

Queensland



# **FAIR TRADING AMENDMENT ACT 1997**

**Act No. 12 of 1997**



# Queensland



## FAIR TRADING AMENDMENT ACT 1997

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	6
2	Commencement .....	6
<b>PART 2—AMENDMENT OF FAIR TRADING ACT 1989</b>		
3	Act amended .....	6
4	Amendment of s 5 (Interpretation) .....	6
5	Amendment of s 5F (Meaning of persons involved in contravention) ....	7
6	Replacement of s 19 (Commissioner and other officers) .....	7
	19 Commissioner and other officers .....	7
7	Insertion of new s 19A .....	8
	19A Delegation by commissioner .....	8
8	Amendment of s 37 (Interpretation—TPA s 51A) .....	8
9	Amendment of s 40 (False or misleading representations—TPA s 53) ...	8
10	Amendment of s 40A (False representations and other misleading or offensive conduct in relation to land—TPA s 53A) .....	8
11	Amendment of s 41 (Misleading conduct in relation to employment—TPA s 53B) .....	8
12	Amendment of s 42 (Cash price to be stated in certain circumstances—TPA s 53C) .....	9
13	Amendment of s 43 (Offering gifts and prizes—TPA s 54) .....	9
14	Amendment of s 44 (Certain misleading conduct in relation to goods—TPA s 55) .....	9
15	Amendment of s 45 (Certain misleading conduct in relation to services—TPA s 55A) .....	9
16	Amendment of s 46 (Bait advertising—TPA s 56) .....	9
17	Amendment of s 47 (Referral selling—TPA s 57) .....	10

---

18	Amendment of s 48 (Accepting payment without intending or being able to supply as ordered—TPA s 58) . . . . .	10
19	Amendment of s 49 (Misleading representation about certain business activities—TPA s 59) . . . . .	10
20	Amendment of s 50 (Harassment and coercion—TPA s 60) . . . . .	10
21	Amendment of s 52 (Assertion of right to payment for unsolicited goods or services, or for making entry in directory—TPA s 64) . . . . .	10
22	Insertion of new pt 3, div 2A . . . . .	12
	<i>Division 2A—Pyramid selling</i>	
	55A Definitions for div 2A . . . . .	12
	55B Meaning of “trading scheme”—TPA s 61 . . . . .	12
	55C Meaning of “payment to or for the benefit of” a person—TPA s 61 . . . . .	13
	55D Offences about pyramid selling—TPA s 61 . . . . .	13
23	Amendment of s 57 (Interpretation) . . . . .	14
24	Insertion of new ss 57A–57C . . . . .	15
	57A References to consumer or supplier under a contract for the supply of goods or services . . . . .	15
	57B References to contract for the supply of goods or services to a person who is a party to the contract . . . . .	15
	57C References to negotiation of a contract to which this division applies . . . . .	15
25	Amendment of s 58 (Contracts to which this division applies) . . . . .	15
26	Insertion of new s 58A . . . . .	15
	58A Contracts to which this division does not apply . . . . .	16
27	Amendment of s 60 (Definition of prescribed contract) . . . . .	16
28	Amendment of s 62 (No consideration during cooling-off period) . . . . .	16
29	Insertion of new ss 71A and 71B . . . . .	16
	71A Exemptions from division for particular contracts or types of contract . . . . .	16
	71B Register of exemptions . . . . .	17
30	Amendment of s 73 (Interpretation) . . . . .	18
31	Omission of pt 3, div 6 (Provisions affecting manufacture and sale of shoes) . . . . .	18
32	Amendment of s 82 (Compliance with information standard) . . . . .	18

---

33	Amendment of s 84 (Compliance with safety standard) . . . . .	18
34	Amendment of s 84A (Definitions) . . . . .	18
35	Omission of pt 4, div 4 (Dangerous refrigeration equipment) . . . . .	19
36	Amendment of pt 4, div 5 (Codes of practice) . . . . .	19
37	Amendment of pt 5 (Enforcement and remedies) . . . . .	19
38	Insertion of new s 88B . . . . .	19
	88B Commissioner's power to ask for substantiation of claims about the supply of goods or services . . . . .	19
39	Amendment of s 90 (Power to obtain information) . . . . .	21
40	Insertion of new pt 5, div 1A . . . . .	21
	<i>Division 1A—General power of inspectors to seize goods</i>	
	<i>Subdivision 1—Seizing and returning goods</i>	
	91A General power to seize goods . . . . .	21
	91B Returning the seized goods . . . . .	22
	<i>Subdivision 2—Appealing against seizure of the goods</i>	
	91C Where and how to start appeal . . . . .	22
	91D Hearing procedures . . . . .	23
	91E Powers of Magistrates Court on appeal . . . . .	23
	91F Appeal to District Court on questions of law only . . . . .	23
	<i>Subdivision 3—Forfeiting the goods</i>	
	91G Court hearing offence proceeding may order forfeiture of seized goods . . . . .	24
41	Insertion of new pt 5, div 1B . . . . .	24
	<i>Division 1B—Commissioner's power to accept undertakings</i>	
	91H Undertaking under a condition of an exemption . . . . .	24
	91I Undertaking about contravention of Act . . . . .	24
	91J Variation and withdrawal of undertakings . . . . .	25
	91K Enforcement of undertakings . . . . .	25
	91L Register of undertakings . . . . .	26
42	Amendment of s 92 (Offences) . . . . .	26
43	Insertion of new s 92B . . . . .	27
	92B Attempts to commit offences . . . . .	28
44	Amendment of s 94 (Proceedings for offences) . . . . .	29

---

45	Amendment of s 96 (Vicarious liability) . . . . .	29
46	Amendment of s 98 (Injunctions—TPA ss 79(4), 80, 80A) . . . . .	29
47	Amendment of s 105 (Reference to consumer authorities and other matters restricted) . . . . .	29
48	Amendment of s 109 (Limitation of action) . . . . .	30
49	Amendment of s 110 (Preservation of secrecy) . . . . .	30
50	Insertion of new s 115 . . . . .	30
	115 Transitional provision about existing officers . . . . .	30
	<b>PART 3—REPEAL</b>	
51	Repeal . . . . .	31

Queensland



## **Fair Trading Amendment Act 1997**

**Act No. 12 of 1997**

---

**An Act to amend the *Fair Trading Act 1989*, and for other purposes**

*[Assented to 15 May 1997]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Fair Trading Amendment Act 1997*.

### **Commencement**

2. Sections 6, 28, 29, 41 and 50 commence on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF FAIR TRADING ACT 1989**

### **Act amended**

3. This part amends the *Fair Trading Act 1989*.

### **Amendment of s 5 (Interpretation)**

- 4.(1) Section 5, heading—

*omit, insert—*

#### **‘Definitions’.**

- (2) Section 5, definitions “**assistant commissioner**”, “**shoes**” and “**sole**”—

*omit.*

- (3) Section 5, definition “**inspector**”, paragraph (b)—

*omit.*



**(4)** Section 5, definition “**supply**”—

*omit, insert—*

‘**“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 1A—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.’.

### **Amendment of s 5F (Meaning of persons involved in contravention)**

**5.** Section 5F, ‘In this Act’—

*omit, insert—*

‘In sections 99, 100 and 112’.

### **Replacement of s 19 (Commissioner and other officers)**

**6.** Section 19—

*omit, insert—*

**‘Commissioner and other officers**

**‘19.(1)** A commissioner for consumer affairs 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.’.

**Insertion of new s 19A**

7. After section 19—

*insert—*

**‘Delegation by commissioner**

‘**19A.** The commissioner may delegate the commissioner’s powers under this or another Act to a public service officer employed in the department.’.

**Amendment of s 37 (Interpretation—TPA s 51A)**

8. Section 37, heading, after ‘**Interpretation**’—

*insert—*

‘**for div 1**’.

**Amendment of s 40 (False or misleading representations—TPA s 53)**

9. Section 40, penalty, ‘400 penalty units’—

*omit, insert—*

‘540 penalty units’.

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

10. Section 40A(1) and (2), penalty, ‘400 penalty units’—

*omit, insert—*

‘540 penalty units’.

**Amendment of s 41 (Misleading conduct in relation to employment—TPA s 53B)**

11. Section 41, penalty, ‘400 penalty units’—

*omit, insert—*

‘540 penalty units’.

**Amendment of s 42 (Cash price to be stated in certain circumstances—TPA s 53C)**

**12.** Section 42, penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

**Amendment of s 43 (Offering gifts and prizes—TPA s 54)**

**13.** Section 43, penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

**Amendment of s 44 (Certain misleading conduct in relation to goods—TPA s 55)**

**14.** Section 44, penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

**Amendment of s 45 (Certain misleading conduct in relation to services—TPA s 55A)**

**15.** Section 45, penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

**Amendment of s 46 (Bait advertising—TPA s 56)**

**16.** Section 46(1) and (2), penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

**Amendment of s 47 (Referral selling—TPA s 57)**

17. Section 47, penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

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

18. Section 40, penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

**Amendment of s 49 (Misleading representation about certain business activities—TPA s 59)**

19.(1) Section 49(1)—  
*insert—*  
‘Maximum penalty—540 penalty units.’.

(2) Section 49(2), penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

**Amendment of s 50 (Harassment and coercion—TPA s 60)**

20. Section 50, penalty, ‘400 penalty units’—  
*omit, insert—*  
‘540 penalty units’.

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

21.(1) Section 52(1), (2) and (3), penalty, ‘400 penalty units’—  
*omit, insert—*

‘540 penalty units’.

(2) Section 52(5)(e)—

*omit, insert—*

‘(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).’.

(3) Section 52, after subsection (5)—

*insert—*

‘(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.’.

(4) Section 52(9), definition “**directory**”—

*omit, insert—*

‘ “**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.’.

(5) Section 52(9)—

*insert—*

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

**Insertion of new pt 3, div 2A**

22. In part 3, after division 2—

*insert—*

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

‘55A. 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.

**Meaning of “trading scheme”—TPA s 61**

‘55B.(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.

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

‘55C. 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.

**‘Offences about pyramid selling—TPA s 61**

‘55D.(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.’.

### **Amendment of s 57 (Interpretation)**

**23.(1)** Section 57, heading—

*omit, insert—*

**‘Definitions for div 4’.**

**(2)** Section 57, definition “**consumer**”, ‘who is’—

*omit, insert—*

‘who’.

**(3)** Section 57, definition “**consumer**”, paragraph (a), before ‘an’—

*insert—*

‘is’.

**(4)** Section 57(2) and (3)—

*omit.*



**Insertion of new ss 57A–57C**

24. After section 57—

*insert—*

**‘References to consumer or supplier under a contract for the supply of goods or services**

‘57A. 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.

**‘References to contract for the supply of goods or services to a person who is a party to the contract**

‘57B. 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.

**‘References to negotiation of a contract to which this division applies**

‘57C. 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.’.

**Amendment of s 58 (Contracts to which this division applies)**

25. Section 58(3)—

*omit.*

**Insertion of new s 58A**

26. After section 58—

*insert—*

**‘Contracts to which this division does not apply**

**‘58A.(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.’.

**Amendment of s 60 (Definition of prescribed contract)**

**27.(1)** Section 60, heading—

*omit, insert—*

**‘Meaning of “prescribed contract”’.**

**(2)** Section 60(3)(c)—

*omit.*

**Amendment of s 62 (No consideration during cooling-off period)**

**28.(1)** Section 62(2), ‘Subject to subsection (3), if’—

*omit, insert—*

‘If’.

**(2)** Section 62(3)—

*omit.*

**Insertion of new ss 71A and 71B**

**29.** After section 71—

*insert—*

**‘Exemptions from division for particular contracts or types of contract**

**‘71A.(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 91H<sup>1</sup> 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.

### ‘Register of exemptions

‘71B.(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

---

<sup>1</sup> Section 91H (Commissioner may accept undertakings)

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.'.

### **Amendment of s 73 (Interpretation)**

**30.** Section 73, heading—

*omit, insert—*

**'Definitions for div 5'.**

### **Omission of pt 3, div 6 (Provisions affecting manufacture and sale of shoes)**

**31.** Part 3, division 6—

*omit.*

### **Amendment of s 82 (Compliance with information standard)**

**32.** Section 82(4)—

*omit.*

### **Amendment of s 84 (Compliance with safety standard)**

**33.** Section 84(4)—

*omit.*

### **Amendment of s 84A (Definitions)**

**34.(1)** Section 84A, heading—

*omit, insert—*

**'Definition for div 3'.**

(2) Section 84A, definition “supply”—  
*omit.*

#### **Omission of pt 4, div 4 (Dangerous refrigeration equipment)**

35. Part 4, division 4—  
*omit.*

#### **Amendment of pt 4, div 5 (Codes of practice)**

36. Part 4, division 5—  
*renumber* as division 4.

#### **Amendment of pt 5 (Enforcement and remedies)**

37. Part 5, division 1, heading—  
*omit, insert—*

*‘Division 1—Powers of commissioner and inspectors’.*

#### **Insertion of new s 88B**

38. Part 5, division 1, before section 89—  
*insert—*

#### **‘Commissioner’s power to ask for substantiation of claims about the supply of goods or services**

‘88B.(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.<sup>2</sup>.

---

<sup>2</sup> See part 5, division 1 (Powers of inspectors).

**Amendment of s 90 (Power to obtain information)**

**39.(1)** Section 90(4), ‘shall not’—

*omit, insert—*

‘must not, without reasonable excuse’.

**(2)** Section 90(5) and (6)—

*omit, insert—*

‘**(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.’.

**(3)** Section 90(6A), ‘This subsection’—

*omit, insert—*

‘Subsection (6)’.

**Insertion of new pt 5, div 1A**

**40.** Part 5, before division 2—

*insert—*

*‘Division 1A—General power of inspectors to seize goods*

*‘Subdivision 1—Seizing and returning goods*

**‘General power to seize goods**

**‘91A.(1)** This division applies if an inspector reasonably believes goods have been supplied in contravention of this Act, other than section 86.<sup>3</sup>

<sup>3</sup> Section 86 is about supplying goods or services to which a regulating instrument applies. 87 deals with seizure of those goods.

‘(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.<sup>4</sup>

‘(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.

### ‘Returning the seized goods

‘91B.(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

#### ‘Where and how to start appeal

‘91C.(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

---

<sup>4</sup> For the prescribed information standard about fibre content, see the *Fair Trading Regulation 1989*, section 6.



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.

### ‘Hearing procedures

‘91D.(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.

### ‘Powers of Magistrates Court on appeal

‘91E. 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.

### ‘Appeal to District Court on questions of law only

‘91F. A party dissatisfied by the decision of the Magistrates Court may appeal to a District Court, but only on a question of law.

***‘Subdivision 3—Forfeiting the goods*****‘Court hearing offence proceeding may order forfeiture of seized goods**

**‘91G.(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.’.

**Insertion of new pt 5, div 1B**

**41.** After section 91G—

*insert—*

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

**‘91H.(1)** The commissioner may accept an undertaking from a person as a condition of exemption under section 71A.<sup>5</sup>

**‘(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.

**‘Undertaking about contravention of Act**

**‘91I.(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

---

<sup>5</sup> Section 71A (Exemptions from division for particular contracts and types of contract)

- (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.

### ‘Variation and withdrawal of undertakings

‘**91J.(1)** If the commissioner accepts an undertaking under section 91H or 91I, 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.

### ‘Enforcement of undertakings

‘**91K.(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.

### ‘Register of undertakings

‘91L.(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.’.

### Amendment of s 92 (Offences)

42.(1) Section 92(3), as heading—

*insert—*

**‘Aggregate penalties limited’.**

(2) Section 92(3)—

*renumber* as section 92A.

(3) Section 92(1)(c), ‘or attempts to induce’—

*omit.*

(4) Section 92(1), ‘other than section 38 or 39 or a code of practice’—

*omit, insert—*

‘for which a penalty is provided’.

(5) After section 92(1)—

*insert—*

‘(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.<sup>6</sup>’.

**Insertion of new s 92B**

**43.** After section 92A—

*insert—*

<sup>6</sup> Criminal Code, chapter 2 (Parties to offences)  
*Acts Interpretation Act 1954*, section 41A (Penalty other than at end of provision)

**‘Attempts to commit offences**

**‘92B.(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
- 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.<sup>7</sup>

<sup>7</sup> Section 40A(2) (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(1) (Obscene material not to be sent)  
 Section 56(1) (Prohibition on mock auctions)  
 Section 62(1) and (2) (No consideration during cooling-off period)  
 Section 65 (Harassment or coercion)  
 Section 82(1) (Compliance with information standard)  
 Section 84(1) (Compliance with safety standard)  
 Section 86 (Offence)

‘(3) The Criminal Code, section 4,<sup>8</sup> applies to subsection (1).

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

#### **Amendment of s 94 (Proceedings for offences)**

**44.** Section 94(4)(c)—

*omit.*

#### **Amendment of s 96 (Vicarious liability)**

**45.** Section 96—

*insert—*

‘(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.’

#### **Amendment of s 98 (Injunctions—TPA ss 79(4), 80, 80A)**

**46.** Section 98(2)(a)–(f) and (4), after ‘practice’—

*insert—*

‘or a term of an undertaking given under section 91H’.

#### **Amendment of s 105 (Reference to consumer authorities and other matters restricted)**

**47.** Section 105(a), ‘, an assistant commissioner’—

*omit.*

---

<sup>8</sup> Criminal Code, section 4 (Attempts to commit offences)

**Amendment of s 109 (Limitation of action)**

**48.** Section 109(1)(a), ‘an assistant commissioner,’—  
*omit.*

**Amendment of s 110 (Preservation of secrecy)**

**49.** Section 110(2)(a), ‘an assistant commissioner,’—  
*omit.*

**Insertion of new s 115**

**50.** After section 114—  
*insert—*

**‘Transitional provision about existing officers**

**‘115.(1)** A person holding office as 1 of the following officers immediately before the commencement of this section is taken to have been appointed under the *Public Service Act 1996* as the officer for the remainder of the person’s term of appointment—

- (a) commissioner for consumer affairs;
- (b) inspector;
- (c) other officer.

**‘(2)** This section expires the day after it commences.’.



**PART 3—REPEAL****Repeal**

**51.** The *Pyramid Selling Schemes (Elimination) Act 1973* is repealed.