

Queensland



# FAIR TRADING ACT 1989

**Reprinted as in force on 1 September 1992  
(includes amendments up to Act No. 97 of 1991)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 1 September 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- use updated references permitted by Division 3 of that Act;
- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- use gender neutral office names as permitted by section 25 of that Act;
- correct spelling, and use different spelling consistent with current legislative drafting practice, as permitted by section 26(2) of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- use the names for instruments and provision units permitted by sections 31 and 32 of that Act;
- relocate marginal or cite notes as permitted by section 34 of that Act;
- use format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by section 40 of that Act;
- use the numbering and renumbering of provisions and references permitted by section 43 of that Act;
- correct minor errors as permitted by section 44 of that Act;
- do anything else permitted to be done by that Act or a regulation made under that Act;
- make all necessary consequential amendments as permitted by section 7(1)(l) of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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# **FAIR TRADING ACT 1989**

[as amended by all amendments that commenced before 1 September 1992<sup>2</sup>]

**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**

### **Short title and citation**

1. This Act may be cited as the *Fair Trading Act 1989*<sup>3-6</sup>.

### **Commencement**

2.(1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1) this Act shall commence on a date appointed by proclamation. The date so appointed is in this Act referred to as the commencement of this Act.

### **Objective of this Act**

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

### **Application of Act**

4.(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.

## **Interpretation**

5. (1) 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;

(b) in relation to services—accept;

“**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;

“**Assistant Commissioner**” means an Assistant Commissioner for Consumer Affairs appointed for the purposes of this Act;

“**Bureau**” means the Consumer Affairs Bureau established under this Act;

“**business**” includes—

(a) a business not carried on for profit; and

(b) a trade or profession;

“**Commissioner**” means the Commissioner for Consumer Affairs appointed for the purposes of this Act and includes any other person who for the time being occupies the office or performs the duties of the Commissioner;

“**Committee**” means the Consumer Safety Committee established under this Act;

“**component part**” includes an accessory;

**“Council”** means the Consumer Affairs Council established under this Act;

**“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
- (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;
- (b) an Assistant Commissioner;
- (c) an inspector appointed for the purposes of this Act;
- (d) an inspector within the meaning of section 6 of the *Workplace Health and Safety Act 1989*;
- (e) an inspector within the meaning of section 6(1) of the *Weights and Measures Act 1951*;
- (f) an inspector or officer appointed for the purposes of the *Profiteering Prevention Act 1948*;

**“premises”** includes land;

**“price”** includes a charge of any description and the cost of obtaining credit;

**“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;

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

**“send”** includes deliver;

**“services”** includes any rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and, without limiting the generality of the foregoing, includes the rights, benefits, privileges and facilities that are, or are to be, provided, granted or conferred under—

- (a) a contract for or in relation to—
  - (i) the performance of work (including 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;

“**shoes**” includes boots, slippers, sandals, thongs, scuffs and similar footwear;

“**Small Claims Tribunal**” means a tribunal duly constituted under the *Small Claims Tribunals Act 1973*;

“**sole**” means all that part of a shoe, including the heel, that in use is under the foot of the wearer, but does not include—

- (a) the insole; or
- (b) the sock lining; or
- (c) thread, wax, rivets, pegs, nails, toe plates, heel tips or heel caps;

“**supply**”, when used as a verb, includes—

- (a) in relation to goods—supply (including resupply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services—provide, grant or confer;

and when used as a noun, has a corresponding meaning, and “**supplied**” and “**supplier**” have corresponding meanings;

“**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.

(2) 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
- (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.

**(3)** 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.

**(4)** 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.

**(5)** 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.

**(6)** In this Act, a reference to the making of a representation includes a reference to the publishing of a statement.

**(9)** In this Act, 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.

**(11)** For the purposes of this Act, a corporation is related to another corporation if it is so related for the purposes of the Companies (Queensland) Code because of section 7(5) of the Code.

### **Meaning of consumer**

**6.(1)** In this Act a reference to a consumer is a reference to a person who in relation to a particular transaction, whether a separate contract or separate transaction within a contract, acquires goods or services as a consumer.

**(2)** A person acquires goods or services as a consumer for the purposes of subsection (1)—

(a) if, being a person other than an incorporated person, the person acquires the goods or services otherwise than in the course of or for the purposes of a business carried on by the person or than as a member of a business partnership; or

(b) if the price of the goods or services does not exceed \$40 000.

(3) In no case shall a person be taken to have acquired goods as a consumer if the person acquires them for resupply by way of sale, exchange, lease, hire or hire-purchase.

(4) For the purposes of subsection (2)(b), if the price of goods or services is not ascertainable by reference to a cash price stipulated in the contract in question, the price shall be deemed to be the reasonable cash price for them having regard to the circumstances of the case.

(5) 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 is a consumer in relation to particular goods or services, it shall be presumed, unless the contrary is proved, that the person is a consumer in relation to the goods and services.

### **Crown bound**

7. 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*

#### **Establishment and function of Council**

8. 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.

### **Membership of Council**

**9.(1)** The Council shall consist of the Commissioner for Consumer Affairs, who shall be a member of the Council *ex officio* 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 by Gazette notice and such members are referred to in this Division as appointed members.

(4) Subject to section 13, each appointed member shall be appointed for a term of 3 years ending on the same day as every other appointed member but, subject to the appointed member not being disqualified from membership, the appointed member shall be eligible for reappointment.

### **Chairperson**

**10.(1)** The Council shall have a chairperson who shall be a member of the Council appointed by the Governor in Council by order 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 notice in writing given to the Minister; or
- (b) the member vacates the member's office as member of the Council; or
- (c) the Governor in Council, by order in council, removes the member from office as chairperson;

whereupon the member shall cease to be chairperson of the Council.

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

### **Deputy chairperson**

**11.(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 notice in writing 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;

whereupon the member shall cease to be deputy chairperson and the office shall fall vacant.

(3) The deputy chairperson shall act in the office of chairperson during such time as the chairperson is prevented by absence, illness or otherwise from performing the duties of that office and whilst so doing shall be deemed to be chairperson.

**Deputy members**

**12.(1)** The Governor in Council, by Gazette notice, 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)** A person appointed as the deputy of an appointed member of the Council may in the absence of the member whose deputy the person is, attend any meeting of the Council in the place of that member and whilst so attending shall discharge the functions, perform the duties and may exercise the powers of a member of the Council but shall not because of the person acting as a member be chairperson or deputy chairperson of the Council.

**Vacating office of member of Council**

**13.(1)** A member of the Council shall be deemed to have vacated the member's office if the member—

- (a) dies; or
- (b) resigns the member's office by notice in writing 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 by order 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, on the recommendation of the Minister, to be sufficient.

**(3)** When a vacancy occurs in the office of a member of the Council before the expiration of the member's term of appointment the Governor in Council may, by Gazette notice, 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.

### **Meetings of Council**

**14.(1)** The Council 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 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 deemed 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.

### **Validity of proceedings**

**15.** No act or proceeding of the Council shall be invalidated or prejudiced because, at the time the act or proceeding was done or taken, there was a vacancy in the office of any member of the Council or there was a defect in the appointment of any member or because any person not qualified for membership of the Council acted as a member.

**Fees and allowances**

**16.(1)** Subject to subsection (2), each member of the Council shall be paid such fees and allowances (if any) as the Governor in Council determines.

**(2)** Fees and allowances provided for in subsection (1) shall not be paid to a member who is an officer of the public service for attendance at any meeting held during the ordinary working hours of that officer.

**Cooperation with other organisations or persons**

**17.** 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.

**Secretary**

**18.** The Commissioner shall as the occasion requires it appoint an officer of the Bureau to be the secretary of the Council.

***Division 2—Commissioner for Consumer Affairs and Consumer  
Affairs Bureau***

**Commissioner and other officers**

**19.(1)** The Governor in Council may appoint a Commissioner for Consumer Affairs, Assistant Commissioners for Consumer Affairs, inspectors and such other officers as the Governor in Council considers necessary to assist the Commissioner.

**(2)** A person appointed under this section shall be appointed and shall hold office under and subject to the laws relating to the public service.

**(3)** A person holding office as the Commissioner for Consumer Affairs may hold that office in conjunction with any other office held by the person in the public service.

**(4)** Judicial notice shall be taken of the appointment of the Commissioner and an Assistant Commissioner and of their signatures.

(5) An Assistant Commissioner may at any time perform the duties of the Commissioner.

### **Consumer Affairs Bureau**

20.(1) There shall be maintained, in the charge, and subject to the direction, of the Minister, a Consumer Affairs Bureau comprised of the Commissioner and the other officers appointed to assist the Commissioner.

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

### **Functions of Bureau**

21.(1) The functions of the Bureau 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 Bureau 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.

### **Acting inspectors**

**22.(1)** 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.

(2) A person so appointed shall be deemed to be an inspector for the purposes of this Act.

### **Aid by government departments in supplying information**

**23.** Except in respect of information which under of 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***

#### **Consumer Safety Committee**

**24.(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 ex officio; and
- (b) such number of other members as the Minister appoints from time to time.

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

**(4)** The Commissioner shall ex officio 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 and shall be appointed by the Minister by Gazette notice.

#### **Term of appointment**

**25.(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 but, subject to the appointed member not being disqualified from membership, the appointed member shall be eligible for reappointment.

**(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.

#### **Casual vacancies**

**26.(1)** Where a vacancy occurs 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.

### **Vacation of office**

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

- (a) dies; or
- (b) resigns the appointed member's office by notice in writing 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.

### **Meetings of the Committee**

28.(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 from time to time.

(3) A quorum shall be three-quarters of the members of the Committee and business shall not be conducted at a meeting of the Committee unless 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.

**Validity of acts**

**29.** No act or proceeding of the Committee shall be invalid or unlawful merely because of any defect in the membership or appointment of any member or a vacancy in the membership of the Committee at the time of that act or proceeding.

**Fees and allowances**

**30.(1)** Subject to subsection (2), each member shall be paid such fees and allowances (if any) as the Governor in Council determines.

**(2)** Fees and allowances provided for in subsection (1) shall not be paid to a member who is an officer of the public service for attendance at any meeting held during ordinary office working hours of that officer.

**Committee may obtain advice**

**31.(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 deemed to be a member of the Committee during the period the person is coopted.

**Reference to the Committee**

**32.** 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.

**Committee to report to Minister or Commissioner**

**33.(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.

### **Commissioner to assist investigations**

**34.(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 Bureau to perform the duties of secretary to the Committee.

### **Powers of Committee to investigate matters**

**35.** 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.

### **Appointment of deputies**

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

(2) A person appointed as a deputy of an appointed member of the Committee may in the absence of the member whose deputy the person is,

attend any meeting of the Committee in the stead of that member and, whilst so attending, shall discharge the functions, perform the duties and may exercise the powers of a member of the Committee.

## **PART 3—TRADE PRACTICES**

### *Division 1—General rules*

#### **Interpretation**

**37.(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.

#### **Misleading or deceptive conduct**

**38.(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).

#### **Unconscionable conduct**

**39.(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.

### **False or misleading representations**

**40.** 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, 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 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.

### **Misleading conduct in relation to employment**

**41.** 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.

### **Cash price to be stated in certain circumstances**

**42.** 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.

### **Offering gifts and prizes**

**43.** 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.

### **Certain misleading conduct in relation to goods**

**44.** 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.



**Certain misleading conduct in relation to services**

**45.** 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.

**Bait advertising**

**46.(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.

**(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.

**(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.

**Referral selling**

47. 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 occurring after that contract is made.

**Accepting payment without intending or being able to supply as ordered**

48. 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.

**Misleading representation about certain business activities**

49.(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.

(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.

### **Harassment and coercion**

**50.** 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.

### **Application of certain provisions to prescribed information providers**

**51.(1)** Nothing in section 38, 40, 44, 45, or 49 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;  
where—
    - (iii) the goods or services were relevant goods or services in relation to the prescribed information provider; or
    - (iv) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with—
      - (A) a person who supplies goods or services of that kind; or
      - (B) a body corporate that is related to a body corporate that supplies goods or services of that kind; 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 Part IIIB of the *Broadcasting Act 1942* of the Commonwealth;

“**prescribed information provider**” means a person who carries on a business of providing information and, without limiting the generality of the foregoing, includes—

(a) a person to whom, or each of the members of a consortium to which, a licence has been granted under Part IIIB of the *Broadcasting Act 1942* 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.

### *Division 2—Unsolicited goods and services*

#### **Assertion of right to payment for unsolicited goods or services, or for making entry in directory**

**52.(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.

(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.

(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.

(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
- (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 any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(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 deemed 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 any publication of a similar nature to a directory but does not include a newspaper published in good faith as a newspaper at regular intervals or a publication published, or to be published, by or under the authority of the Australian Telecommunications Commission;

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

### **Liability of recipient of unsolicited goods**

**53.(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 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.

### **False orders**

**54.(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.

### **Obscene material not to be sent**

**55.(1)** A person, for the purpose of encouraging any order for goods or the despatch 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 deemed 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 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;

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

### *Division 3—Mock auctions*

#### **Prohibition on mock auctions**

**56.(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*

### **Interpretation**

**57.(1)** In this Division—

**“consumer”** means a consumer within the meaning of section 6 who, being a person other than an incorporated person, acquires goods or services otherwise than in the course of or for the purposes of a business carried on by the consumer or as a member of a business partnership;

**“contract to which this Division applies”** means a contract to which this Division applies by virtue of section 58;

**“cooling-off period”**, in relation to a prescribed contract, means the period of 10 days commencing 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.

**(2)** In this Division—

(a) a reference 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; and

(b) a reference 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.

**(3)** For the purposes of this Division, a contract is a contract for the supply of goods or services to a person (being a party to the contract) if it provides for the supply of goods or services either to that person or to some other person but on the order of that person.

### **Contracts to which this Division applies**

**58.(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.

(3) This Division does not apply to a contract of a kind excluded by regulation from the application of this Division.

### **Prohibition of certain contractual terms**

**59.(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.

### **Definition of prescribed contract**

**60.(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 deemed 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;

(c) a contract of a kind declared by regulation not to be a prescribed contract.

(4) In this section—

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

### **Requirements in relation to prescribed contracts**

**61.(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) 1 being a notice, in the prescribed form, explaining the right of the consumer to rescind the contract; and
  - (ii) the other being a notice, in the prescribed 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.

### **No consideration during cooling-off period**

**62.(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) Subject to subsection (3), 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.

(3) Subsection (2) does not apply to the supply of services of a kind excluded by regulation from the application of that subsection.

### **Prohibited hours**

**63.** 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 8.00 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.

### **Duties of dealers**

**64.(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.

### **Harassment or coercion**

**65.** 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.

### **Right of rescission**

**66.(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; or
- (b) if the supplier or a dealer commits an offence against section 50, 63 or 64 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 62 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 that the contract has been fully executed.

**Exercise of right of rescission**

**67.(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 form prescribed by regulation 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 deemed to have been given to the supplier at the time of posting.

**Restitution**

**68.(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 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.

(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—100 penalty units.

### **Related contracts or instruments**

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

### **No waiver of rights**

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

### **Prohibition of certain actions**

71.(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.

### **Evidentiary matters concerning this Division**

**72.** 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.

### *Division 5—Express warranties concerning defective goods or services*

#### **Interpretation**

**73.** 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.

#### **Definition of persons associated with warranty**

**74.** For the purposes of this Division—

- (a) the person who communicates a warranty to a consumer shall, subject to section 95, 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.

### **Offence to issue warranty lacking prescribed particulars**

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

- (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 deemed to have been committed at the place where, and the time when, the warranty is so communicated.

Maximum penalty—100 penalty units.

### **Requirements prescribed for a warranty**

**76.(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.

### **Use as warranties of deficient documents prohibited**

**77.(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 in respect of every major component of the goods.

(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 deemed to have been committed at the place where and the time when the document is so given.

Maximum penalty—100 penalty units.

**Belief that warranty will be honoured**

**78.(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.

**(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.

Maximum penalty—100 penalty units.

**Benefits under warranty additional to legal rights**

**79.** 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.

*Division 6—Provisions affecting manufacture and sale of shoes***Admixture of weighting substances prohibited**

**80.(1)** A person shall not, in trade or commerce, manufacture in Queensland for supply in Queensland or supply in Queensland shoes the soles of which consist of leather having an admixture of any weighting substance specified by regulation.

Maximum penalty—100 penalty units.

**(2)** A tanner or other person shall not, in trade or commerce, manufacture or supply or keep for use in Queensland any leather—

- (a) intended for use in the making of soles for shoes; and
- (b) having an admixture of any weighting substance specified by regulation.

Maximum penalty—100 penalty units.



(3) In this section—  
“supply” includes offer to supply or expose, exhibit or have in possession for supply.

## **PART 4—INFORMATION AND SAFETY PROVISIONS**

### *Division 1—Information provisions*

#### **Information standards**

**81.(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.

### **Compliance with information standard**

**82.(1)** A person shall not, in trade or commerce, supply goods or services—

- (a) to a consumer; and
- (b) in relation to which there is a prescribed information standard;

unless that prescribed information standard is complied with.

(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 deemed, 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.

(4) In this Division—

“**supply**” includes offer to supply and in relation to the supply of goods includes expose, exhibit or have in possession for supply.

### *Division 2—Safety provisions*

#### **Safety standards**

**83.(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.

### **Compliance with safety standard**

**84.(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.

(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 deemed, 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.

(4) In this Division—

“**supply**” includes offer to supply and in relation to the supply of goods includes expose, exhibit or have in possession for supply.

### *Division 3—Ministerial prohibition*

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

**85.(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 published in the Gazette—

- (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) shall take effect from the date of publication in the Gazette or from such later date as is specified in the order.

**(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 notice in writing 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 prior to making the order under subsection (1).

**(5)** In this Division—

“**supply**” includes offer to supply and in relation to the supply of goods includes expose, exhibit or have in possession for supply.

**Offence to contravene order under s.85**

**86.** A person shall not supply goods or services in contravention of an order made under section 85.

**Seizure etc. of goods in certain cases**

**87.(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 an order made under section 85.

**(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 an order under section 85 has been made, 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 prior to 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 an order has been made under section 85, 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 pursuant to subsection (1), if no application for the delivery of the goods has been duly 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—

- (i) the withdrawal of the application; or
- (ii) 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 manner as the Minister directs.

#### ***Division 4—Dangerous refrigeration equipment***

##### **Refrigerators, ice chests and iceboxes**

**88.(1)** A person shall not sell a refrigerator, ice chest or icebox which has in it a compartment of a capacity of 0.04 m<sup>3</sup> or more, unless the compartment is so constructed or equipped that every door or lid of the compartment can be opened easily from the inside of the compartment when any lock or catch that can be operated from the outside of the compartment is fastened.

(2) In any prosecution for an offence against subsection (1), it shall be a defence if the defendant proves that the refrigerator, ice chest or icebox with respect to which the offence is alleged to have been committed was manufactured in or imported into Queensland before 16 December 1960, but the defendant shall be liable to pay the costs incurred on behalf of the prosecution unless the defendant has given reasonable notice to the complainant that the defendant will rely on such a defence.

(3) In this section—

“**sell**” includes offer or attempt to sell, supply or receive for sale, have in possession for sale, exhibit or expose for sale, send or forward for sale or on sale, cause or suffer or permit to be sold as so defined, exhibit or expose or have in possession for any purpose of advertisement or trade or gain, letting under a hire-purchase agreement or on hire or have in possession for the purpose of such a lease.

## **PART 5—ENFORCEMENT AND REMEDIES**

### *Division 1—Powers of inspectors*

#### **Powers of inspectors**

**89.(1)** For the purpose of the discharge by the Bureau 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—
  - (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 to 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 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.

### **Power to obtain information**

**90.(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 Bureau specified;
- (b) at the place the requisition is made or at another place;
- (c) immediately or at, by or within a time specified;
- (d) in person, or by certified mail or in another manner specified;
- (e) by means of, or accompanied by, verification in the form of, a statutory declaration made in accordance with the *Oaths Act 1867*;
- (f) in the case of information, orally or in writing.

**(4)** A person shall not—

- (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)** A person shall not be entitled to refuse or fail to furnish information or records or a copy of them on the ground only that the information, or records or copy of them would tend to incriminate the person.

**(6)** If in response to a requisition authorised by subsection (1)(a), a person furnishes information that would tend to incriminate the person in any offence, other than an offence defined in subsection (4)(b), the information furnished shall not be admissible in evidence against the person in proceedings in any court or tribunal other than the Small Claims Tribunal.

**(6A)** This subsection 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 Bureau 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.

## **Obstruction**

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

(2) For the purposes of this Act a person shall be deemed 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.

Maximum penalty—100 penalty units.

## ***Division 2—Offences, court enforcement and remedies***

### **Offences**

**92.(1)** A person who—

- (a) contravenes; or

- (b) aids, abets, counsels or procures a person to contravene; or
- (c) induces or attempts to induce 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 other than section 38 or 39, commits an offence against this Act.

(2) Unless a specific penalty is otherwise prescribed, a person who commits an offence against this Act is liable to a penalty not exceeding—

- (a) in the case of a body corporate—2 000 penalty units; or
- (b) in any other case—400 penalty units.

(3) 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.

### **Continuing offences**

**93.** Where a person commits an offence defined in section 90, 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 that 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.

### **Proceedings for offences**

**94.(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 shall be 200 penalty units; and

(b) for all purposes the offence alleged shall be deemed 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; and

(c) section 19(6) of the Criminal Code shall be read and construed as if the longest term for which a person might be sentenced to be imprisoned without fine for any offence against this Act were 12 months.

**(5)** The maximum term of imprisonment that any court may order pursuant to section 10(1) of the *Penalty Units Act 1985* upon default of payment of any penalty imposed under this Act shall be 12 months.

**(6)** Proceedings for an offence against this Act—

(a) shall not be instituted without the Commissioner's prior consent;

and

(b) shall be commenced within 3 years after the offence is committed.

### **Conduct by directors, servants or agents**

**95.(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 deemed, 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.

### **Vicarious liability**

96. 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 deemed also to have committed the offence and is liable to be proceeded against and punished accordingly.

### **Defences in proceedings for an offence against this Act**

97.(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 notice in writing 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 section 23 of the Criminal Code, 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 section 24 of the Criminal Code 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.

## **Injunctions**

**98.(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

(b) attempting to contravene such a provision; or

(c) aiding, abetting, counselling or procuring a person to contravene such a provision; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

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

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 39 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, 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.

(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.

### **Actions for damages**

**99.(1)** A person who suffers loss or damage by an act or omission of another person that is a contravention of Part 3 or 4 of this Act 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.

### **Compensation and other remedial orders**

**100.(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 paragraph (2)(b) may be brought in the course of proceedings in which a 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 prior to 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 unless the person is a consumer.

**Mode of enforcement of compensation**

**101.** 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.

**Power of Court to prohibit payment or transfer of money or other property**

**102.(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—

(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.

### **Jurisdiction**

**103.(1)** Jurisdiction is conferred upon the Supreme Court and, subject to subsection (1A), every 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 a District Court, or the Supreme Court, or a Judge thereof.

(1A) An application for an order against a person under section 98 or 100 may be made in a 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, a 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.



## **PART 6—GENERAL**

### **Impersonation**

**104.** A person shall not falsely represent that the person is an inspector or that the person is an officer of the Bureau.

Maximum penalty—100 penalty units.

### **Reference to consumer authorities and other matters restricted**

**105.** 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 Bureau, a member of the Council or Committee, an inspector, the Commissioner, an Assistant Commissioner or an officer of the Bureau 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.

### **Savings of rights and remedies**

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

### **Contracting out prohibited**

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

**Severability**

**108.** 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 Division 4 of Part 3 or any order made under section 100, 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.

**Limitation of action**

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

- (a) on account of any disclosure made to the Council, the Committee, the Commissioner, an Assistant Commissioner, any officer of the Bureau or any inspector; or
- (b) on account of any disclosure or publication made by the Commissioner or on the Commissioner's behalf, concerning—
  - (i) the supply of goods or services; or
  - (ii) the commercial or business reputation of any person associated with the supply of goods or services; or
  - (iii) the quality or standard of goods or services supplied by any person; or
  - (iv) a contravention or alleged contravention of this Act or the operation or enforcement of this Act.

**(2)** Without derogating from the foregoing provisions, no liability shall be incurred by the Crown, the Minister, the Commissioner, a person acting on the Commissioner's behalf, an officer of the Bureau 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 bona fide 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 Management and Employment Act 1988*.

**(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.

### **Preservation of secrecy**

**110.(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 Bureau, 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 Assistant Commissioner, an officer of the Bureau, 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)(c) to (f); 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.

**(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.

### **Service of documents etc.**

**111.(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.

(3) The provisions of this section are in addition to the provisions of section 528 of the Companies (Queensland) Code.

## **Evidence**

**112.(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 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 40 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 deemed, 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 90 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
- (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) for an order against a person, a finding of any fact by a court made in proceedings under section 98 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.

**Regulations**

**113.(1)** The Governor in Council may make regulations not inconsistent with this Act with respect to—

(a) all matters required or permitted by this Act to be prescribed by regulation or to be prescribed and in respect of which no other means of prescription is specified; and

(b) all matters necessary or expedient to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.

**(2)** Without limiting the power conferred by subsection (1), the Governor in Council may make regulations for or with respect to the matters mentioned in Schedule 1.

**(5)** A regulation may provide for an offence punishable by a penalty not exceeding 20 penalty units.

**Repeals, savings, amendments**

**114.(3)** Without limiting the effect of section 20 of the *Acts Interpretation Act 1954*—

(a) the persons who, immediately before the commencement of this Act, held office as the chairperson, deputy chairperson and as members (other than the Commissioner) of the Consumer Affairs Council constituted under the *Consumer Affairs Act 1970* (a repealed Act) shall on and from the commencement of this Act be deemed to be appointed or elected, as the case may be, the chairperson, deputy chairperson and members of the Council under the provisions of this Act and shall hold office subject to the provisions of this Act for the balance of the terms of their appointments under that repealed Act; and

(b) the persons who, immediately before the commencement of this Act, held office as members of the Product Safety Committee constituted under the *Consumer Affairs Act 1970* (a repealed Act) because of their appointment as members by the Minister within the meaning of that Act, shall on and from the commencement of this Act, be deemed to be appointed members of the Consumer Safety Committee under section 24; and

- (c) the persons who, immediately before the commencement of this Act held office as Commissioner for Consumer Affairs, Assistant Commissioner for Consumer Affairs and as inspectors or officers appointed under the *Consumer Affairs Act 1970* as amended (a repealed Act) shall upon the commencement of this Act be deemed to be appointed to their offices under this Act; and
- (d) section 4 of the *Unordered Goods and Services Act 1973* (a repealed Act) shall continue to apply with respect to unordered goods within the meaning of that Act received before the commencement of this Act as if this Act had not been passed; and
- (e) the *Door to Door (Sales) Act 1966* (a repealed Act) shall continue to apply to agreements to which that Act applied made before the commencement of this Act as if this Act had not been passed.



**SCHEDULE 1****SUBJECT MATTERS FOR REGULATIONS**

section 113

**Functions, powers and duties**

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

**Qualifications and appointments**

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

**Instruments**

3. The forms required or authorised in respect of any notice or instrument or other matter under this Act.

**Fees etc.**

4. 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.

**Advertisements**

5. 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.

**Prevention of injury**

6. 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.

### **Prevention of deception of consumers**

7. 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.

### **Matters ancillary to Act**

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

### **Shoes**

9. 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 day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 1 September 1992. Future amendments of the *Fair Trading Act 1989* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

**3 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 Ind Gaz 7 October 1989 p 1003)

as amended by—

**Statute Law (Miscellaneous Provisions) Act 1991 No 97 s 3 Sch 2**

date of assent 17 December 1991

commenced on date of assent

## 4 List of annotations

### Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
orig	=	original
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

### Interpretation

s 5            amd 1991 No 97 s 3 Sch 2  
               def “**Minister**” om 1991 No 97 s 3 Sch 2

### Regulations

s 113        amd 1991 No 97 s 3 Sch 2

### Repeals, savings, amendments

s 114        amd (see s 40 RA)

Sch 2        om (see s 40 RA)

## 5 Table of corrected minor errors

### TABLE OF CORRECTED MINOR ERRORS under section 7(1)(j) of *Reprints Act 1992*

Section	Description
s 33(2)	om ‘disagrees’, ins ‘disagree’
s 57(1) def “ <b>consumer</b> ”	ins ‘,’ after ‘incorporated person’ om ‘than’ (last occurring)
s 97(6)	om ‘is’ where it occurs before the word ‘Australia’, ins ‘in’
s 100(2A)	ins ‘(2)’ after ‘paragraph’

**6 Table of comparative legislation**

s 37	TPA s 51A
s 38	TPA s 52
s 39	TPA s 52A
s 40	TPA s 53
s 41	TPA s 53B
s 42	TPA s 53C
s 43	TPA s 54
s 44	TPA s 55
s 45	TPA s 55A
s 46	TPA s 56
s 47	TPA s 57
s 48	TPA s 58
s 49	TPA s 59
s 50	TPA s 60
s 51	TPA s 65A
s 52	TPA s 64
s 53	TPA s 65
s 95	TPA s 84
s 97	TPA s 85
s 98	TPA ss 79(4), 80, 80A
s 99	TPA s 82
s 100	TPA s 87
s 102	TPA s 87A