 1994 No. 87 s 3 sch 1; 1997 No. 12 s 49; 1997 No. 82 s 3 sch; 1999 No. 63 s 62

Service of documents etc.

s 111 amd 1992 No. 68 s 3 sch 1; 2001 No. 45 s 29 sch 3

Evidence

s 112 amd 1994 No. 36 s 19

Regulation-making power

s 113 amd 1991 No. 97 s 3 sch 2
sub 1994 No. 36 s 2 sch
amd 1995 No. 58 s 4 sch 1

Approval of forms

s 114 amd R1 (see RA s 40)
om 1994 No. 36 s 2 sch
ins 1995 No. 58 s 4 sch 1

**PART 7—TRANSITIONAL PROVISIONS FOR EQUITY AND FAIR TRADING
(MISCELLANEOUS PROVISIONS) ACT 1999****pt hdg** ins 1999 No. 63 s 63**Transitional provision for references to commissioner for consumer affairs****s 115** orig s 115 ins 1995 No. 58 s 4 sch 1
exp 28 May 1996 (see s 115(3))
prev s 115 ins 1997 No. 12 s 50
exp 17 May 1998 (see s 115(2))
pres s 115 ins 1999 No. 63 s 63**Transitional provision for references to Office of Consumer Affairs****s 116** ins 1999 No. 63 s 63**SCHEDULE 1—SUBJECT MATTERS FOR REGULATIONS****s 3** sub 1995 No. 58 s 4 sch 1**SCHEDULE 2**

om R1 (see RA s 40)

8 List of forms**Form 1—Information on Rescinding a Contract**

pubd gaz 16 November 2001 p 977

Form 2—Notice to Rescind

pubd gaz 16 November 2001 p 977