

Queensland



**YEAR 2000 INFORMATION
DISCLOSURE BILL 1999**

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DEFINITIONS IN TRADE PRACTICES ACT 1974 (CWLTH)**APPLIED PROVISIONS OF AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989 (CWLTH)****APPLIED PROVISIONS OF TRADE PRACTICES ACT 1974 (CWLTH)**

1999

A BILL

FOR

An Act to encourage the voluntary disclosure and exchange of information about year 2000 computer problems and remediation efforts, and for other purposes

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

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Short title

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1. This Act may be cited as the *Year 2000 Information Disclosure Act 1999*.

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Commencement

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2. This Act is taken to have commenced on 27 February 1999.

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Dictionary

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3. The dictionary in the schedule defines particular words used in this Act.

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Attachment

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4.(1) The attachment to this Act contains—

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(a) definitions of words that, under the schedule, have the same meaning as they have in the *Trade Practices Act 1974* (Cwlth); and

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(b) provisions of the *Australian Securities and Investments Commission Act 1989* (Cwlth) and *Trade Practices Act 1974* (Cwlth) that, under section 9, are applied for that section.

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(2) The attachment is not part of this Act.

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(3) The attachment must be revised so that it is an accurate copy of the definitions and provisions as amended from time to time.

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(4) The revision must happen in the first reprint of this Act after an amendment of any of the definitions or the provisions.

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Act binds all persons

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5. This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the other States.

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PART 2—YEAR 2000 DISCLOSURE STATEMENTS

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Meaning of “year 2000 disclosure statements”

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6. A “year 2000 disclosure statement” is—

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- (a) an original year 2000 disclosure statement; or
- (b) a republished year 2000 disclosure statement.

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Meaning of “original year 2000 disclosure statements”

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7.(1) An “original year 2000 disclosure statement” is a statement that—

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- (a) relates solely to any or all of the following—
 - (i) year 2000 processing;
 - (ii) the detection of problems relating to year 2000 processing;
 - (iii) the prevention of problems relating to year 2000 processing;
 - (iv) the remediation of problems relating to year 2000 processing;
 - (v) the consequences or implications, for the supply of goods or services, of problems relating to year 2000 processing;
 - (vi) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications mentioned in subparagraph (v);
 - (vii) the consequences or implications, for the activities or capabilities of a person, of problems relating to year 2000 processing;
 - (viii) contingency planning, risk management, remediation efforts

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Year 2000 Information Disclosure

or other arrangements for dealing with consequences or implications mentioned in subparagraph (vii); and	1 2
(b) includes words to the effect that the statement is a year 2000 disclosure statement for the purposes of this Act or a corresponding law; and	3 4 5
(c) includes words to the effect that a person may be protected by this Act or a corresponding law from liability for the statement in certain circumstances; and	6 7 8
(d) is made after the commencement of this section and before 1 July 2001; and	9 10
(e) identifies the person who authorised the statement; and	11
(f) satisfies 1 of the following conditions—	12
(i) the statement is made in writing;	13
(ii) the statement is made in a data storage device and is capable of being reproduced in writing from that device, with or without the aid of any other article or device;	14 15 16
(iii) the statement is made by way of an electronic communication of writing.	17 18
(2) The subparagraphs of subsection (1)(a) do not limit each other.	19
(3) A statement is taken to comply with subsection (1)(b) and (c) if the statement includes the following words—	20 21
‘This statement is a year 2000 disclosure statement for the purposes of the Year 2000 Information Disclosure Act 1999. A person may be protected by that Act from liability for this statement in certain circumstances.’	22 23 24
Meaning of “republished year 2000 disclosure statements”	25
8. A “republished year 2000 disclosure statement” is a statement that—	26 27
(a) consists of the republication, retransmission, reproduction, recital or reading aloud of the whole of an original year 2000 disclosure statement; and	28 29 30
(b) is made after the commencement of this section and before	31

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| 1 July 2001; and | 1 |
| (c) is made— | 2 |
| (i) orally; or | 3 |
| (ii) in writing; or | 4 |
| (iii) in a data storage device; or | 5 |
| (iv) by way of an electronic communication of writing; or | 6 |
| (v) by way of an electronic communication of speech. | 7 |

PART 3—PROTECTION FROM CIVIL LIABILITY 8

Protection from civil actions 9

9.(1) No civil action lies against a person for or in relation to any matter or thing arising out of, or incidental to, the making of a year 2000 disclosure statement. 10
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(2) A year 2000 disclosure statement is not admissible as evidence against a person in a civil action to which the person is a party. 13
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Exceptions 15

10.(1) Section 9 does not apply to a person (the “**first person**”) if— 16

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| (a) the year 2000 disclosure statement is false or misleading in a material particular and the first person— | 17
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| (i) knew the statement was false or misleading in a material particular; or | 19
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| (ii) was reckless as to whether the statement was false or misleading in a material particular; or | 21
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| (b) all of the following conditions are satisfied— | 23 |
| (i) the year 2000 disclosure statement was made to another person, otherwise than in the other person’s capacity as a member of the public or of a section of the public, in | 24
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Year 2000 Information Disclosure

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| connection with the formation of a contract; | 1 |
| (ii) the other person, or a representative of the other person, is a party to the civil action; | 2
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| (iii) the civil action relates to the contract. | 4 |
| (2) Section 9 does not apply to a year 2000 disclosure statement if— | 5 |
| (a) the year 2000 disclosure statement was made in fulfilment of an obligation imposed under a contract; or | 6
7 |
| (b) the year 2000 disclosure statement was made in fulfilment of an obligation imposed under a law of the Commonwealth or a State. | 8
9 |
| (3) Section 9 does not apply to a civil action if— | 10 |
| (a) all of the following conditions are satisfied— | 11 |
| (i) a purpose for making the year 2000 disclosure statement was to induce persons to acquire goods or services identified in the statement; | 12
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| (ii) any of those persons acquired the goods or services as a consumer; | 15
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| (iii) the consumer concerned, or a representative of the consumer concerned, is a party to the civil action; | 17
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| (iv) the civil action relates to the goods or services acquired by the consumer; or | 19
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| (b) all of the following conditions are satisfied— | 21 |
| (i) a purpose for making the year 2000 disclosure statement was to induce a particular consumer to acquire goods or services identified in the statement; | 22
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| (ii) the consumer acquired the goods or services; | 25 |
| (iii) the consumer, or a representative of the consumer, is a party to the civil action; | 26
27 |
| (iv) the civil action relates to the goods or services acquired by the consumer. | 28
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| (4) Section 9 does not apply to a civil action to the extent to which— | 30 |
| (a) the civil action consists of proceedings for a restraining injunction | 31 |

Year 2000 Information Disclosure

or for declaratory relief; or	1
(b) the civil action consists of proceedings started by an entity under a law of the Commonwealth or a State—	2 3
(i) in the performance of a regulatory or enforcement function conferred on the entity by the law; or	4 5
(ii) in the exercise of a regulatory or enforcement power conferred on the entity by the law; or	6 7
(c) the civil action is an action for infringement of copyright, a trade mark, a design or a patent.	8 9
(5) The paragraphs of subsections (1), (2), (3) and (4) do not limit each other.	10 11
(6) The <i>Trade Practices Act 1974</i> (Cwlth), section 4B, ¹ applies for subsection (3)(a) and (b) in a corresponding way to the way in which it applies for the <i>Trade Practices Act 1974</i> (Cwlth).	12 13 14
(7) For subsection (6), it is to be assumed that a reference in the <i>Trade Practices Act 1974</i> (Cwlth), section 4B, to services does not include a reference to financial services within the meaning of that Act.	15 16 17
(8) The <i>Australian Securities and Investments Commission Act 1989</i> (Cwlth), section 12BC, ² applies for subsection (3)(a) and (b) in a corresponding way to the way in which it applies for division 2 of part 2 of that Act.	18 19 20 21
False or misleading statement exception—explanatory statement to be given	22 23
11.(1) If a civil action is started against a person (the “ first person ”) by another person (the “ second person ”), the first person is not entitled to plead or otherwise rely on section 9(1) unless—	24 25 26

¹ The *Trade Practices Act 1974* (Cwlth), section 4B, states circumstances in which consumers acquire goods and services. The section is set out in the attachment to this Act.

² The *Australian Securities and Investments Commission Act 1989* (Cwlth), section 12BC, states circumstances in which a person acquires financial services as a consumer. The section is set out in the attachment to this Act.

Year 2000 Information Disclosure

- (a) the first person gives the second person a statement (the “**explanatory statement**”) to the effect that the first person believes the exception in section 10(1)(a) is not applicable; and
- (b) the explanatory statement states the grounds for the belief; and
- (c) the explanatory statement satisfies 1 of the following conditions—
- (i) it is made in writing;
 - (ii) it is made in a data storage device and is capable of being reproduced in writing from that device, with or without the aid of any other article or device;
 - (iii) it is made by way of an electronic communication of writing.
- (2) If the first person gives the second person an explanatory statement mentioned in subsection (1), the explanatory statement is not admissible in any civil action except for the purposes of deciding whether subsection (1) has been complied with.
- (3) The second person may waive compliance with subsection (1).
- False or misleading statement exception—imputed knowledge**
- 12.(1)** Subsection (2) applies if, in any proceedings arising out of section 10(1)(a), it is necessary to establish—
- (a) whether a corporation knew a year 2000 disclosure statement was false or misleading in a material particular; or
 - (b) whether a corporation was reckless as to whether a year 2000 disclosure statement was false or misleading in a material particular.
- (2) It is sufficient to show—
- (a) a director, employee or agent of the corporation engaged in conduct in relation to the year 2000 disclosure statement; and
 - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
 - (c) the director, employee or agent—
 - (i) knew the year 2000 disclosure statement was false or

Year 2000 Information Disclosure

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- misleading in a material particular; or
- (ii) was reckless as to whether the year 2000 disclosure statement was false or misleading in a material particular, as the case may be.
- (3)** Subsection (4) applies if, in any proceedings arising out of section 10(1)(a), it is necessary to establish—
- (a) whether a person, other than a corporation, knew a year 2000 disclosure statement was false or misleading in a material particular; or
- (b) whether a person other than a corporation was reckless as to whether a year 2000 disclosure statement was false or misleading in a material particular.
- (4)** It is sufficient to show—
- (a) an employee or agent of the person engaged in conduct in relation to the year 2000 disclosure statement; and
- (b) the employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
- (c) the employee or agent—
- (i) knew the year 2000 disclosure statement was false or misleading in a material particular; or
- (ii) was reckless as to whether the year 2000 disclosure statement was false or misleading in a material particular, as the case may be.
- (5)** A reference in this section to a director includes a reference to a constituent member of a body corporate incorporated for a public purpose under a law of the Commonwealth or a State.

PART 4—PRESUMPTION AGAINST AMENDMENT OF CONTRACTS

Presumption against amendment of contracts

13.(1) The making of a year 2000 disclosure statement is taken not to amend a contract unless—

(a) both—

(i) the parties to the contract have expressly agreed to the amendment; and

(ii) that agreement satisfies 1 of the conditions in subsection (2);
or

(b) the contract expressly provides for the amendment by way of the making of a year 2000 disclosure statement.

(2) The conditions mentioned in subsection (1)(a)(ii) are as follows—

(a) the agreement is made in writing;

(b) the agreement is embodied in a data storage device and is capable of being reproduced in writing from that device, with or without the aid of any other article or device;

(c) the agreement is made by way of 1 or more electronic communications of writing.

(3) An act under this section can not affect the operation of a condition or warranty that is taken to form part of a contract under another Act.

PART 5—EXEMPTION FROM SECTION 45 OF THE COMPETITION CODE

Exemption from section 45 of the Competition Code

14.(1) This section applies to an arrangement made or proposed to be made—

Year 2000 Information Disclosure

- (a) after the commencement of this section; and 1
- (b) before 1 July 2001. 2
- (2) Section 45 of the Competition Code of Queensland³ does not apply to 3
or in relation to the arrangement or proposed arrangement to the extent it 4
provides or would provide for the disclosure or exchange of information, by 5
any or all of the parties to it, for the sole purpose of facilitating any or all of 6
the matters mentioned in subsection (3). 7
- (3) The matters are the following— 8
- (a) the detection of problems relating to year 2000 processing; 9
- (b) the prevention of problems relating to year 2000 processing; 10
- (c) the remediation of problems relating to year 2000 processing; 11
- (d) awareness of the consequences or implications, for the supply of 12
goods or services, of problems relating to year 2000 processing; 13
- (e) contingency planning, risk management, remediation efforts or 14
other arrangements for dealing with consequences or implications 15
mentioned in paragraph (d); 16
- (f) awareness of the consequences or implications, for the activities 17
or capabilities of a person, of problems relating to year 2000 18
processing; 19
- (g) contingency planning, risk management, remediation efforts or 20
other arrangements for dealing with consequences or implications 21
mentioned in paragraph (f). 22
- (4) In this section— 23
- “arrangement”** made, includes the following— 24
- (a) a contract made; 25
- (b) an understanding arrived at. 26

³ The Code applies as a law of Queensland under the *Competition Policy Reform (Queensland) Act 1996*, part 2. Section 45 of the code deals with contracts, arrangements or understandings that restrict dealings or affect competition.

PART 6—MISCELLANEOUS**Quarterly reports about year 2000 processing issues relating to departments**

15.(1) The Minister must, at least once in each quarter, table in the Legislative Assembly a report about the progress of departments in detecting, preventing and remedying problems relating to year 2000 processing.

(2) In this section—

“quarter” means—

- (a) the period of 3 months beginning on the date of assent; and
- (b) each subsequent period of 3 months, being a period that begins before 1 July 2001.

Regulation-making power

16. The Governor in Council may make regulations under this Act.

SCHEDULE	1
DICTIONARY	2
section 3	3
“acquire” , for goods or services, see the <i>Trade Practices Act 1974</i> (Cwlth), section 4.	4 5
“arrive at” , for an understanding, includes reach or enter into.	6
“civil action” means a civil action in a court, and includes a civil proceeding in a court.	7 8
“consequences” includes potential consequences.	9
“corresponding law” means a law of the Commonwealth or a State corresponding to this Act.	10 11
“data storage device” means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.	12 13 14
“electronic communication of speech” means a communication of speech by way of guided or unguided electromagnetic energy, including, for example, a telephone call or a radio broadcast.	15 16 17
“electronic communication of writing” means a communication of writing by way of guided or unguided electromagnetic energy, including, for example, a facsimile transmission or electronic mail.	18 19 20
“goods” see the <i>Trade Practices Act 1974</i> (Cwlth), section 4.	21
“implications” includes potential implications.	22
“original year 2000 disclosure statement” see section 7.	23
“problems” includes potential problems.	24
“republished year 2000 disclosure statement” see section 8.	25
“services” see the <i>Trade Practices Act 1974</i> (Cwlth), section 4.	26

SCHEDULE (continued)

“statement” includes—	1
(a) a distinct part of a statement; and	2
(b) a statement made to the public or a section of the public.	3
“supply” see the <i>Trade Practices Act 1974</i> (Cwlth), section 4.	4
“year 2000 disclosure statement” see section 6.	5
“year 2000 processing” means the processing (including calculating, comparing, sequencing, displaying or storing), transmitting or receiving of date data (whether or not the date data relates to the year 2000).	6 7 8 9
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ATTACHMENT

1

section 4

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**DEFINITIONS IN TRADE PRACTICES ACT 1974
(CWLTH)**

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“acquire” includes:

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

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“goods” includes:

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- (a) ships, aircraft and other vehicles;
- (b) animals, including fish;
- (c) minerals, trees and crops, whether on, under or attached to land or not; and
- (d) gas and electricity;

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

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- (a) a contract for or in relation to:

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- (i) the performance of work (including work of a professional nature), whether with or without the supply of goods;
- (ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
- (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

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ATTACHMENT (continued)

- (b) a contract of insurance; 1
 - (c) a contract between a banker and a customer of the banker entered 2
into in the course of the carrying on by the banker of the business 3
of banking; or 4
 - (d) any contract for or in relation to the lending of moneys; 5
- but does not include rights or benefits being the supply of goods or the 6
performance of work under a contract of service; 7
- “supply”**, when used as a verb, includes: 8
- (a) in relation to goods—supply (including re-supply) by way of sale, 9
exchange, lease, hire or hire-purchase; and 10
 - (b) in relation to services—provide, grant or confer; 11
- and, when used as a noun, has a corresponding meaning, and supplied and 12
supplier have corresponding meanings. 13
14

ATTACHMENT (continued)

**APPLIED PROVISIONS OF AUSTRALIAN
SECURITIES AND INVESTMENTS COMMISSION
ACT 1989 (CWLTH)**

Consumers

12BC.(1) For the purposes of this Division, unless the contrary intention appears, a person is taken to have acquired particular financial services as a consumer if, and only if:

- (a) the price of the services did not exceed the prescribed amount; or
- (b) if the price of the services exceeded the prescribed amount the services were of a kind ordinarily acquired for personal, domestic or household use; or
- (c) if the services were acquired by a person within the meaning of subsection (2) and the price of the services exceeded the prescribed amount the services were of a kind ordinarily acquired for business use.

(2) For the purposes of this Division, “**person**” includes:

- (a) a person or corporation employing fewer than 20 people; or
- (b) if the person or corporation is engaged in the manufacture of any goods a person or corporation employing fewer than 100 people.

(3) For the purposes of subsection (1):

- (a) the prescribed amount is:
 - (i) \$40,000; or
 - (ii) if a greater amount is prescribed for the purposes of this paragraph that greater amount; and
- (b) subject to paragraph (c), the price of services purchased by a person is taken to have been the amount paid or payable by the person for the services; and
- (c) if a person purchased services together with other property or services, or with both other property and services, and a specified

ATTACHMENT (continued)

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| price was not allocated to the services in the contract under which they were purchased, the price of the services is taken to have been: | 1 |
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| (i) the price at which, at the time of the acquisition, the person could have purchased the services from the supplier without the other property or services; or | 4 |
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| | 6 |
| (ii) if, at the time of the acquisition, the services were only available for purchase from the supplier together with the other property or services but, at that time, services of the kind acquired were available for purchase from another supplier without other property or services the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or | 7 |
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| (iii) if, at the time of the acquisition, services of the kind acquired were not available for purchase from any supplier except together with other property or services the value of the services at that time; and | 14 |
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| (d) if a person acquired services otherwise than by way of purchase, the price of the services is taken to have been: | 18 |
| | 19 |
| (i) the price at which, at the time of the acquisition, the person could have purchased the services from the supplier; or | 20 |
| | 21 |
| (ii) if, at the time of the acquisition, the services were not available for purchase from the supplier, or were available only together with other property or services, but, at that time, services of the kind acquired were available for purchase from another supplier the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or | 22 |
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| (iii) if services of the kind acquired were not available, at the time of the acquisition, for purchase from any supplier, or were not available except together with other property or services the value of the services at that time; and | 29 |
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| (e) without limiting by implication the meaning of the expression “services” in subsection 12BA(1), the obtaining of credit by a | 33 |
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ATTACHMENT (continued)

person in connection with the person's acquisition of services is taken to be the acquisition by the person of a service and any amount by which the amount paid or payable by the person for the services is increased by reason of the person's so obtaining credit is taken to be paid or payable by the person for that service.

(4) If it is alleged in a proceeding under this Division, or in any other proceeding in respect of a matter arising under this Division, that a person was a consumer in relation to particular services, it is presumed that the person was a consumer in relation to those services unless the contrary is established.

APPLIED PROVISIONS OF TRADE PRACTICES ACT 1974 (CWLTH)

Consumers

4B.(1) For the purposes of this Act, unless the contrary intention appears:

(a) a person shall be taken to have acquired particular goods as a consumer if, and only if:

(i) the price of the goods did not exceed the prescribed amount;
or

(ii) where that price exceeded the prescribed amount the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption or the goods consisted of a commercial road vehicle;

and the person did not acquire the goods, or hold himself or herself out as acquiring the goods, for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land; and

ATTACHMENT (continued)

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| (b) | a person shall be taken to have acquired particular services as a consumer if, and only if: | 1 |
| | | 2 |
| (i) | the price of the services did not exceed the prescribed amount; or | 3 |
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| (ii) | where that price exceeded the prescribed amount the services were of a kind ordinarily acquired for personal, domestic or household use or consumption. | 5 |
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| (2) | For the purposes of subsection (1): | 8 |
| (a) | the prescribed amount is \$40,000 or, if a greater amount is prescribed for the purposes of this paragraph, that greater amount; | 9 |
| | | 10 |
| (b) | subject to paragraph (c), the price of goods or services purchased by a person shall be taken to have been the amount paid or payable by the person for the goods or services; | 11 |
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| (c) | where a person purchased goods or services together with other property or services, or with both other property and services, and a specified price was not allocated to the goods or services in the contract under which they were purchased, the price of the goods or services shall be taken to have been: | 14 |
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| (i) | the price at which, at the time of the acquisition, the person could have purchased from the supplier the goods or services without the other property or services; | 19 |
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| (ii) | if, at the time of the acquisition, the goods or services were not available for purchase from the supplier except together with the other property or services but, at that time, goods or services of the kind acquired were available for purchase from another supplier without other property or services the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or | 22 |
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| (iii) | if, at the time of the acquisition, goods or services of the kind acquired were not available for purchase from any supplier except together with other property or services the value of the goods or services at that time; | 30 |
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ATTACHMENT (continued)

- (d) where a person acquired goods or services otherwise than by way of purchase, the price of the goods or services shall be taken to have been:
- (i) the price at which, at the time of the acquisition, the person could have purchased the goods or services from the supplier;
 - (ii) if, at the time of the acquisition, the goods or services were not available for purchase from the supplier or were so available only together with other property or services but, at that time, goods or services of the kind acquired were available for purchase from another supplier the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or
 - (iii) if goods or services of the kind acquired were not available, at the time of the acquisition, for purchase from any supplier or were not so available except together with other property or services the value of the goods or services at that time; and
- (e) without limiting by implication the meaning of the expression “**services**” in subsection 4(1), the obtaining of credit by a person in connection with the acquisition of goods or services by him or her shall be deemed to be the acquisition by him or her of a service and any amount by which the amount paid or payable by him or her for the goods or services is increased by reason of his or her so obtaining credit shall be deemed to be paid or payable by him or her for that service.
- (3)** Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a consumer in relation to particular goods or services, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services.

ATTACHMENT (continued)

(4) In this section, “**commercial road vehicle**” means a vehicle or trailer acquired for use principally in the transport of goods on public roads.

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