



Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010

No. 103, 2010

An Act to amend the *Trade Practices Act 1974* and the *Australian Securities and Investments Commission Act 2001*, and for other purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—The Australian Consumer Law		4
	<i>Trade Practices Act 1974</i>	4
Schedule 2—Application of the Australian Consumer Law		262
	<i>Trade Practices Act 1974</i>	262
Schedule 3—Amendment of the Corporations legislation		337
	<i>Australian Securities and Investments Commission Act 2001</i>	337
	<i>Corporations Act 2001</i>	349
Schedule 4—Enforcement of industry codes		351
	<i>Trade Practices Act 1974</i>	351
Schedule 5—Other amendments of the Trade Practices Act 1974		358
Schedule 6—Amendment of other Acts to change references to the Trade Practices Act 1974		374
Part 1—Bulk amendments		374
	<i>Administrative Decisions (Judicial Review) Act 1977</i>	374
	<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	374
	<i>Airports Act 1996</i>	374
	<i>Air Services Act 1995</i>	375
	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	375
	<i>Australian Communications and Media Authority Act 2005</i>	376
	<i>Australian Energy Market Act 2004</i>	376
	<i>Australian Maritime Safety Authority Act 1990</i>	376
	<i>Australian Postal Corporation Act 1989</i>	376
	<i>Banking Act 1959</i>	377
	<i>Broadcasting Services Act 1992</i>	377
	<i>Crimes Act 1914</i>	378
	<i>Customs Act 1901</i>	378

<i>Do Not Call Register Act 2006</i>	378
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	378
<i>Evidence and Procedure (New Zealand) Act 1994</i>	378
<i>Federal Court of Australia Act 1976</i>	378
<i>Financial Sector (Business Transfer and Group Restructure) Act 1999</i>	379
<i>Health Insurance Commission (Reform and Separation of Functions) Act 1997</i>	379
<i>Insurance Act 1973</i>	379
<i>Jurisdiction of Courts (Cross-vesting) Act 1987</i>	379
<i>Life Insurance Act 1995</i>	380
<i>Liquid Fuel Emergency Act 1984</i>	380
<i>Medibank Private Sale Act 2006</i>	380
<i>Northern Territory National Emergency Response Act 2007</i>	380
<i>Occupational Health and Safety Act 1991</i>	380
<i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	380
<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>	381
<i>Patents Act 1990</i>	381
<i>Payment Systems (Regulation) Act 1998</i>	381
<i>Private Health Insurance Act 2007</i>	381
<i>Proceeds of Crime Act 2002</i>	381
<i>Protection of the Sea (Powers of Intervention) Act 1981</i>	381
<i>Radiocommunications Act 1992</i>	381
<i>Social Security (Administration) Act 1999</i>	382
<i>Spam Act 2003</i>	382
<i>Sydney Airport Demand Management Act 1997</i>	382
<i>Telecommunications Act 1997</i>	383
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	385
<i>Telecommunications (Interception and Access) Act 1979</i>	385
<i>Trade Marks Act 1995</i>	385
<i>Trans-Tasman Proceedings Act 2010</i>	385
<i>Water Act 2007</i>	385
<i>Wheat Export Marketing Act 2008</i>	385

Part 2—Other amendments	386
<i>Administrative Decisions (Judicial Review) Act 1977</i>	386
<i>Agricultural and Veterinary Chemicals Act 1994</i>	386
<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>	386
<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	386
<i>Airports Act 1996</i>	387
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	387
<i>Banking Act 1959</i>	387
<i>Carriage of Goods by Sea Act 1991</i>	388
<i>Federal Court of Australia Act 1976</i>	388
<i>Food Standards Australia New Zealand Act 1991</i>	388
<i>Insurance Act 1973</i>	389
<i>Jurisdiction of Courts (Cross-vesting) Act 1987</i>	389
<i>Motor Vehicle Standards Act 1989</i>	389
<i>National Transmission Network Sale Act 1998</i>	390
<i>Olympic Insignia Protection Act 1987</i>	391
<i>Radiocommunications Act 1992</i>	392
<i>Wheat Export Marketing Act 2008</i>	392
Schedule 7—Transitional matters	393



Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010

No. 103, 2010

**An Act to amend the *Trade Practices Act 1974* and
the *Australian Securities and Investments
Commission Act 2001*, and for other purposes**

[Assented to 13 July 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Trade Practices Amendment
(Australian Consumer Law) Act (No. 2) 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 July 2010
2. Schedules 1 to 5	The later of: (a) the start of 1 January 2011; and (b) immediately after the commencement of Schedule 1 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 January 2011
3. Schedule 6, items 1 to 46	At the same time as the provision(s) covered by table item 2.	1 January 2011
4. Schedule 6, item 47	The later of: (a) the same time as the provision(s) covered by table item 2; and (b) immediately after the commencement of Schedule 1 to the <i>Broadcasting Legislation Amendment (Digital Television) Act 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 January 2011
5. Schedule 6, items 48 to 141	At the same time as the provision(s) covered by table item 2.	1 January 2011

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
6. Schedule 6, item 142	The later of: (a) the same time as the provision(s) covered by table item 2; and (b) immediately after the commencement of section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
7. Schedule 6, items 143 to 191	At the same time as the provision(s) covered by table item 2.	1 January 2011
8. Schedule 7	At the same time as the provision(s) covered by table item 2.	1 January 2011

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—The Australian Consumer Law

Trade Practices Act 1974

1 Schedule 2

Repeal the Schedule, substitute:

Schedule 2—The Australian Consumer Law

Note: See Part XI.

Chapter 1—Introduction

- 1 Application of this Schedule
- 2 Definitions
- 3 Meaning of consumer
- 4 Misleading representations with respect to future matters
- 5 When donations are treated as supplies or acquisitions
- 6 Related bodies corporate
- 7 Meaning of manufacturer
- 8 Goods affixed to land or premises
- 9 Meaning of safety defect in relation to goods
- 10 Asserting a right to payment
- 11 References to acquisition, supply and re-supply
- 12 Application of Schedule in relation to leases and licences of land and buildings
- 13 Loss or damage to include injury
- 14 Meaning of continuing credit contract
- 15 Contraventions of this Schedule
- 16 Severability
- 17 References to provisions in this Schedule

Chapter 2—General protections

Part 2-1—Misleading or deceptive conduct

- 18 Misleading or deceptive conduct
- 19 Application of this Part to information providers

Part 2-2—Unconscionable conduct

- 20 Unconscionable conduct within the meaning of the unwritten law
 - 21 Unconscionable conduct
-

22 Unconscionable conduct in business transactions

Part 2-3—Unfair contract terms

- 23 Unfair terms of consumer contracts
- 24 Meaning of unfair
- 25 Examples of unfair terms
- 26 Terms that define main subject matter of consumer contracts etc. are unaffected
- 27 Standard form contracts
- 28 Contracts to which this Part does not apply

Chapter 3—Specific protections

Part 3-1—Unfair practices

Division 1—False or misleading representations etc.

- 29 False or misleading representations about goods or services
- 30 False or misleading representations about sale etc. of land
- 31 Misleading conduct relating to employment
- 32 Offering rebates, gifts, prizes etc.
- 33 Misleading conduct as to the nature etc. of goods
- 34 Misleading conduct as to the nature etc. of services
- 35 Bait advertising
- 36 Wrongly accepting payment
- 37 Misleading representations about certain business activities
- 38 Application of provisions of this Division to information providers

Division 2—Unsolicited supplies

- 39 Unsolicited cards etc.
- 40 Assertion of right to payment for unsolicited goods or services
- 41 Liability etc. of recipient for unsolicited goods
- 42 Liability of recipient for unsolicited services
- 43 Assertion of right to payment for unauthorised entries or advertisements

Division 3—Pyramid schemes

- 44 Participation in pyramid schemes
- 45 Meaning of pyramid scheme
- 46 Marketing schemes as pyramid schemes

Division 4—Pricing

- 47 Multiple pricing
- 48 Single price to be specified in certain circumstances

Division 5—Other unfair practices

- 49 Referral selling
- 50 Harassment and coercion

Part 3-2—Consumer transactions

Division 1—Consumer guarantees

Subdivision A—Guarantees relating to the supply of goods

- 51 Guarantee as to title
- 52 Guarantee as to undisturbed possession
- 53 Guarantee as to undisclosed securities etc.
- 54 Guarantee as to acceptable quality
- 55 Guarantee as to fitness for any disclosed purpose etc.
- 56 Guarantee relating to the supply of goods by description
- 57 Guarantees relating to the supply of goods by sample or demonstration model
- 58 Guarantee as to repairs and spare parts
- 59 Guarantee as to express warranties

Subdivision B—Guarantees relating to the supply of services

- 60 Guarantee as to due care and skill
- 61 Guarantees as to fitness for a particular purpose etc.
- 62 Guarantee as to reasonable time for supply
- 63 Services to which this Subdivision does not apply

Subdivision C—Guarantees not to be excluded etc. by contract

- 64 Guarantees not to be excluded etc. by contract

Subdivision D—Miscellaneous

- 65 Application of this Division to supplies of gas, electricity and telecommunications
- 66 Display notices
- 67 Conflict of laws
- 68 Convention on Contracts for the International Sale of Goods

Division 2—Unsolicited consumer agreements

Subdivision A—Introduction

- 69 Meaning of unsolicited consumer agreement
- 70 Presumption that agreements are unsolicited consumer agreements
- 71 Meaning of dealer
- 72 Meaning of negotiation

Subdivision B—Negotiating unsolicited consumer agreements

- 73 Permitted hours for negotiating an unsolicited consumer agreement
- 74 Disclosing purpose and identity
- 75 Ceasing to negotiate on request
- 76 Informing person of termination period etc.
- 77 Liability of suppliers for contraventions by dealers

Subdivision C—Requirements for unsolicited consumer agreements etc.

- 78 Requirement to give document to the consumer
- 79 Requirements for all unsolicited consumer agreements etc.
- 80 Additional requirements for unsolicited consumer agreements not negotiated by telephone
- 81 Requirements for amendments of unsolicited consumer agreements

Subdivision D—Terminating unsolicited consumer agreements

- 82 Terminating an unsolicited consumer agreement during the termination period
- 83 Effect of termination
- 84 Obligations of suppliers on termination
- 85 Obligations and rights of consumers on termination
- 86 Prohibition on supplies etc. for 10 business days
- 87 Repayment of payments received after termination
- 88 Prohibition on recovering amounts after termination

Subdivision E—Miscellaneous

- 89 Certain provisions of unsolicited consumer agreements void
- 90 Waiver of rights
- 91 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.
- 92 Application of this Division to supplies to third parties
- 93 Effect of contravening this Division
- 94 Regulations may limit the application of this Division
- 95 Application of this Division to certain conduct covered by the Corporations Act

Division 3—Lay-by agreements

- 96 Lay-by agreements must be in writing etc.
- 97 Termination of lay-by agreements by consumers
- 98 Termination of lay-by agreements by suppliers
- 99 Effect of termination

Division 4—Miscellaneous

- 100 Supplier must provide proof of transaction etc.
- 101 Consumer may request an itemised bill
- 102 Prescribed requirements for warranties against defects
- 103 Repairers must comply with prescribed requirements

Part 3-3—Safety of consumer goods and product related services

Division 1—Safety standards

- 104 Making safety standards for consumer goods and product related services
- 105 Declaring safety standards for consumer goods and product related services

- 106 Supplying etc. consumer goods that do not comply with safety standards
- 107 Supplying etc. product related services that do not comply with safety standards
- 108 Requirement to nominate a safety standard

Division 2—Bans on consumer goods and product related services

Subdivision A—Interim bans

- 109 Interim bans on consumer goods or product related services that will or may cause injury to any person etc.
- 110 Places in which interim bans apply
- 111 Ban period for interim bans
- 112 Interaction of multiple interim bans
- 113 Revocation of interim bans

Subdivision B—Permanent bans

- 114 Permanent bans on consumer goods or product related services
- 115 Places in which permanent bans apply
- 116 When permanent bans come into force
- 117 Revocation of permanent bans

Subdivision C—Compliance with interim bans and permanent bans

- 118 Supplying etc. consumer goods covered by a ban
- 119 Supplying etc. product related services covered by a ban

Subdivision D—Temporary exemption from mutual recognition principles

- 120 Temporary exemption under the Trans-Tasman Mutual Recognition Act 1997
- 121 Temporary exemption under the Mutual Recognition Act 1992

Division 3—Recall of consumer goods

Subdivision A—Compulsory recall of consumer goods

- 122 Compulsory recall of consumer goods
- 123 Contents of a recall notice
- 124 Obligations of a supplier in relation to a recall notice
- 125 Notification by persons who supply consumer goods outside Australia if there is compulsory recall
- 126 Interaction of multiple recall notices
- 127 Compliance with recall notices

Subdivision B—Voluntary recall of consumer goods

- 128 Notification requirements for a voluntary recall of consumer goods

Division 4—Safety warning notices

129 Safety warning notices about consumer goods and product related services

130 Announcement of the results of an investigation etc.

Division 5—Consumer goods, or product related services, associated with death or serious injury or illness

131 Suppliers to report consumer goods associated with the death or serious injury or illness of any person

132 Suppliers to report product related services associated with the death or serious injury or illness of any person

Division 6—Miscellaneous

133 Liability under a contract of insurance

Part 3-4—Information standards

134 Making information standards for goods and services

135 Declaring information standards for goods and services

136 Supplying etc. goods that do not comply with information standards

137 Supplying etc. services that do not comply with information standards

Part 3-5—Liability of manufacturers for goods with safety defects

Division 1—Actions against manufacturers for goods with safety defects

138 Liability for loss or damage suffered by an injured individual

139 Liability for loss or damage suffered by a person other than an injured individual

140 Liability for loss or damage suffered by a person if other goods are destroyed or damaged

141 Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged

142 Defences to defective goods actions

Division 2—Defective goods actions

143 Time for commencing defective goods actions

144 Liability joint and several

145 Survival of actions

146 No defective goods action where workers' compensation law etc. applies

147 Unidentified manufacturer

148 Commonwealth liability for goods that are defective only because of compliance with Commonwealth mandatory standard

149 Representative actions by the regulator

Division 3—Miscellaneous

150 Application of all or any provisions of this Part etc. not to be excluded or modified

Chapter 4—Offences

Part 4-1—Offences relating to unfair practices

Division 1—False or misleading representations etc.

151 False or misleading representations about goods or services
152 False or misleading representations about sale etc. of land
153 Misleading conduct relating to employment
154 Offering rebates, gifts, prizes etc.
155 Misleading conduct as to the nature etc. of goods
156 Misleading conduct as to the nature etc. of services
157 Bait advertising
158 Wrongly accepting payment
159 Misleading representations about certain business activities
160 Application of provisions of this Division to information providers

Division 2—Unsolicited supplies

161 Unsolicited cards etc.
162 Assertion of right to payment for unsolicited goods or services
163 Assertion of right to payment for unauthorised entries or advertisements

Division 3—Pyramid schemes

164 Participation in pyramid schemes

Division 4—Pricing

165 Multiple pricing
166 Single price to be specified in certain circumstances

Division 5—Other unfair practices

167 Referral selling
168 Harassment and coercion

Part 4-2—Offences relating to consumer transactions

Division 1—Consumer guarantees

169 Display notices

Division 2—Unsolicited consumer agreements

Subdivision A—Negotiating unsolicited consumer agreements

170 Permitted hours for negotiating an unsolicited consumer agreement
171 Disclosing purpose and identity
172 Ceasing to negotiate on request

173 Informing person of termination period etc.

Subdivision B—Requirements for unsolicited consumer agreements etc.

174 Requirement to give document to the consumer

175 Requirements for all unsolicited consumer agreements etc.

176 Additional requirements for unsolicited consumer agreements not negotiated by telephone

177 Requirements for amendments of unsolicited consumer agreements

Subdivision C—Terminating unsolicited consumer agreements

178 Obligations of suppliers on termination

179 Prohibition on supplies for 10 business days

180 Repayment of payments received after termination

181 Prohibition on recovering amounts after termination

Subdivision D—Miscellaneous

182 Certain provisions of unsolicited consumer agreements void

183 Waiver of rights

184 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.

185 Application of this Division to supplies to third parties

186 Regulations may limit the application of this Division

187 Application of this Division to certain conduct covered by the Corporations Act

Division 3—Lay-by agreements

188 Lay-by agreements must be in writing etc.

189 Termination charges

190 Termination of lay-by agreements by suppliers

191 Refund of amounts

Division 4—Miscellaneous

192 Prescribed requirements for warranties against defects

193 Repairers must comply with prescribed requirements

Part 4-3—Offences relating to safety of consumer goods and product related services

Division 1—Safety standards

194 Supplying etc. consumer goods that do not comply with safety standards

195 Supplying etc. product related services that do not comply with safety standards

196 Requirement to nominate a safety standard

Division 2—Bans on consumer goods and product related services

- 197 Supplying etc. consumer goods covered by a ban
- 198 Supplying etc. product related services covered by a ban

Division 3—Recall of consumer goods

- 199 Compliance with recall orders
- 200 Notification by persons who supply consumer goods outside Australia if there is compulsory recall
- 201 Notification requirements for a voluntary recall of consumer goods

Division 4—Consumer goods, or product related services, associated with death or serious injury or illness

- 202 Suppliers to report consumer goods etc. associated with the death or serious injury or illness of any person

Part 4-4—Offences relating to information standards

- 203 Supplying etc. goods that do not comply with information standards
- 204 Supplying etc. services that do not comply with information standards

Part 4-5—Offences relating to substantiation notices

- 205 Compliance with substantiation notices
- 206 False or misleading information etc.

Part 4-6—Defences

- 207 Reasonable mistake of fact
- 208 Act or default of another person etc.
- 209 Publication of advertisements in the ordinary course of business
- 210 Supplying goods acquired for the purpose of re-supply
- 211 Supplying services acquired for the purpose of re-supply

Part 4-7—Miscellaneous

- 212 Prosecutions to be commenced within 3 years
- 213 Preference must be given to compensation for victims
- 214 Penalties for contraventions of the same nature etc.
- 215 Penalties for previous contraventions of the same nature etc.
- 216 Granting of injunctions etc.
- 217 Criminal proceedings not to be brought for contraventions of Chapter 2 or 3

Chapter 5—Enforcement and remedies

Part 5-1—Enforcement

Division 1—Undertakings

218 Regulator may accept undertakings

Division 2—Substantiation notices

219 Regulator may require claims to be substantiated etc.

220 Extending periods for complying with substantiation notices

221 Compliance with substantiation notices

222 False or misleading information etc.

Division 3—Public warning notices

223 Regulator may issue a public warning notice

Part 5-2—Remedies

Division 1—Pecuniary penalties

224 Pecuniary penalties

225 Pecuniary penalties and offences

226 Defence

227 Preference must be given to compensation for victims

228 Civil action for recovery of pecuniary penalties

229 Indemnification of officers

230 Certain indemnities not authorised and certain documents void

231 Application of section 229 to a person other than a body
corporate

Division 2—Injunctions

232 Injunctions

233 Consent injunctions

234 Interim injunctions

235 Variation and discharge of injunctions

Division 3—Damages

236 Actions for damages

Division 4—Compensation orders etc. for injured persons and orders for non-party consumers

Subdivision A—Compensation orders etc. for injured persons

237 Compensation orders etc. on application by an injured person or the regulator

238 Compensation orders etc. arising out of other proceedings

Subdivision B—Orders for non-party consumers

239 Orders to redress etc. loss or damage suffered by non-party consumers

240 Determining whether to make a redress order etc. for non-party consumers

241 When a non-party consumer is bound by a redress order etc.

Subdivision C—Miscellaneous

242 Applications for orders

243 Kinds of orders that may be made

244 Power of a court to make orders

245 Interaction with other provisions

Division 5—Other remedies

246 Non-punitive orders

247 Adverse publicity orders

248 Order disqualifying a person from managing corporations

249 Privilege against exposure to penalty or forfeiture—
disqualification from managing corporations

250 Declarations relating to consumer contracts

Division 6—Defences

251 Publication of advertisement in the ordinary course of business

252 Supplying consumer goods for the purpose of re-supply

253 Supplying product related services for the purpose of re-supply

Part 5-3—Country of origin representations

254 Overview

255 Country of origin representations do not contravene certain provisions

256 Cost of producing or manufacturing goods

257 Rules for determining the percentage of costs of production or manufacture attributable to a country

258 Proceedings relating to false, misleading or deceptive conduct or representations

Part 5-4—Remedies relating to guarantees

Division 1—Action against suppliers

Subdivision A—Action against suppliers of goods

259 Action against suppliers of goods

260 When a failure to comply with a guarantee is a major failure

261 How suppliers may remedy a failure to comply with a guarantee

262 When consumers are not entitled to reject goods

263 Consequences of rejecting goods

264 Replaced goods

265 Termination of contracts for the supply of services that are connected with rejected goods

266 Rights of gift recipients

Subdivision B—Action against suppliers of services

- 267 Action against suppliers of services
- 268 When a failure to comply with a guarantee is a major failure
- 269 Termination of contracts for the supply of services
- 270 Termination of contracts for the supply of goods that are connected with terminated services

Division 2—Action for damages against manufacturers of goods

- 271 Action for damages against manufacturers of goods
- 272 Damages that may be recovered by action against manufacturers of goods
- 273 Time limit for actions against manufacturers of goods

Division 3—Miscellaneous

- 274 Indemnification of suppliers by manufacturers
- 275 Limitation of liability etc.
- 276 This Part not to be excluded etc. by contract
- 277 Representative actions by the regulator

Part 5-5—Liability of suppliers and credit providers

Division 1—Linked credit contracts

- 278 Liability of suppliers and linked credit providers relating to linked credit contracts
- 279 Action by consumer to recover amount of loss or damage
- 280 Cases where a linked credit provider is not liable
- 281 Amount of liability of linked credit providers
- 282 Counter-claims and offsets
- 283 Enforcement of judgments etc.
- 284 Award of interest to consumers
- 285 Liability of suppliers to linked credit providers, and of linked credit providers to suppliers
- 286 Joint liability proceedings and recovery under section 135 of the National Credit Code

Division 2—Non-linked credit contracts

- 287 Liability of suppliers and credit providers relating to non-linked credit contracts

Chapter 1—Introduction

1 Application of this Schedule

This Schedule applies to the extent provided by:

- (a) Part XI of the Competition and Consumer Act; or
- (b) an application law.

2 Definitions

(1) In this Schedule:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

acceptable quality: see sections 54(2) to (7).

ACN has the meaning given by section 9 of the *Corporations Act 2001*.

acquire includes:

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

Note: Section 5 deals with when receipt of a donation is an acquisition.

adverse publicity order: see section 247(2).

affected person, in relation to goods, means:

- (a) a consumer who acquires the goods; or
- (b) a person who acquires the goods from the consumer (other than for the purpose of re-supply); or
- (c) a person who derives title to the goods through or under the consumer.

agreement document: see section 78(2).

applicable industry code has the meaning given by section 51ACA(1) of the Competition and Consumer Act.

application law has the same meaning as in section 140 of the Competition and Consumer Act.

article includes a token, card or document.

ASIC means the Australian Securities and Investments Commission.

assert a right to payment: see section 10(1).

associate regulator:

- (a) for the purposes of the application of this Schedule as a law of the Commonwealth—means a body that is, for the

purposes of the application of this Schedule as a law of a State or a Territory, the regulator within the meaning of the application law of the State or Territory; or

- (b) for the purposes of the application of this Schedule as a law of a State or a Territory—means:
 - (i) the Commission; or
 - (ii) a body that is, for the purposes of the application of this Schedule as a law of another State or a Territory, the regulator within the meaning of the application law of that other State or Territory.

authority, in relation to a State or a Territory (including an external Territory), means:

- (a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or
- (b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

authority of the Commonwealth means:

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or
- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

banker has the same meaning as in section 4(1) of the Competition and Consumer Act.

ban period for an interim ban: see section 111(1).

business includes a business not carried on for profit.

business day, in relation to an unsolicited consumer agreement, means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in the place where the agreement was made.

business or professional relationship includes a relationship between employer and employee, or a similar relationship.

call on, in relation to negotiating an unsolicited consumer agreement, does not include call by telephone.

Commission has the same meaning as in section 4(1) of the Competition and Consumer Act.

Commonwealth mandatory standard, in relation to goods, means a mandatory standard in respect of the goods imposed by a law of the Commonwealth.

Commonwealth Minister means the Minister who administers Part XI of the Competition and Consumer Act.

Competition and Consumer Act means the *Competition and Consumer Act 2010*.

consumer: see section 3.

consumer contract: see section 23(3).

consumer goods means goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption, and includes any such goods that have become fixtures since the time they were supplied if:

- (a) a recall notice for the goods has been issued; or
- (b) a person has voluntarily taken action to recall the goods.

continuing credit contract: see section 14(1).

contravening conduct: see section 239(1)(a)(i).

court, in relation to a matter, means any court having jurisdiction in the matter.

covering includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper.

credit card: see section 39(5).

credit provider means a person providing, or proposing to provide, in the course of a business carried on by the person, credit to consumers in relation to the acquisition of goods or services.

dealer: see section 71.

debit card: see section 39(6).

declared term: see section 239(1)(a)(ii).

defective goods action means an action under section 138, 139, 140 or 141, and includes such an action because of section 138(3) or 145.

disclosed purpose: see section 55(2).

displayed price: see sections 47(2) to (5).

document includes:

- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced.

enforcement proceeding means:

- (a) a proceeding for an offence against Chapter 4; or
- (b) a proceeding instituted under Chapter 5 (other than under sections 237 and 239).

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

express warranty, in relation to goods, means an undertaking, assertion or representation:

- (a) that relates to:
 - (i) the quality, state, condition, performance or characteristics of the goods; or
 - (ii) the provision of services that are or may at any time be required for the goods; or
 - (iii) the supply of parts that are or may at any time be required for the goods; or
 - (iv) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods, in relation to which the undertaking, assertion or representation is given or made, form part; and

- (b) that is given or made in connection with the supply of the goods, or in connection with the promotion by any means of the supply or use of the goods; and
- (c) the natural tendency of which is to induce persons to acquire the goods.

financial product has the meaning given by section 12BAA of the *Australian Securities and Investments Commission Act 2001*.

financial service has the meaning given by section 12BAB of the *Australian Securities and Investments Commission Act 2001*.

free item includes a free service.

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) computer software; and
- (f) second-hand goods; and
- (g) any component part of, or accessory to, goods.

grown: see section 255(7).

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

industry code has the meaning given by section 51ACA of the Competition and Consumer Act.

information provider: see sections 19(5) and (6).

information standard: see sections 134(1) and 135(1).

inner container includes any container into which goods are packed, other than a shipping or airline container, pallet or other similar article.

interest, in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or

- (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or
- (c) a right, power or privilege over, or in connection with, the land.

interim ban: see sections 109(1) and (2).

involved: a person is involved, in a contravention of a provision of this Schedule or in conduct that constitutes such a contravention, if the person:

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

joint liability proceedings means proceedings relating to the joint and several liability under section 278 of a linked credit provider and a supplier of goods or services.

label includes a band or ticket.

lay-by agreement: see section 96(3).

linked credit contract: see section 278(2).

linked credit provider, in relation to a supplier of goods or services, means a credit provider:

- (a) with whom the supplier has a contract, arrangement or understanding relating to:
 - (i) the supply to the supplier of goods in which the supplier deals; or
 - (ii) the business carried on by the supplier of supplying goods or services; or
 - (iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services; or

- (b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit; or
- (c) whose forms of contract, forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or
- (d) with whom the supplier has a contract, arrangement or understanding under which contracts, applications or offers for credit from the credit provider may be signed by persons at premises of the supplier.

listed public company has the meaning given by section 995-1(1) the *Income Tax Assessment Act 1997*.

loan contract means a contract under which a person in the course of a business carried on by that person provides or agrees to provide, whether on one or more occasions, credit to a consumer in one or more of the following ways:

- (a) by paying an amount to, or in accordance with the instructions of, the consumer;
- (b) by applying an amount in satisfaction or reduction of an amount owed to the person by the consumer;
- (c) by varying the terms of a contract under which money owed to the person by the consumer is payable;
- (d) by deferring an obligation of the consumer to pay an amount to the person;
- (e) by taking from the consumer a bill of exchange or other negotiable instrument on which the consumer (whether alone or with another person or other persons) is liable as drawer, acceptor or endorser.

major failure: see sections 260 and 268.

mandatory standard, in relation to goods, means a standard:

- (a) for the goods or anything relating to the goods; and
- (b) that, under a law of the Commonwealth, a State or a Territory, must be complied with when the goods are supplied by their manufacturer, being a law creating an offence or liability if there is such non-compliance;

but does not include a standard which may be complied with by meeting a higher standard.

manufacturer: see section 7.

market has the same meaning as in section 4E of the Competition and Consumer Act.

materials, in relation to goods, means:

- (a) if the goods are unmanufactured raw products—those products; and
- (b) if the goods are manufactured goods—all matter or substances used or consumed in the manufacture of the goods (other than matter or substances that are treated as overheads); and
- (c) in either case—the inner containers in which the goods are packed.

mixed supply: see section 3(11).

National Credit Code has the meaning given by section 5(1) of the *National Consumer Credit Protection Act 2009*.

negotiated by telephone: see section 78(3).

negotiation: see section 72.

new participant: see section 45(2).

non-linked credit contract: see section 287(5).

non-party consumer means:

- (a) in relation to conduct referred to in section 239(1)(a)(i)—a person who is not, or has not been, a party to an enforcement proceeding in relation to the conduct; and
- (b) in relation to a term of a consumer contract referred to in section 239(1)(a)(ii)—a person who is not, or has not been, a party to an enforcement proceeding in relation to the term.

participant, in a pyramid scheme, means a person who participates in the scheme.

participate, in a pyramid scheme: see section 44(3).

participation payment: see section 45(1)(a).

permanent ban: see sections 114(1) and (2).

premises means:

- (a) an area of land or any other place (whether or not it is enclosed or built on); or
- (b) a building or other structure; or
- (c) a vehicle, vessel or aircraft; or
- (d) a part of any such premises.

price, of goods or services, means:

- (a) the amount paid or payable (including any charge of any description) for their acquisition; or
- (b) if such an amount is not specified because the acquisition is part only of a transaction for which a total amount is paid or payable:
 - (i) the lowest amount (including any charge of any description) for which the goods or services could reasonably have been acquired from the supplier at the time of the transaction or, if not from the supplier, from another supplier; or
 - (ii) if they could not reasonably have been acquired separately from another supplier—their value at the time of the transaction.

prior negotiations or arrangements, in relation to the acquisition of goods by a consumer, means negotiations or arrangements:

- (a) that were conducted or made with the consumer by another person in the course of a business carried on by the other person; and
- (b) that induced the consumer to acquire the goods, or otherwise promoted the acquisition of the goods by the consumer.

product related service means a service for or relating to:

- (a) the installation of consumer goods of a particular kind; or
- (b) the maintenance, repair or cleaning of consumer goods of a particular kind; or
- (c) the assembly of consumer goods of a particular kind; or
- (d) the delivery of consumer goods of a particular kind;

and, without limiting paragraphs (a) to (d), includes any other service that relates to the supply of consumer goods of that kind.

proof of transaction: see section 100(4).

publish, in relation to an advertisement, means include in a publication intended for sale or public distribution (whether to the public generally or to a restricted class or number of persons) or for public display (including in an electronic form).

pyramid scheme: see section 45(1).

recall notice: see section 122(1).

recovery period: see section 41(4).

recruitment payment: see section 45(1)(b).

regulations means regulations made under section 139G of the Competition and Consumer Act.

regulator:

- (a) for the purposes of the application of this Schedule as a law of the Commonwealth—means the Commission; or
- (b) for the purposes of the application of this Schedule as a law of a State or a Territory—has the meaning given by the application law of the State or Territory.

rejection period: see section 262(2).

related, in relation to a body corporate: see section 6.

related contract or instrument: see section 83(2).

rely on, in relation to a term of a consumer contract, includes the following:

- (a) attempt to enforce the term;
- (b) attempt to exercise a right conferred, or purportedly conferred, by the term;
- (c) assert the existence of a right conferred, or purportedly conferred, by the term.

responsible Minister means:

- (a) the Commonwealth Minister; or
- (b) the Minister of a State who administers the application law of the State; or
- (c) the Minister of a Territory who administers the application law of the Territory.

safety defect, in relation to goods: see section 9.

safety standard: see sections 104(1) and 105(1).

sale by auction, in relation to the supply of goods by a person, means a sale by auction that is conducted by an agent of the person (whether the agent acts in person or by electronic means).

send includes deliver, and *sent* and *sender* have corresponding meanings.

serious injury or illness means an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place), but does not include:

- (a) an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or
- (b) the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.

services includes:

- (a) any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce; and
- (b) without limiting paragraph (a), the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:
 - (i) a contract for or in relation to the performance of work (including work of a professional nature), whether with or without the supply of goods; or
 - (ii) a contract for or in relation to the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
 - (iii) a contract for or in relation to the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
 - (iv) a contract of insurance; or
 - (v) 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

(vi) any 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.

share includes stock.

ship has the meaning given by section 3(1) of the *Admiralty Act 1988*.

single price: see section 48(7).

substantially transformed, in relation to goods: see section 255(3).

substantiation notice means a notice under section 219.

substantiation notice compliance period: see section 221(2).

supply, when used as a verb, includes:

- (a) in relation to goods—supply (including re-supply) 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.

Note: Section 5 deals with when a donation is a supply.

supply of limited title: see section 51(2).

telecommunications service: see section 65(2).

termination charge: see section 97(2).

termination period, in relation to an unsolicited consumer agreement, means the period within which the consumer under the agreement is, under section 82 or under the agreement, entitled to terminate the agreement.

tied continuing credit contract means a continuing credit contract under which a credit provider provides credit in respect of the payment by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

tied loan contract means a loan contract entered into between a credit provider and a consumer where:

- (a) the credit provider knows, or ought reasonably to know, that the consumer enters into the loan contract wholly or partly for the purposes of payment for goods or services supplied by a supplier; and
- (b) at the time the loan contract is entered into the credit provider is a linked credit provider of the supplier.

trade or commerce means:

- (a) trade or commerce within Australia; or
- (b) trade or commerce between Australia and places outside Australia;

and includes any business or professional activity (whether or not carried on for profit).

transparent:

- (a) in relation to a document—means:
 - (i) expressed in reasonably plain language; and
 - (ii) legible; and
 - (iii) presented clearly; and
- (b) in relation to a term of a consumer contract—see section 24(3).

unfair, in relation to a term of a consumer contract: see section 24(1).

unsolicited consumer agreement: see section 69.

unsolicited goods means goods sent to a person without any request made by the person or on his or her behalf.

unsolicited services means services supplied to a person without any request made by the person or on his or her behalf.

upfront price: see section 26(2).

warranty against defects: see section 102(3).

- (2) In this Schedule:
 - (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including:
 - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or

- (ii) the arriving at, or the giving effect to a provision of, an understanding; or
 - (iii) the requiring of the giving of, or the giving of, a covenant; and
- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is a reference to the doing of or the refusing to do any act, including:
 - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or
 - (ii) the arriving at, or the giving effect to a provision of, an understanding; or
 - (iii) the requiring of the giving of, or the giving of, a covenant; 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, as the case may be.

3 Meaning of *consumer*

Acquiring goods as a consumer

- (1) A person is taken to have acquired particular goods as a **consumer** if, and only if:
 - (a) the amount paid or payable for the goods, as worked out under subsections (4) to (9), did not exceed:
 - (i) \$40,000; or
 - (ii) if a greater amount is prescribed for the purposes of this paragraph—that greater amount; or
 - (b) the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption; or
 - (c) the goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads.

- (2) However, subsection (1) does not apply if the person acquired the goods, or held himself or herself out as acquiring the goods:
- (a) for the purpose of re-supply; or
 - (b) for the purpose of using them up or transforming them, in trade or commerce:
 - (i) in the course of a process of production or manufacture; or
 - (ii) in the course of repairing or treating other goods or fixtures on land.

Acquiring services as a consumer

- (3) A person is taken to have acquired particular services as a **consumer** if, and only if:
- (a) the amount paid or payable for the services, as worked out under subsections (4) to (9), did not exceed:
 - (i) \$40,000; or
 - (ii) if a greater amount is prescribed for the purposes of subsection (1)(a)—that greater amount; or
 - (b) the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

Amounts paid or payable for purchases

- (4) For the purposes of subsection (1) or (3), the amount paid or payable for goods or services purchased by a person is taken to be the price paid or payable by the person for the goods or services, unless subsection (5) applies.
- (5) For the purposes of subsection (1) or (3), if a person purchased goods or services by a mixed supply and a specified price was not allocated to the goods or services in the contract under which they were purchased, the amount paid or payable for goods or services is taken to be:
- (a) if, at the time of the acquisition, the person could have purchased from the supplier the goods or services other than by a mixed supply—the price at which they could have been purchased from the supplier; or
 - (b) if:
 - (i) paragraph (a) does not apply; but

- (ii) at the time of the acquisition, goods or services of the kind acquired could have been purchased from another supplier other than by a mixed supply;
the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or
- (c) if, at the time of the acquisition, goods or services of the kind acquired could not have been purchased from any supplier except by a mixed supply—the value of the goods or services at that time.

Amounts paid or payable for other acquisitions

- (6) For the purposes of subsection (1) or (3), the amount paid or payable for goods or services acquired by a person other than by way of purchase is taken to be the price at which, at the time of the acquisition, the person could have purchased the goods or services from the supplier, unless subsection (7) or (8) applies.
- (7) For the purposes of subsection (1) or (3), if:
 - (a) goods or services acquired by a person other than by way of purchase could not, at the time of the acquisition, have been purchased from the supplier, or could have been purchased only by a mixed supply; but
 - (b) at that time, goods or services of the kind acquired could have been purchased from another supplier other than by a mixed supply;the amount paid or payable for the goods or services is taken to be the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier.
- (8) For the purposes of subsection (1) or (3), if goods or services acquired by a person other than by way of purchase could not, at the time of the acquisition, have been purchased from any supplier other than by a mixed supply, the amount paid or payable for the goods or services is taken to be the value of the goods or services at that time.

Amounts paid or payable for obtaining credit

- (9) If:
-

- (a) a person obtains credit in connection with the acquisition of goods or services by him or her; and
 - (b) the amount paid or payable by him or her for the goods or services is increased because he or she so obtains credit;
- obtaining the credit is taken for the purposes of subsection (3) to be the acquisition of a service, and the amount paid or payable by him or her for the service of being provided with the credit is taken to include the amount of the increase.

Presumption that persons are consumers

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

Mixed supplies

- (11) A purchase or other acquisition of goods or services is made by a ***mixed supply*** if the goods or services are purchased or acquired together with other property or services, or together with both other property and other services.

Supplies to consumers

- (12) In this Schedule, a reference to a supply of goods or services to a consumer is a reference to a supply of goods or services to a person who is taken to have acquired them as a consumer.

4 Misleading representations with respect to future matters

- (1) If:
- (a) a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act); and
 - (b) the person does not have reasonable grounds for making the representation;
- the representation is taken, for the purposes of this Schedule, to be misleading.

- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation made with respect to a future matter by:
 - (a) a party to the proceeding; or
 - (b) any other person;the party or other person is taken not to have had reasonable grounds for making the representation, unless evidence is adduced to the contrary.
- (3) To avoid doubt, subsection (2) does not:
 - (a) have the effect that, merely because such evidence to the contrary is adduced, the person who made the representation is taken to have had reasonable grounds for making the representation; or
 - (b) have the effect of placing on any person an onus of proving that the person who made the representation had reasonable grounds for making the representation.
- (4) Subsection (1) does not limit by implication the meaning of a reference in this Schedule to:
 - (a) a misleading representation; or
 - (b) a representation that is misleading in a material particular; or
 - (c) conduct that is misleading or is likely or liable to mislead;and, in particular, does not imply that a representation that a person makes with respect to any future matter is not misleading merely because the person has reasonable grounds for making the representation.

5 When donations are treated as supplies or acquisitions

- (1) For the purposes of this Schedule, other than Parts 3-3, 3-4, 4-3 and 4-4:
 - (a) a donation of goods or services is not treated as a supply of the goods or services unless the donation is for promotional purposes; and
 - (b) receipt of a donation of goods or services is not treated as an acquisition of the goods or services unless the donation is for promotional purposes.
- (2) For the purposes of Parts 3-3, 3-4, 4-3 and 4-4:

- (a) any donation of goods or services is treated as a supply of the goods or services; and
- (b) receipt of any donation of goods or services is treated as an acquisition of the goods or services.

6 Related bodies corporate

- (1) A body corporate is taken to be *related* to another body corporate if the bodies corporate would, under section 4A(5) of the Competition and Consumer Act, be deemed to be related to each other.
- (2) In proceedings under this Schedule, it is presumed, unless the contrary is established, that bodies corporate are not, or were not at a particular time, related to each other.

7 Meaning of *manufacturer*

- (1) A *manufacturer* includes the following:
 - (a) a person who grows, extracts, produces, processes or assembles goods;
 - (b) a person who holds himself or herself out to the public as the manufacturer of goods;
 - (c) a person who causes or permits the name of the person, a name by which the person carries on business or a brand or mark of the person to be applied to goods supplied by the person;
 - (d) a person (the *first person*) who causes or permits another person, in connection with:
 - (i) the supply or possible supply of goods by that other person; or
 - (ii) the promotion by that other person by any means of the supply or use of goods;to hold out the first person to the public as the manufacturer of the goods;
 - (e) a person who imports goods into Australia if:
 - (i) the person is not the manufacturer of the goods; and
 - (ii) at the time of the importation, the manufacturer of the goods does not have a place of business in Australia.

- (2) For the purposes of subsection (1)(c):
- (a) a name, brand or mark is taken to be applied to goods if:
 - (i) it is woven in, impressed on, worked into or annexed or affixed to the goods; or
 - (ii) it is applied to a covering, label, reel or thing in or with which the goods are supplied; and
 - (b) if the name of a person, a name by which a person carries on business or a brand or mark of a person is applied to goods, it is presumed, unless the contrary is established, that the person caused or permitted the name, brand or mark to be applied to the goods.
- (3) If goods are imported into Australia on behalf of a person, the person is taken, for the purposes of paragraph (1)(e), to have imported the goods into Australia.

8 Goods affixed to land or premises

For the purposes of this Schedule, goods are taken to be supplied to a consumer even if they are affixed to land or premises at the time of the supply.

9 Meaning of *safety defect* in relation to goods

- (1) For the purposes of this Schedule, goods have a *safety defect* if their safety is not such as persons generally are entitled to expect.
- (2) In determining the extent of the safety of goods, regard is to be given to all relevant circumstances, including:
- (a) the manner in which, and the purposes for which, they have been marketed; and
 - (b) their packaging; and
 - (c) the use of any mark in relation to them; and
 - (d) any instructions for, or warnings with respect to, doing, or refraining from doing, anything with or in relation to them; and
 - (e) what might reasonably be expected to be done with or in relation to them; and
 - (f) the time when they were supplied by their manufacturer.

- (3) An inference that goods have a safety defect is not to be made only because of the fact that, after they were supplied by their manufacturer, safer goods of the same kind were supplied.
- (4) An inference that goods have a safety defect is not to be made only because:
 - (a) there was compliance with a Commonwealth mandatory standard for them; and
 - (b) that standard was not the safest possible standard having regard to the latest state of scientific or technical knowledge when they were supplied by their manufacturer.

10 Asserting a right to payment

- (1) A person is taken to *assert a right to payment* from another person if the 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 that:
 - (i) states the amount of the payment; or
 - (ii) sets out the price of unsolicited goods or unsolicited services; or
 - (iii) sets out the charge for placing, in a publication, an entry or advertisement;and does not contain a statement, to the effect that the document is not an assertion of a right to a payment, that complies with any requirements prescribed by the regulations.
- (2) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person is taken to have been sent by that person unless the contrary is established.

11 References to acquisition, supply and re-supply

In this Schedule:

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods pursuant to 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 re-supply 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-mentioned goods have been incorporated; and
- (f) a reference to the re-supply of services (the *original services*) acquired from a person (the *original supplier*) includes a reference to:
 - (i) a supply of the original services to another person in an altered form or condition; and
 - (ii) a supply to another person of other services that are substantially similar to the original services, and could not have been supplied if the original services had not been acquired by the person who acquired them from the original supplier.

12 Application of Schedule in relation to leases and licences of land and buildings

In this Schedule:

- (a) a reference to a contract includes a reference to a lease of, or a licence in respect of, land or a building or part of a building (despite the express references in this Schedule to such leases or licences); and

- (b) a reference to making or entering into a contract, in relation to such a lease or licence, is a reference to granting or taking the lease or licence; and
- (c) a reference to a party to a contract, in relation to such a lease or licence, includes a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.

13 Loss or damage to include injury

In this Schedule:

- (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.

14 Meaning of *continuing credit contract*

(1) If:

- (a) a person (the *creditor*), in the course of a business carried on by the creditor, agrees with a consumer to provide credit to the consumer in relation to:
 - (i) payment for goods or services; or
 - (ii) cash supplied by the creditor to the consumer from time to time; or
 - (iii) payment by the creditor to another person in relation to goods or services, or cash, supplied by that other person to the consumer from time to time; and
- (b) the creditor:
 - (i) has an agreement, arrangement or understanding (the *credit agreement*) with the consumer in relation to the provision of the credit; or
 - (ii) is engaged in a course of dealing (the *credit dealing*) with the consumer in relation to the provision of the credit; and
- (c) the amounts owing to the creditor from time to time under the credit agreement or credit dealing are, or are to be, calculated on the basis that:
 - (i) all amounts owing; and

- (ii) all payments made;
by the consumer under, or in respect of, the credit agreement or credit dealing are entered in one or more accounts kept for the purpose of that agreement or dealing;
the credit agreement or credit dealing is taken, for the purposes of this Schedule, to be a *continuing credit contract*.
- (2) If subsection (1)(a)(iii) applies, the creditor is taken, for the purposes of this section, to have provided credit to the consumer in relation to any goods or services, or cash, supplied by another person to the consumer to the extent of any payments made, or to be made, by the creditor to that other person.

15 Contraventions of this Schedule

Conduct is not taken, for the purposes of this Schedule, to contravene a provision of this Schedule merely because of the application of:

- (a) section 23(1); or
- (b) a provision of Division 1 of Part 3-2 (other than section 66(2)); or
- (c) a provision of Part 3-5.

16 Severability

- (1) If the making of a contract after the commencement of this section contravenes this Schedule because the contract includes a particular provision, nothing in this Schedule affects the validity or enforceability of the contract otherwise than in relation to that provision, so far as that provision is severable.
- (2) This section has effect subject to any order made under Division 4 of Part 5-2.

17 References to provisions in this Schedule

In this Schedule, a reference to a provision is a reference to a provision of this Schedule, unless the contrary intention appears.

Chapter 2—General protections

Part 2-1—Misleading or deceptive conduct

18 Misleading or deceptive conduct

- (1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) Nothing in Part 3-1 (which is about unfair practices) limits by implication subsection (1).

Note: For rules relating to representations as to the country of origin of goods, see Part 5-3.

19 Application of this Part to information providers

- (1) This Part does not apply to a publication of matter by an information provider if:
 - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
 - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
 - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
 - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who

- supplies goods or services of the same kind as the publicised goods or services; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.
- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the **publicised interests in land**), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
- (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.
- (5) An **information provider** is a person who carries on a business of providing information.
- (6) Without limiting subsection (5), each of the following is an **information provider**:
- (a) the holder of a licence granted under the *Broadcasting Services Act 1992*;
- (b) a person who is the provider of a broadcasting service under a class licence under that Act;
- (c) the holder of a licence continued in force by section 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*;
- (d) the Australian Broadcasting Corporation;
- (e) the Special Broadcasting Service Corporation.
-

Part 2-2—Unconscionable conduct

20 Unconscionable conduct within the meaning of the unwritten law

- (1) A person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not apply to conduct that is prohibited by section 21 or 22.

21 Unconscionable conduct

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the **supplier**) has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (the **consumer**), the court may have regard to:
- (a) the relative strengths of the bargaining positions of the supplier and the consumer; and
 - (b) whether, as a result of conduct engaged in by the person, the consumer 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 consumer 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 consumer or a person acting on behalf of the consumer 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 consumer could have acquired identical or equivalent goods or services from a person other than the supplier.
- (3) A person is not to 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 person by reason only that the person 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 person has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person:
- (a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.
- (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 re-supply or for the purpose of using them up or transforming them in trade or commerce.
- (7) Section 4 applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part 3-1.

22 Unconscionable conduct in business transactions

- (1) A person must not, in trade or commerce, in connection with:
- (a) the supply or possible supply of goods or services to another person (other than a listed public company); or
- (b) the acquisition or possible acquisition of goods or services from another person (other than a listed public company);

engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the **supplier**) has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (the **business consumer**), the court may have regard to:
- (a) the relative strengths of the bargaining positions of the supplier and the business consumer; and
 - (b) whether, as a result of conduct engaged in by the supplier, the business consumer 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 business consumer 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 business consumer or a person acting on behalf of the business consumer 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 business consumer could have acquired identical or equivalent goods or services from a person other than the supplier; and
 - (f) the extent to which the supplier's conduct towards the business consumer was consistent with the supplier's conduct in similar transactions between the supplier and other like business consumers; and
 - (g) the requirements of any applicable industry code; and
 - (h) the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with that code; and
 - (i) the extent to which the supplier unreasonably failed to disclose to the business consumer:
 - (i) any intended conduct of the supplier that might affect the interests of the business consumer; and
-

- (ii) any risks to the business consumer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the business consumer); and
 - (j) if there is a contract between the supplier and the business consumer for the supply of the goods or services:
 - (i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the business consumer; and
 - (ii) the terms and conditions of the contract; and
 - (iii) the conduct of the supplier and the business consumer in complying with the terms and conditions of the contract; and
 - (iv) any conduct that the supplier or the business consumer engaged in, in connection with their commercial relationship, after they entered into the contract; and
 - (k) without limiting paragraph (j), whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the business consumer for the supply of the goods or services; and
 - (l) the extent to which the supplier and the business consumer acted in good faith.
- (3) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the **acquirer**) has contravened subsection (1) in connection with the acquisition or possible acquisition of goods or services from another person (the **small business supplier**), the court may have regard to:
- (a) the relative strengths of the bargaining positions of the acquirer and the small business supplier; and
 - (b) whether, as a result of conduct engaged in by the acquirer, the small business supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer; and
 - (c) whether the small business supplier was able to understand any documents relating to the acquisition or possible acquisition of the goods or services; and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the small business

- supplier or a person acting on behalf of the small business supplier by the acquirer or a person acting on behalf of the acquirer in relation to the acquisition or possible acquisition of the goods or services; and
- (e) the amount for which, and the circumstances in which, the small business supplier could have supplied identical or equivalent goods or services to a person other than the acquirer; and
 - (f) the extent to which the acquirer's conduct towards the small business supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like small business suppliers; and
 - (g) the requirements of any applicable industry code; and
 - (h) the requirements of any other industry code, if the small business supplier acted on the reasonable belief that the acquirer would comply with that code; and
 - (i) the extent to which the acquirer unreasonably failed to disclose to the small business supplier:
 - (i) any intended conduct of the acquirer that might affect the interests of the small business supplier; and
 - (ii) any risks to the small business supplier arising from the acquirer's intended conduct (being risks that the acquirer should have foreseen would not be apparent to the small business supplier); and
 - (j) if there is a contract between the acquirer and the small business supplier for the acquisition of the goods or services:
 - (i) the extent to which the acquirer was willing to negotiate the terms and conditions of the contract with the small business supplier; and
 - (ii) the terms and conditions of the contract; and
 - (iii) the conduct of the acquirer and the small business supplier in complying with the terms and conditions of the contract; and
 - (iv) any conduct that the acquirer or the small business supplier engaged in, in connection with their commercial relationship, after they entered into the contract; and
 - (k) without limiting paragraph (j), whether the acquirer has a contractual right to vary unilaterally a term or condition of a

- contract between the acquirer and the small business supplier for the acquisition of the goods or services; and
- (1) the extent to which the acquirer and the small business supplier acted in good faith.
- (4) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with:
- (a) the supply or possible supply of goods or services to another person; or
 - (b) the acquisition or possible acquisition of goods or services from another person;
- by reason only that the first-mentioned person institutes legal proceedings in relation to that supply, possible supply, acquisition or possible acquisition or refers to arbitration a dispute or claim in relation to that supply, possible supply, acquisition or possible acquisition.
- (5) For the purpose of determining whether a person has contravened subsection (1):
- (a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
 - (b) the court may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.
- (6) A reference in this section to the supply or possible supply of goods or services is a reference to the supply or possible supply of goods or services to a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.
- (7) A reference in this section to the acquisition or possible acquisition of goods or services is a reference to the acquisition or possible acquisition of goods or services by a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.
- (8) Section 4 applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part 3-1.

Part 2-3—Unfair contract terms

23 Unfair terms of consumer contracts

- (1) A term of a consumer contract is void if:
 - (a) the term is unfair; and
 - (b) the contract is a standard form contract.
- (2) The contract continues to bind the parties if it is capable of operating without the unfair term.
- (3) A **consumer contract** is a contract for:
 - (a) a supply of goods or services; or
 - (b) a sale or grant of an interest in land;to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.

24 Meaning of *unfair*

- (1) A term of a consumer contract is **unfair** if:
 - (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
 - (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
 - (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.
- (2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the following:
 - (a) the extent to which the term is transparent;
 - (b) the contract as a whole.
- (3) A term is **transparent** if the term is:
 - (a) expressed in reasonably plain language; and
 - (b) legible; and

- (c) presented clearly; and
 - (d) readily available to any party affected by the term.
- (4) For the purposes of subsection (1)(b), a term of a consumer contract is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

25 Examples of unfair terms

- (1) Without limiting section 24, the following are examples of the kinds of terms of a consumer contract that may be unfair:
- (a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract;
 - (b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract;
 - (c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract;
 - (d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract;
 - (e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract;
 - (f) a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract;
 - (g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract;
 - (h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether the contract has been breached or to interpret its meaning;
 - (i) a term that limits, or has the effect of limiting, one party's vicarious liability for its agents;
 - (j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party's consent;

- (k) a term that limits, or has the effect of limiting, one party's right to sue another party;
 - (l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract;
 - (m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract;
 - (n) a term of a kind, or a term that has an effect of a kind, prescribed by the regulations.
- (2) Before the Governor-General makes a regulation for the purposes of subsection (1)(n) prescribing a kind of term, or a kind of effect that a term has, the Minister must take into consideration:
- (a) the detriment that a term of that kind would cause to consumers; and
 - (b) the impact on business generally of prescribing that kind of term or effect; and
 - (c) the public interest.

26 Terms that define main subject matter of consumer contracts etc. are unaffected

- (1) Section 23 does not apply to a term of a consumer contract to the extent, but only to the extent, that the term:
- (a) defines the main subject matter of the contract; or
 - (b) sets the upfront price payable under the contract; or
 - (c) is a term required, or expressly permitted, by a law of the Commonwealth, a State or a Territory.
- (2) The *upfront price* payable under a consumer contract is the consideration that:
- (a) is provided, or is to be provided, for the supply, sale or grant under the contract; and
 - (b) is disclosed at or before the time the contract is entered into; but does not include any other consideration that is contingent on the occurrence or non-occurrence of a particular event.

27 Standard form contracts

- (1) If a party to a proceeding alleges that a contract is a standard form contract, it is presumed to be a standard form contract unless another party to the proceeding proves otherwise.
- (2) In determining whether a contract is a standard form contract, a court may take into account such matters as it thinks relevant, but must take into account the following:
 - (a) whether one of the parties has all or most of the bargaining power relating to the transaction;
 - (b) whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;
 - (c) whether another party was, in effect, required either to accept or reject the terms of the contract (other than the terms referred to in section 26(1)) in the form in which they were presented;
 - (d) whether another party was given an effective opportunity to negotiate the terms of the contract that were not the terms referred to in section 26(1);
 - (e) whether the terms of the contract (other than the terms referred to in section 26(1)) take into account the specific characteristics of another party or the particular transaction;
 - (f) any other matter prescribed by the regulations.

28 Contracts to which this Part does not apply

- (1) This Part does not apply to:
 - (a) a contract of marine salvage or towage; or
 - (b) a charterparty of a ship; or
 - (c) a contract for the carriage of goods by ship.
 - (2) Without limiting subsection (1)(c), the reference in that subsection to a contract for the carriage of goods by ship includes a reference to any contract covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the *Carriage of Goods by Sea Act 1991*.
 - (3) This Part does not apply to a contract that is the constitution (within the meaning of section 9 of the *Corporations Act 2001*) of a company, managed investment scheme or other kind of body.
-

Chapter 3—Specific protections

Part 3-1—Unfair practices

Division 1—False or misleading representations etc.

29 False or misleading representations about goods or services

- (1) A person must 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) make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
 - (b) make a false or misleading representation that services are of a particular standard, quality, value or grade; or
 - (c) make a false or misleading representation that goods are new; or
 - (d) make a false or misleading representation that a particular person has agreed to acquire goods or services; or
 - (e) make a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or
 - (f) make a false or misleading representation concerning:
 - (i) a testimonial by any person; or
 - (ii) a representation that purports to be such a testimonial; relating to goods or services; or
 - (g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or
 - (h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
 - (i) make a false or misleading representation with respect to the price of goods or services; or

- (j) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
- (k) make a false or misleading representation concerning the place of origin of goods; or
- (l) make a false or misleading representation concerning the need for any goods or services; or
- (m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or
- (n) make a false or misleading representation concerning a requirement to pay for a contractual right that:
 - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
 - (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Note 1: A pecuniary penalty may be imposed for a contravention of this subsection.

Note 2: For rules relating to representations as to the country of origin of goods, see Part 5-3.

- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary.
- (3) To avoid doubt, subsection (2) does not:
 - (a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or
 - (b) have the effect of placing on any person an onus of proving that the representation is not misleading.

30 False or misleading representations about sale etc. of land

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

- (a) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
- (b) make a false or misleading representation concerning the nature of the interest in the land; or
- (c) make a false or misleading representation concerning the price payable for the land; or
- (d) make a false or misleading representation concerning the location of the land; or
- (e) make a false or misleading representation concerning the characteristics of the land; or
- (f) make a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or
- (g) make a false or misleading representation concerning the existence or availability of facilities associated with the land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

31 Misleading conduct relating to employment

A person must 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:

- (a) the availability, nature, terms or conditions of the employment; or
- (b) any other matter relating to the employment.

Note: A pecuniary penalty may be imposed for a contravention of this section.

32 Offering rebates, gifts, prizes etc.

- (1) A person must not, in trade or commerce, offer any rebate, gift, prize or other free item with the intention of not providing it, or of not providing it as offered, in connection with:
 - (a) the supply or possible supply of goods or services; or

- (b) the promotion by any means of the supply or use of goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the promotion by any means of the sale or grant of an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If a person offers any rebate, gift, prize or other free item in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the promotion by any means of the supply or use of goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the promotion by any means of the sale or grant of an interest in land;

the person must, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, provide the rebate, gift, prize or other free item in accordance with the offer.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) Subsection (2) does not apply if:

- (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.

- (4) Subsection (2) does not apply to an offer that the person makes to another person if:

- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and
- (b) the other person agrees to receive the different rebate, gift, prize or other free item.

- (5) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

33 Misleading conduct as to the nature etc. of goods

A person must 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.

Note: A pecuniary penalty may be imposed for a contravention of this section.

34 Misleading conduct as to the nature etc. of services

A person must 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.

Note: A pecuniary penalty may be imposed for a contravention of this section.

35 Bait advertising

- (1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:
- (a) there are reasonable grounds 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:
 - (i) the nature of the market in which the person carries on business; and
 - (ii) the nature of the advertisement; and
 - (b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:

- (a) the nature of the market in which the person carries on business; and
- (b) the nature of the advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

36 Wrongly accepting payment

- (1) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends not to supply the goods or services.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance:

- (a) there are reasonable grounds for believing that the person will not be able to supply the goods or services:
 - (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
 - (ii) if no period is specified at or before that time—within a reasonable time; and
- (b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) A person who, in trade or commerce, accepts payment or other consideration for goods or services must supply all the goods or services:

- (a) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

- (b) if no period is specified at or before that time—within a reasonable time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (5) Subsection (4) does not apply if:
 - (a) the person's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or omission of another person, or to some other cause beyond the person's control; and
 - (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- (6) Subsection (4) does not apply if:
 - (a) the person offers to supply different goods or services as a replacement to the person (the *customer*) to whom the original supply was to be made; and
 - (b) the customer agrees to receive the different goods or services.
- (7) Subsections (1), (2), (3) and (4) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

37 Misleading representations about certain business activities

- (1) A person must not, in trade or commerce, make a representation that:
 - (a) is false or misleading in a material particular; and
 - (b) concerns the profitability, 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 a person's place of residence.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, make a representation that:
 - (a) is false or misleading in a material particular; and
 - (b) concerns the profitability, risk or any other material aspect of any business activity:

- (i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and
- (ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

38 Application of provisions of this Division to information providers

- (1) Sections 29, 30, 33, 34 and 37 do not apply to a publication of matter by an information provider if:
 - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
 - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
 - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
 - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or
 - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies

goods or services of the same kind as the publicised goods or services.

- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the *publicised interests in land*), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
 - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
 - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

Division 2—Unsolicited supplies

39 Unsolicited cards etc.

- (1) A person must not send a credit card or a debit card, or an article that may be used as a credit card and a debit card, to another person except:
- (a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or
 - (b) in renewal or replacement of, or in substitution for:
 - (i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a liability, to the person who issued the card previously so sent, in respect of the use of that card; or
 - (ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply unless the card or article is sent by or on behalf of the person who issued it.
- (3) A person must not take any action that enables another person who has a credit card to use the card as a debit card, except in accordance with the other person's written request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) A person must not take any action that enables another person who has a debit card to use the card as a credit card, except in accordance with the other person's written request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (5) A **credit card** is an article that is one or more of the following:
- (a) an article of a kind commonly known as a credit card;

- (b) a similar article intended for use in obtaining cash, goods or services on credit;
- (c) an article of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit;

and includes an article that may be used as an article referred to in paragraph (a), (b) or (c).

(6) A *debit card* is:

- (a) an article intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; or
- (b) an article that may be used as an article referred to in paragraph (a).

40 Assertion of right to payment for unsolicited goods or services

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

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in trade or commerce, send to another person an invoice or other document that:

- (a) states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services; and
- (b) does not contain a warning statement that complies with the requirements set out in the regulations;

unless the person has reasonable cause to believe that there is a right to the payment or charge.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person had reasonable cause to believe that there was a right to the payment or charge.

41 Liability etc. of recipient for unsolicited goods

- (1) If a person, in trade or commerce, supplies unsolicited goods to another person, the other person:
- (a) is not liable to make any payment for the goods; and
 - (b) is not liable for loss of or damage to the goods, other than loss or damage resulting from the other person doing a wilful and unlawful act in relation to the goods during the recovery period.
- (2) If a person sends, in trade or commerce, unsolicited goods to another person:
- (a) neither the sender nor any person claiming under the sender is entitled, after the end of the recovery period, to take action for the recovery of the goods from the other person; and
 - (b) at the end of the recovery period, the goods become, by force of this section, the property of the other person freed and discharged from all liens and charges of any description.
- (3) However, 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 recovery period, 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 the recovery 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 him or her.
- (4) The **recovery period** is whichever of the following periods ends first:
- (a) the period of 3 months starting on the day after the day on which the person received the goods;
 - (b) if the person who receives the unsolicited goods gives notice with respect to the goods to the supplier or sender in

accordance with subsection (5)—the period of one month starting on the day after the day on which the notice is given.

- (5) A notice under subsection (4)(b):
- (a) must be in writing; and
 - (b) must state the name and address of the person who received the goods; and
 - (c) must state the address at which possession may be taken of the goods, if it is not the address of the person; and
 - (d) must contain a statement to the effect that the goods are unsolicited goods.

42 Liability of recipient for unsolicited services

If a person, in trade or commerce, supplies unsolicited services to another person, the other person:

- (a) is not liable to make any payment for the services; and
- (b) is not liable for loss or damage as a result of the supply of the services.

43 Assertion of right to payment for unauthorised entries or advertisements

- (1) A person must not assert a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to:
- (a) the other person; or
 - (b) the other person's profession, business, trade or occupation; unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not send to another person an invoice or other document that:
- (a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to:
 - (i) the other person; or

(ii) the other person's profession, business, trade or occupation; and

(b) does not contain a warning statement that complies with the requirements set out in the regulations;

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is:
- (a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations; or
 - (b) a body corporate related to such a publisher; or
 - (c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or
 - (d) a person specified in the regulations.
- (4) A person:
- (a) is not liable to make any payment to another person; and
 - (b) is entitled to recover by action in a court against another person any payment made by the person to the other person; in full or part satisfaction of a charge for placing, in a publication, an entry or advertisement, unless the person authorised the placing of the entry or advertisement.
- (5) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless:
- (a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her; and
 - (b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and
 - (c) the document specifies:
 - (i) the name and address of the person publishing the entry or advertisement; and

- (ii) particulars of the entry or advertisement; and
 - (iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.
- (6) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person knew or had reasonable cause to believe that the person against whom a right to payment was asserted had authorised the placing of the entry or advertisement.

Division 3—Pyramid schemes

44 Participation in pyramid schemes

- (1) A person must not participate in a pyramid scheme.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not induce, or attempt to induce, another person to participate in a pyramid scheme.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) To *participate* in a pyramid scheme is:

- (a) to establish or promote the scheme (whether alone or together with another person); or
- (b) to take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or who otherwise takes part in the scheme).

45 Meaning of *pyramid scheme*

- (1) A *pyramid scheme* is a scheme with both of the following characteristics:

- (a) to take part in the scheme, some or all new participants must provide, to another participant or participants in the scheme, either of the following (a *participation payment*):
 - (i) a financial or non-financial benefit to, or for the benefit of, the other participant or participants;
 - (ii) a financial or non-financial benefit partly to, or for the benefit of, the other participant or participants and partly to, or for the benefit of, other persons;
- (b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled, in relation to the introduction to the scheme of further new participants, to be provided with either of the following (a *recruitment payment*):

- (i) a financial or non-financial benefit to, or for the benefit of, new participants;
 - (ii) a financial or non-financial benefit partly to, or for the benefit of, new participants and partly to, or for the benefit of, other persons.
- (2) A *new participant* includes a person who has applied, or been invited, to participate in the scheme.
- (3) A scheme may be a pyramid scheme:
 - (a) no matter who holds out to new participants the prospect of entitlement to recruitment payments; and
 - (b) no matter who is to make recruitment payments to new participants; and
 - (c) no matter who is to make introductions to the scheme of further new participants.
- (4) A scheme may be a pyramid scheme even if it has any or all of the following characteristics:
 - (a) the participation payments may (or must) be made after the new participants begin to take part in the scheme;
 - (b) making a participation payment is not the only requirement for taking part in the scheme;
 - (c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;
 - (d) arrangements for the scheme are not recorded in writing (whether entirely or partly);
 - (e) the scheme involves the marketing of goods or services (or both).

46 Marketing schemes as pyramid schemes

- (1) To decide, for the purpose of this Schedule, whether a scheme that involves the marketing of goods or services (or both) is a pyramid scheme, a court must have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:
 - (a) whether the participation payments bear a reasonable relationship to the value of the goods or services that

participants are entitled to be supplied with under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);

- (b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods or services by comparison with the emphasis given to their entitlement to recruitment payments.
- (2) Subsection (1) does not limit the matters to which the court may have regard in working out whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

Division 4—Pricing

47 Multiple pricing

- (1) A person must not, in trade or commerce, supply goods if:
- (a) the goods have more than one displayed price; and
 - (b) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A *displayed price* for goods is a price for the goods, or any representation that may reasonably be inferred to be a representation of a price for the goods:
- (a) that is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any covering, label, reel or thing used in connection with the goods; or
 - (b) that is used in connection with the goods or anything on which the goods are mounted for display or exposed for supply; or
 - (c) that is determined on the basis of anything encoded on or in relation to the goods; or
 - (d) that is published in relation to the goods in a catalogue available to the public if:
 - (i) a time is specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed; or
 - (ii) in any other case—the catalogue may reasonably be regarded as not out-of-date; or
 - (e) that is in any other way represented in a manner from which it may reasonably be inferred that the price or representation is applicable to the goods;
- and includes such a price or representation that is partly obscured by another such price or representation that is written, stamped or located partly over that price or representation.

- (3) If:
- (a) a price or representation is included in a catalogue; and
-

- (b) the catalogue is expressed to apply only to goods supplied at a specified location, or in a specified region;
the price or representation is taken, for the purposes of subsection (2)(d), not to have been made in relation to supply of the goods at a different location, or in a different region, as the case may be.
- (4) Despite subsection (2), a price or representation is not a displayed price for goods if:
- (a) the price or representation is wholly obscured by another such price or representation that is written, stamped or located wholly over that price or representation; or
 - (b) the price or representation:
 - (i) is expressed as a price per unit of mass, volume, length or other unit of measure; and
 - (ii) is presented as an alternative means of expressing the price for supply of the goods that is a displayed price for the goods; or
 - (c) the price or representation is expressed as an amount in a currency other than Australian currency; or
 - (d) the price or representation is expressed in a way that is unlikely to be interpreted as an amount of Australian currency.
- (5) Despite subsection (2), a displayed price for goods that is a displayed price because it has been published in a catalogue or advertisement ceases to be a displayed price for the goods if:
- (a) the displayed price is retracted; and
 - (b) the retraction is published in a manner that has at least a similar circulation or audience as the catalogue or advertisement.

48 Single price to be specified in certain circumstances

- (1) A person must not, in trade or commerce, in connection with:
- (a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or
 - (b) the promotion by any means of the supply to another person, or of the use by another person, of goods or services of a kind

ordinarily acquired for personal, domestic or household use or consumption;

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, in a prominent way and as a single figure, the single price for the goods or services.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the other person.
- (3) However, if:
- (a) the person does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the other person; and
 - (b) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person;

the person must not make the representation referred to in subsection (1) unless the person also specifies that minimum amount.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) Subsection (1) does not apply if the representation is made exclusively to a body corporate.
- (5) For the purposes of subsection (1), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.
- (6) Subsection (5) does not apply in relation to services to be supplied under a contract if:
- (a) the contract provides for the supply of the services for the term of the contract; and
 - (b) the contract provides for periodic payments for the services to be made during the term of the contract; and

- (c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.
- (7) The *single price* is the minimum quantifiable consideration for the supply of the goods or services at the time of the representation, including each of the following amounts (if any) that is quantifiable at that time:
- (a) a charge of any description payable to the person making the representation by another person (other than a charge that is payable at the option of the other person);
 - (b) the amount which reflects any tax, duty, fee, levy or charge imposed on the person making the representation in relation to the supply;
 - (c) any amount paid or payable by the person making the representation in relation to the supply with respect to any tax, duty, fee, levy or charge if:
 - (i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and
 - (ii) the tax, duty, fee, levy or charge would have otherwise been payable by another person in relation to the supply.

Example 1: A person advertises lounge suites for sale. Persons have the option of paying for fabric protection. The fabric protection charge does not form part of the single price because of the exception in paragraph (a).

Example 2: The GST may be an example of an amount covered by paragraph (b).

Example 3: The passenger movement charge imposed under the *Passenger Movement Charge Act 1978* may be an example of an amount covered by paragraph (c). Under an arrangement under section 10 of the *Passenger Movement Charge Collection Act 1978*, airlines may pay an amount equal to the charge that would otherwise be payable by passengers departing Australia.

Division 5—Other unfair practices

49 Referral selling

A person must 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:

- (a) giving the person the names of prospective customers; or
- (b) 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.

Note: A pecuniary penalty may be imposed for a contravention of this section.

50 Harassment and coercion

- (1) A person must not use physical force, or undue harassment or coercion, in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the payment for goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the payment for an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsections (1)(c) and (d) do not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

Part 3-2—Consumer transactions

Division 1—Consumer guarantees

Subdivision A—Guarantees relating to the supply of goods

51 Guarantee as to title

- (1) If a person (the *supplier*) supplies goods to a consumer, there is a guarantee that the supplier will have a right to dispose of the property in the goods when that property is to pass to the consumer.
- (2) Subsection (1) does not apply to a supply (a *supply of limited title*) if an intention that the supplier of the goods should transfer only such title as the supplier, or another person, may have:
 - (a) appears from the contract for the supply; or
 - (b) is to be inferred from the circumstances of that contract.
- (3) This section does not apply if the supply is a supply by way of hire or lease.

52 Guarantee as to undisturbed possession

- (1) If:
 - (a) a person (the *supplier*) supplies goods to a consumer; and
 - (b) the supply is not a supply of limited title;there is a guarantee that the consumer has the right to undisturbed possession of the goods.
- (2) Subsection (1) does not apply to the extent that the consumer's undisturbed possession of the goods may be lawfully disturbed by a person who is entitled to the benefit of any security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply.
- (3) If:
 - (a) a person (the *supplier*) supplies goods to a consumer; and
 - (b) the supply is a supply of limited title;

there is a guarantee that the following persons will not disturb the consumer's possession of the goods:

- (c) the supplier;
 - (d) if the parties to the contract for the supply intend that the supplier should transfer only such title as another person may have—that other person;
 - (e) anyone claiming through or under the supplier or that other person (otherwise than under a security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply).
- (4) This section applies to a supply by way of hire or lease only for the period of the hire or lease.

53 Guarantee as to undisclosed securities etc.

- (1) If:
- (a) a person (the *supplier*) supplies goods to a consumer; and
 - (b) the supply is not a supply of limited title;
- there is a guarantee that:
- (c) the goods are free from any security, charge or encumbrance:
 - (i) that was not disclosed to the consumer, in writing, before the consumer agreed to the supply; or
 - (ii) that was not created by or with the express consent of the consumer; and
 - (d) the goods will remain free from such a security, charge or encumbrance until the time when the property in the goods passes to the consumer.
- (2) A supplier does not fail to comply with the guarantee only because of the existence of a floating charge over the supplier's assets unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

Note: Section 339 of the *Personal Property Securities Act 2009* affects the meaning of the references in this subsection to a floating charge and a fixed charge.

- (3) If:
- (a) a person (the *supplier*) supplies goods to a consumer; and
 - (b) the supply is a supply of limited title;

there is a guarantee that all securities, charges or encumbrances known to the supplier, and not known to the consumer, were disclosed to the consumer before the consumer agreed to the supply.

- (4) This section does not apply if the supply is a supply by way of hire or lease.

54 Guarantee as to acceptable quality

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
 - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the goods are of acceptable quality.
- (2) Goods are of *acceptable quality* if they are as:
- (a) fit for all the purposes for which goods of that kind are commonly supplied; and
 - (b) acceptable in appearance and finish; and
 - (c) free from defects; and
 - (d) safe; and
 - (e) durable;
- as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).
- (3) The matters for the purposes of subsection (2) are:
- (a) the nature of the goods; and
 - (b) the price of the goods (if relevant); and
 - (c) any statements made about the goods on any packaging or label on the goods; and
 - (d) any representation made about the goods by the supplier or manufacturer of the goods; and
 - (e) any other relevant circumstances relating to the supply of the goods.
- (4) If:
- (a) goods supplied to a consumer are not of acceptable quality;
- and
-

- (b) the only reason or reasons why they are not of acceptable quality were specifically drawn to the consumer's attention before the consumer agreed to the supply;
the goods are taken to be of acceptable quality.
- (5) If:
 - (a) goods are displayed for sale or hire; and
 - (b) the goods would not be of acceptable quality if they were supplied to a consumer;the reason or reasons why they are not of acceptable quality are taken, for the purposes of subsection (4), to have been specifically drawn to a consumer's attention if those reasons were disclosed on a written notice that was displayed with the goods and that was transparent.
- (6) Goods do not fail to be of acceptable quality if:
 - (a) the consumer to whom they are supplied causes them to become of unacceptable quality, or fails to take reasonable steps to prevent them from becoming of unacceptable quality; and
 - (b) they are damaged by abnormal use.
- (7) Goods do not fail to be of acceptable quality if:
 - (a) the consumer acquiring the goods examines them before the consumer agrees to the supply of the goods; and
 - (b) the examination ought reasonably to have revealed that the goods were not of acceptable quality.

55 Guarantee as to fitness for any disclosed purpose etc.

- (1) If:
 - (a) a person (the *supplier*) supplies, in trade or commerce, goods to a consumer; and
 - (b) the supply does not occur by way of sale by auction;there is a guarantee that the goods are reasonably fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit.
- (2) A *disclosed purpose* is a particular purpose (whether or not that purpose is a purpose for which the goods are commonly supplied) for which the goods are being acquired by the consumer and that:

- (a) the consumer makes known, expressly or by implication, to:
 - (i) the supplier; or
 - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made; or
 - (b) the consumer makes known to the manufacturer of the goods either directly or through the supplier or the person referred to in paragraph (a)(ii).
- (3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier, the person referred to in subsection (2)(a)(ii) or the manufacturer, as the case may be.

56 Guarantee relating to the supply of goods by description

- (1) If:
- (a) a person supplies, in trade or commerce, goods by description to a consumer; and
 - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the goods correspond with the description.
- (2) A supply of goods is not prevented from being a supply by description only because, having been exposed for sale or hire, they are selected by the consumer.
- (3) If goods are supplied by description as well as by reference to a sample or demonstration model, the guarantees in this section and in section 57 both apply.

57 Guarantees relating to the supply of goods by sample or demonstration model

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer by reference to a sample or demonstration model; and
 - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that:
- (c) the goods correspond with the sample or demonstration model in quality, state or condition; and

- (d) if the goods are supplied by reference to a sample—the consumer will have a reasonable opportunity to compare the goods with the sample; and
 - (e) the goods are free from any defect that:
 - (i) would not be apparent on reasonable examination of the sample or demonstration model; and
 - (ii) would cause the goods not to be of acceptable quality.
- (2) If goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in section 56 and in this section both apply.

58 Guarantee as to repairs and spare parts

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
 - (b) the supply does not occur by way of sale by auction; there is a guarantee that the manufacturer of the goods will take reasonable action to ensure that facilities for the repair of the goods, and parts for the goods, are reasonably available for a reasonable period after the goods are supplied.
- (2) This section does not apply if the manufacturer took reasonable action to ensure that the consumer would be given written notice, at or before the time when the consumer agrees to the supply of the goods, that:
- (a) facilities for the repair of the goods would not be available or would not be available after a specified period; or
 - (b) parts for the goods would not be available or would not be available after a specified period.

59 Guarantee as to express warranties

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
 - (b) the supply does not occur by way of sale by auction; there is a guarantee that the manufacturer of the goods will comply with any express warranty given or made by the manufacturer in relation to the goods.

- (2) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
 - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the supplier will comply with any express warranty given or made by the supplier in relation to the goods.

Subdivision B—Guarantees relating to the supply of services

60 Guarantee as to due care and skill

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

61 Guarantees as to fitness for a particular purpose etc.

- (1) If:
- (a) a person (the *supplier*) supplies, in trade or commerce, services to a consumer; and
 - (b) the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the services are being acquired by the consumer;
- there is a guarantee that the services, and any product resulting from the services, will be reasonably fit for that purpose.
- (2) If:
- (a) a person (the *supplier*) supplies, in trade or commerce, services to a consumer; and
 - (b) the consumer makes known, expressly or by implication, to:
 - (i) the supplier; or
 - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the services were conducted or made;the result that the consumer wishes the services to achieve;
- there is a guarantee that the services, and any product resulting from the services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve that result.

- (3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier.
- (4) This section does not apply to a supply of services of a professional nature by a qualified architect or engineer.

62 Guarantee as to reasonable time for supply

If:

- (a) a person (the *supplier*) supplies, in trade or commerce, services to a consumer; and
- (b) the time within which the services are to be supplied:
 - (i) is not fixed by the contract for the supply of the services; or
 - (ii) is not to be determined in a manner agreed to by the consumer and supplier;

there is a guarantee that the services will be supplied within a reasonable time.

63 Services to which this Subdivision does not apply

This Subdivision does not apply to services that are, or are to be, supplied under:

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance.

Subdivision C—Guarantees not to be excluded etc. by contract

64 Guarantees not to be excluded etc. by contract

- (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:
 - (a) the application of all or any of the provisions of this Division;or

- (b) the exercise of a right conferred by such a provision; or
 - (c) any liability of a person for a failure to comply with a guarantee that applies under this Division to a supply of goods or services.
- (2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with the provision.

64A Limitation of liability for failures to comply with guarantees

- (1) A term of a contract for the supply by a person of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee (other than a guarantee under section 51, 52 or 53) to one or more of the following:
- (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (d) the payment of the cost of having the goods repaired.
- (2) A term of a contract for the supply by a person of services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee to:
- (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.
- (3) This section does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the person who supplied the goods or services to rely on that term of the contract.
- (4) In determining for the purposes of subsection (3) whether or not reliance on a term of a contract is fair or reasonable, a court is to have regard to all the circumstances of the case, and in particular to the following matters:

- (a) the strength of the bargaining positions of the person who supplied the goods or services and the person to whom the goods or services were supplied (the *buyer*) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;
- (b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;
- (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
- (d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

Subdivision D—Miscellaneous

65 Application of this Division to supplies of gas, electricity and telecommunications

- (1) This Division does not apply to a supply if the supply:
 - (a) is a supply of a kind specified in the regulations; and
 - (b) is a supply of gas, electricity or a telecommunications service.
- (2) A *telecommunications service* is a service for carrying communications by means of guided or unguided electromagnetic energy or both.

66 Display notices

- (1) The Commonwealth Minister may determine, in writing, that persons (the *suppliers*) who make supplies, or supplies of a specified kind, to which guarantees apply under this Division are required to display, in accordance with the determination, a notice that meets the requirements of the determination.

- (2) A supplier who makes a supply to a consumer to which a guarantee applies under this Division, and to which such a determination relates, must ensure that a notice that meets those requirements is, in accordance with the determination:
- (a) if the consumer takes delivery of the goods or services at the supplier's premises—displayed at those premises; or
 - (b) otherwise—drawn to the consumer's attention before the consumer agrees to the supply of the goods.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (3) Without limiting subsection (1), a determination under that subsection may do all or any of the following:
- (a) require the notice to include specified information about the application of all or any of the provisions of this Division and Part 5-4;
 - (b) specify where the notice must be displayed;
 - (c) specify how the notice must be drawn to the attention of consumers;
 - (d) specify requirements as to the form of the notice.

67 Conflict of laws

If:

- (a) the proper law of a contract for the supply of goods or services to a consumer would be the law of any part of Australia but for a term of the contract that provides otherwise; or
 - (b) a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, the following provisions for all or any of the provisions of this Division:
 - (i) the provisions of the law of a country other than Australia;
 - (ii) the provisions of the law of a State or a Territory;
- the provisions of this Division apply in relation to the supply under the contract despite that term.

68 Convention on Contracts for the International Sale of Goods

The provisions of the United Nations Convention on Contracts for the International Sale of Goods, done at Vienna on 11 April 1980, as amended and in force for Australia from time to time, prevail over the provisions of this Division to the extent of any inconsistency.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 32 ([1988] ATS 32). In 2010, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Division 2—Unsolicited consumer agreements

Subdivision A—Introduction

69 Meaning of *unsolicited consumer agreement*

- (1) An agreement is an *unsolicited consumer agreement* if:
- (a) it is for the supply, in trade or commerce, of goods or services to a consumer; and
 - (b) it is made as a result of negotiations between a dealer and the consumer:
 - (i) in each other's presence at a place other than the business or trade premises of the supplier of the goods or services; or
 - (ii) by telephone;whether or not they are the only negotiations that precede the making of the agreement; and
 - (c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply); and
 - (d) the total price paid or payable by the consumer under the agreement:
 - (i) is not ascertainable at the time the agreement is made; or
 - (ii) if it is ascertainable at that time—is more than \$100 or such other amount prescribed by the regulations.
- (1A) The consumer is not taken, for the purposes of subsection (1)(c), to have invited the dealer to come to that place, or to make a telephone call, merely because the consumer has:
- (a) given his or her name or contact details other than for the predominant purpose of entering into negotiations relating to the supply of the goods or services referred to in subsection (1)(c); or
 - (b) contacted the dealer in connection with an unsuccessful attempt by the dealer to contact the consumer.

- (2) An invitation merely to quote a price for a supply is not taken, for the purposes of subsection (1)(c), to be an invitation to enter into negotiations for a supply.
- (3) An agreement is also an *unsolicited consumer agreement* if it is an agreement of a kind that the regulations provide are unsolicited consumer agreements.
- (4) However, despite subsections (1) and (3), an agreement is not an *unsolicited consumer agreement* if it is an agreement of a kind that the regulations provide are not unsolicited consumer agreements.

70 Presumption that agreements are unsolicited consumer agreements

- (1) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal proceeding), an agreement is presumed to be an unsolicited consumer agreement if:
 - (a) a party to the proceeding alleges that the agreement is an unsolicited consumer agreement; and
 - (b) no other party to the proceeding proves that the agreement is not an unsolicited consumer agreement.
- (2) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal proceeding), it is presumed that a proposed agreement would be an unsolicited consumer agreement if it were made if:
 - (a) a party to the proceeding alleges that the proposed agreement would be an unsolicited consumer agreement if it were made; and
 - (b) no other party to the proceeding proves that the proposed agreement would not be an unsolicited consumer agreement if it were made.

71 Meaning of *dealer*

A *dealer* is a person who, in trade or commerce:

- (a) enters into negotiations with a consumer with a view to making an agreement for the supply of goods or services to the consumer; or

- (b) calls on, or telephones, a consumer 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.

72 Meaning of *negotiation*

A *negotiation*, in relation to an agreement or a proposed agreement, includes any discussion or dealing directed towards the making of the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing).

Subdivision B—Negotiating unsolicited consumer agreements

73 Permitted hours for negotiating an unsolicited consumer agreement

- (1) A dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:
 - (a) at any time on a Sunday or a public holiday; or
 - (b) before 9 am on any other day; or
 - (c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply if the dealer calls on the person in accordance with consent that:
 - (a) was given by the person to the dealer or a person acting on the dealer's behalf; and
 - (b) was not given in the presence of the dealer or a person acting on the dealer's behalf.

Note: The *Do Not Call Register Act 2006* may apply to a telephone call made for the purpose of negotiating an unsolicited consumer agreement.

74 Disclosing purpose and identity

A dealer who calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must, as soon as practicable and in any event before starting to negotiate:

- (a) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and
- (b) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and
- (c) provide to the person such information relating to the dealer's identity as is prescribed by the regulations.

Note: A pecuniary penalty may be imposed for a contravention of this section.

75 Ceasing to negotiate on request

- (1) A dealer who calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must leave the premises immediately on the request of:

- (a) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or
- (b) the person (the *prospective consumer*) with whom the negotiations are being conducted.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If the prospective consumer makes such a request, the dealer must not contact the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) for at least 30 days after the prospective consumer makes the request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate:

- (a) subsection (2) applies to that supplier, and any person acting on behalf of that supplier, in the same way that it applies to the dealer; but

- (b) subsection (2) does not apply to the dealer contacting the prospective customer in relation to a supply by another supplier.

76 Informing person of termination period etc.

A dealer must not make an unsolicited consumer agreement with a person unless:

- (a) before the agreement is made, the person is given information as to the following:
 - (i) the person's right to terminate the agreement during the termination period;
 - (ii) the way in which the person may exercise that right;
 - (iii) such other matters as are prescribed by the regulations; and
- (b) if the agreement is made in the presence of both the dealer and the person—the person is given the information in writing; and
- (c) if the agreement is made by telephone—the person is given the information by telephone, and is subsequently given the information in writing; and
- (d) the form in which, and the way in which, the person is given the information complies with any other requirements prescribed by the regulations.

Note: A pecuniary penalty may be imposed for a contravention of this section.

77 Liability of suppliers for contraventions by dealers

If:

- (a) a dealer contravenes a provision of this Subdivision in relation to an unsolicited consumer agreement; and
- (b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates;

the supplier of the goods or services is also taken to have contravened that provision in relation to the agreement.

Subdivision C—Requirements for unsolicited consumer agreements etc.

78 Requirement to give document to the consumer

- (1) If an unsolicited consumer agreement was not negotiated by telephone, the dealer who negotiated the agreement must give a copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If an unsolicited consumer agreement was negotiated by telephone, the dealer who negotiated the agreement must, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement:
- (a) personally; or
 - (b) by post; or
 - (c) with the consumer's consent—by electronic communication; a document (the **agreement document**) evidencing the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) An unsolicited consumer agreement was **negotiated by telephone** if the negotiations that resulted in the making of the agreement took place by telephone (whether or not other negotiations preceded the making of the agreement).

79 Requirements for all unsolicited consumer agreements etc.

The supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with the following requirements:

- (a) it must set out in full all the terms of the agreement, including:
 - (i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and

- (ii) any postal or delivery charges to be paid by the consumer;
- (b) its front page must include a notice that:
 - (i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and
 - (ii) conspicuously and prominently sets out any other information prescribed by the regulations; and
 - (iii) complies with any other requirements prescribed by the regulations;
- (c) it must be accompanied by a notice that:
 - (i) may be used by the consumer to terminate the agreement; and
 - (ii) complies with any requirements prescribed by the regulations;
- (d) it must conspicuously and prominently set out in full:
 - (i) the supplier's name; and
 - (ii) if the supplier has an ABN—the supplier's ABN; and
 - (iii) if the supplier does not have an ABN but has an ACN—the supplier's ACN; and
 - (iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and
 - (v) if the supplier has an email address—the supplier's email address; and
 - (vi) if the supplier has a fax number—the supplier's fax number;
- (e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);
- (f) it must be transparent.

Note: A pecuniary penalty may be imposed for a contravention of this section.

80 Additional requirements for unsolicited consumer agreements not negotiated by telephone

The supplier under an unsolicited consumer agreement that was not negotiated by telephone must ensure that, in addition to complying

with the requirements of section 79, the agreement complies with the following requirements:

- (a) the agreement must be signed by the consumer under the agreement;
- (b) if the agreement is signed by a person on the supplier's behalf—the agreement must state that the person is acting on the supplier's behalf, and must set out in full:
 - (i) the person's name; and
 - (ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential address; and
 - (iii) if the person has an email address—the person's email address.

Note: A pecuniary penalty may be imposed for a contravention of this section.

81 Requirements for amendments of unsolicited consumer agreements

The supplier under an unsolicited consumer agreement must ensure that any amendments to the agreement are signed by both parties to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this section.

Subdivision D—Terminating unsolicited consumer agreements

82 Terminating an unsolicited consumer agreement during the termination period

- (1) The consumer under an unsolicited consumer agreement may, during the period provided under subsection (3), terminate the agreement by indicating, in an oral or written notice to the supplier under the agreement, an intention to terminate the agreement.
- (2) A right of termination under this section may be exercised:
 - (a) despite affirmation of the agreement by the consumer; and
 - (b) even though the agreement has been fully executed.
- (3) The period during which the consumer may terminate the agreement is whichever of the following periods is the longest:

- (a) if the agreement was not negotiated by telephone—the period of 10 business days starting at the start of the first business day after the day on which the agreement was made;
 - (b) if the agreement was negotiated by telephone—the period of 10 business days starting at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement;
 - (c) if one or more of the following were contravened in relation to the agreement:
 - (i) section 73 (permitted hours for negotiating an unsolicited consumer agreement);
 - (ii) section 74 (disclosing purpose and identity);
 - (iii) section 75 (ceasing to negotiate on request);the period of 3 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;
 - (d) if one or more of the following were contravened in relation to the agreement:
 - (i) section 76 (informing consumer of termination period);
 - (ii) a provision of Subdivision C (requirements for unsolicited consumer agreements);
 - (iii) section 86 (prohibition on supplies for 10 business days);the period of 6 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;
 - (e) such other period as the agreement provides.
- (4) If the notice under subsection (1) is written, it may be given:
- (a) by delivering it personally to the supplier; or
 - (b) by delivering it, or sending it by post, in an envelope addressed to the supplier, to the supplier's address referred to in section 79(d)(iv); or
 - (c) if the supplier has an email address—by sending it to the supplier's email address referred to in section 79(d)(v); or
 - (d) if the supplier has a fax number—by faxing it to the supplier's fax number referred to in section 79(d)(vi).

- (5) A notice under subsection (1) sent by post to a supplier is taken to have been given to the supplier at the time of posting.
- (6) There are no requirements relating to the form or content of a notice under subsection (1).

83 Effect of termination

- (1) If an unsolicited consumer agreement is terminated in accordance with section 82:
 - (a) the agreement is taken to have been rescinded by mutual consent; and
 - (b) any related contract or instrument is void.
- (2) A *related contract or instrument*, in relation to an unsolicited consumer agreement, is:
 - (a) any contract of guarantee or indemnity that is related to the agreement; or
 - (b) any instrument related to the agreement that creates a mortgage or charge in favour of the supplier under the contract or the dealer in relation to the contract (or a person nominated by the supplier or dealer); or
 - (c) any contract or instrument (other than an instrument of a kind referred to in paragraph (b)) that is collateral or related to the agreement;but does not include a tied continuing credit contract (within the meaning of section 127(2) of Schedule 1 to the *National Consumer Credit Protection Act 2009*), or a tied loan contract (within the meaning of section 127(3) of that Schedule).
- (3) The termination of an unsolicited consumer agreement has effect for the purposes of section 82 and this section even if:
 - (a) the supplier under the agreement has not received the notice of termination; or
 - (b) the goods or services supplied under the agreement have been wholly or partly consumed or used.

84 Obligations of suppliers on termination

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must, immediately upon being notified of the termination, return or

refund to the consumer under the agreement any consideration (or the value of any consideration) that the consumer gave under the agreement or a related contract or instrument.

Note: A pecuniary penalty may be imposed for a contravention of this section.

85 Obligations and rights of consumers on termination

- (1) If an unsolicited consumer agreement is terminated in accordance with section 82, the consumer under the agreement must, within a reasonable time:
 - (a) return to the supplier under the agreement any goods:
 - (i) that have been received from the supplier under the agreement; and
 - (ii) that the consumer has not already consumed; or
 - (b) notify the supplier of the place where the supplier may collect the goods.
- (2) The goods become the property of the consumer, freed and discharged from all liens and charges of any description, if:
 - (a) the consumer gives notice to the supplier under subsection (1)(b); and
 - (b) the supplier does not collect the goods within 30 days after the termination of the contract.
- (3) If:
 - (a) the agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:
 - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and
 - (b) the consumer returns the goods to the supplier, or the supplier collects the goods, under this section; and
 - (c) the consumer 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.

- (4) The compensation is recoverable in a court of competent jurisdiction.
- (5) However, the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or to circumstances beyond the consumer's control.
- (6) If:
 - (a) an unsolicited consumer agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:
 - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and
 - (b) prior to the termination, but after the end of that period, a service was supplied under the agreement;the termination does not affect any liability of the consumer under the agreement to provide consideration for the service.

86 Prohibition on supplies etc. for 10 business days

- (1) The supplier under an unsolicited consumer agreement must not:
 - (a) supply to the consumer under the agreement the goods or services to be supplied under the agreement; or
 - (b) accept any payment, or any other consideration, in connection with those goods or services; or
 - (c) require any payment, or any other consideration, in connection with those goods or services;during the period of 10 business days starting:
 - (d) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
 - (e) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
-

- (2) If the supplier supplies goods to the consumer in contravention of this section, the consumer has the same rights in relation to the goods as if the goods were unsolicited goods.

Note: Section 41 deals with unsolicited goods.

- (3) If the supplier supplies services to the consumer in contravention of this section, the consumer has the same rights in relation to the services as if the services were unsolicited services.

Note: Section 42 deals with unsolicited services.

87 Repayment of payments received after termination

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must immediately refund to the consumer under the agreement any payment:

- (a) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and
- (b) that purports to be made under the agreement or a related contract or instrument.

Note: A pecuniary penalty may be imposed for a contravention of this section.

88 Prohibition on recovering amounts after termination

- (1) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not:

- (a) bring, or assert an intention to bring, legal proceedings against the consumer; or
- (b) take, or assert an intention to take, any other action against the consumer;

in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (1A) Subsection (1) does not apply to:

- (a) bringing, or asserting an intention to bring, legal proceedings against the consumer; or

- (b) taking, or asserting an intention to take, any other action against the consumer;
to enforce a liability under section 85(3), or a liability of a kind referred to in section 85(6).
 - (2) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not, for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement:
 - (a) place the consumer's name, or cause the consumer's name to be placed, on a list of defaulters or debtors; or
 - (b) assert an intention to place the consumer's name, or cause the consumer's name to be placed, on such a list.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (3) Without limiting Division 2 of Part 5-2, an injunction granted under that Division may require a person responsible for keeping a list of defaulters or debtors on which the consumer's name has been wrongly placed to remove the name from that list.

Subdivision E—Miscellaneous

89 Certain provisions of unsolicited consumer agreements void

- (1) A provision (however described) of an unsolicited consumer agreement is void if it has the effect of, or purports to have the effect of:
 - (a) excluding, limiting, modifying or restricting a right of the consumer under the agreement to terminate the agreement under this Division; or
 - (b) otherwise excluding, limiting, modifying or restricting the effect or operation of this Division; or
 - (c) making a dispute relating to the agreement, or to a supply to which the agreement relates, justiciable by a court by which the dispute would not otherwise be justiciable.
- (2) The supplier under an unsolicited consumer agreement must ensure that the agreement does not include, or purport to include, a provision (however described) that is, or would be, void because of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) The supplier under an unsolicited consumer agreement must not attempt to enforce or rely on a provision (however described) that is void because of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

90 Waiver of rights

- (1) The consumer under an unsolicited consumer agreement is not competent to waive any right conferred by this Division.
- (2) The supplier under the unsolicited consumer agreement must not induce, or attempt to induce, the consumer to waive any right conferred by this Division.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

91 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.

- (1) This Division applies in relation to a person to whom the rights of a consumer (the *original consumer*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.
- (2) This Division applies in relation to a person to whom the rights of a supplier (the *original supplier*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

92 Application of this Division to supplies to third parties

This Division applies in relation to a contract for the supply of goods or services to a consumer (the *original consumer*) on the order of another person as if the other person were also the consumer.

93 Effect of contravening this Division

- (1) The supplier under an unsolicited consumer agreement cannot enforce the agreement against the consumer under the agreement if a provision of this Division (other than section 85) has been contravened in relation to the agreement.
- (2) This section does not prevent any action being taken under this Schedule in relation to the contravention.

94 Regulations may limit the application of this Division

This Division (other than section 73) does not apply, or provisions of this Division (other than section 73) that are specified in the regulations do not apply, to or in relation to:

- (a) circumstances of a kind specified in the regulations; or
- (b) agreements of a kind specified in the regulations; or
- (c) the conduct of businesses of a kind specified in the regulations.

95 Application of this Division to certain conduct covered by the Corporations Act

This Division does not apply in relation to conduct to which section 736, 992A or 992AA of the *Corporations Act 2001* applies.

Note: Section 736 of the *Corporations Act 2001* prohibits hawking of securities. Section 992A of that Act prohibits hawking of certain financial products. Section 992AA of that Act prohibits hawking of managed investment products.

Division 3—Lay-by agreements

96 Lay-by agreements must be in writing etc.

- (1) A supplier of consumer goods who is a party to a lay-by agreement must ensure that:
 - (a) the agreement is in writing; and
 - (b) a copy of the agreement is given to the consumer to whom the goods are, or are to be, supplied.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement is transparent.
- (3) A **lay-by agreement** is an agreement between a supplier of consumer goods and a consumer for the supply, in trade or commerce, of the consumer goods on terms (whether express or implied) which provide that:
 - (a) the goods will not be delivered to the consumer until the total price of the goods has been paid; and
 - (b) the price of the goods is to be paid by:
 - (i) 3 or more instalments; or
 - (ii) if the agreement specifies that it is a lay-by agreement—2 or more instalments.
- (4) For the purposes of subsection (3)(b), any deposit paid by the consumer for the consumer goods is taken to be an instalment.

97 Termination of lay-by agreements by consumers

- (1) A consumer who is party to a lay-by agreement may terminate the agreement at any time before the consumer goods to which the agreement relates are delivered to the consumer under the agreement.
- (2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement does not require the consumer to pay a charge (a **termination charge**) for the termination of the agreement unless:

- (a) the agreement is terminated by the consumer; and
- (b) the supplier has not breached the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A supplier of consumer goods who is a party to a lay-by agreement must ensure that, if the agreement provides that a termination charge is payable, the amount of the charge is not more than the supplier's reasonable costs in relation to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

98 Termination of lay-by agreements by suppliers

A supplier of consumer goods who is a party to a lay-by agreement must not terminate the agreement unless:

- (a) the consumer who is a party to the agreement breached a term of the agreement; or
- (b) the supplier is no longer engaged in trade or commerce; or
- (c) the consumer goods to which the agreement relates are no longer available.

Note: A pecuniary penalty may be imposed for a contravention of this section.

99 Effect of termination

- (1) If a lay-by agreement is terminated by a party to the agreement, the supplier must refund to the consumer all the amounts paid by the consumer under the agreement other than any termination charge that is payable under the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) The supplier is entitled to recover any unpaid termination charge from the consumer as a debt if the amounts paid by the consumer under the lay-by agreement are not enough to cover the charge.
- (3) If a lay-by agreement is terminated by a party to the agreement, the supplier is not entitled to damages, or to enforce any other remedy, in relation to that termination except as provided for by this section.

Division 4—Miscellaneous

100 Supplier must provide proof of transaction etc.

(1) If:

- (a) a person (the *supplier*), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price (excluding GST) of the goods or services is \$75 or more;

the supplier must give the consumer a proof of transaction as soon as practicable after the goods or services are so supplied.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If:

- (a) a person (the *supplier*), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price (excluding GST) of the goods or services is less than \$75;

the consumer may request a proof of transaction from the supplier as soon as practicable after the goods or services are so supplied.

(3) If a request is made under subsection (2), the supplier must give the proof of transaction within 7 days after the request is made.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) A ***proof of transaction*** for a supply of goods or services to a consumer is a document that:

- (a) identifies the supplier of the goods or services; and
- (b) if the supplier has an ABN—states the supplier's ABN; and
- (c) if the supplier does not have an ABN but has an ACN—states the supplier's ACN; and
- (d) states the date of the supply; and
- (e) states the goods or services supplied to the consumer; and
- (f) states the price of the goods or services.

Note: The following are examples of a proof of transaction:

- (a) a tax invoice within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*;

- (b) a cash register receipt;
 - (c) a credit card or debit card statement;
 - (d) a handwritten receipt;
 - (e) a lay-by agreement;
 - (f) a confirmation or receipt number provided for a telephone or internet transaction.
- (5) The supplier must ensure that the proof of transaction given under subsection (1) or (3) is transparent.

101 Consumer may request an itemised bill

- (1) If a person (the *supplier*), in trade or commerce, supplies services to a consumer, the consumer may request that the supplier give the consumer an itemised bill that:
- (a) specifies how the price of the services was calculated; and
 - (b) includes, if applicable, the number of hours of labour that related to the supply of the services and the hourly rate for that labour; and
 - (c) includes, if applicable, a list of the materials used to supply the services and the amount charged for those materials.
- (2) The request under subsection (1) must be made within 30 days after:
- (a) the services are supplied; or
 - (b) the consumer receives a bill or account from the supplier for the supply of the services;
- whichever occurs later.
- (3) The supplier must give the consumer the itemised bill within 7 days after the request is made.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (4) The supplier must not charge the consumer for the itemised bill.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (5) The supplier must ensure that the itemised bill is transparent.

102 Prescribed requirements for warranties against defects

- (1) The regulations may prescribe requirements relating to the form and content of warranties against defects.
- (2) A person must not, in connection with the supply, in trade or commerce, of goods or services to a consumer:
 - (a) give to the consumer a document that evidences a warranty against defects that does not comply with the requirements prescribed for the purposes of subsection (1); or
 - (b) represent directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A **warranty against defects** is a representation communicated to a consumer in connection with the 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 again or rectify the services or part of them; or
 - (c) wholly or partly recompense the consumer;if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced.

103 Repairers must comply with prescribed requirements

- (1) The regulations may prescribe requirements relating to the form and content of notices to be given relating to the repair of consumer goods.
- (2) A person (the **repairer**) must not, in trade or commerce, accept from another person goods that the other person acquired as a consumer if the repairer:
 - (a) accepts the goods for the purpose of repairing them; and
 - (b) does not give to the other person a notice that complies with the requirements prescribed for the purposes of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

Part 3-3—Safety of consumer goods and product related services

Division 1—Safety standards

104 Making safety standards for consumer goods and product related services

- (1) The Commonwealth Minister may, by written notice published on the internet, make a *safety standard* for one or both of the following:
 - (a) consumer goods of a particular kind;
 - (b) product related services of a particular kind.
- (2) A safety standard for consumer goods of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:
 - (a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of consumer goods of that kind;
 - (b) the testing of consumer goods of that kind during, or after the completion of, manufacture or processing;
 - (c) the form and content of markings, warnings or instructions to accompany consumer goods of that kind.
- (3) A safety standard for product related services of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:
 - (a) the manner in which services of that kind are supplied (including, but not limited to, the method of supply);
 - (b) the skills or qualifications of persons who supply such services;
 - (c) the materials used in supplying such services;
 - (d) the testing of such services;

- (e) the form and content of warnings, instructions or other information about such services.

105 Declaring safety standards for consumer goods and product related services

- (1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is a *safety standard* for consumer goods, or product related services, of a kind specified in the instrument:
 - (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
 - (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.
- (2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is a safety standard for:
 - (a) consumer goods of a particular kind; or
 - (b) product related services of a particular kind;if that standard or part is inconsistent with a safety standard for those goods or services that is in force and that was made under section 104(1).

106 Supplying etc. consumer goods that do not comply with safety standards

- (1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:
 - (a) a safety standard for consumer goods of that kind is in force; and
 - (b) those goods do not comply with the standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

- (5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:
- (a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and
 - (b) the Commonwealth Minister gives such an approval by written notice given to the person.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

- (7) If:

- (a) a person supplies consumer goods in contravention of this section; and
 - (b) another person suffers loss or damage:
 - (i) because of a defect in, or a dangerous characteristic of, the goods; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of the goods; or
 - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the goods; and
 - (c) the other person would not have suffered the loss or damage if the goods had complied with the safety standard;
- the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

107 Supplying etc. product related services that do not comply with safety standards

- (1) A person must not, in trade or commerce, supply product related services of particular kind if:
- (a) a safety standard for services of that kind is in force; and
 - (b) those services do not comply with the standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:

- (a) a person supplies product related services in contravention of this section; and
- (b) another person suffers loss or damage:
 - (i) because of defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied; or
 - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the services; and
- (c) the other person would not have suffered the loss or damage if the services had complied with the safety standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

108 Requirement to nominate a safety standard

If:

- (a) a safety standard for consumer goods of a particular kind is in force; and
- (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and

(c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard;

the supplier must, within the period specified in the request, give to the regulator a written notice specifying which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard.

Division 2—Bans on consumer goods and product related services

Subdivision A—Interim bans

109 Interim bans on consumer goods or product related services that will or may cause injury to any person etc.

- (1) A responsible Minister may, by written notice published on the internet, impose an *interim ban* on consumer goods of a particular kind if:
- (a) it appears to the responsible Minister that:
 - (i) consumer goods of that kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; or
 - (b) another responsible Minister has imposed, under paragraph (a), an interim ban:
 - (i) on consumer goods of the same kind; or
 - (ii) on consumer goods of a kind that includes those goods; and that ban is still in force.
- (2) A responsible Minister may, by written notice published on the internet, impose an *interim ban* on product related services of a particular kind if:
- (a) it appears to the responsible Minister that:
 - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied; or
 - (b) another responsible Minister has imposed, under paragraph (a), an interim ban:
 - (i) on product related services of the same kind; or
 - (ii) on product related services that include those services;
-

and that ban is still in force.

110 Places in which interim bans apply

- (1) An interim ban imposed by the Commonwealth Minister applies in all States and Territories.
- (2) An interim ban imposed by a responsible Minister who is Minister of a State applies in the State.
- (3) An interim ban imposed by a responsible Minister who is a Minister of a Territory applies in the Territory.

111 Ban period for interim bans

- (1) An interim ban imposed by a responsible Minister is in force during the period (the *ban period*) that:
 - (a) starts on the day (the *start day*) specified in the notice imposing the ban; and
 - (b) subject to this Subdivision, ends at the end of 60 days after the start day.
 - (2) Before the ban period for the interim ban ends, the responsible Minister may, by written notice published on the internet, extend the ban period for the ban by a period of up to 30 days.
 - (3) If:
 - (a) the ban period for the interim ban is extended under subsection (2); and
 - (b) the extended ban period for the ban has not ended; and
 - (c) the interim ban was not imposed by the Commonwealth Minister;the responsible Minister may, in writing, request the Commonwealth Minister to extend the extended ban period for the ban.
 - (4) If a request is made under subsection (3), the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.
 - (5) If:
 - (a) a request is made under subsection (3); and
-

- (b) the Commonwealth Minister has not made a decision on the request immediately before the extended ban period for the interim ban is to end;

the Commonwealth Minister is taken to have decided to extend the extended ban period for the ban by a further period of 30 days.

- (6) If:
 - (a) the ban period for the interim ban is extended under subsection (2); and
 - (b) the extended ban period for the ban has not ended; and
 - (c) the interim ban was imposed by the Commonwealth Minister;

the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

112 Interaction of multiple interim bans

- (1) If:
 - (a) an interim ban (the *original ban*) on consumer goods of a particular kind (the *banned goods*) is imposed by a responsible Minister other than the Commonwealth Minister; and
 - (b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the *Commonwealth ban*):
 - (i) on the banned goods; or
 - (ii) on consumer goods of a kind that includes the banned goods;

the original ban, to the extent that it is a ban on the banned goods, ceases to be in force immediately before the Commonwealth ban comes into force.

- (2) If:
 - (a) an interim ban (the *original ban*) on product related services of a particular kind (the *banned services*) is imposed by a responsible Minister other than the Commonwealth Minister; and
 - (b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the *Commonwealth ban*):
 - (i) on the banned services; or

- (ii) on product related services of a kind that includes the banned services;
- the original ban, to the extent that it is a ban on the banned services, ceases to be in force immediately before the Commonwealth ban comes into force.

113 Revocation of interim bans

If a responsible Minister imposes an interim ban:

- (a) the responsible Minister may, by written notice published on the internet, revoke the ban at any time; and
- (b) the ban ceases to be in force on the day specified by the responsible Minister in the notice.

Subdivision B—Permanent bans

114 Permanent bans on consumer goods or product related services

- (1) The Commonwealth Minister may, by written notice published on the internet, impose a *permanent ban* on consumer goods of a particular kind if:
 - (a) one or more interim bans on consumer goods of that kind (the *banned goods*), or on consumer goods of a kind that include the banned goods, are in force; or
 - (b) it appears to the Commonwealth Minister that:
 - (i) consumer goods of that kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.
- (2) The Commonwealth Minister may, by written notice published on the internet, impose a *permanent ban* on product related services of a particular kind if:
 - (a) one or more interim bans on product related services of that kind (the *banned services*), or on product related services of a kind that include the banned services, are in force; or
 - (b) it appears to the Commonwealth Minister that:
 - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or

- (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

115 Places in which permanent bans apply

A permanent ban applies in all States and Territories.

116 When permanent bans come into force

A permanent ban comes into force on the day specified by the Commonwealth Minister in the instrument imposing the ban.

117 Revocation of permanent bans

If the Commonwealth Minister imposes a permanent ban:

- (a) the Commonwealth Minister may, by written notice published on the internet, revoke the ban at any time; and
- (b) the ban ceases to be in force on the day specified by the Commonwealth Minister in the notice.

Subdivision C—Compliance with interim bans and permanent bans

118 Supplying etc. consumer goods covered by a ban

- (1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:
 - (a) an interim ban on consumer goods of that kind is in force in the place where the supply occurs; or
 - (b) a permanent ban on consumer goods of that kind is in force.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

- (5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:
- (a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and
 - (b) the Commonwealth Minister gives such an approval by written notice given to the person.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

- (7) If:
- (a) a person supplies consumer goods in contravention of subsection (1); and
 - (b) another person suffers loss or damage:
 - (i) because of a defect in, or a dangerous characteristic of, the goods; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of the goods;
- the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

119 Supplying etc. product related services covered by a ban

- (1) A person must not, in trade or commerce, supply product related services of a particular kind if:
-

(a) an interim ban on services of that kind is in force in the place where the supply occurs; or

(b) a permanent ban on services of that kind is in force.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) If:

(a) a person supplies product related services in contravention of subsection (1); and

(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or

(ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Subdivision D—Temporary exemption from mutual recognition principles

120 Temporary exemption under the *Trans-Tasman Mutual Recognition Act 1997*

(1) If:

(a) an interim ban on consumer goods of a particular kind is in force; or

(b) a permanent ban on consumer goods of a particular kind is in force;

the goods are taken, for the purposes of section 46 of the *Trans-Tasman Mutual Recognition Act 1997*, to be goods of a kind that are declared, in the manner provided by section 46(2) of that Act, to be exempt from the operation of that Act.

- (2) This section does not affect the application of section 46(4) of that Act in relation to such an exemption.

121 Temporary exemption under the *Mutual Recognition Act 1992*

- (1) If:
- (a) an interim ban on consumer goods of a particular kind is in force; and
 - (b) the interim ban was not imposed by the Commonwealth Minister;
- the goods are taken, for the purposes of section 15 of the *Mutual Recognition Act 1992*, to be goods of a kind that are declared, in the manner provided by section 15(1) of that Act, to be goods to which that section applies.
- (2) This section does not affect the application of section 15(3) of that Act in relation to such an exemption.

Division 3—Recall of consumer goods

Subdivision A—Compulsory recall of consumer goods

122 Compulsory recall of consumer goods

- (1) A responsible Minister may, by written notice published on the internet, issue a *recall notice* for consumer goods of a particular kind if:
 - (a) a person, in trade or commerce, supplies consumer goods of that kind; and
 - (b) any of the following applies:
 - (i) it appears to the responsible Minister that such goods will or may cause injury to any person;
 - (ii) it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury to any person;
 - (iii) a safety standard for such goods is in force and the goods do not comply with the standard;
 - (iv) an interim ban, or a permanent ban, on such goods is in force; and
 - (c) it appears to the responsible Minister that one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person.
- (2) It is not necessary for the purposes of subsection (1)(c) for the responsible Minister to know the identities of any of the suppliers of the consumer goods of that kind.
- (3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.

123 Contents of a recall notice

- (1) A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no such supplier is known to the responsible Minister who issued the notice) the regulator, to take one or more of the following actions:

- (a) recall the goods;
 - (b) disclose to the public, or to a class of persons specified in the notice, one or more of the following:
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;
 - (ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous;
 - (iii) procedures as specified in the notice for disposing of the goods;
 - (c) if the identities of any of those suppliers are known to the responsible Minister—inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) unless the notice identifies a dangerous characteristic of the goods—repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.
- (2) The recall notice may specify:
- (a) the manner in which the action required to be taken by the notice must be taken; and
 - (b) the period within which the action must be taken.
- (3) If the recall notice requires the regulator to take action to recall the consumer goods, the responsible Minister may specify in the notice that the regulator must retain, destroy or otherwise dispose of the goods.
- (4) If the recall notice requires a supplier of the consumer goods to take action of a kind referred to in subsection (1)(c), the responsible Minister may specify in the notice that, if:
- (a) the supplier undertakes to refund the price of the goods; and
 - (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;
- the amount of a refund may be reduced by the supplier by an amount calculated in a manner specified in the notice that is attributable to the use which a person has had of the goods.
-

124 Obligations of a supplier in relation to a recall notice

- (1) This section applies if a recall notice for consumer goods requires a supplier to take action of a kind referred to in section 123(1)(c).
- (2) If the supplier undertakes to repair the consumer goods, the supplier must cause the goods to be repaired so that:
 - (a) any defect in the goods identified in the recall notice is remedied; and
 - (b) if a safety standard for the goods is in force—the goods comply with that standard.
- (3) If the supplier undertakes to replace the consumer goods, the supplier must replace the goods with similar consumer goods which:
 - (a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the recall notice—do not contain that defect or have that characteristic; and
 - (b) if a safety standard for the goods to be replaced is in force—comply with that standard.
- (4) If the supplier undertakes:
 - (a) to repair the consumer goods; or
 - (b) to replace the consumer goods;the cost of the repair or replacement, including any necessary transportation costs, must be paid by the supplier.

125 Notification by persons who supply consumer goods outside Australia if there is compulsory recall

- (1) If consumer goods of a particular kind are recalled as required by a recall notice, a person who has supplied or supplies those consumer goods to a person outside Australia must give the person outside Australia a written notice that complies with subsection (2).
- (2) The notice given under subsection (1) must:
 - (a) state that the consumer goods are subject to recall; and
 - (b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and

- (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
 - (d) if the consumer goods do not comply with a safety standard for such goods that is in force—set out the nature of the non-compliance; and
 - (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.
- (3) The notice under subsection (1) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.
- (4) A person who is required to give a notice under subsection (1) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister who issued the recall notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

126 Interaction of multiple recall notices

If:

- (a) a recall notice (the *original recall notice*) for consumer goods of a particular kind (the *recalled goods*) is issued by a responsible Minister other than the Commonwealth Minister; and
- (b) while the original recall notice is in force, the Commonwealth Minister issues a recall notice (the *Commonwealth recall notice*):
 - (i) for the recalled goods; or
 - (ii) for consumer goods of a kind that includes the recalled goods;

the original recall notice, to the extent that it relates to the recalled goods, ceases to be in force immediately before the Commonwealth recall notice is issued.

127 Compliance with recall notices

- (1) If:
- (a) a recall notice for consumer goods is in force; and

- (b) the notice requires a person (other than the regulator) to do one or more things;

the person must comply with the notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If a recall notice for consumer goods is in force, a person must not, in trade or commerce:

- (a) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supply consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or

- (b) in any other case—supply consumer goods of the kind to which the notice relates.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:

- (a) a person contravenes subsection (1) or (2) in relation to consumer goods; and

- (b) another person suffers loss or damage:

- (i) because of a defect in, or a dangerous characteristic of, the goods; or

- (ii) because of a reasonably foreseeable use (including a misuse) of the goods; or

- (iii) because, contrary to the recall notice, the other person was not provided with particular information in relation to the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of the contravention.

Subdivision B—Voluntary recall of consumer goods

128 Notification requirements for a voluntary recall of consumer goods

- (1) This section applies if a person voluntarily takes action to recall consumer goods of a particular kind (including consumer goods that have become fixtures since being supplied) because:

- (a) the consumer goods will or may cause injury to any other person; or

- (b) a reasonably foreseeable use (including a misuse) of the consumer goods will or may cause injury to any other person; or
 - (c) a safety standard for the consumer goods is in force and they do not, or it is likely that they do not, comply with the standard; or
 - (d) an interim ban, or a permanent ban, on the consumer goods is in force.
- (2) The person must, within 2 days after taking the action, give the Commonwealth Minister a written notice that complies with subsection (7).
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (3) The Commonwealth Minister may publish a copy of the notice on the internet.
- (4) A person who has supplied or supplies consumer goods of that kind to another person outside Australia must give the other person a written notice that complies with subsection (7).
- (5) The notice under subsection (4) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.
- (6) A person who is required to give a notice under subsection (4) must, within 10 days after giving the notice, give a copy of the notice to the Commonwealth Minister.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (7) A notice given under subsection (2) or (4) must:
- (a) state that the consumer goods are subject to recall; and
 - (b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and
 - (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
 - (d) if the consumer goods do not, or it is likely that they do not, comply with a safety standard for the goods that is in force—
-

set out the nature of the non-compliance or likely non-compliance; and

- (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.

Division 4—Safety warning notices

129 Safety warning notices about consumer goods and product related services

- (1) A responsible Minister may publish on the internet a written notice containing one or both of the following:
 - (a) a statement that consumer goods of a kind specified in the notice are under investigation to determine whether:
 - (i) those goods will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of those goods will or may cause injury to any person;
 - (b) a warning of possible risks involved in the use of consumer goods of a kind specified in the notice.
- (2) A responsible Minister may publish on the internet a written notice containing one or both of the following:
 - (a) a statement that product related services of a kind specified in the notice are under investigation to determine whether:
 - (i) consumer goods of a particular kind will or may cause injury to any person as a result of services of that kind being supplied; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied;
 - (b) a warning of possible risks involved in the supply of product related services of a kind specified in the notice.

130 Announcement of the results of an investigation etc.

- (1) If:
 - (a) an investigation of consumer goods, or product related services, specified in a notice under section 129(1) or (2) has been completed; and

- (b) none of the following have been published or issued in relation to those goods or services:
 - (i) a proposed ban notice under section 132 of the Competition and Consumer Act;
 - (ii) a proposed recall notice under section 132A of that Act;
 - (iii) a notice under section 132J(1) or (2) of that Act;the responsible Minister who issued the notice under section 129(1) or (2) must, as soon as practicable after the completion of the investigation, announce, by written notice published on the internet, the results of the investigation.
- (2) The responsible Minister may announce in a notice published under subsection (1) of this section:
 - (a) whether any action under this Part is proposed to be taken in relation to the consumer goods or product related services; and
 - (b) if it is proposed to take any such action—what action is proposed to be taken.

**Division 5—Consumer goods, or product related services,
associated with death or serious injury or illness**

**131 Suppliers to report consumer goods associated with the death or
serious injury or illness of any person**

- (1) If:
- (a) a person (the *supplier*), in trade or commerce, supplies consumer goods; and
 - (b) the supplier becomes aware of the death or serious injury or illness of any person and:
 - (i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods; or
 - (ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods;

the supplier must, within 2 days of becoming so aware, give the Commonwealth Minister a written notice that complies with subsection (5).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply if:
- (a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods; or
 - (b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods; or
 - (c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or
 - (d) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with an industry code of practice that:

- (i) applies to the supplier or other person; and
 - (ii) is specified in the regulations.
- (3) Subsection (1) applies whether or not the consumer goods were being used before or at the time the death or serious injury or illness occurred.
- (4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1)(b) include receiving the relevant information from any of the following:
 - (a) a consumer;
 - (b) a person who re-supplies the consumer goods;
 - (c) a repairer or insurer of the goods;
 - (d) an industry organisation or consumer organisation.
- (5) The notice must:
 - (a) identify the consumer goods; and
 - (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:
 - (i) when, and in what quantities, the consumer goods were manufactured in Australia, supplied in Australia, imported into Australia or exported from Australia;
 - (ii) the circumstances in which the death or serious injury or illness occurred;
 - (iii) the nature of any serious injury or illness suffered by any person;
 - (iv) any action that the supplier has taken, or is intending to take, in relation to the consumer goods.
- (6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:
 - (a) the consumer goods; or
 - (b) the death or serious injury or illness of any person.

132 Suppliers to report product related services associated with the death or serious injury or illness of any person

- (1) If:
 - (a) a person (the *supplier*), in trade or commerce, supplies product related services; and
-

- (b) the supplier becomes aware of the death or serious injury or illness of any person and:
 - (i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate; or
 - (ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate;

the supplier must, within 2 days of becoming so aware, give the Commonwealth Minister a written notice that complies with subsection (5).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply if:
 - (a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
 - (b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
 - (c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or
 - (d) the supplier, or another person, has notified the death or serious injury or illness in accordance with an industry code of practice that:
 - (i) applies to the supplier or other person; and
 - (ii) is specified in the regulations.
 - (3) Subsection (1) applies whether or not consumer goods to which the product related services relate were being used before or at the time the death or serious injury or illness occurred.
 - (4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1)(b) include receiving the relevant information from any of the following:
-

- (a) a consumer;
 - (b) a person who re-supplies the product related services;
 - (c) an insurer of the services;
 - (d) an industry organisation or consumer organisation.
- (5) The notice must:
- (a) identify the product related services and the consumer goods to which the services relate; and
 - (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:
 - (i) when the services have been supplied;
 - (ii) the circumstances in which the death or serious injury or illness occurred;
 - (iii) the nature of any serious injury or illness suffered by any person;
 - (iv) any action that the supplier has taken, or is intending to take, in relation to the services.
- (6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:
- (a) the product related services; or
 - (b) the consumer goods to which the services relate; or
 - (c) the death or serious injury or illness of any person.

132A Confidentiality of notices given under this Division

- (1) A person must not disclose to any other person a notice given under this Division, or any part of or information contained in such a notice, unless the person who gave the notice has consented to the notice, or that part or information, not being treated as confidential.
- (2) This section does not apply if:
- (a) the disclosure is made by the Commonwealth Minister to:
 - (i) another responsible Minister; or
 - (ii) the regulator; or
 - (iii) an associate regulator; or

- (b) the disclosure is made by the Commonwealth Minister and the Commonwealth Minister considers that the disclosure is in the public interest; or
- (c) the disclosure is made by a member of the staff of the regulator, or an associate regulator, in the performance of his or her duties as such a member of staff, and is made:
 - (i) to another member of the staff of the regulator or associate regulator; or
 - (ii) if the person making the disclosure is a member of the staff of the regulator—to an associate regulator; or
 - (iii) if the person making the disclosure is a member of the staff of an associate regulator—to the regulator or another associate regulator; or
- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

Division 6—Miscellaneous

133 Liability under a contract of insurance

If:

- (a) a contract of insurance between an insurer and a person relates to:
 - (i) the recall of consumer goods that are supplied by the person, or which the person proposes to supply; or
 - (ii) the liability of the person with respect to possible defects in such consumer goods; and
- (b) the person gives information relating to any such consumer goods to:
 - (i) a responsible Minister; or
 - (ii) the regulator; or
 - (iii) a person appointed or engaged under the *Public Service Act 1999*, or under a corresponding law of a State or a Territory; or
 - (iv) an officer of an authority of the Commonwealth or of a State or Territory;

the liability of the insurer under the contract is not affected only because the person gave the information.

Part 3-4—Information standards

134 Making information standards for goods and services

- (1) The Commonwealth Minister may, by written notice published on the internet, make an *information standard* for one or both of the following:
 - (a) goods of a particular kind;
 - (b) services of a particular kind.
- (2) Without limiting subsection (1), an information standard for goods or services of a particular kind may:
 - (a) make provision in relation to the content of information about goods or services of that kind; or
 - (b) require the provision of specified information about goods or services of that kind; or
 - (c) provide for the manner or form in which such information is to be provided; or
 - (d) provide that such information is not to be provided in a specified manner or form; or
 - (e) provide that information of a specified kind is not to be provided about goods or services of that kind; or
 - (f) assign a meaning to specified information about goods or services.

135 Declaring information standards for goods and services

- (1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is an *information standard* for goods or services of a kind specified in the instrument:
 - (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
 - (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

- (2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is an information standard for:
- (a) goods of a particular kind; or
 - (b) services of a particular kind;
- if that standard or part is inconsistent with an information standard for those goods or services that is in force and was made under section 134(1).

136 Supplying etc. goods that do not comply with information standards

- (1) A person must not, in trade or commerce, supply goods of a particular kind if:
- (a) an information standard for goods of that kind is in force; and
 - (b) the person has not complied with that standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods.

- (5) Subsections (1), (2) and (3) do not apply to goods that are intended to be used outside Australia.

- (6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Australia if either of the following is applied to the goods:

- (a) a statement that the goods are for export only;

- (b) a statement indicating, by the use of words authorised by the regulations to be used for the purposes of this subsection, that the goods are intended to be used outside Australia.
- (7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being:
 - (a) woven in, impressed on, worked into or annexed or affixed to the goods; or
 - (b) applied to a covering, label, reel or thing in or with which the goods are supplied.
- (8) If:
 - (a) a person (the *supplier*) supplies goods in contravention of subsection (1), (2) or (3); and
 - (b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the goods; and
 - (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

137 Supplying etc. services that do not comply with information standards

- (1) A person must not, in trade or commerce, supply services of a particular kind if:
 - (a) an information standard for services of that kind is in force; and
 - (b) the person has not complied with that standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:
 - (a) a person (the *supplier*) supplies services in contravention of subsection (1) or (2); and

- (b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the services; and
 - (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;
- the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Part 3-5—Liability of manufacturers for goods with safety defects

Division 1—Actions against manufacturers for goods with safety defects

138 Liability for loss or damage suffered by an injured individual

- (1) A manufacturer of goods is liable to compensate an individual if:
 - (a) the manufacturer supplies the goods in trade or commerce; and
 - (b) the goods have a safety defect; and
 - (c) the individual suffers injuries because of the safety defect.
- (2) The individual may recover, by action against the manufacturer, the amount of the loss or damage suffered by the individual.
- (3) If the individual dies because of the injuries, a law of a State or a Territory about liability in respect of the death of individuals applies as if:
 - (a) the action were an action under the law of the State or Territory for damages in respect of the injuries; and
 - (b) the safety defect were the manufacturer's wrongful act, neglect or default.

139 Liability for loss or damage suffered by a person other than an injured individual

- (1) A manufacturer of goods is liable to compensate a person if:
 - (a) the manufacturer supplies the goods in trade or commerce; and
 - (b) the goods have a safety defect; and
 - (c) an individual (other than the person) suffers injuries because of the safety defect; and
 - (d) the person suffers loss or damage because of:
 - (i) the injuries; or

- (ii) if the individual dies because of the injuries—the individual’s death; and
 - (e) the loss or damage does not come about because of a business or professional relationship between the person and the individual.
- (2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

140 Liability for loss or damage suffered by a person if other goods are destroyed or damaged

- (1) A manufacturer of goods is liable to compensate a person if:
- (a) the manufacturer supplies the goods in trade or commerce; and
 - (b) the goods have a safety defect; and
 - (c) other goods of a kind ordinarily acquired for personal, domestic or household use or consumption are destroyed or damaged because of the safety defect; and
 - (d) the person used or consumed, or intended to use or consume, the destroyed or damaged goods for personal, domestic or household use or consumption; and
 - (e) the person suffers loss or damage as a result of the destruction or damage.
- (2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

141 Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged

- (1) A manufacturer of goods is liable to compensate a person if:
- (a) the manufacturer supplies the goods in trade or commerce; and
 - (b) the goods have a safety defect; and
 - (c) land, buildings or fixtures are destroyed or damaged because of the safety defect; and
 - (d) the land, buildings or fixtures are ordinarily acquired for private use; and
 - (e) the person used, or intended to use, the land, buildings or fixtures for private use; and
-

- (f) the person suffers loss or damage as a result of the destruction or damage.
- (2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

142 Defences to defective goods actions

In a defective goods action, it is a defence if it is established that:

- (a) the safety defect in the goods that is alleged to have caused the loss or damage did not exist:
 - (i) in the case of electricity—at the time at which the electricity was generated, being a time before it was transmitted or distributed; or
 - (ii) in any other case—at the time when the goods were supplied by their actual manufacturer; or
- (b) the goods had that safety defect only because there was compliance with a mandatory standard for them; or
- (c) the state of scientific or technical knowledge at the time when the goods were supplied by their manufacturer was not such as to enable that safety defect to be discovered; or
- (d) if the goods that had that safety defect were comprised in other goods—that safety defect is attributable only to:
 - (i) the design of the other goods; or
 - (ii) the markings on or accompanying the other goods; or
 - (iii) the instructions or warnings given by the manufacturer of the other goods.

Division 2—Defective goods actions

143 Time for commencing defective goods actions

- (1) Subject to subsection (2), a person may commence a defective goods action at any time within 3 years after the time the person became aware, or ought reasonably to have become aware, of all of the following:
 - (a) the alleged loss or damage;
 - (b) the safety defect of the goods;
 - (c) the identity of the person who manufactured the goods.
- (2) A defective goods action must be commenced within 10 years of the supply by the manufacturer of the goods to which the action relates.

144 Liability joint and several

If 2 or more persons are liable under Division 1 for the same loss or damage, they are jointly and severally liable.

145 Survival of actions

A law of a State or a Territory about the survival of causes of action vested in persons who die applies to actions under Division 1.

146 No defective goods action where workers' compensation law etc. applies

Division 1 does not apply to a loss or damage in respect of which an amount has been, or could be, recovered under a law of the Commonwealth, a State or a Territory that:

- (a) relates to workers' compensation; or
- (b) gives effect to an international agreement.

147 Unidentified manufacturer

- (1) A person who:
-

- (a) wishes to institute a defective goods action; but
 - (b) does not know who is the manufacturer of the goods to which the action would relate;
- may, by written notice given to a supplier, or each supplier, of the goods who is known to the person, request the supplier or suppliers to give the person particulars identifying the manufacturer of the goods, or the supplier of the goods to the supplier requested.
- (2) If, 30 days after the person made the request or requests, the person still does not know who is the manufacturer of the goods, then each supplier:
- (a) to whom the request was made; and
 - (b) who did not comply with the request;
- is taken, for the purposes of the defective goods liability action (but not for the purposes of section 142(c)), to be the manufacturer of the goods.

148 Commonwealth liability for goods that are defective only because of compliance with Commonwealth mandatory standard

- (1) If a person (however described) against whom a defective goods action is brought raises the defence that the goods had the alleged safety defect only because there was compliance with a Commonwealth mandatory standard for the goods, the person must, as soon as practicable after raising that defence, give the Commonwealth:
- (a) a prescribed notice of the action and of that defence; and
 - (b) a copy of the person's defence in the action.
- (2) The giving of the notice and defence makes the Commonwealth a defendant in the action.
- (3) If, in the action, the court finds that the person (the *plaintiff*) by whom the action is brought would, but for the defence referred to in subsection (1), have succeeded against the person (other than the Commonwealth) against which the action is brought, then:
- (a) the Commonwealth, and not the person (other than the Commonwealth) against which the action is brought, is liable to pay the plaintiff for the amount of the loss or damage caused by the safety defect; and

- (b) the court is to enter judgment against the Commonwealth for that amount; and
- (c) the court may make such orders for costs as the court considers just.

149 Representative actions by the regulator

- (1) The regulator may, by application, commence a defective goods action on behalf of one or more persons identified in the application who have suffered the loss or damage in relation to which the action is commenced.
- (2) The regulator may only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

Division 3—Miscellaneous

150 Application of all or any provisions of this Part etc. not to be excluded or modified

- (1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any of the following is void:
 - (a) the application of all or any of the provisions of this Part;
 - (b) the exercise of a right conferred by any of those provisions;
 - (c) any liability under any of those provisions.
- (2) A term of a contract is not taken to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

Chapter 4—Offences

Part 4-1—Offences relating to unfair practices

Division 1—False or misleading representations etc.

151 False or misleading representations about goods or services

- (1) A person commits an offence if the person, 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) makes a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
 - (b) makes a false or misleading representation that services are of a particular standard, quality, value or grade; or
 - (c) makes a false or misleading representation that goods are new; or
 - (d) makes a false or misleading representation that a particular person has agreed to acquire goods or services; or
 - (e) makes a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or
 - (f) makes a false or misleading representation concerning:
 - (i) a testimonial by any person; or
 - (ii) a representation that purports to be such a testimonial; relating to goods or services; or
 - (g) makes a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or
 - (h) makes a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
 - (i) makes a false or misleading representation with respect to the price of goods or services; or

- (j) makes a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
- (k) makes a false or misleading representation concerning the place of origin of goods; or
- (l) makes a false or misleading representation concerning the need for any goods or services; or
- (m) makes a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or
- (n) makes a false or misleading representation concerning a requirement to pay for a contractual right that:
 - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
 - (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

Note: For rules relating to representations as to the country of origin of goods, see Part 5-3.

- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary.
- (3) To avoid doubt, subsection (2) does not:
 - (a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or
 - (b) have the effect of placing on any person an onus of proving that the representation is not misleading.
- (4) Subsection (1) is an offence of strict liability.

152 False or misleading representations about sale etc. of land

- (1) A person commits an offence if the person, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:
- (a) makes a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
 - (b) makes a false or misleading representation concerning the nature of the interest in the land; or
 - (c) makes a false or misleading representation concerning the price payable for the land; or
 - (d) makes a false or misleading representation concerning the location of the land; or
 - (e) makes a false or misleading representation concerning the characteristics of the land; or
 - (f) makes a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or
 - (g) makes a false or misleading representation concerning the existence or availability of facilities associated with the land.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.
- (3) This section does not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

153 Misleading conduct relating to employment

- (1) A person commits an offence if the person, in relation to employment that is to be, or may be, offered by the person or by another person, engages in conduct that is liable to mislead persons seeking the employment as to:
- (a) the availability, nature, terms or conditions of the employment; or

(b) any other matter relating to the employment.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(2) Subsection (1) is an offence of strict liability.

154 Offering rebates, gifts, prizes etc.

(1) A person commits an offence if:

- (a) the person, in trade or commerce, offers any rebate, gift, prize or other free item; and
- (b) the offer is connected 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; or
 - (iii) the sale or grant, or the possible sale or grant, of an interest in land; or
 - (iv) the promotion by any means of the sale or grant of an interest in land; and
- (c) the offer is made with the intention of not providing the rebate, gift, prize or other free item, or of not providing it as offered.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(2) A person commits an offence if:

- (a) the person, in trade or commerce, offers any rebate, gift, prize or other free item; and
 - (b) the offer is connected 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; or
 - (iii) the sale or grant, or the possible sale or grant, of an interest in land; or
 - (iv) the promotion by any means of the sale or grant of an interest in land; and
-

- (c) the person fails to provide the rebate, gift, prize or other free item, in accordance with the offer, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) Subsection (2) does not apply if:
 - (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
 - (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
 - (4) Subsection (2) does not apply to an offer that the person makes to another person if:
 - (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and
 - (b) the other person agrees to receive the different rebate, gift, prize or other free item.
 - (5) Strict liability applies to subsections (1)(b) and (2)(b).
 - (6) This section does not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

155 Misleading conduct as to the nature etc. of goods

- (1) A person commits an offence if the person, in trade or commerce, engages 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.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.

156 Misleading conduct as to the nature etc. of services

- (1) A person commits an offence if the person, in trade or commerce, engages 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.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.

157 Bait advertising

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, advertises goods or services for supply at a specified price; and
 - (b) there are reasonable grounds 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:
 - (i) the nature of the market in which the person carries on business; and
 - (ii) the nature of the advertisement.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, advertises goods or services for supply at a specified price; and
 - (b) the person fails to offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:
 - (i) the nature of the market in which the person carries on business; and
 - (ii) the nature of the advertisement.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
-

- (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.
- (4) In a prosecution of a person (the *defendant*) under subsection (2), for failing to offer goods or services to another person (the *customer*), it is a defence if:
 - (a) the defendant proves that:
 - (i) he or she offered to supply, or to procure a third 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
 - (ii) he or she offered to supply immediately, or to procure a third 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-mentioned goods or services were advertised; and
 - (b) in either case, if the offer was accepted by the customer, the defendant proves that he or she has so supplied, or procured a third person to supply, the goods or services.

158 Wrongly accepting payment

- (1) A person commits an offence if:
 - (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
 - (b) at the time of the acceptance, the person intends not to supply the goods or services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.
- (2) Strict liability applies to subsection (1)(a).
- (3) A person commits an offence if:
 - (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
 - (b) at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(4) Strict liability applies to subsection (3)(a).

(5) A person commits an offence if:

- (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
- (b) at the time of the acceptance, the person was reckless as to whether he or she would be able to supply the goods or services:
 - (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
 - (ii) if no period is specified at or before that time—within a reasonable time.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(6) Strict liability applies to subsection (5)(a).

(7) A person commits an offence if:

- (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
- (b) the person fails to supply all the goods or services:
 - (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
 - (ii) if no period is specified at or before that time—within a reasonable time.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(8) Subsection (7) does not apply if:

- (a) the person's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or

- omission of another person, or to some other cause beyond the person's control; and
- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- (9) Subsection (7) does not apply if:
- (a) the person offers to supply different goods or services as a replacement to the person (the *customer*) to whom the original supply was to be made; and
 - (b) the customer agrees to receive the different goods or services.
- (10) Subsection (7) is an offence of strict liability.
- (11) Subsections (1), (3), (5) and (7) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

159 Misleading representations about certain business activities

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, makes a representation; and
 - (b) the representation is false or misleading in a material particular; and
 - (c) the representation concerns the profitability, 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 a person's place of residence.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, makes a representation; and
 - (b) the representation is false or misleading in a material particular; and
 - (c) the representation concerns the profitability, risk or any other material aspect of any business activity:

- (i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and
- (ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

160 Application of provisions of this Division to information providers

- (1) Sections 151, 152, 155, 156 and 159 do not apply to a publication of matter by an information provider if:
 - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
 - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
 - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
 - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or

- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.
- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the ***publicised interests in land***), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
 - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
 - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

Division 2—Unsolicited supplies

161 Unsolicited cards etc.

- (1) A person commits an offence if:
- (a) the person sends a credit card or a debit card, or an article that may be used as a credit card and a debit card, to another person; and
 - (b) either:
 - (i) the person had issued the card; or
 - (ii) the card was sent on behalf of the person who had issued the card.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) does not apply if the person sends the card to the other person:
- (a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or
 - (b) in renewal or replacement of, or in substitution for:
 - (i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a liability, to the person who issued the card previously so sent, in respect of the use of that card; or
 - (ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.
- (3) A person commits an offence if the person takes any action that enables another person who has a credit card to use the card as a debit card.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
-

- (4) A person commits an offence if the person takes any action that enables another person who has a debit card to use the card as a credit card.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (5) Subsection (3) or (4) does not apply if the person takes the action in accordance with the other person's written request.
- (6) Subsections (1), (3) and (4) are offences of strict liability.

162 Assertion of right to payment for unsolicited goods or services

- (1) A person commits an offence if the person, in trade or commerce, asserts a right to payment from another person for unsolicited goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if the person, in trade or commerce, asserts a right to payment from another person for unsolicited services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) A person commits an offence if the person, in trade or commerce, sends to another person an invoice or other document that:
- (a) states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services; and
 - (b) does not contain a warning statement that complies with the requirements set out in the regulations made for the purposes of section 40(3)(b).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
-

(4) Subsection (1), (2) or (3) does not apply if the person proves that he or she had reasonable cause to believe that there was a right to the payment or charge.

(5) Subsections (1), (2) and (3) are offences of strict liability.

163 Assertion of right to payment for unauthorised entries or advertisements

- (1) A person commits an offence if the person asserts a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to:
- (a) the other person; or
 - (b) the other person's profession, business, trade or occupation.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if the person sends to another person an invoice or other document that:

- (a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to:
 - (i) the other person; or
 - (ii) the other person's profession, business, trade or occupation; and
- (b) does not contain a warning statement that complies with the requirements set out in the regulations made for the purposes of section 43(2)(b).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) Subsections (1) and (2) do not apply if the person proves that he or she knew, or had reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

- (4) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is:

- (a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations made for the purposes of section 43(3)(a); or
 - (b) a body corporate related to such a publisher; or
 - (c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or
 - (d) a person specified in regulations made for the purposes of section 43(3)(d).
- (5) Subsections (1) and (2) are offences of strict liability.
- (6) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless:
- (a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her; and
 - (b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and
 - (c) the document specifies:
 - (i) the name and address of the person publishing the entry or advertisement; and
 - (ii) particulars of the entry or advertisement; and
 - (iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.

Division 3—Pyramid schemes

164 Participation in pyramid schemes

- (1) A person commits an offence if the person participates in a pyramid scheme.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if the person induces another person to participate in a pyramid scheme.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) Subsections (1) and (2) are offences of strict liability.

Division 4—Pricing

165 Multiple pricing

- (1) A person commits an offence if:
 - (a) the person, in trade or commerce, supplies goods; and
 - (b) the goods have more than one displayed price; and
 - (c) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.

Penalty:

- (a) if the person is a body corporate—\$5,000; or
 - (b) if the person is not a body corporate—\$1,000.
- (2) Subsection (1) is an offence of strict liability.

166 Single price to be specified in certain circumstances

- (1) A person commits an offence if the person, in trade or commerce, in connection with:
 - (a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or
 - (b) the promotion by any means of the supply to another person, or of the use by another person, of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;

makes 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.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the other person.
 - (3) Subsection (1) does not apply if the person also:

- (a) specifies, in a prominent way and as a single figure, the single price for the goods or services; and
 - (b) if, in relation to goods:
 - (i) the person does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the other person; and
 - (ii) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person; specifies that minimum amount.
- (4) Subsection (1) does not apply if the representation is made exclusively to a body corporate.
- (5) For the purposes of subsection (3)(a), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.
- (6) Subsection (5) does not apply in relation to services to be supplied under a contract if:
- (a) the contract provides for the supply of the services for the term of the contract; and
 - (b) the contract provides for periodic payments for the services to be made during the term of the contract; and
 - (c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.
- (7) Subsection (1) is an offence of strict liability.

Division 5—Other unfair practices

167 Referral selling

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, induces 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:
 - (i) giving the person the names of prospective customers; or
 - (ii) otherwise assisting the person to supply goods or services to other consumers; and
 - (b) the receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.

168 Harassment and coercion

- (1) A person commits an offence if:
- (a) the person uses physical force, or undue harassment or coercion; and
 - (b) the physical force, or undue harassment or coercion is used in connection with:
 - (i) the supply or possible supply of goods or services; or
 - (ii) the payment for goods or services; or
 - (iii) the sale or grant, or the possible sale or grant, of an interest in land; or
 - (iv) the payment for an interest in land.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) Subsection (1) is an offence of strict liability.
- (3) Subsections (1)(b)(iii) and (iv) do not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

Part 4-2—Offences relating to consumer transactions

Division 1—Consumer guarantees

169 Display notices

- (1) A person commits an offence if:
 - (a) the person makes a supply to a consumer to which:
 - (i) guarantees apply under Division 1 of Part 3-2; and
 - (ii) a determination under subsection 66(1) applies; and
 - (b) a notice that meets the requirements of the determination is not, in accordance with the determination:
 - (i) if the consumer takes delivery of the goods or services at the supplier's premises—displayed at those premises;
or
 - (ii) otherwise—drawn to the consumer's attention before the consumer agrees to the supply of the goods.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

Division 2—Unsolicited consumer agreements

Subdivision A—Negotiating unsolicited consumer agreements

170 Permitted hours for negotiating an unsolicited consumer agreement

- (1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:
 - (a) at any time on a Sunday or a public holiday; or
 - (b) before 9 am on any other day; or
 - (c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) does not apply if the dealer calls on, or telephones, the person in accordance with consent that:
 - (a) was given by the person to the dealer or a person acting on the dealer's behalf; and
 - (b) was not given in the presence of the dealer or a person acting on the dealer's behalf.
- (3) Subsection (1) is an offence of strict liability.

171 Disclosing purpose and identity

- (1) A dealer commits an offence if the dealer:
 - (a) calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose; and
 - (b) does not as soon as practicable and in any event before starting to negotiate:
 - (i) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and

- (ii) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and
- (iii) provide to the person such information relating to the dealer's identity as is prescribed by the regulations made for the purposes of section 74(c).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
- (b) if the person is not a body corporate—\$10,000.

(2) Subsection (1) is an offence of strict liability.

172 Ceasing to negotiate on request

(1) A dealer commits an offence if the dealer:

- (a) calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose; and
- (b) does not leave the premises immediately on the request of:
 - (i) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or
 - (ii) the person (the *prospective consumer*) with whom the negotiations are being conducted.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
- (b) if the person is not a body corporate—\$10,000.

(2) A dealer commits an offence if:

- (a) the prospective consumer has made the request referred to in subsection (1)(b); and
- (b) the dealer contacts the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) within 30 days after the prospective consumer made the request.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
- (b) if the person is not a body corporate—\$10,000.

(3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate, subsection (2) applies to

that supplier, and any person acting on behalf of the supplier, in the same way that it applies to the dealer.

- (4) Subsection (2) does not apply to the dealer contacting the prospective consumer if:
 - (a) the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate; and
 - (b) the contact relates to a supply by another supplier.
- (5) Subsections (1) and (2) are offences of strict liability.

173 Informing person of termination period etc.

- (1) A dealer commits an offence if the dealer makes an unsolicited consumer agreement with a person, and:
 - (a) before the agreement is made, the person is not given information as to the following:
 - (i) the person's right to terminate the agreement during the termination period;
 - (ii) the way in which the person may exercise that right;
 - (iii) such other matters as are prescribed by regulations made for the purposes of section 76(a)(iii); or
 - (b) if the agreement is made in the presence of both the dealer and the person—the person is not given the information in writing; or
 - (c) if the agreement is made by telephone—the person is not:
 - (i) given the information by telephone; and
 - (ii) subsequently given the information in writing; or
 - (d) the form in which, and the way in which, the person is given the information does not comply with any other requirements prescribed by regulations made for the purposes of section 76(d).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) If:
 - (a) a dealer contravenes subsection (1) in relation to an unsolicited consumer agreement; and

(b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates;
the supplier of the goods or services is also taken to have contravened subsection (1) in relation to the agreement.

(3) Subsection (1) is an offence of strict liability.

Subdivision B—Requirements for unsolicited consumer agreements etc.

174 Requirement to give document to the consumer

- (1) The dealer who negotiated an unsolicited consumer agreement commits an offence if:
- (a) the agreement was not negotiated by telephone; and
 - (b) the dealer does not give a copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
- (b) if the person is not a body corporate—\$10,000.

- (2) The dealer who negotiated an unsolicited consumer agreement commits an offence if:
- (a) the agreement was negotiated by telephone; and
 - (b) the dealer does not, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement:
 - (i) personally; or
 - (ii) by post; or
 - (iii) with the consumer’s consent—by electronic communication;an agreement document evidencing the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
- (b) if the person is not a body corporate—\$10,000.

(3) Subsections (1) and (2) are offences of strict liability.

175 Requirements for all unsolicited consumer agreements etc.

- (1) The supplier under an unsolicited consumer agreement commits an offence if the agreement, or (if the agreement was negotiated by telephone) the agreement document, does not comply with the following requirements:
 - (a) it must set out in full all the terms of the agreement, including:
 - (i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and
 - (ii) any postal or delivery charges to be paid by the consumer;
 - (b) its front page must include a notice that:
 - (i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and
 - (ii) conspicuously and prominently sets out any other information prescribed by regulations made for the purposes of section 79(b)(ii); and
 - (iii) complies with any other requirements prescribed by regulations made for the purposes of section 79(b)(iii);
 - (c) it must be accompanied by a notice that:
 - (i) may be used by the consumer to terminate the agreement; and
 - (ii) complies with any requirements prescribed by regulations made for the purposes of section 79(c)(ii);
 - (d) it must conspicuously and prominently set out in full:
 - (i) the supplier's name; and
 - (ii) if the supplier has an ABN—the supplier's ABN; and
 - (iii) if the supplier does not have an ABN but has an ACN—the supplier's ACN; and
 - (iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and
 - (v) if the supplier has an email address—the supplier's email address; and

- (vi) if the supplier has a fax number—the supplier’s fax number;
- (e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);
- (f) it must be transparent.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
- (b) if the person is not a body corporate—\$10,000.

(2) Subsection (1) is an offence of strict liability.

176 Additional requirements for unsolicited consumer agreements not negotiated by telephone

- (1) The supplier under an unsolicited consumer agreement that was not negotiated by telephone commits an offence if the agreement does not comply with the following requirements:
 - (a) the agreement must be signed by the consumer under the agreement;
 - (b) if the agreement is signed by a person on the supplier’s behalf—the agreement must state that the person is acting on the supplier’s behalf, and must set out in full:
 - (i) the person’s name; and
 - (ii) the person’s business address (not being a post box) or, if the person does not have a business address, the person’s residential address; and
 - (iii) if the person has an email address—the person’s email address.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
- (b) if the person is not a body corporate—\$10,000.

(2) Subsection (1) is an offence of strict liability.

(3) This section does not limit the operation of section 175.

177 Requirements for amendments of unsolicited consumer agreements

- (1) The supplier under an unsolicited consumer agreement commits an offence if any amendments to the agreement are not signed by both parties to the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
(b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

Subdivision C—Terminating unsolicited consumer agreements

178 Obligations of suppliers on termination

- (1) The supplier under an unsolicited consumer agreement commits an offence if:
- (a) the agreement is terminated in accordance with section 82;
and
(b) the supplier does not, immediately upon being notified of the termination, return or refund to the consumer under the agreement any consideration (or the value of any consideration) that the consumer gave under the agreement or a related contract or instrument.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
(b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

179 Prohibition on supplies for 10 business days

- (1) The supplier under an unsolicited consumer agreement commits an offence if:
- (a) the supplier:
- (i) supplies to the consumer under the agreement the goods or services to be supplied under the agreement; or
(ii) accepts any payment, or any other consideration, in connection with those goods or services; or
-

- (iii) requires any payment, or any other consideration, in connection with those goods or services; and
- (b) the supply, acceptance or requirement occurs during the period of 10 business days starting:
 - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) Strict liability applies to subsection (1)(a).

180 Repayment of payments received after termination

- (1) The supplier under an unsolicited consumer agreement commits an offence if:
- (a) the agreement is terminated in accordance with section 82; and
 - (b) the supplier does not immediately refund to the consumer under the agreement any payment:
 - (i) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and
 - (ii) that purports to be made under the agreement or a related contract or instrument.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

181 Prohibition on recovering amounts after termination

- (1) A person commits an offence if:

- (a) an unsolicited consumer agreement is terminated in accordance with section 82; and
- (b) the person:
 - (i) brings, or asserts an intention to bring, legal proceedings against the consumer; or
 - (ii) takes, or asserts an intention to take, any other action against the consumer;in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) A person commits an offence if:
- (a) an unsolicited consumer agreement is terminated in accordance with section 82; and
 - (b) for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement, the person:
 - (i) places the consumer's name, or causes the consumer's name to be placed, on a list of defaulters or debtors; or
 - (ii) asserts an intention to place the consumer's name, or to cause the consumer's name to be placed, on such a list.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (3) Subsection (1) is an offence of strict liability.
- (4) Strict liability applies to subsection (2)(a).

Subdivision D—Miscellaneous

182 Certain provisions of unsolicited consumer agreements void

- (1) The supplier under an unsolicited consumer agreement commits an offence if the agreement includes, or purports to include, a

provision (however described) that is, or would be, void because of section 89(1).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) The supplier under an unsolicited consumer agreement commits an offence if the supplier attempts to enforce or rely on a provision (however described) that is void because of section 89(1).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (3) Subsections (1) and (2) are offences of strict liability.

183 Waiver of rights

- (1) The supplier under an unsolicited consumer agreement commits an offence if the supplier induces the consumer to waive any right conferred by Division 2 of Part 3-2.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

184 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.

- (1) This Division applies in relation to a person to whom the rights of a consumer (the *original consumer*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.
- (2) This Division applies in relation to a person to whom the rights of a supplier (the *original supplier*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

185 Application of this Division to supplies to third parties

This Division applies in relation to a contract for the supply of goods or services to a consumer (the *original consumer*) on the order of another person as if the other person were also the consumer.

186 Regulations may limit the application of this Division

This Division (other than section 170) does not apply, or provisions of this Division (other than section 170) that are specified in regulations made for the purposes of section 94 do not apply, to or in relation to:

- (a) circumstances of a kind specified in those regulations; or
- (b) agreements of a kind specified in those regulations; or
- (c) the conduct of businesses of a kind specified in those regulations.

187 Application of this Division to certain conduct covered by the Corporations Act

This Division does not apply in relation to conduct to which section 736, 992A or 992AA of the *Corporations Act 2001* applies.

Note: Section 736 of the *Corporations Act 2001* prohibits hawking of securities. Section 992A of that Act prohibits hawking of certain financial products. Section 992AA of that Act prohibits hawking of managed investment products.

Division 3—Lay-by agreements

188 Lay-by agreements must be in writing etc.

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:
- (a) the agreement is not in writing; or
 - (b) a copy of the agreement is not given to the consumer to whom the goods are, or are to be, supplied.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
 - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) is an offence of strict liability.

189 Termination charges

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if the agreement requires the consumer to pay a termination charge.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
 - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) does not apply if the termination charge is payable only if:
- (a) the agreement is terminated by the consumer; and
 - (b) the supplier has not breached the agreement.
- (3) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:
- (a) the agreement provides that a termination charge is payable; and
 - (b) the amount of the charge is more than the supplier's reasonable costs in relation to the agreement.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
-

- (b) if the person is not a body corporate—\$6,000.
- (4) Subsections (1) and (3) are offences of strict liability.

190 Termination of lay-by agreements by suppliers

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if the supplier terminates the agreement.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
 - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) does not apply if:
 - (a) the consumer who is a party to the agreement breached a term of the agreement; or
 - (b) the supplier is no longer engaged in trade or commerce; or
 - (c) the consumer goods to which the agreement relates are no longer available.
 - (3) Subsection (1) is an offence of strict liability.

191 Refund of amounts

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:
 - (a) the agreement is terminated by a party to the agreement; and
 - (b) the supplier fails to refund to the consumer all the amounts paid by the consumer under the agreement (other than any termination charge that is payable under the agreement).

Penalty:

- (a) if the person is a body corporate—\$30,000; or
 - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) is an offence of strict liability.

Division 4—Miscellaneous

192 Prescribed requirements for warranties against defects

- (1) A person commits an offence if the person, in connection with the supply, in trade or commerce, of goods or services to a consumer:
- (a) gives to the consumer a document that evidences a warranty against defects and that does not comply with the requirements prescribed for the purposes of section 102(1); or
 - (b) represents directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

193 Repairers must comply with prescribed requirements

- (1) A person commits an offence if:
- (a) the person accepts from another person goods that the other person acquired as a consumer; and
 - (b) the goods are accepted for the purpose of repairing them; and
 - (c) the person does not give to the other person a notice that complies with the requirements prescribed for the purposes of section 103(1).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
 - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

Part 4-3—Offences relating to safety of consumer goods and product related services

Division 1—Safety standards

194 Supplying etc. consumer goods that do not comply with safety standards

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and
 - (b) a safety standard for consumer goods of that kind is in force; and
 - (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and
 - (b) a safety standard for consumer goods of that kind is in force; and
 - (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if:
- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and
 - (b) a safety standard for consumer goods of that kind is in force; and
 - (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).
- (5) A person commits an offence if:
- (a) the person, in trade or commerce, exports consumer goods of a particular kind; and
 - (b) a safety standard for consumer goods of that kind is in force; and
 - (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 106(5).
- (7) Subsections (1), (2), (3) and (5) are offences of strict liability.

195 Supplying etc. product related services that do not comply with safety standards

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies product related services of a particular kind; and
 - (b) a safety standard for services of that kind is in force; and
 - (c) those services do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply product related services of a particular kind; and
 - (b) a safety standard for services of that kind is in force; and
-

(c) those services do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(3) Subsections (1) and (2) are offences of strict liability.

196 Requirement to nominate a safety standard

(1) A person commits an offence if the person refuses or fails to comply with a request given to the person under section 108.

Penalty:

- (a) if the person is a body corporate—\$22,000; or
- (b) if the person is not a body corporate—\$4,400.

(2) Subsection (1) is an offence of strict liability.

Division 2—Bans on consumer goods and product related services

197 Supplying etc. consumer goods covered by a ban

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and
 - (b) either:
 - (i) an interim ban on goods of that kind is in force in the place where the supply occurs; or
 - (ii) a permanent ban on goods of that kind is in force.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and
 - (b) the supply would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if:
- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and
 - (b) supply of the goods would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).

- (5) A person commits an offence if:
- (a) the person exports consumer goods of a particular kind; and
 - (b) supply of the goods would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 118(5).
- (7) Subsections (1), (2), (3) and (5) are offences of strict liability.

198 Supplying etc. product related services covered by a ban

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies product related services of a particular kind; and
 - (b) either:
 - (i) an interim ban on services of that kind is in force in the place where the supply occurs; or
 - (ii) a permanent ban on services of that kind is in force.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply product related services of a particular kind; and
 - (b) the supply would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

Division 3—Recall of consumer goods

199 Compliance with recall orders

- (1) A person commits an offence if:
- (a) a recall notice for consumer goods is in force; and
 - (b) the notice requires the person (other than the regulator) to do one or more things; and
 - (c) the person refuses or fails to comply with the notice.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) a recall notice for consumer goods is in force; and
 - (b) the person, in trade or commerce:
 - (i) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supplies consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or
 - (ii) in any other case—supplies consumer goods of the kind to which the notice relates.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

200 Notification by persons who supply consumer goods outside Australia if there is compulsory recall

- (1) A person commits an offence if:
- (a) the person is required by section 125(4) to give a copy of a notice to a responsible Minister; and
 - (b) the person refuses or fails to give the copy as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
- (b) if the person is not a body corporate—\$3,330.

(2) Subsection (1) is an offence of strict liability.

201 Notification requirements for a voluntary recall of consumer goods

(1) A person commits an offence if:

- (a) the person is required by section 128(2) to give a notice to the Commonwealth Minister; and
- (b) the person refuses or fails to give the notice as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
- (b) if the person is not a body corporate—\$3,330.

(2) A person commits an offence if:

- (a) the person is required by section 128(6) to give a copy of a notice to the Commonwealth Minister; and
- (b) the person refuses or fails to give the copy as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
- (b) if the person is not a body corporate—\$3,330.

(3) Subsections (1) and (2) are offences of strict liability.

**Division 4—Consumer goods, or product related services,
associated with death or serious injury or illness**

**202 Suppliers to report consumer goods etc. associated with the
death or serious injury or illness of any person**

- (1) A person commits an offence if:
- (a) the person is required by section 131 or 132 to give a notice to the Commonwealth Minister; and
 - (b) the person refuses or fails to give the notice as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
 - (b) if the person is not a body corporate—\$3,330.
- (2) Subsection (1) is an offence of strict liability.

Part 4-4—Offences relating to information standards

203 Supplying etc. goods that do not comply with information standards

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies goods of a particular kind; and
 - (b) an information standard for goods of that kind is in force; and
 - (c) the person has not complied with the standard in relation to the goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply goods of a particular kind; and
 - (b) an information standard for goods of that kind is in force; and
 - (c) the person has not complied with the standard in relation to the goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if:
- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of goods of a particular kind; and
 - (b) an information standard for goods of that kind is in force; and
 - (c) the person has not complied with the standard in relation to the goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
-

- (b) if the person is not a body corporate—\$220,000.
- (4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods.
- (5) Subsection (1), (2) or (3) does not apply to goods that are intended to be used outside Australia.
- (6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Australia if either of the following is applied to the goods:
 - (a) a statement that the goods are for export only;
 - (b) a statement indicating, by the use of words authorised by regulations made for the purposes of section 136(6)(b) to be used for the purposes of section 136(6), that the goods are intended to be used outside Australia.
- (7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being:
 - (a) woven in, impressed on, worked into or annexed or affixed to the goods; or
 - (b) applied to a covering, label, reel or thing in or with which the goods are supplied.
- (8) Subsections (1), (2) and (3) are offences of strict liability.

204 Supplying etc. services that do not comply with information standards

- (1) A person commits an offence if:
 - (a) the person, in trade or commerce, supplies services of a particular kind; and
 - (b) an information standard for services of that kind is in force; and
 - (c) the person has not complied with the standard in relation to the services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply services of a particular kind; and
 - (b) an information standard for services of that kind is in force; and
 - (c) the person has not complied with the standard in relation to the services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

Part 4-5—Offences relating to substantiation notices

205 Compliance with substantiation notices

- (1) A person commits an offence if the person:
- (a) is given a substantiation notice; and
 - (b) refuses or fails to comply with it within the substantiation notice compliance period for the notice.

Penalty:

- (a) if the person is a body corporate—\$16,500; or
 - (b) if the person is not a body corporate—\$3,300.
- (2) Subsection (1) does not apply if:
- (a) the person is an individual; and
 - (b) the person refuses or fails to give particular information or produce a particular document in compliance with a substantiation notice; and
 - (c) the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.
- (3) Subsection (1) is an offence of strict liability.

206 False or misleading information etc.

- (1) A person commits an offence if the person, in compliance or purported compliance with a substantiation notice given by the regulator:
- (a) gives to the regulator false or misleading information; or
 - (b) produces to the regulator documents that contain false or misleading information.

Penalty:

- (a) if the person is a body corporate—\$27,500; or
- (b) if the person is not a body corporate—\$5,500.

- (2) This section does not apply to:
- (a) information that the person could not have known was false or misleading; or
 - (b) the production to the regulator of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.
- (3) Subsection (1) is an offence of strict liability.

Part 4-6—Defences

207 Reasonable mistake of fact

- (1) In a prosecution for a contravention of a provision of this Chapter, it is a defence if the defendant proves that the contravention was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.
- (2) However, subsection (1) does not apply in relation to information relied upon by the defendant that was supplied to the defendant by another person who was, at the time when the contravention occurred:
 - (a) an employee or agent of the defendant; or
 - (b) if the defendant is a body corporate—a director, employee or agent of the defendant.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the defendant is not entitled to rely on that defence unless:
 - (a) the court gives leave; or
 - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

208 Act or default of another person etc.

- (1) In a prosecution for a contravention of a provision of this Chapter, it is a defence if the defendant proves that:
 - (a) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
 - (b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

- (2) However, subsection (1) does not apply in relation to the act or default of another person who was, at the time when the contravention occurred:
- (a) an employee or agent of the defendant; or
 - (b) if the defendant is a body corporate—a director, employee or agent of the defendant.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to the act or default of another person, the defendant is not entitled to rely on that defence unless:
- (a) the court gives leave; or
 - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

209 Publication of advertisements in the ordinary course of business

In a prosecution for a contravention of a provision of this Chapter that was committed by publication of an advertisement, it is a defence if the defendant proves that:

- (a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements; and
- (b) the defendant received the advertisement for publication in the ordinary course of business; and
- (c) the defendant did not know, and had no reason to suspect, that its publication would amount to a contravention of such a provision.

210 Supplying goods acquired for the purpose of re-supply

- (1) In a prosecution for a contravention of a provision of this Chapter that was committed by supplying goods in contravention of section 194 or 203, it is a defence if the defendant proves that:
- (a) the goods were acquired by the defendant for the purpose of re-supply; and
 - (b) the goods were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and
 - (c) in the case of a contravention of section 194—the defendant:
-

- (i) did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with the safety standard to which the contravention relates; or
- (ii) relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard for such goods; and
- (d) in the case of a contravention of section 203—the defendant:
 - (i) did not know, and could not with reasonable diligence have ascertained, that the defendant had not complied with the information standard to which the contravention relates; or
 - (ii) relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no information standard for such goods.

Note: Section 194 is about supply of consumer goods that do not comply with safety standards, and section 203 is about supply of goods that do not comply with information standards.

- (2) A defendant is not entitled to rely on the defence provided by subsection (1) unless:
 - (a) the court gives leave; or
 - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the goods.

211 Supplying services acquired for the purpose of re-supply

- (1) In a prosecution for a contravention of a provision of this Chapter that was committed by supplying services in contravention of section 195 or 204, it is a defence if the defendant proves that:
 - (a) the services were acquired by the defendant for the purpose of re-supply; and
 - (b) the services were so acquired from a person who carried on in Australia a business of supplying such services otherwise than as the agent of a person outside Australia; and
 - (c) in the case of a contravention of section 195—the defendant:
 - (i) did not know, and could not with reasonable diligence have ascertained, that the services did not comply with the safety standard to which the contravention relates; or

- (ii) relied in good faith on a representation by the person from whom the defendant acquired the services that there was no safety standard for such services; and
- (d) in the case of a contravention of section 204—the defendant:
 - (i) did not know, and could not with reasonable diligence have ascertained, that the defendant had not complied with the information standard to which the contravention relates; or
 - (ii) relied in good faith on a representation by the person from whom the defendant acquired the services that there was no information standard for such services.

Note: Section 195 is about supply of product related services that do not comply with safety standards, and section 204 is about supply of services that do not comply with information standards.

- (2) A defendant is not entitled to rely on the defence provided by subsection (1) unless:
 - (a) the court gives leave; or
 - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the services.

Part 4-7—Miscellaneous

212 Prosecutions to be commenced within 3 years

A prosecution for an offence against a provision of this Chapter may be commenced at any time within 3 years after the commission of the offence.

213 Preference must be given to compensation for victims

If a court considers that:

- (a) it is appropriate to impose a fine on a person (the *defendant*) under this Chapter in relation to:
 - (i) a contravention of a provision of this Schedule; or
 - (ii) an attempt to contravene such a provision; or
 - (iii) aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - (iv) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
 - (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (vi) conspiring with others to contravene such a provision; and
 - (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and
 - (c) the defendant does not have sufficient financial resources to pay both the fine and the compensation;
- the court must give preference to making an order for compensation.

214 Penalties for contraventions of the same nature etc.

- (1) If:

- (a) a person is convicted of 2 or more offences constituted by, or relating to, contraventions of the same provision of this Chapter; and
 - (b) the contraventions appear to the court:
 - (i) to have been of the same nature or a substantially similar nature; and
 - (ii) to have occurred at or about the same time;
- the court must not, in respect of the offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision.
- (2) This section applies whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time.

215 Penalties for previous contraventions of the same nature etc.

- (1) If:
- (a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of this Chapter; and
 - (b) a fine has, or fines have, previously been imposed on the person by the court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision; and
 - (c) the contravention, or each of the contraventions, mentioned in paragraph (b) appear to the court:
 - (i) to have been of the same nature as, or a substantially similar nature to, the contravention mentioned in paragraph (a); and
 - (ii) to have occurred at or about the same time as the contravention mentioned in paragraph (a);
- the court must not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence is greater than the amount of the fine, or the sum of the amounts of the fines, referred to in paragraph (b).
- (2) This section applies whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences
-

constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time.

216 Granting of injunctions etc.

In proceedings against a person for a contravention of a provision of this Chapter, the court may:

- (a) grant an injunction under Division 2 of Part 5-2 against the person in relation to:
 - (i) the conduct that constitutes, or is alleged to constitute, the contravention; or
 - (ii) other conduct of that kind; or
- (b) make an order under section 246, 247 or 248 in relation to the contravention.

217 Criminal proceedings not to be brought for contraventions of Chapter 2 or 3

Criminal proceedings do not lie against a person only because the person:

- (a) has contravened a provision of Chapter 2 or 3; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
- (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision.

Chapter 5—Enforcement and remedies

Part 5-1—Enforcement

Division 1—Undertakings

218 Regulator may accept undertakings

- (1) The regulator may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the regulator has a power or function under this Schedule.
- (2) The person may, with the consent of the regulator, withdraw or vary the undertaking at any time.
- (3) If the regulator considers that the person who gave the undertaking has breached any of its terms, the regulator may apply to a court for an order under subsection (4).
- (4) If the court is satisfied that the person has breached a term of the undertaking, the court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay to the Commonwealth, or to a State or Territory, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.

Division 2—Substantiation notices

219 Regulator may require claims to be substantiated etc.

- (1) This section applies if a person has, in trade or commerce, made a claim or representation promoting, or apparently intended to promote:
 - (a) a supply, or possible supply, of goods or services by the person or another person; or
 - (b) a sale or grant, or possible sale or grant, of an interest in land by the person or another person; or
 - (c) employment that is to be, or may be, offered by the person or another person.

- (2) The regulator may give the person who made the claim or representation a written notice that requires the person to do one or more of the following:
 - (a) give information and/or produce documents to the regulator that could be capable of substantiating or supporting the claim or representation;
 - (b) if the claim or representation relates to a supply, or possible supply, of goods or services by the person or another person—give information and/or produce documents to the regulator that could be capable of substantiating:
 - (i) the quantities in which; and
 - (ii) the period for which;the person or other person is or will be able to make such a supply (whether or not the claim or representation relates to those quantities or that period);
 - (c) give information and/or produce documents to the regulator that are of a kind specified in the notice;within 21 days after the notice is given to the person who made the claim or representation.

- (3) Any kind of information or documents that the regulator specifies under subsection (2)(c) must be a kind that the regulator is satisfied is relevant to:
 - (a) substantiating or supporting the claim or representation; or

- (b) if the claim or representation relates to a supply, or possible supply, of goods or services by the person or another person—substantiating the quantities in which, or the period for which, the person or other person is or will be able to make such a supply.
- (4) The notice must:
 - (a) name the person to whom it is given; and
 - (b) specify the claim or representation to which it relates; and
 - (c) explain the effect of sections 220, 221 and 222.
- (5) The notice may relate to more than one claim or representation that the person has made.
- (6) This section does not apply to a person who made the claim or representation if the person:
 - (a) is an information provider; and
 - (b) made the claim or representation by publishing it on behalf of another person in the course of carrying on a business of providing information; and
 - (c) does not have a commercial relationship with the other person other than for the purpose of:
 - (i) publishing claims or representations promoting, or apparently intended to promote, the other person's business or other activities; or
 - (ii) the other person supplying goods or services, or selling or granting interests in land to the person.

220 Extending periods for complying with substantiation notices

- (1) A person who has been given a substantiation notice may, at any time within 21 days after the notice was given to the person by the regulator, apply in writing to the regulator for an extension of the period for complying with the notice.
- (2) The regulator may, by written notice given to the person, extend the period within which the person must comply with the notice.

221 Compliance with substantiation notices

- (1) A person who is given a substantiation notice must comply with it within the substantiation notice compliance period for the notice.
-

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) The ***substantiation notice compliance period*** for a substantiation notice is:
- (a) the period of 21 days specified in the notice; or
 - (b) if the period for complying with the notice has been extended under section 220—the period as so extended;
- and includes (if an application has been made under section 220(1) for an extension of the period for complying with the notice) the period up until the time when the applicant is given notice of the regulator’s decision on the application.
- (3) Despite subsection (1), an individual may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the information or production of the document might tend to incriminate the individual or to expose the individual to a penalty.

222 False or misleading information etc.

- (1) A person must not, in compliance or purported compliance with a substantiation notice given by the regulator:
- (a) give to the regulator false or misleading information; or
 - (b) produce to the regulator documents that contain false or misleading information.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not apply to:
- (a) information that the person could not have known was false or misleading; or
 - (b) the production to the regulator of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

Division 3—Public warning notices

223 Regulator may issue a public warning notice

- (1) The regulator may issue to the public a written notice containing a warning about the conduct of a person if:
 - (a) the regulator has reasonable grounds to suspect that the conduct may constitute a contravention of a provision of Chapter 2, 3 or 4; and
 - (b) the regulator is satisfied that one or more other persons has suffered, or is likely to suffer, detriment as a result of the conduct; and
 - (c) the regulator is satisfied that it is in the public interest to issue the notice.
- (2) Without limiting subsection (1), if:
 - (a) a person refuses to respond to a substantiation notice given by the regulator to the person, or fails to respond to the notice before the end of the substantiation notice compliance period for the notice; and
 - (b) the regulator is satisfied that it is in the public interest to issue a notice under this subsection;the regulator may issue to the public a written notice containing a warning that the person has refused or failed to respond to the substantiation notice within that period, and specifying the matter to which the substantiation notice related.

Part 5-2—Remedies

Division 1—Pecuniary penalties

224 Pecuniary penalties

- (1) If a court is satisfied that a person:
- (a) has contravened any of the following provisions:
 - (i) a provision of Part 2-2 (which is about unconscionable conduct);
 - (ii) a provision of Part 3-1 (which is about unfair practices);
 - (iii) section 66(2) (which is about display notices);
 - (iv) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);
 - (v) a provision (other than section 96(2)) of Division 3 of Part 3-2 (which is about lay-by agreements);
 - (vi) section 100(1) or (3) or 101(3) or (4) (which are about proof of transactions and itemised bills);
 - (vii) section 102(2) or 103(2) (which are about prescribed requirements for warranties and repairers);
 - (viii) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);
 - (ix) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);
 - (x) section 221(1) or 222(1) (which are about substantiation notices); or
 - (b) has attempted to contravene such a provision; or
 - (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
 - (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or

- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision;
- the court may order the person to pay to the Commonwealth, State or Territory, as the case may be, such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the court determines to be appropriate.
- (2) In determining the appropriate pecuniary penalty, the court must have regard to all relevant matters including:
- (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
- (b) the circumstances in which the act or omission took place; and
- (c) whether the person has previously been found by a court in proceedings under Chapter 4 or this Part to have engaged in any similar conduct.
- (3) The pecuniary penalty payable under subsection (1) is not to exceed the amount worked out using the following table:

Amount of pecuniary penalty		
Item	For each act or omission to which this section applies that relates to ...	the pecuniary penalty is not to exceed ...
1	a provision of Part 2-2	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
2	a provision of Part 3-1 (other than section 47(1))	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
3	section 47(1)	(a) if the person is a body corporate—\$5,000; or (b) if the person is not a

Amount of pecuniary penalty		
Item	For each act or omission to which this section applies that relates to ...	the pecuniary penalty is not to exceed ...
		body corporate—\$1,000.
4	section 66(2)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
5	a provision of Division 2 of Part 3-2 (other than section 85)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
6	a provision of Division 3 of Part 3-2 (other than section 96(2))	(a) if the person is a body corporate—\$30,000; or (b) if the person is not a body corporate—\$6,000.
7	section 100(1) or (3) or 101(3) or (4)	(a) if the person is a body corporate—\$15,000; or (b) if the person is not a body corporate—\$3,000.
8	section 102(2) or 103(2)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
9	section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5) or 119(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
10	section 125(4)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.
11	section 127(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or

Amount of pecuniary penalty		
Item	For each act or omission to which this section applies that relates to ...	the pecuniary penalty is not to exceed ...
		(b) if the person is not a body corporate—\$220,000.
12	section 128(2) or (6), 131(1) or 132(1)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.
13	section 136(1), (2) or (3) or 137(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
14	section 221(1)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.
15	section 222(1)	(a) if the person is a body corporate—\$27,500; or (b) if the person is not a body corporate—\$5,500.

- (4) If conduct constitutes a contravention of 2 or more provisions referred to in subsection (1)(a):
- (a) a proceeding may be instituted under this Schedule against a person in relation to the contravention of any one or more of the provisions; but
 - (b) a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

225 Pecuniary penalties and offences

- (1) A court must not make an order under section 224 against a person in relation to either of the following matters (a **consumer protection breach**):
- (a) a contravention of a provision referred to in section 224(1)(a);

- (b) conduct referred to in section 224(1)(b), (c), (d), (e) or (f) that relates to a contravention of such a provision;
if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the consumer protection breach.
- (2) Proceedings for an order under section 224 against a person in relation to a consumer protection breach are stayed if:
- (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the consumer protection breach.
- The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.
- (3) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a consumer protection breach regardless of whether an order under section 224 has been made against the person in respect of the breach.
- (4) Evidence of information given, or evidence of the production of documents, by an individual is not admissible in criminal proceedings against the individual if:
- (a) the individual previously gave the evidence or produced the documents in proceedings for an order under section 224 against the individual in relation to a consumer protection breach (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the consumer protection breach.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the order.

226 Defence

If, in proceedings under section 224 against a person other than a body corporate, it appears to a court that the person has, or may have:

- (a) engaged in conduct in contravention of a provision referred to in subsection (1)(a) of that section; or

- (b) engaged in conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention of such a provision;

but that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the court may relieve the person either wholly or partly from liability to a pecuniary penalty under that section.

227 Preference must be given to compensation for victims

If a court considers that:

- (a) it is appropriate to order a person (the *defendant*) to pay a pecuniary penalty under section 224 in relation to:
 - (i) a contravention of a provision referred to in subsection (1)(a) of that section; or
 - (ii) conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention such a provision; and
 - (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and
 - (c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty and the compensation;
- the court must give preference to making an order for compensation.

228 Civil action for recovery of pecuniary penalties

- (1) The regulator may institute a proceeding in a court for the recovery on behalf of the Commonwealth, a State or a Territory, as the case may be, of a pecuniary penalty referred to in section 224.
- (2) A proceeding under subsection (1) may be commenced at any time within 6 years after the contravention or conduct.

229 Indemnification of officers

- (1) A body corporate (the *first body*), or a body corporate related to the first body, commits an offence if it indemnifies a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against either of the following

liabilities incurred as an officer (within the meaning of the *Corporations Act 2001*) of the first body:

- (a) a liability to pay a pecuniary penalty under section 224;
- (b) legal costs incurred in defending or resisting proceedings in which the person is found to have such a liability.

Penalty: \$2,750.

- (2) For the purposes of subsection (1), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

230 Certain indemnities not authorised and certain documents void

- (1) Section 229 does not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify a person against a liability is void to the extent that it contravenes section 229.

Division 2—Injunctions

232 Injunctions

- (1) A court may grant an injunction, in such terms as the court considers appropriate, if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
 - (a) a contravention of a provision of Chapter 2, 3 or 4; 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.
- (2) The court may grant the injunction on application by the regulator or any other person.
- (3) Subsection (1) applies in relation to conduct constituted by applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term as if the conduct were a contravention of a provision of Chapter 2.
- (4) The power of the court to grant an injunction under subsection (1) 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 a kind referred to in that subsection; 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 other person if the person engages in conduct of that kind.

- (5) Without limiting subsection (1), the court may grant an injunction under that subsection restraining a person from carrying on a business or supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business):
 - (a) for a specified period; or
 - (b) except on specified terms and conditions.
- (6) Without limiting subsection (1), the court may grant an injunction under that subsection requiring a person to do any of the following:
 - (a) refund money;
 - (b) transfer property;
 - (c) honour a promise;
 - (d) destroy or dispose of goods.
- (7) The power of the court to grant an injunction under subsection (1) 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 refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

233 Consent injunctions

If an application is made under section 232, the court may, if it considers that it is appropriate to do so, grant an injunction under this section by consent of all the parties to the proceedings, whether or not the court is satisfied as required by section 232(1).

234 Interim injunctions

- (1) If an application is made under section 232, the court may, if it considers it is desirable to do so, grant an interim injunction under this subsection pending the determination of the application.
- (2) If a responsible Minister or the regulator made the application under section 232, the court must not require the applicant or any

other person to give any undertakings as to damages as a condition of granting the interim injunction.

(3) If:

(a) in a case to which subsection (2) does not apply the court would, but for this subsection, require a person to give an undertaking as to damages or costs; and

(b) a responsible Minister gives the undertaking;

the court must accept the undertaking by the responsible Minister and must not require a further undertaking from any other person.

235 Variation and discharge of injunctions

A court may vary or discharge an injunction (including an interim injunction) that it has granted under this Division.

Division 3—Damages

236 Actions for damages

- (1) If:
 - (a) a person (the *claimant*) suffers loss or damage because of the conduct of another person; and
 - (b) the conduct contravened a provision of Chapter 2 or 3;the claimant may recover the amount of the loss or damage by action against that other person, or against any person involved in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

Division 4—Compensation orders etc. for injured persons and orders for non-party consumers

Subdivision A—Compensation orders etc. for injured persons

237 Compensation orders etc. on application by an injured person or the regulator

- (1) A court may:
- (a) on application of a person (the *injured person*) who has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:
 - (i) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or
 - (ii) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term; or
 - (b) on the application of the regulator made on behalf of one or more such injured persons;

make such order or orders as the court thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

- (2) The order must be an order that the court considers will:
- (a) compensate the injured person, or any such injured persons, in whole or in part for the loss or damage; or
 - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or any such injured persons.
- (3) An application under subsection (1) may be made at any time within 6 years after the day on which:
- (a) if subsection (1)(a)(i) applies—the cause of action that relates to the conduct referred to in that subsection accrued; or

- (b) if subsection (1)(a)(ii) applies—the declaration referred to in that subsection is made.

238 Compensation orders etc. arising out of other proceedings

- (1) If a court finds, in a proceeding instituted under a provision of Chapter 4 or this Chapter (other than this section), that a person (the *injured person*) who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:
 - (a) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or
 - (b) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term;the court may make such order or orders as it thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note: The orders that the court may make include all or any of the orders set out in section 243.

- (2) The order must be an order that the court considers will:
 - (a) compensate the injured person in whole or in part for the loss or damage; or
 - (b) prevent or reduce the loss or damage.

Subdivision B—Orders for non-party consumers

239 Orders to redress etc. loss or damage suffered by non-party consumers

- (1) If:
 - (a) a person:
 - (i) engaged in conduct (the *contravening conduct*) in contravention of a provision of Chapter 2, Part 3-1, Division 2, 3 or 4 of Part 3-2 or Chapter 4; or
 - (ii) is a party to a consumer contract who is advantaged by a term (the *declared term*) of the contract in relation to which a court has made a declaration under section 250; and

(b) the contravening conduct or declared term caused, or is likely to cause, a class of persons to suffer loss or damage; and

(c) the class includes persons who are non-party consumers in relation to the contravening conduct or declared term;

a court may, on the application of the regulator, make such order or orders (other than an award of damages) as the court thinks appropriate against a person referred to in subsection (2) of this section.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

(2) An order under subsection (1) may be made against:

(a) if subsection (1)(a)(i) applies—the person who engaged in the contravening conduct, or a person involved in that conduct; or

(b) if subsection (1)(a)(ii) applies—a party to the contract who is advantaged by the declared term.

(3) The order must be an order that the court considers will:

(a) redress, in whole or in part, the loss or damage suffered by the non-party consumers in relation to the contravening conduct or declared term; or

(b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the non-party consumers in relation to the contravening conduct or declared term.

(4) An application under subsection (1) may be made at any time within 6 years after the day on which:

(a) if subsection (1)(a)(i) applies—the cause of action that relates to the contravening conduct accrued; or

(b) if subsection (1)(a)(ii) applies—the declaration is made.

240 Determining whether to make a redress order etc. for non-party consumers

(1) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(a), the court may have regard to the conduct of the person, and of the non-party

consumers in relation to the contravening conduct, since the contravention occurred.

- (2) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(b), the court may have regard to the conduct of the person, and of the non-party consumers in relation to the declared term, since the declaration was made.
- (3) In determining whether to make an order under section 239(1), the court need not make a finding about either of the following matters:
 - (a) which persons are non-party consumers in relation to the contravening conduct or declared term;
 - (b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

241 When a non-party consumer is bound by a redress order etc.

- (1) A non-party consumer is bound by an order made under section 239(1) against a person if:
 - (a) the loss or damage suffered, or likely to be suffered, by the non-party consumer in relation to the contravening conduct, or the declared term, to which the order relates has been redressed, prevented or reduced in accordance with the order; and
 - (b) the non-party consumer has accepted the redress, prevention or reduction.
- (2) Any other order made under section 239(1) that relates to that loss or damage has no effect in relation to the non-party consumer.
- (3) Despite any other provision of:
 - (a) this Schedule; or
 - (b) any other law of the Commonwealth, or a State or a Territory;no claim, action or demand may be made or taken against the person by the non-party consumer in relation to that loss or damage.

Subdivision C—Miscellaneous

242 Applications for orders

- (1) An application may be made under section 237(1) or 239(1) even if an enforcement proceeding in relation to the conduct, or the term of a consumer contract, referred to in that subsection has not been instituted.
- (2) The regulator must not make an application under section 237(1)(b) on behalf of one or more persons unless those persons have consented in writing to the making of the application.

243 Kinds of orders that may be made

Without limiting section 237(1), 238(1) or 239(1), the orders that a court may make under any of those sections against a person (the *respondent*) include all or any of the following:

- (a) an order declaring the whole or any part of a contract made between the respondent and a person (the *injured person*) who suffered, or is likely to suffer, the loss or damage referred to in that section, or of a collateral arrangement relating to such a contract:
 - (i) to be void; and
 - (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (b) an order:
 - (i) varying such a contract or arrangement in such manner as is specified in the order; and
 - (ii) if the court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;
- (d) an order directing the respondent to refund money or return property to the injured person;

- (e) except if the order is to be made under section 239(1)—an order directing the respondent to pay the injured person the amount of the loss or damage;
- (f) an order directing the respondent, at his or her own expense, to repair, or provide parts for, goods that had been supplied by the respondent to the injured person;
- (g) an order directing the respondent, at his or her own expense, to supply specified services to the injured person;
- (h) an order, in relation to an instrument creating or transferring an interest in land, directing the respondent to execute an instrument that:
 - (i) varies, or has the effect of varying, the first mentioned instrument; or
 - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first mentioned instrument.

244 Power of a court to make orders

A court may make an order under Subdivision A or B of this Division whether or not the court:

- (a) grants an injunction under Division 2 of this Part; or
- (b) makes an order under section 236, 246, 247 or 248.

245 Interaction with other provisions

Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part.

Division 5—Other remedies

246 Non-punitive orders

- (1) A court may, on application of the regulator, make one or more of the orders mentioned in subsection (2) in relation to a person who has engaged in conduct that:
 - (a) contravenes a provision of Chapter 2, 3 or 4; or
 - (b) constitutes an involvement in a contravention of such a provision.
- (2) The court may make the following orders in relation to the person who has engaged in the conduct:
 - (a) an order directing the person to perform a service that is specified in the order, and that relates to the conduct, for the benefit of the community or a section of the community;
 - (b) an order for the purpose of ensuring that the person does not engage in the conduct, similar conduct, or related conduct, during the period of the order (which must not be longer than 3 years) including:
 - (i) an order directing the person to establish a compliance program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and
 - (ii) an order directing the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and
 - (iii) an order directing the person to revise the internal operations of the person's business which led to the person engaging in such conduct;
 - (c) an order requiring the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to;

- (d) an order requiring the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

Note: The following are examples of orders that the court may make under subsection (2)(a):

- (a) an order requiring a person who has made false representations to make available a training video which explains advertising obligations under this Schedule;
 - (b) an order requiring a person who has engaged in misleading or deceptive conduct in relation to a product to carry out a community awareness program to address the needs of consumers when purchasing the product.
- (3) This section does not limit a court's powers under any other provision of this Schedule.

247 Adverse publicity orders

- (1) A court may, on application of the regulator, make an adverse publicity order in relation to a person who:
 - (a) has contravened a provision of Part 2-2 or Chapter 3; or
 - (b) has committed an offence against Chapter 4.
- (2) An **adverse publicity order** in relation to a person is an order that requires the person:
 - (a) to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and
 - (b) to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.
- (3) This section does not limit a court's powers under any other provision of this Schedule.

248 Order disqualifying a person from managing corporations

- (1) A court may, on application of the regulator, make an order disqualifying a person from managing corporations for a period that the court considers appropriate if:

- (a) the court is satisfied that the person has contravened, has attempted to contravene or has been involved in a contravention of any of the following provisions:
 - (i) a provision of Part 2-2 (which is about unconscionable conduct);
 - (ii) a provision of Part 3-1 (which is about unfair practices);
 - (iii) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);
 - (iv) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);
 - (v) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);
 - (vi) a provision of Chapter 4 (which is about offences); and
- (b) the court is satisfied that the disqualification is justified.

Note: Section 206EA of the *Corporations Act 2001* provides that a person is disqualified from managing corporations if a court order is in force under this section. That Act contains various consequences for persons so disqualified.

- (2) In determining under subsection (1) whether the disqualification is justified, the court may have regard to:
 - (a) the person's conduct in relation to the management, business or property of any corporation; and
 - (b) any other matters that the court considers appropriate.
- (3) If the court makes an order under subsection (1), the regulator must:
 - (a) notify ASIC; and
 - (b) give ASIC a copy of any such order.

Note: ASIC must keep a register of persons who have been disqualified from managing corporations: see section 1274AA of the *Corporations Act 2001*.

- (4) For the purposes of this Schedule (other than this section or section 249), an order under this section is not a penalty.

**249 Privilege against exposure to penalty or forfeiture—
disqualification from managing corporations**

- (1) In a civil or criminal proceeding under, or arising out of, this Schedule, a person is not entitled to refuse or fail to comply with a requirement:
 - (a) to answer a question or give information; or
 - (b) to produce a document or any other thing; or
 - (c) to do any other act;on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.
- (2) Subsection (1) applies whether or not the person is a defendant in the proceeding or in any other proceeding.
- (3) A person is not entitled to refuse or fail to comply with a requirement under this Schedule:
 - (a) to answer a question or give information; or
 - (b) to produce a document or any other thing; or
 - (c) to do any other act;on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.

250 Declarations relating to consumer contracts

- (1) A court may, on the application of a party to a consumer contract or on the application of the regulator, declare that a term of such a contract is an unfair term.
- (2) Subsection (1) does not apply unless the consumer contract is a standard form contract.
- (3) Subsection (1) does not limit any other power of the court to make declarations.

Division 6—Defences

251 Publication of advertisement in the ordinary course of business

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 if the contravention was committed by the publication of an advertisement.
- (2) In the proceeding, it is a defence if the defendant proves that:
 - (a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements; and
 - (b) the defendant received the advertisement for publication in the ordinary course of business; and
 - (c) the defendant did not know, and had no reason to suspect, that its publication would amount to a contravention of such a provision.

252 Supplying consumer goods for the purpose of re-supply

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:
 - (a) the supplying of consumer goods that did not comply with a safety standard for such goods; or
 - (b) the supplying of consumer goods by a supplier who did not comply with an information standard for such goods.
- (2) In the proceeding, it is a defence if the defendant proves that:
 - (a) the consumer goods were acquired by the defendant for the purpose of re-supply; and
 - (b) the consumer goods were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and
 - (c) either:
 - (i) the defendant did not know, and could not with reasonable diligence have ascertained, that the consumer goods did not comply with that safety standard, or that

- the defendant had not complied with that information standard, as the case may be; or
- (ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information standard, as the case may be, for such consumer goods.
- (3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:
- (a) the court gives leave; or
- (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the consumer goods.

253 Supplying product related services for the purpose of re-supply

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:
- (a) the supplying of product related services that did not comply with a safety standard for such services; or
- (b) the supplying of product related services by a supplier who did not comply with an information standard for such services.
- (2) In the proceeding, it is a defence if the defendant proves that:
- (a) the product related services were acquired by the defendant for the purpose of re-supply; and
- (b) the product related services were so acquired from a person who carried on in Australia a business of supplying such services otherwise than as the agent of a person outside Australia; and
- (c) either:
- (i) the defendant did not know, and could not with reasonable diligence have ascertained, that the product related services did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or

- (ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information standard, as the case may be, for such product related services.
- (3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:
 - (a) the court gives leave; or
 - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the product related services.

Part 5-3—Country of origin representations

254 Overview

This Part provides that certain country of origin representations made about goods do not contravene:

- (a) section 18 (which deals with misleading or deceptive conduct); or
- (b) section 29(1)(a) or (k) or 151(1)(a) or (k) (which deal with false or misleading representations).

255 Country of origin representations do not contravene certain provisions

- (1) A person does not contravene section 18, 29(1)(a) or (k) or 151(1)(a) or (k) only by making a representation of a kind referred to in an item in the first column of this table, if the requirements of the corresponding item in the second column are met.

Country of origin representations		
Item	Representation	Requirements to be met
1	A representation as to the country of origin of goods	<ul style="list-style-type: none"> (a) the goods have been substantially transformed in that country; and (b) 50% or more of the total cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that occurred in that country; and (c) the representation is not a representation to which item 2 or 3 of this table applies.
2	A representation that goods are the produce of a particular country	<ul style="list-style-type: none"> (a) the country was the country of origin of each significant ingredient or significant component of the goods; and (b) all, or virtually all, processes involved in the production or manufacture happened in that country.
3	A representation as to the country of origin of	<ul style="list-style-type: none"> (a) the goods have been substantially transformed in the country represented by the logo as the

Country of origin representations

Item	Representation	Requirements to be met
	goods by means of a logo specified in the regulations	country of origin of the goods; and (b) the prescribed percentage of the cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that happened in that country.
4	A representation that goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each significant ingredient or significant component of the goods was grown in that country; and (c) all, or virtually all, processes involved in the production or manufacture happened in that country.
5	A representation that ingredients or components of goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and (c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and (d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country.

Note: The regulations may prescribe rules for determining the percentage of the total costs of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country, see section 257.

(2) Despite subsection (1), this section does not apply to a representation of a kind referred to in item 4 or 5 in the first

column of the table in that subsection if the representation is made together with another representation of a kind referred to in item 1 or 2 in that first column.

- (3) Goods are *substantially transformed* in a country if they undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.
- (4) Without limiting subsection (3), the regulations:
 - (a) may prescribe changes (whether in relation to particular classes of goods or otherwise) that are not fundamental changes for the purposes of that subsection; and
 - (b) may include examples (in relation to particular classes of goods or otherwise) of changes which are fundamental changes for the purposes of that subsection.
- (5) Item 2 of the table in subsection (1) applies to a representation that goods are the produce of a particular country whether the representation uses the words “product of”, “produce of” or any other grammatical variation of the word “produce”.
- (6) The regulations made for the purposes of item 3 of the table in subsection (1) may, in relation to a specified logo, prescribe a percentage in the range of 51% to 100% as the percentage applicable to goods for the purposes of paragraph (b) in the second column of that item.
- (7) Goods, or ingredients or components of goods, are *grown* in a country if they:
 - (a) are materially increased in size or materially altered in substance in that country by natural development; or
 - (b) germinated or otherwise arose in, or issued in, that country; or
 - (c) are harvested, extracted or otherwise derived from an organism that has been materially increased in size, or materially altered in substance, in that country by natural development.
- (8) For the purposes of items 4 and 5 in the table in subsection (1) in relation to particular goods:
 - (a) packaging materials are not treated as ingredients or components of the goods; and

- (b) disregard the weight of packaging materials in working out the weight of the goods.
- (9) For the purposes of items 4 and 5 in the table in subsection (1) in relation to an ingredient or component that has been dried or concentrated by the evaporation of water, and to which water has been added to return the water content of the ingredient or component to no more than its natural level:
- (a) the weight of the water so added is included in the weight of the ingredient or component; and
 - (b) the water so added is treated as having the same origin as the ingredient or component, regardless of its actual origin.

256 Cost of producing or manufacturing goods

- (1) The cost of producing or manufacturing goods is worked out, for the purposes of section 255, by adding up the following amounts:
- (a) the amount of expenditure on materials in respect of the goods;
 - (b) the amount of expenditure on labour in respect of the goods;
 - (c) the amount of expenditure on overheads in respect of the goods;
- each worked out in accordance with this table:

Cost of producing or manufacturing goods		
Item	This amount of expenditure:	is worked out as follows:
1	Expenditure on materials in respect of the goods	The cost of materials used in the production or manufacture of the goods: <ul style="list-style-type: none"> (a) that is incurred by the manufacturer of the goods; and (b) that has not been prescribed by regulations made for the purposes of subsection (2)(a).
2	Expenditure on labour in respect of the goods	The sum of each labour cost: <ul style="list-style-type: none"> (a) that is incurred by the manufacturer of the goods; and (b) that relates to the production or manufacture of the goods; and (c) that can reasonably be allocated to the production or manufacture of the goods; and

Cost of producing or manufacturing goods

Item	This amount of expenditure:	is worked out as follows:
		(d) that has not been prescribed by regulations made for the purposes of subsection (2)(b).
3	Expenditure on overheads in respect of the goods	The sum of each overhead cost: <ul style="list-style-type: none"> (a) that is incurred by the manufacturer of the goods; and (b) that relates to the production or manufacture of the goods; and (c) that can reasonably be allocated to the production or manufacture of the goods; and (d) that has not been prescribed by regulations made for the purposes of subsection (2)(c).

- (2) The regulations may, for the purposes of subsection (1), prescribe that:
 - (a) the cost of a particular material, or a part of such a cost; or
 - (b) a particular labour cost, or a part of a labour cost; or
 - (c) a particular overhead cost, or a part of an overhead cost;
 is not allowable in respect of goods, or classes of goods.
- (3) The regulations may, for the purposes of subsection (1), prescribe the manner of working out:
 - (a) the cost of a material, or part of the cost; or
 - (b) a labour cost, or part of the cost; or
 - (c) an overhead cost, or part of the cost.

257 Rules for determining the percentage of costs of production or manufacture attributable to a country

- (1) Subject to subsection (2), the regulations may prescribe rules for determining, for the purposes of section 255, the percentage of the total cost of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country.

- (2) Rules prescribed under subsection (1) must not discriminate (whether favourably or unfavourably) between countries or classes of countries.

258 Proceedings relating to false, misleading or deceptive conduct or representations

If:

- (a) proceedings are brought against a person in respect of section 18, 29(1)(a) or (k) or 151(1)(a) or (k); and
- (b) the person seeks to rely on a provision of this Part, or of a regulation made for the purposes of a provision of this Part, in the proceedings;

the person bears an evidential burden in relation to the matters set out in the provision on which the person seeks to rely.

Part 5-4—Remedies relating to guarantees

Division 1—Action against suppliers

Subdivision A—Action against suppliers of goods

259 Action against suppliers of goods

- (1) A consumer may take action under this section if:
 - (a) a person (the *supplier*) supplies, in trade or commerce, goods to the consumer; and
 - (b) a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2 (other than sections 58 and 59(1)) is not complied with.
 - (2) If the failure to comply with the guarantee can be remedied and is not a major failure:
 - (a) the consumer may require the supplier to remedy the failure within a reasonable time; or
 - (b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time—the consumer may:
 - (i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied; or
 - (ii) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection.
 - (3) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:
 - (a) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection; or
 - (b) by action against the supplier, recover compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.
-

- (4) The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.
- (5) Subsection (4) does not apply if the failure to comply with the guarantee occurred only because of a cause independent of human control that occurred after the goods left the control of the supplier.
- (6) To avoid doubt, subsection (4) applies in addition to subsections (2) and (3).
- (7) The consumer may take action under this section whether or not the goods are in their original packaging.

260 When a failure to comply with a guarantee is a major failure

A failure to comply with a guarantee referred to in section 259(1)(b) that applies to a supply of goods is a *major failure* if:

- (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the goods depart in one or more significant respects:
 - (i) if they were supplied by description—from that description; or
 - (ii) if they were supplied by reference to a sample or demonstration model—from that sample or demonstration model; or
- (c) the goods are substantially unfit for a purpose for which goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (d) the goods are unfit for a disclosed purpose that was made known to:
 - (i) the supplier of the goods; or
 - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made;

- and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (e) the goods are not of acceptable quality because they are unsafe.

261 How suppliers may remedy a failure to comply with a guarantee

If, under section 259(2)(a), a consumer requires a supplier of goods to remedy a failure to comply with a guarantee referred to in section 259(1)(b), the supplier may comply with the requirement:

- (a) if the failure relates to title—by curing any defect in title; or
- (b) if the failure does not relate to title—by repairing the goods; or
- (c) by replacing the goods with goods of an identical type; or
- (d) by refunding:
- (i) any money paid by the consumer for the goods; and
- (ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods.

262 When consumers are not entitled to reject goods

- (1) A consumer is not entitled, under section 259, to notify a supplier of goods that the consumer rejects the goods if:
- (a) the rejection period for the goods has ended; or
- (b) the goods have been lost, destroyed or disposed of by the consumer; or
- (c) the goods were damaged after being delivered to the consumer for reasons not related to their state or condition at the time of supply; or
- (d) the goods have been attached to, or incorporated in, any real or personal property and they cannot be detached or isolated without damaging them.
- (2) The *rejection period* for goods is the period from the time of the supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with a guarantee referred to in section 259(1)(b) to become apparent having regard to:
- (a) the type of goods; and
- (b) the use to which a consumer is likely to put them; and

- (c) the length of time for which it is reasonable for them to be used; and
- (d) the amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

263 Consequences of rejecting goods

- (1) This section applies if, under section 259, a consumer notifies a supplier of goods that the consumer rejects the goods.
- (2) The consumer must return the goods to the supplier unless:
 - (a) the goods have already been returned to, or retrieved by, the supplier; or
 - (b) the goods cannot be returned, removed or transported without significant cost to the consumer because of:
 - (i) the nature of the failure to comply with the guarantee to which the rejection relates; or
 - (ii) the size or height, or method of attachment, of the goods.
- (3) If subsection (2)(b) applies, the supplier must, within a reasonable time, collect the goods at the supplier's expense.
- (4) The supplier must, in accordance with an election made by the consumer:
 - (a) refund:
 - (i) any money paid by the consumer for the goods; and
 - (ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods;or
 - (b) replace the rejected goods with goods of the same type, and of similar value, if such goods are reasonably available to the supplier.
- (5) The supplier cannot satisfy subsection (4)(a) by permitting the consumer to acquire goods from the supplier.
- (6) If the property in the rejected goods had passed to the consumer before the rejection was notified, the property in those goods reverts in the supplier on the notification of the rejection.

264 Replaced goods

If the goods are replaced under section 261(c) or 263(4)(b):

- (a) the replacement goods are taken, for the purposes of Division 1 of Part 3-2 and this Part, to be supplied by the supplier; and
- (b) the provisions of Division 1 of Part 3-2 and this Part apply in relation to the replacement goods.

265 Termination of contracts for the supply of services that are connected with rejected goods

- (1) If:
 - (a) under section 259, a consumer notifies a supplier of goods that the consumer rejects the goods; and
 - (b) the supplier is required under section 263(4)(a) to give the consumer a refund; and
 - (c) a person supplies, in trade or commerce, services to the consumer that are connected with the rejected goods;the consumer may terminate the contract for the supply of the services.
- (2) The termination takes effect:
 - (a) at the time the termination is made known to the supplier of the services (whether by words or by conduct indicating the consumer's intention to terminate the contract); or
 - (b) if it is not reasonably practicable to communicate with the supplier of the services—at the time the consumer indicates, by means which are reasonable in the circumstances, his or her intention to terminate the contract.
- (3) The consumer is entitled to recover, by action against the supplier of the services, a refund of:
 - (a) any money paid by the consumer for the services; and
 - (b) an amount that is equal to the value of any other consideration provided by the consumer for the services;to the extent that the consumer has not already consumed the services at the time the termination takes effect.

266 Rights of gift recipients

If a consumer acquires goods from a supplier and gives them to another person as a gift, the other person may, subject to any defence which would be available to the supplier against the consumer:

- (a) exercise any rights or remedies under this Subdivision which would be available to the other person if he or she had acquired the goods from the supplier; and
- (b) any reference in this Subdivision to a consumer includes a reference to the other person accordingly.

Subdivision B—Action against suppliers of services

267 Action against suppliers of services

- (1) A consumer may take action under this section if:
 - (a) a person (the *supplier*) supplies, in trade or commerce, services to the consumer; and
 - (b) a guarantee that applies to the supply under Subdivision B of Division 1 of Part 3-2 is not complied with; and
 - (c) unless the guarantee is the guarantee under section 60—the failure to comply with the guarantee did not occur only because of:
 - (i) an act, default or omission of, or a representation made by, any person other than the supplier, or an agent or employee of the supplier; or
 - (ii) a cause independent of human control that occurred after the services were supplied.
- (2) If the failure to comply with the guarantee can be remedied and is not a major failure:
 - (a) the consumer may require the supplier to remedy the failure within a reasonable time; or
 - (b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time—the consumer may:
 - (i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs

- incurred by the consumer in having the failure so remedied; or
- (ii) terminate the contract for the supply of the services.
- (3) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:
- (a) terminate the contract for the supply of the services; or
- (b) by action against the supplier, recover compensation for any reduction in the value of the services below the price paid or payable by the consumer for the services.
- (4) The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.
- (5) To avoid doubt, subsection (4) applies in addition to subsections (2) and (3).

268 When a failure to comply with a guarantee is a major failure

A failure to comply with a guarantee referred to in section 267(1)(b) that applies to a supply of services is a *major failure* if:

- (a) the services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the services are substantially unfit for a purpose for which services of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (c) both of the following apply:
- (i) the services, and any product resulting from the services, are unfit for a particular purpose for which the services were acquired by the consumer that was made known to the supplier of the services;
- (ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (d) both of the following apply:

- (i) the services, and any product resulting from the services, are not of such a nature, or quality, state or condition, that they might reasonably be expected to achieve a result desired by the consumer that was made known to the supplier;
 - (ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to achieve such a result; or
- (e) the supply of the services creates an unsafe situation.

269 Termination of contracts for the supply of services

- (1) This section applies if, under section 267, a consumer terminates a contract for the supply of services.
- (2) The termination takes effect:
 - (a) at the time the termination is made known to the supplier of the services (whether by words or by conduct indicating the consumer's intention to terminate the contract); or
 - (b) if it is not reasonably practicable to communicate with the supplier of the services—at the time the consumer indicates, by means which are reasonable in the circumstances, his or her intention to terminate the contract.
- (3) The consumer is entitled to recover, by action against the supplier of the services, a refund of:
 - (a) any money paid by the consumer for the services; and
 - (b) an amount that is equal to the value of any other consideration provided by the consumer for the services;to the extent that the consumer has not already consumed the services at the time the termination takes effect.

270 Termination of contracts for the supply of goods that are connected with terminated services

- (1) If:
 - (a) under section 267, a consumer terminates a contract for the supply of services; and
 - (b) a person (the *supplier*) has supplied, in trade or commerce, goods to the consumer that are connected with the services;then:
-

- (c) the consumer is taken to have rejected the goods at the time the termination of the contract takes effect; and
 - (d) the consumer must return the goods to the supplier of the goods unless:
 - (i) the goods have already been returned to, or retrieved by, the supplier; or
 - (ii) the goods cannot be returned, removed or transported without significant cost to the consumer because of the nature of the failure to comply with the guarantee to which the rejection relates, or because of the size or height, or method of attachment, of the goods; and
 - (e) the supplier must refund:
 - (i) any money paid by the consumer for the goods; and
 - (ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods.
- (2) If subsection (1)(d)(ii) applies, the supplier must collect the goods at the supplier's expense.

Division 2—Action for damages against manufacturers of goods

271 Action for damages against manufacturers of goods

- (1) If:
 - (a) the guarantee under section 54 applies to a supply of goods to a consumer; and
 - (b) the guarantee is not complied with;an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.
- (2) Subsection (1) does not apply if the guarantee under section 54 is not complied with only because of:
 - (a) an act, default or omission of, or any representation made by, any person other than the manufacturer or an employee or agent of the manufacturer; or
 - (b) a cause independent of human control that occurred after the goods left the control of the manufacturer; or
 - (c) the fact that the price charged by the supplier was higher than the manufacturer's recommended retail price, or the average retail price, for the goods.
- (3) If:
 - (a) a person supplies, in trade or commerce, goods by description to a consumer; and
 - (b) the description was applied to the goods by or on behalf of the manufacturer of the goods, or with express or implied consent of the manufacturer; and
 - (c) the guarantee under section 56 applies to the supply and it is not complied with;an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.
- (4) Subsection (3) does not apply if the guarantee under section 56 is not complied with only because of:

- (a) an act, default or omission of any person other than the manufacturer or an employee or agent of the manufacturer; or
 - (b) a cause independent of human control that occurred after the goods left the control of the manufacturer.
- (5) If:
- (a) the guarantee under section 58 or 59(1) applies to a supply of goods to a consumer; and
 - (b) the guarantee is not complied with;
- an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.
- (6) If an affected person in relation to goods has, in accordance with an express warranty given or made by the manufacturer of the goods, required the manufacturer to remedy a failure to comply with a guarantee referred to in subsection (1), (3) or (5):
- (a) by repairing the goods; or
 - (b) by replacing the goods with goods of an identical type;
- then, despite that subsection, the affected person is not entitled to commence an action under that subsection to recover damages of a kind referred to in section 272(1)(a) unless the manufacturer has refused or failed to remedy the failure, or has failed to remedy the failure within a reasonable time.
- (7) The affected person in relation to the goods may commence an action under this section whether or not the goods are in their original packaging.

272 Damages that may be recovered by action against manufacturers of goods

- (1) In an action for damages under this Division, an affected person in relation to goods is entitled to recover damages for:
- (a) any reduction in the value of the goods, resulting from the failure to comply with the guarantee to which the action relates, below whichever of the following prices is lower:
 - (i) the price paid or payable by the consumer for the goods;
 - (ii) the average retail price of the goods at the time of supply; and

- (b) any loss or damage suffered by the affected person because of the failure to comply with the guarantee to which the action relates if it was reasonably foreseeable that the affected person would suffer such loss or damage as a result of such a failure.
- (2) Without limiting subsection (1)(b), the cost of inspecting and returning the goods to the manufacturer is taken to be a reasonably foreseeable loss suffered by the affected person as a result of the failure to comply with the guarantee.
- (3) Subsection (1)(b) does not apply to loss or damage suffered through a reduction in the value of the goods.

273 Time limit for actions against manufacturers of goods

An affected person may commence an action for damages under this Division at any time within 3 years after the day on which the affected person first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates has not been complied with.

Division 3—Miscellaneous

274 Indemnification of suppliers by manufacturers

- (1) A manufacturer of goods is liable to indemnify a person (the *supplier*) who supplies the goods to a consumer if:
 - (a) the supplier is liable to pay damages under section 259(4) to the consumer for loss or damage suffered by the consumer; and
 - (b) the manufacturer is or would be liable under section 271 to pay damages to the consumer for the same loss or damage.
 - (2) Without limiting subsection (1), a manufacturer of goods is liable to indemnify a person (the *supplier*) who supplies the goods to a consumer if:
 - (a) the supplier incurs costs because the supplier is liable under this Part for a failure to comply with a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2; and
 - (b) the failure is:
 - (i) a failure to comply with the guarantee under section 54; or
 - (ii) a failure to comply with the guarantee under section 55 in relation to a disclosed purpose that the consumer made known to the manufacturer either directly or through the supplier or the person referred to in section 55(2)(a)(ii); or
 - (iii) a failure to comply with the guarantee under section 56 in relation to a description that was applied to the goods by or on behalf of the manufacturer of the goods, or with the express or implied consent of the manufacturer.
 - (3) The supplier may, with respect to the manufacturer's liability to indemnify the supplier, commence an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the supplier could have obtained if that liability had arisen under a contract of indemnity made between them.
 - (4) The supplier may commence the action at any time within 3 years after the earliest of the following days:
-

- (a) the day, or the first day, as the case may be, on which the supplier made a payment with respect to, or otherwise discharged in whole or in part, the liability of the supplier to the consumer;
- (b) the day on which a proceeding was commenced by the consumer against the supplier with respect to that liability or, if more than one such proceeding was commenced, the day on which the first such proceeding was commenced.

275 Limitation of liability etc.

If:

- (a) there is a failure to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 3-2; and
- (b) the law of a State or a Territory is the proper law of the contract;

that law applies to limit or preclude liability for the failure, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of any liability, for a breach of a term of the contract for the supply of the services.

276 This Part not to be excluded etc. by contract

- (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:
 - (a) the application of all or any of the provisions of this Part; or
 - (b) the exercise of a right conferred by such a provision; or
 - (c) any liability of a person in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 to a supply of goods or services.
- (2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with the provision.
- (3) This section does not apply to a term of a contract that is a term referred to in section 276A(4).

276A Limitation in certain circumstances of liability of manufacturer to seller

- (1) Despite section 274, if goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of the manufacturer of the goods to a person (the *supplier*) who supplied the goods to a consumer is limited to a liability to pay to the supplier an amount equal to:
 - (a) the cost of replacing the goods; or
 - (b) the cost of obtaining equivalent goods; or
 - (c) the cost of having the goods repaired;whichever is the lowest amount.
- (2) Subsection (1) does not apply in relation to particular goods if the supplier establishes that it is not fair or reasonable for the liability of the manufacturer of the goods to be limited as mentioned in subsection (1).
- (3) In determining for the purposes of subsection (2) whether or not it is fair or reasonable for the liability of a manufacturer to a supplier in relation to goods to be limited as mentioned in subsection (1), a court is to have regard to all the circumstances of the case, and in particular to the following matters:
 - (a) the availability of suitable alternative sources of supply of the goods;
 - (b) the availability of equivalent goods;
 - (c) whether the goods were manufactured, processed or adapted to the special order of the supplier.
- (4) This section is subject to any term of a contract between the manufacturer and the supplier imposing on the manufacturer a greater liability than the liability mentioned in subsection (1).

277 Representative actions by the regulator

- (1) The regulator may, by application, commence an action under this Part on behalf of one or more persons identified in the application who are entitled under this Part to take the action.
- (2) The regulator may only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

Part 5-5—Liability of suppliers and credit providers

Division 1—Linked credit contracts

278 Liability of suppliers and linked credit providers relating to linked credit contracts

- (1) If a consumer who is a party to a linked credit contract suffers loss or damage as a result of:
- (a) a misrepresentation relating to the credit provided under that linked credit contract, or to a supply of goods or services (a *related supply*) to which that contract relates; or
 - (b) a breach of the linked credit contract, or of a contract for a related supply; or
 - (c) the failure of consideration in relation to the linked credit contract, or to a contract for a related supply; or
 - (d) a failure to comply with a guarantee that applies, under section 54, 55, 56, 57, 60, 61 or 62, in relation to a related supply; or
 - (e) a breach of a warranty that is implied in the linked credit contract by section 12ED of the *Australian Securities and Investments Commission Act 2001*;
- the linked credit provider who is a party to the contract, and the supplier of a related supply, are jointly and severally liable to the consumer for the amount of the loss or damage.
- (2) A *linked credit contract* is a contract that a consumer enters into with a linked credit provider of a person (the *supplier*) for the provision of credit in relation to:
- (a) the supply by way of sale, lease, hire or hire-purchase of goods to the consumer by the linked credit provider where the supplier supplies the goods, or causes the goods to be supplied, to the linked credit provider; or
 - (b) the supply by the supplier of goods or services, or goods and services, to the consumer.

279 Action by consumer to recover amount of loss or damage

- (1) If a linked credit provider, and a supplier of the goods or services, are liable under section 278 to a consumer for an amount of loss or damage, the consumer may recover the amount by action in a court of competent jurisdiction.
- (2) The consumer must bring the action against the linked credit provider and the supplier jointly.
- (3) Subsection (2) does not apply if:
 - (a) the supplier has been dissolved or the winding up of the supplier has commenced; or
 - (b) both of the following apply:
 - (i) in the opinion of the court in which the action is taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;
 - (ii) that court has, on the application of the consumer, declared that that subsection does not apply in relation to the proceedings.

280 Cases where a linked credit provider is not liable

- (1) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the linked credit provider establishes that:
 - (a) the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer; and
 - (b) the approach was not induced by the supplier of the goods or services to which the linked credit contract relates.
- (2) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the proceedings relate to the supply by way of lease, hire or hire-purchase of goods to the consumer by the linked credit provider, and the credit provider establishes that:
 - (a) after due inquiry before becoming a linked credit provider of the supplier of the goods, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

- (b) after becoming a linked credit provider of the supplier, the credit provider had not had cause to suspect that:
 - (i) the consumer might be entitled to recover an amount of loss or damage suffered as a result of a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or breach of a warranty, referred to in section 278(1); and
 - (ii) the supplier might be unable to meet the supplier's liabilities as and when they fall due.
 - (3) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the proceedings relate to a contract of sale in relation to which a tied loan contract applies and the linked credit provider establishes that:
 - (a) after due inquiry before becoming a linked credit provider of the supplier of goods to which the contract relates, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and
 - (b) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that:
 - (i) the consumer might, if the tied loan contract was entered into, be entitled to recover an amount of loss or damage suffered as a result of a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or breach of a warranty, referred to in section 278(1); and
 - (ii) the supplier might be unable to meet the supplier's liabilities as and when they fall due.
 - (4) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if:
 - (a) the proceedings relate to a contract of sale in relation to which a tied continuing credit contract entered into by the linked credit provider applies; and
 - (b) the credit provider establishes the matter referred to in subsection (5), having regard to:
 - (i) the nature and volume of business carried on by the credit provider; and
-

- (ii) such other matters as appear to be relevant in the circumstances of the case.
- (5) The matter for the purposes of subsection (4) is that the linked credit provider, before first becoming aware of:
 - (a) the contract of sale referred to in paragraph (a) of that subsection; or
 - (b) proposals for the making of such a contract;had not had cause to suspect that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or a breach of a warranty, referred to in section 278(1).
- (6) This section has effect despite section 278(1).

281 Amount of liability of linked credit providers

The liability of a linked credit provider to a consumer under section 278(1) in relation to a contract referred to in section 278(1) is limited to an amount that does not exceed the sum of:

- (a) the amount financed under the tied loan contract, tied continuing credit contract, lease contract, contract of hire or contract of hire-purchase; and
- (b) the amount of interest (if any), or damages in the nature of interest, allowed or awarded against the credit provider by the court in which the action in relation to the liability is taken; and
- (c) the amount of costs (if any) awarded by that court against the credit provider or supplier, or both.

282 Counter-claims and offsets

- (1) If proceedings in relation to a linked credit contract are brought against a consumer who is party to the contract by the linked credit provider who is a party to the contract, the consumer is not entitled to:
 - (a) make a counter-claim in relation to the credit provider's liability under section 278(1); or

- (b) exercise a right conferred by subsection (3) of this section in relation to that liability;unless the consumer claims in the proceedings against the supplier in respect of the liability, by third-party proceedings or otherwise.
- (2) Subsection (1) does not apply if:
 - (a) the supplier has been dissolved or the winding up of the supplier has commenced; or
 - (b) both of the following apply:
 - (i) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;
 - (ii) that court has, on the application of the consumer, declared that that subsection does not apply in relation to the proceedings.
- (3) In any proceedings in relation to a linked credit contract in which the linked credit provider who is a party to the contract claims damages or an amount of money from a consumer, the consumer may offset, in whole or in part, the consumer's liability against any liability of the credit provider under section 278(1).

283 Enforcement of judgments etc.

- (1) If, in joint liability proceedings, judgment is given against a supplier and a linked credit provider, the judgment must not be enforced against the credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for at least 30 days.
 - (2) If the judgment can be enforced against the linked credit provider, it may only be enforced to the extent of the lesser of the following amounts:
 - (a) the amount calculated in accordance with section 281;
 - (b) so much of the judgment debt as has not been satisfied by the supplier.
 - (3) If, in joint liability proceedings, a right conferred by section 282(3) is established by a consumer against a linked credit provider, the consumer must not receive the benefit of the right unless:
 - (a) judgment has been given against the supplier and credit provider; and
-

- (b) a written demand has been made on the supplier for satisfaction of the judgment; and
 - (c) the demand has remained unsatisfied for at least 30 days.
- (4) If the consumer can receive the benefit of a right conferred by section 282(3), the consumer may only receive the benefit to the extent of the lesser of the following amounts:
- (a) the amount calculated in accordance with section 281;
 - (b) so much of the judgment debt as has not been satisfied by the supplier.
- (5) Subsections (1) and (3) do not apply if:
- (a) the supplier has been dissolved or the winding up of the supplier has commenced; or
 - (b) both of the following apply:
 - (i) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;
 - (ii) that court has, on the application of the consumer, declared that those subsections do not apply in relation to the proceedings.
- (6) If a judgment given in joint liability proceedings is enforced against a linked credit provider of a supplier, the credit provider is subrogated to the extent of the enforced judgment to any rights that the consumer would have had but for the judgment against the supplier or any other person.

284 Award of interest to consumers

- (1) If, in joint liability proceedings, judgment is given against the following (the *defendant*) for an amount of loss or damage:
- (a) a supplier and a linked credit provider;
 - (b) a linked credit provider;
- the court must, on the application of the consumer who suffered the loss or damage, award interest to the consumer against the defendant upon the whole or a part of the amount, unless good cause is shown to the contrary.
- (2) The interest must be awarded from the time when the consumer became entitled to recover the amount until the date on which the judgment is given, at the greater of the following rates:
-

- (a) if the amount payable by the consumer to the linked credit provider for obtaining credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum—that rate or, if more than one such rate may be calculated, the lower or lowest of those rates;
 - (b) 8%, or such other rate as is prescribed by the regulations.
- (3) In determining whether good cause is shown against the awarding of interest under subsection (1), the court must take into account any payment made into court by the supplier or the linked credit provider.
- (4) This section applies despite any other law.

285 Liability of suppliers to linked credit providers, and of linked credit providers to suppliers

- (1) If a linked credit provider and supplier are liable, under section 278, to a consumer who is a party to a linked credit contract:
 - (a) if the liability relates to a supply of goods or services to which the linked credit contract relates—the supplier is liable to the credit provider for the amount of loss suffered by the credit provider, unless the supplier and credit provider otherwise agree; or
 - (b) if the liability relates to the linked credit contract—the credit provider is liable to the supplier for the amount of loss suffered by the supplier, unless the supplier and credit provider otherwise agree.
- (2) The amount for which the supplier is liable under subsection (1)(a) of this section is an amount not exceeding the sum of the following amounts:
 - (a) the maximum amount of the linked credit provider's liability under section 281;
 - (b) unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the joint liability proceedings.

286 Joint liability proceedings and recovery under section 135 of the National Credit Code

(1) If:

- (a) a consumer is seeking, in joint liability proceedings, to recover an amount under section 279 in relation to a contract for the supply of goods or services; and
- (b) the contract has been rescinded or discharged (whether under this Schedule or any other law); and
- (c) as a result of the contract being rescinded or discharged, the consumer is entitled under section 135 of the National Credit Code to terminate a linked credit contract; and
- (d) the consumer terminates the linked credit contract under that section;

the following amounts may be recovered in the joint liability proceedings (to the extent that they have not been recovered under section 135 of the National Credit Code):

- (e) any amount that the consumer is entitled under section 135 of the National Credit Code to recover from the credit provider under the linked credit contract;
 - (f) any amount that the credit provider is entitled under section 135 of the National Credit Code to recover from:
 - (i) the consumer; or
 - (ii) if the supplier under the contract for the supply of goods or services is a party to the joint liability proceedings—the supplier.
- (2) An amount that is recovered under subsection (1) ceases to be recoverable under section 135 of the National Credit Code.

Division 2—Non-linked credit contracts

287 Liability of suppliers and credit providers relating to non-linked credit contracts

- (1) If a consumer who is a party to a non-linked credit contract suffers loss or damage as a result of a failure to comply with a guarantee that applies, under section 54, 55, 56, 57, 60, 61 or 62, in relation to a supply to which the contract relates, the credit provider who is a party to the contract is not under any liability to the consumer for the amount of the loss or damage.
- (2) Subsection (1) does not prevent the consumer from recovering that amount by action against the supplier of the goods or services to which the contract relates.
- (3) If a consumer who is a party to a non-linked credit contract suffers loss or damage as a result of a breach of a warranty that is implied in the contract by section 12ED of the *Australian Securities and Investments Commission Act 2001*, the supplier of the goods or services to which the contract relates is not under any liability to the consumer for the amount of the loss or damage.
- (4) Subsection (3) does not prevent the consumer from recovering that amount by action against the credit provider who is a party to the contract.
- (5) A ***non-linked credit contract*** is a contract that a consumer enters into with a credit provider for the provision of credit in relation to:
 - (a) the supply by way of sale, lease, hire or hire-purchase of goods to the consumer where:
 - (i) a person (the ***supplier***) supplies the goods, or the causes the goods to be supplied, to the credit provider; and
 - (ii) the credit provider is not a linked credit provider of the supplier; and
 - (iii) prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made with the consumer by or on behalf of the supplier; and

- (iv) the credit provider did not take physical possession of the goods before they were delivered to the consumer;
or
- (b) the supply of services to the consumer by a person in relation to whom the credit provider is not a linked credit provider.

Schedule 2—Application of the Australian Consumer Law

Trade Practices Act 1974

1 Part XI

Repeal the Part, substitute:

Part XI—Application of the Australian Consumer Law as a law of the Commonwealth

Division 1—Preliminary

130 Definitions

In this Part:

associate: a person (the *first person*) is an associate of another person if:

- (a) the first person holds money or other property on behalf of the other person; or
- (b) if the other person is a body corporate—the first person is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001*) of the other person.

Australian Consumer Law means Schedule 2 as applied under Subdivision A of Division 2 of this Part.

Chairperson has the same meaning as in subsection 4(1).

corporation has the same meaning as in subsection 4(1).

disclosure notice: see subsection 133D(3).

embargo notice: see subsection 135S(1).

embargo period for an embargo notice means the period specified in the embargo notice under paragraph 135S(3)(c) or (d).

enforcement order: see paragraph 139D(1)(b).

Family Court Judge means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge).

Federal Court means the Federal Court of Australia.

infringement notice means an infringement notice issued under subsection 134A(1).

infringement notice compliance period: see subsection 134F(1).

infringement notice provision: see subsection 134A(2).

inspector means a person who is appointed as an inspector under subsection 133(1).

listed corporation has the meaning given by section 9 of the *Corporations Act 2001*.

member of the Commission has the same meaning as in subsection 4(1).

occupational liability: see subsection 137(5).

personal injury includes:

- (a) prenatal injury; and
- (b) impairment of a person's physical or mental condition; and
- (c) disease;

but does not include an impairment of a person's mental condition unless the impairment consists of a recognised psychiatric illness.

person assisting: see subsection 135D(2).

professional standards law: see subsection 137(4).

proposed ban notice: see subsection 132(1).

proposed recall notice: see subsection 132A(1).

reckless conduct: see subsection 139A(5).

recreational services: see subsection 139A(2).

search-related powers: see subsections 135A(1) and (2).

search warrant means a warrant issued or signed under section 135Z or 136.

smoking has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

state of mind, of a person, includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the person's intention, opinion, belief or purpose.

tobacco product has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

130A Expressions defined in Schedule 2

An expression has the same meaning in this Part as in Schedule 2.

Division 2—Application of the Australian Consumer Law as a law of the Commonwealth

Subdivision A—Application of the Australian Consumer Law

131 Application of the Australian Consumer Law in relation to corporations etc.

- (1) Schedule 2 applies as a law of the Commonwealth to the conduct of corporations, and in relation to contraventions of Chapter 2, 3 or 4 of Schedule 2 by corporations.

Note: Sections 5 and 6 of this Act extend the application of this Part (and therefore extend the application of the Australian Consumer Law as a law of the Commonwealth).

- (2) Without limiting subsection (1):
 - (a) section 22 of Schedule 2 also applies as a law of the Commonwealth in relation to:
 - (i) a supply or possible supply of goods or services by any person to a corporation (other than a listed public company); or

- (ii) an acquisition or possible acquisition of goods or services from any person by a corporation (other than a listed public company); and
 - (b) section 147 of Schedule 2 also applies as a law of the Commonwealth to, and in relation to, a corporation as a supplier referred to in that section; and
 - (c) Division 2 of Part 5-1 of Schedule 2 also applies as a law of the Commonwealth to and in relation to a person if the other person referred to in section 219 of Schedule 2 is a corporation.
- (3) The table of contents in Schedule 2 is additional information that is not part of this Act. Information in the table may be added to or edited in any published version of this Act.

131A Division does not apply to financial services

- (1) Despite section 131, this Division does not apply (other than in relation to the application of Part 5-5 of Schedule 2 as a law of the Commonwealth) to the supply, or possible supply, of services that are financial services, or of financial products.
- (2) Without limiting subsection (1):
 - (a) Part 2-1 of Schedule 2 and sections 34 and 156 of Schedule 2 do not apply to conduct engaged in in relation to financial services; and
 - (b) Part 2-3 of Schedule 2 does not apply to, or in relation to:
 - (i) contracts that are financial products; or
 - (ii) contracts for the supply, or possible supply, of services that are financial services; and
 - (c) if a financial product consists of or includes an interest in land—the following provisions of Schedule 2 do not apply to that interest:
 - (i) section 30;
 - (ii) paragraphs 32(1)(c) and (d) and (2)(c) and (d);
 - (iii) paragraphs 50(1)(c) and (d);
 - (iv) section 152;
 - (v) subparagraphs 154(1)(b)(iii) and (iv) and (2)(b)(iii) and (iv);
 - (vi) subparagraphs 168(1)(b)(iii) and (iv); and

- (d) sections 39 and 161 of Schedule 2 do not apply to:
 - (i) a credit card that is part of, or that provides access to, a credit facility that is a financial product; or
 - (ii) a debit card that allows access to an account that is a financial product.

131B Division does not apply to interim bans imposed by State or Territory Ministers

Despite section 131, this Division does not apply to an interim ban that is not imposed by the Commonwealth Minister.

131C Saving of other laws and remedies

- (1) This Part is not intended to exclude or limit the concurrent operation of any law, whether written or unwritten, of a State or a Territory.
- (2) Section 73 of the Australian Consumer Law does not operate in a State or a Territory to the extent necessary to ensure that no inconsistency arises between:
 - (a) that section; and
 - (b) a provision of a law of the State or Territory that would, but for this subsection, be inconsistent with that section.
- (3) Despite subsection (1):
 - (a) if an act or omission of a person is both:
 - (i) an offence against this Part or the Australian Consumer Law; and
 - (ii) an offence against a law of a State or a Territory; and
 - (b) the person is convicted of either of those offences; he or she is not liable to be convicted of the other of those offences.
- (4) Except as expressly provided by this Part or the Australian Consumer Law, nothing in this Part or the Australian Consumer Law is taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Part and the Australian Consumer Law had not been enacted.

Subdivision B—Effect of other Commonwealth laws on the Australian Consumer Law

131D Effect of Part VIB on Chapter 5 of the Australian Consumer Law

Chapter 5 of the Australian Consumer Law has effect subject to Part VIB.

131E Application of the *Legislative Instruments Act 2003*

- (1) The following instruments made under the Australian Consumer Law by the Commonwealth Minister are to be made by legislative instrument:
 - (a) a determination under subsection 66(1) (display notices);
 - (b) a notice under subsection 104(1) or 105(1) (safety standards);
 - (c) a notice under subsection 109(1) or (2) (interim bans);
 - (d) a notice under section 111 (extensions of interim bans);
 - (e) a notice under section 113 (revocation of interim bans);
 - (f) a notice under subsection 114(1) or (2) (permanent bans);
 - (g) a notice under section 117 (revocation of permanent bans);
 - (h) a notice under subsection 122(1) (recall notices);
 - (i) a notice under subsection 134(1) or 135(1) (information standards).

- (2) The following instruments made under the Australian Consumer Law are not legislative instruments:
 - (a) an approval given under paragraph 106(5)(b) (approval to export);
 - (b) an approval given under paragraph 118(5)(b) (approval to export);
 - (c) a notice under subsection 128(3) (voluntary recalls);
 - (d) a notice under subsection 129(1) or (2) (safety warning notices);
 - (e) a notice under subsection 130(1) (announcement of results of an investigation);
 - (f) a notice under subsection 223(1) or (2) (public warning notices).

- (3) To avoid doubt, an instrument made under the Australian Consumer Law by a responsible Minister who is not the Commonwealth Minister, or a regulator that is not the Commission, is not a legislative instrument.

131F Section 4AB of the Crimes Act does not apply

Section 4AB of the *Crimes Act 1914* does not apply to any provision of this Part or the Australian Consumer Law.

131G Application of the *Criminal Code*

Corporate criminal responsibility

- (1) Part 2.5 of the *Criminal Code* does not apply to an offence against this Part or the Australian Consumer Law.

Mistake of fact defence

- (2) Section 9.2 of the *Criminal Code* does not apply to an offence against Chapter 4 of the Australian Consumer Law.

Note: Section 207 of the Australian Consumer Law provides a mistake of fact defence for offences under Chapter 4 of the Australian Consumer Law.

Division 3—Conferences for proposed bans and recall notices

Subdivision A—Conference requirements before a ban or compulsory recall

132 Commonwealth Minister must issue a proposed ban notice

- (1) The Commonwealth Minister must issue a *proposed ban notice* if the Commonwealth Minister proposes to impose an interim ban, or a permanent ban:
 - (a) on consumer goods of a particular kind; or
 - (b) on product related services of a particular kind.
 - (2) Subsection (1) does not apply in relation to an interim ban if the Commonwealth Minister has issued a notice under section 132J certifying that the ban should be imposed without delay.
-

- (3) The proposed ban notice must:
 - (a) be in writing; and
 - (b) be published on the internet; and
 - (c) set out a copy of a draft notice for the imposition of the interim ban or permanent ban; and
 - (d) set out a summary of the reasons for the proposed imposition of the ban; and
 - (e) invite any person who supplies, or proposes to supply:
 - (i) consumer goods of that kind; or
 - (ii) product related services of that kind;to notify the Commission, in writing and within a period specified in the notice, if the person wishes the Commission to hold a conference in relation to the proposed imposition of the ban.
- (4) The period specified in the proposed ban notice under paragraph (3)(e):
 - (a) must be a period of at least 10 days, or such longer period as the Commonwealth Minister specifies in the notice; and
 - (b) must not commence before the day on which the notice is published.
- (5) A proposed ban notice is not a legislative instrument.

132A Commonwealth Minister must issue a proposed recall notice

- (1) The Commonwealth Minister must issue a *proposed recall notice* if the Commonwealth Minister proposes to issue a recall notice for consumer goods of a particular kind.
- (2) Subsection (1) does not apply in relation to a recall notice if the Commonwealth Minister has issued a notice under section 132J certifying that the recall notice should be issued without delay.
- (3) The proposed recall notice must:
 - (a) be in writing; and
 - (b) be published on the internet; and
 - (c) set out a copy of a draft recall notice; and
 - (d) set out a summary of the reasons for the proposed issue of the recall notice; and

- (e) invite any person who supplies, or proposes to supply, consumer goods of that kind to notify the Commission, in writing and within a period specified in the notice, if the person wishes the Commission to hold a conference in relation to the proposed issue of the recall notice.
- (4) The period specified in the proposed recall notice under paragraph (3)(e):
 - (a) must be a period of at least 10 days, or such longer period as the Commonwealth Minister specifies in the notice; and
 - (b) must not commence before the day on which the notice is published.
- (5) A proposed recall notice is not a legislative instrument.

132B Commonwealth Minister to be notified if no person wishes a conference to be held

- (1) If no person notifies the Commission in accordance with a proposed ban notice, or a proposed recall notice, that the person wishes the Commission to hold a conference, the Commission must, in writing, notify the Commonwealth Minister of that fact.
- (2) A notice under subsection (1) is not a legislative instrument.

132C Notification of conference

- (1) If one or more persons notify the Commission in accordance with a proposed ban notice, or a proposed recall notice, that they wish the Commission to hold a conference, the Commission must:
 - (a) appoint a day, time and place for the holding of the conference; and
 - (b) give written notice to the Commonwealth Minister, and to each person who so notified the Commission, of that day, time and place.
- (2) The day appointed must be at least 5 days, but not more than 14 days, after the end of the period:
 - (a) for a proposed ban notice—specified under paragraph 132(3)(e); or
 - (b) for a proposed recall notice—specified under paragraph 132A(3)(e).

- (3) A notice under paragraph (1)(b) is not a legislative instrument.

132D Recommendation after conclusion of conference

- (1) As soon as is practicable after the conclusion of a conference held under this Subdivision in relation to the proposed imposition of an interim ban or permanent ban, the Commission must:
- (a) by written notice given to the Commonwealth Minister, recommend that the Commonwealth Minister:
 - (i) impose the ban in the same terms as the draft notice referred to in paragraph 132(3)(c); or
 - (ii) impose the ban with such modifications to that notice as are specified by the Commission; or
 - (iii) not impose the ban; and
 - (b) cause a copy of the notice given under paragraph (a) to be given to each person who was present or represented at the conference.
- (2) As soon as is practicable after the conclusion of a conference held under this Subdivision in relation to the proposed issue of a recall notice, the Commission must:
- (a) by written notice given to the Commonwealth Minister, recommend that the Commonwealth Minister:
 - (i) issue the recall notice in the same terms as the draft recall notice referred to in paragraph 132A(3)(c); or
 - (ii) issue the recall notice with such modifications to that draft recall notice as are specified by the Commission; or
 - (iii) not issue the recall notice; and
 - (b) cause a copy of the notice given under paragraph (a) to be given to each person who was present or represented at the conference.
- (3) The Commonwealth Minister must:
- (a) have regard to a recommendation made under paragraph (1)(a) or (2)(a); and
 - (b) if he or she decides to act otherwise than in accordance with the recommendation—the Commonwealth Minister must, by written notice published on the internet, set out the reasons for his or her decision.

Subdivision B—Conference requirements after an interim ban is imposed

132E Opportunity for a conference after an interim ban has been imposed by the Commonwealth Minister

- (1) This section applies if:
 - (a) an interim ban on consumer goods of a particular kind, or on product related services of a particular kind, is in force; and
 - (b) the interim ban was imposed by the Commonwealth Minister; and
 - (c) before the ban was imposed, the Commonwealth Minister published a notice under section 132J certifying that the interim ban should be imposed without delay.
- (2) The Commonwealth Minister must, by written notice published on the internet, invite any person who supplied, or proposes to supply:
 - (a) consumer goods of that kind; or
 - (b) product related services of that kind;to notify the Commission, in writing and within a period specified in the notice, if the person wishes the Commission to hold a conference in relation to the interim ban.
- (3) The period specified in the notice under subsection (2):
 - (a) must be a period of at least 10 days, or such longer period as the Commonwealth Minister specifies in the notice; and
 - (b) must not commence before the day on which the notice is published.
- (4) A notice under subsection (2) is not a legislative instrument.

132F Notification of conference

- (1) If one or more persons notify the Commission in accordance with a notice published under subsection 132E(2) that they wish the Commission to hold a conference, the Commission must:
 - (a) appoint a day, time and place for the holding of the conference; and
 - (b) give written notice to the Commonwealth Minister, and to each person who so notified the Commission, of that day, time and place.
-

- (2) The day appointed must be at least 5 days, but not more than 14 days, after the end of the period specified in the notice under subsection 132E(2).
- (3) A notice under paragraph (1)(b) is not a legislative instrument.

132G Recommendation after conclusion of conference

- (1) As soon as is practicable after the conclusion of a conference held under this Subdivision in relation to an interim ban, the Commission must:
 - (a) by written notice given to the Commonwealth Minister, recommend that the interim ban remain in force, be varied or be revoked; and
 - (b) cause a copy of the notice to be given to each person who was present or represented at the conference.
- (2) The Commonwealth Minister must:
 - (a) have regard to a recommendation made under paragraph (1)(a); and
 - (b) if he or she decides to act otherwise than in accordance with the recommendation—the Commonwealth Minister must, by written notice published on the internet, set out the reasons for his or her decision.

Subdivision C—Conduct of conferences

132H Conduct of conferences

- (1) At a conference held under Subdivision A or B of this Division:
 - (a) the Commission must be represented by a member or members of the Commission who are nominated by the Chairperson; and
 - (b) each person who notified the Commission in accordance with whichever of the following is applicable:
 - (i) a proposed ban notice;
 - (ii) a proposed recall notice;
 - (iii) a notice under subsection 132E(2);is entitled to be present or to be represented; and

- (c) any other person whose presence at the conference is considered by the Commission to be appropriate is entitled to be present or to be represented; and
 - (d) the Commonwealth Minister is, or a person or persons nominated in writing by the Commonwealth Minister are, entitled to be present; and
 - (e) the procedure to be followed must be as determined by the Commission.
- (2) The Commission must cause a record of the proceedings at the conference to be kept.
- (3) The Commission must, as far as is practicable, ensure that each person who is entitled to be present, or who is representing such a person, at the conference is given a reasonable opportunity at the conference to present his or her case and in particular:
- (a) to inspect any documents (other than a document that contains particulars of a secret formula or process) which the Commission proposes to consider for the purpose of making a recommendation after the conclusion of the conference; and
 - (b) to make submissions in relation to those documents.

Subdivision D—Miscellaneous

132J Interim ban and recall notice without delay in case of danger to the public

- (1) If it appears to the Commonwealth Minister that consumer goods of a particular kind create an imminent risk of death, serious illness or serious injury, he or she may, by written notice published on the internet, certify that:
- (a) an interim ban on consumer goods of that kind should be imposed without delay; or
 - (b) a recall notice for consumer goods of that kind should be issued without delay.
- (2) If it appears to the Commonwealth Minister that product related services of a particular kind create an imminent risk of death, serious illness or serious injury, he or she may, by written notice published on the internet, certify that an interim ban on services of that kind should be imposed without delay.

- (3) If:
- (a) the Commonwealth Minister publishes a notice under subsection (1) or (2); and
 - (b) action of any kind has been taken under Subdivision A of this Division in relation to the interim ban or recall notice, but no recommendation has been made under section 132D;
- the Commonwealth Minister may impose the interim ban, or issue the recall notice, without regard to that action.
- (4) A notice under subsection (1) or (2) is not a legislative instrument.

132K Copy of notices under this Division to be given to suppliers

- (1) If the Commonwealth Minister:
- (a) issues a proposed ban notice; or
 - (b) issues a proposed recall notice; or
 - (c) publishes a notice under subsection 132E(2); or
 - (d) publishes a notice under subsection 132J(1) or (2);
- he or she must cause a copy of the notice to be given to each person who, to the knowledge of the Commonwealth Minister, supplies the consumer goods, or the product related services, to which the notice relates.
- (2) The copy must be given:
- (a) within 2 days after the publication or issue of the notice; or
 - (b) if it is not practicable to give the copy within that period—as soon as practicable after the end of that period.
- (3) A failure to comply with subsection (1) does not invalidate the notice.

Division 4—Enforcement

Subdivision A—Inspectors

133 Appointment of inspectors

- (1) The Chairperson may, in writing, appoint a member of the staff assisting the Commission as an inspector.

- (2) The Chairperson must not appoint a person as an inspector unless the Chairperson is satisfied that the person has suitable qualifications and experience to exercise properly the powers of an inspector.
- (3) An inspector must, in exercising powers as an inspector, comply with any directions of the Chairperson.
- (4) If a direction under subsection (3) is given in writing, the direction is not a legislative instrument.

133A Identity cards

- (1) The Chairperson must issue an identity card to a person appointed as an inspector.

Form of identity card

- (2) The identity card must:
 - (a) be in the form prescribed by the regulations; and
 - (b) contain a recent photograph of the person.

Offence

- (3) A person commits an offence if:
 - (a) the person has been issued with an identity card under subsection (1); and
 - (b) the person ceases to be an inspector; and
 - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Chairperson.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defence: card lost or destroyed

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Inspector must carry card

- (6) An inspector issued with an identity card under subsection (1) must carry his or her identity card at all times when exercising powers as an inspector.

Subdivision B—Premises to which the public is given access

**133B Power to enter premises to which the public has access—
consumer goods**

- (1) An inspector may enter premises in or from which a person, in trade or commerce, supplies consumer goods, if the public has access to the premises at the time of entry, for the purpose of ascertaining whether:
- (a) any of those consumer goods will or may cause injury to any person; or
 - (b) a reasonably foreseeable use (including a misuse) of those consumer goods will or may cause injury to any person;
- and remain on the premises for such a purpose while the public has access to the premises.
- (2) While on the premises, the inspector may:
- (a) take photographs of:
 - (i) any of those consumer goods; or
 - (ii) equipment used in the manufacturing, processing or storage any of those consumer goods; and
 - (b) inspect, handle and measure any of those consumer goods; and
 - (c) purchase any of those consumer goods.

**133C Power to enter premises to which the public has access—
product related services**

- (1) An inspector may enter premises in or from which a person, in trade or commerce, supplies product related services, if the public has access to the premises at the time of entry, for the purposes of ascertaining whether:
- (a) as a result of any of those product related services being supplied, any consumer goods will or may cause injury to any person; or

- (b) a reasonably foreseeable use (including a misuse) of any consumer goods, to which any of those product related services relate, will or may cause injury to any person as a result of those services being supplied;
and remain on the premises for such a purpose while the public has access to the premises.
- (2) While on the premises, the inspector may:
 - (a) take photographs of:
 - (i) the premises; or
 - (ii) equipment used to supply any of those product related services; and
 - (b) inspect, handle and measure such equipment; and
 - (c) purchase any of those product related services.

Subdivision C—Disclosure notices relating to the safety of goods or services

133D Power to obtain information etc.

Consumer goods

- (1) The Commonwealth Minister or an inspector may give a disclosure notice to a person (the *supplier*) who, in trade or commerce, supplies consumer goods of a particular kind if the person giving the notice has reason to believe:
 - (a) that:
 - (i) consumer goods of that kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; and
 - (b) that the supplier is capable of giving information, producing documents or giving evidence in relation to those consumer goods.

Product related services

- (2) The Commonwealth Minister or an inspector may give a disclosure notice to a person (the *supplier*) who, in trade or commerce,
-

supplies product related services of a particular kind if the person giving the notice has reason to believe:

- (a) that:
 - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied; and
- (b) that the supplier is capable of giving information, producing documents or giving evidence in relation to those services.

Disclosure notice

- (3) A **disclosure notice** is a written notice requiring the supplier:
 - (a) to give, in writing signed by the supplier, any such information to the person specified in the notice:
 - (i) in the manner specified in the notice; and
 - (ii) within such reasonable time as is specified in the notice; or
 - (b) to produce, in accordance with such reasonable requirements as are specified in the notice, any such documents to the person specified in the notice; or
 - (c) to appear before the person specified in the notice at such reasonable time, and at such place, as is specified in the notice:
 - (i) to give any such evidence, on oath or affirmation; and
 - (ii) to produce any such documents.
- (4) The person specified in the notice may be:
 - (a) the Commonwealth Minister; or
 - (b) an inspector (whether or not that inspector gave the notice).

133E Self-incrimination

- (1) A person is not excused from:
 - (a) giving information or evidence; or
 - (b) producing a document;

as required by a disclosure notice given to the person on the ground that the information or evidence, or production of the document, might tend to incriminate the person or expose the person to a penalty.

- (2) However, in the case of an individual:
- (a) the information or evidence given, or the document produced; and
 - (b) giving the information or evidence, or producing the document;
- are not admissible in evidence against the individual:
- (c) in any proceedings instituted by the individual; or
 - (d) in any criminal proceedings, other than proceedings against the individual for an offence against section 133F or 133G.

133F Compliance with disclosure notices

- (1) A person commits an offence if:
- (a) the person is given a disclosure notice; and
 - (b) the person refuses or fails to comply with the notice.

Penalty:

- (a) if the person is a body corporate—200 penalty units; or
 - (b) if the person is not a body corporate—40 penalty units.
- (2) Subsection (1) does not apply if the person complies with the disclosure notice to the extent to which the person is capable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

133G False or misleading information etc.

A person commits an offence if:

- (a) the person gives information, evidence or a document in purported compliance with a disclosure notice; and
- (b) the person does so knowing that the information, evidence or document is false or misleading in a material particular.

Penalty:

- (a) if the person is a body corporate—300 penalty units; or
- (b) if the person is not a body corporate—60 penalty units or imprisonment for 12 months, or both.

Subdivision D—Court orders relating to the destruction etc. of goods

133H Court orders relating to consumer goods that do not comply with a safety standard etc.

- (1) If a court is satisfied that:
 - (a) a person possesses or has control of consumer goods of a particular kind; and
 - (b) any of the following apply:
 - (i) the consumer goods do not comply with a safety standard that is in force for consumer goods of that kind and the cause of that non-compliance cannot be remedied;
 - (ii) a permanent ban on consumer goods of that kind is in force;
 - (iii) a recall notice for consumer goods of that kind is in force and a defect or dangerous characteristic of such consumer goods identified in the notice cannot be remedied;

the court may, on the application of an inspector, make an order of a kind referred to in subsection (2).
- (2) The court may make an order under subsection (1) authorising one or more inspectors to do the following in accordance with any requirements specified in the order:
 - (a) to enter the premises of the person that are specified in the order;
 - (b) to search the premises for consumer goods of a kind specified in the order;
 - (c) to seize any such consumer goods that are found at those premises;
 - (d) to destroy or otherwise dispose of any such consumer goods that are so seized.

- (3) Before making an application under subsection (1), the inspector must:
 - (a) take reasonable steps to discover who has an interest in the consumer goods; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.
- (4) A person notified under subsection (3) is entitled to be heard in relation to the application.

133J Recovery of reasonable costs of seizing, and destroying or disposing of, consumer goods

- (1) If an inspector seizes, and destroys or otherwise disposes of, consumer goods in accordance with an order made under subsection 133H(1):
 - (a) the person from whom the consumer goods were seized; or
 - (b) if that person is not entitled to possess the consumer goods—the owner of the consumer goods;is liable to pay an amount equal to the costs reasonably incurred by the inspector in seizing, and in destroying or disposing of, the consumer goods.
- (2) An amount payable by a person under subsection (1):
 - (a) is a debt due by the person to the Commonwealth; and
 - (b) may be recovered by action in a court of competent jurisdiction.

Division 5—Infringement notices

134 Purpose and effect of this Division

- (1) The purpose of this Division is to provide for the issue of an infringement notice to a person for an alleged contravention of an infringement notice provision as an alternative to proceedings for an order under section 224 of the Australian Consumer Law.
- (2) This Division does not:
 - (a) require an infringement notice to be issued to a person for an alleged contravention of an infringement notice provision; or

- (b) affect the liability of a person to proceedings under Chapter 4 or Part 5-2 of the Australian Consumer Law in relation to an alleged contravention of an infringement notice provision if:
 - (i) an infringement notice is not issued to the person for the alleged contravention; or
 - (ii) an infringement notice issued to a person for the alleged contravention is withdrawn under section 134G; or
- (c) prevent a court from imposing a higher penalty than the penalty specified in the infringement notice if the person does not comply with the notice.

134A Issuing an infringement notice

- (1) If the Commission has reasonable grounds to believe that a person has contravened an infringement notice provision, the Commission may issue an infringement notice to the person.
- (2) Each of the following provisions of the Australian Consumer Law is an ***infringement notice provision***:
 - (a) a provision of Part 2-2;
 - (b) a provision of Part 3-1 (other than subsection 32(1), 35(1) or 36(1), (2) or (3) or section 40 or 43);
 - (c) subsection 66(2);
 - (d) a provision of Division 2 of Part 3-2 (other than section 85);
 - (e) a provision of Division 3 of Part 3-2 (other than subsection 96(2));
 - (f) subsection 100(1) or (3), 101(3) or (4), 102(2) or 103(2);
 - (g) subsection 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1), 132(1), 136(1), (2) or (3) or 137(1) or (2);
 - (h) subsection 221(1) or 222(1).
- (3) The Commission must not issue more than one infringement notice to the person for the same alleged contravention of the infringement notice provision.
- (4) The infringement notice does not have any effect if the notice:
 - (a) is issued more than 12 months after the day on which the contravention of the infringement notice provision is alleged to have occurred; or

- (b) relates to more than one alleged contravention of an infringement notice provision by the person.

134B Matters to be included in an infringement notice

An infringement notice must:

- (a) be identified by a unique number; and
- (b) state the day on which it is issued; and
- (c) state the name and address of the person to whom it is issued; and
- (d) identify the Commission; and
- (e) state how the Commission may be contacted; and
- (f) give details of the alleged contravention by the person, including:
 - (i) the date of the alleged contravention; and
 - (ii) the particular infringement notice provision that was allegedly contravened; and
- (g) state the maximum pecuniary penalty that the court could order the person to pay under section 224 of the Australian Consumer Law for the alleged contravention; and
- (h) specify the penalty that is payable in relation to the alleged contravention; and
- (i) state that the penalty is payable within the infringement notice compliance period for the notice; and
- (j) state that the penalty is payable to the Commission on behalf of the Commonwealth; and
- (k) explain how payment of the penalty is to be made; and
- (l) explain the effect of sections 134D, 134E, 134F and 134G.

134C Amount of penalty

The penalty to be specified in an infringement notice that is to be issued to a person, in relation to an alleged contravention of a provision of the Australian Consumer Law, must be a penalty equal to the amount worked out using the following table:

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
1	a provision of Part 2-2	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
2	a provision of Part 3-1 (other than subsection 32(1), 35(1), 36(1), (2) or (3), section 40 or 43 or subsection 47(1))	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
3	subsection 47(1)	(a) if the person is a body corporate—10 penalty units; or (b) if the person is not a body corporate—2 penalty units.
4	subsection 66(2)	(a) if the person is a body corporate—55 penalty units; or (b) if the person is not a body corporate—11 penalty units.
5	a provision of Division 2 of Part 3-2 (other than section 85)	(a) if the person is a body corporate—60 penalty units; or (b) if the person is not a

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
		body corporate—12 penalty units.
6	a provision of Division 3 of Part 3-2 (other than subsection 96(2))	(a) if the person is a body corporate—55 penalty units; or (b) if the person is not a body corporate—11 penalty units.
7	subsection 100(1) or (3) or 101(3) or (4)	(a) if the person is a body corporate—20 penalty units; or (b) if the person is not a body corporate—4 penalty units.
8	subsection 102(2) or 103(2)	(a) if the person is a body corporate—60 penalty units; or (b) if the person is not a body corporate—12 penalty units.
9	subsection 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
10	subsection 125(4)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units.

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
11	subsection 127(1) or (2)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
12	subsection 128(2) or (6), 131(1) or 132(1)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units.
13	subsection 136(1), (2) or (3) or 137(1) or (2)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
14	subsection 221(1)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units.
15	subsection 222(1)	(a) if the person is a body corporate—50 penalty units; or (b) if the person is not a

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
		body corporate—10 penalty units.

134D Effect of compliance with an infringement notice

- (1) This section applies if:
 - (a) an infringement notice for an alleged contravention of an infringement notice provision is issued to a person; and
 - (b) the person pays the penalty specified in the infringement notice within the infringement notice compliance period and in accordance with the notice; and
 - (c) the infringement notice is not withdrawn under section 134G.
- (2) The person is not, merely because of the payment, regarded as:
 - (a) having contravened the infringement notice provision; or
 - (b) having been convicted of an offence constituted by the same conduct that constituted the alleged contravention of the infringement notice provision.
- (3) No proceedings (whether criminal or civil) may be started or continued against the person, by or on behalf of the Commonwealth, in relation to:
 - (a) the alleged contravention of the infringement notice provision; or
 - (b) an offence constituted by the same conduct that constituted the alleged contravention.

134E Effect of failure to comply with an infringement notice

- If:
- (a) an infringement notice for an alleged contravention of an infringement notice provision is issued to a person; and
 - (b) the person fails to pay the penalty specified in the infringement notice within the infringement notice compliance period and in accordance with the notice; and
-

(c) the infringement notice is not withdrawn under section 134G; the person is liable to proceedings under Chapter 4 or Part 5-2 of the Australian Consumer Law in relation to the alleged contravention of the infringement notice provision.

134F Infringement notice compliance period for infringement notice

- (1) Subject to this section, the *infringement notice compliance period* for an infringement notice is the period of 28 days beginning on the day after the day on which the infringement notice is issued by the Commission.
- (2) The Commission may extend, by notice in writing, the infringement notice compliance period for the notice if the Commission is satisfied that it is appropriate to do so.
- (3) Only one extension may be given and the extension must not be for longer than 28 days.
- (4) Notice of the extension must be given to the person who was issued the infringement notice.
- (5) A failure to comply with subsection (4) does not affect the validity of the extension.
- (6) If the Commission extends the infringement notice compliance period for an infringement notice, a reference in this Division to the infringement notice compliance period for an infringement notice is taken to be a reference to the infringement notice compliance period as so extended.

134G Withdrawal of an infringement notice

Representations to the Commission

- (1) The person to whom an infringement notice has been issued for an alleged contravention of an infringement notice provision may make written representations to the Commission seeking the withdrawal of the infringement notice.
 - (2) Evidence or information that the person, or a representative of the person, gives to the Commission in the course of making representations under subsection (1) is not admissible in evidence against the person or representative in any proceedings (other than
-

proceedings for an offence based on the evidence or information given being false or misleading).

Withdrawal by the Commission

- (3) The Commission may, by written notice (the *withdrawal notice*) given to the person to whom an infringement notice was issued, withdraw the infringement notice if the Commission is satisfied that it is appropriate to do so.
- (4) Subsection (3) applies whether or not the person has made representations seeking the withdrawal.

Content of withdrawal notices

- (5) The withdrawal notice must state:
 - (a) the name and address of the person; and
 - (b) the day on which the infringement notice was issued to the person; and
 - (c) that the infringement notice is withdrawn; and
 - (d) that proceedings under Chapter 4 or Part 5-2 of the Australian Consumer Law may be started or continued against the person in relation to:
 - (i) the alleged contravention of the infringement notice provision; or
 - (ii) an offence constituted by the same conduct that constituted the alleged contravention.

Time limit for giving withdrawal notices

- (6) To be effective, the withdrawal notice must be given to the person within the infringement notice compliance period for the infringement notice.

Refunds

- (7) If the infringement notice is withdrawn after the person has paid the penalty specified in the infringement notice, the Commission must refund to the person an amount equal to the amount paid.

Division 6—Search, seizure and entry

Subdivision A—Powers of inspectors

135 Inspector may enter premises

Consumer goods

- (1) If an inspector has reason to believe that:
- (a) consumer goods of a particular kind will or may cause injury to any person; or
 - (b) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind will or may cause injury to any person;
- the inspector may, for the purposes of ascertaining the matter referred to in paragraph (a) or (b):
- (c) enter any premises in or from which the inspector has reason to believe that a person supplies consumer goods of that kind in trade or commerce; and
 - (d) exercise search-related powers in relation to the premises.

Product related services

- (2) If an inspector has reason to believe that:
- (a) as a result of product related services of a particular kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
 - (b) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which product related services of a particular kind relate, will or may cause injury to any person as a result of such services being supplied;
- the inspector may, for the purposes of ascertaining the matter referred to in paragraph (a) or (b):
- (c) enter any premises in or from which the inspector has reason to believe that a person supplies product related services of that kind in trade or commerce; and
 - (d) exercise search-related powers in relation to the premises.

Limitation on entry

- (3) However, the inspector is not entitled to enter premises under subsection (1) or (2) unless:
- (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
 - (b) the entry is made under a search warrant; or
 - (c) the entry is made in circumstances in which the exercise of search-related powers is required without delay in order to protect life or public safety.

Note: For requirements relating to the occupier's consent, see section 135H.

135A Search-related powers of inspectors

Search-related powers—consumer goods

- (1) The following are the *search-related powers* that an inspector may exercise, under subsection 135(1), in relation to premises in or from which the inspector has reason to believe that a person supplies consumer goods of a particular kind:
- (a) if entry to the premises is under a search warrant—the power to seize consumer goods of that kind;
 - (b) the power to inspect, handle and measure consumer goods of that kind;
 - (c) the power to take samples of consumer goods of that kind;
 - (d) the power:
 - (i) to inspect, handle and read any documents relating to consumer goods of that kind; and
 - (ii) to make copies of, or take extracts from, those documents;
 - (e) the power:
 - (i) to inspect, handle and measure equipment used in the manufacturing, processing or storage of consumer goods of that kind; and
 - (ii) if entry to the premises is under a search warrant—to seize such equipment;
 - (f) the power to make any still or moving image or any recording of:
 - (i) consumer goods of that kind; or
-

- (ii) the premises; or
- (iii) any equipment referred to in subparagraph (e)(i).

Search-related powers—product related services

- (2) The following are the ***search-related powers*** that an inspector may exercise, under subsection 135(2), in relation to premises in or from which the inspector has reason to believe that a person supplies product related services of a particular kind:
 - (a) the power:
 - (i) to inspect, handle and read any documents relating to services of that kind; and
 - (ii) to make copies of, or take extracts from, those documents;
 - (b) the power:
 - (i) to inspect, handle and measure equipment used to supply services of that kind; and
 - (ii) if entry to the premises is under a search warrant—to seize such equipment;
 - (c) the power to make any still or moving image or any recording of:
 - (i) any consumer goods to which product related services of that kind relate; or
 - (ii) the premises; or
 - (iii) any equipment referred to in subparagraph (b)(i).

135B Inspector may ask questions and seek production of documents

Entry with consent etc.

- (1) If an inspector enters premises because the occupier of the premises consents to the entry or in the circumstances referred to in paragraph 135(3)(c), the inspector may ask the occupier to:
 - (a) answer any questions relating to the reasons for the inspector entering the premises that are put by the inspector; and
 - (b) produce any document relating to the reasons for the inspector entering the premises that is requested by the inspector.

Entry under a search warrant

- (2) If an inspector enters premises under a search warrant, the inspector may require any person on the premises to:
- (a) answer any questions relating to the reasons for the inspector entering the premises that are put by the inspector; and
 - (b) produce any document relating to the reasons for the inspector entering the premises that is requested by the inspector.

135C Failure to answer questions or produce documents

- (1) A person commits an offence if:
- (a) the person is subject to a requirement under subsection 135B(2); and
 - (b) the person fails to comply with the requirement.

Penalty:

- (a) if the person is a body corporate—150 penalty units; or
 - (b) if the person is not a body corporate—30 penalty units.
- (2) A person is not excused from:
- (a) answering a question; or
 - (b) producing a document;
- as required under subsection 135B(2) on the ground that the answer, or production of the document, might tend to incriminate the person or expose the person to a penalty.
- (3) However, in the case of an individual:
- (a) the answer, or the document produced; and
 - (b) giving the answer, or producing the document;
- are not admissible in evidence against the individual in any criminal proceedings other than:
- (c) proceedings for any offence against subsection (1); or
 - (d) proceedings for an offence based on the answer or document being false or misleading; or
 - (e) proceedings for an offence based on the obstruction of public officials.
- (4) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

135D Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 135 and in exercising search-related powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable.
- (2) A person giving such assistance is a *person assisting* the inspector.

Powers of a person assisting the inspector

- (3) A person assisting the inspector may:
 - (a) enter the premises; and
 - (b) exercise search-related powers in relation to the premises, but only in accordance with a direction given to the person by the inspector.
- (4) A power exercised by a person assisting the inspector as mentioned in subsection (3) is taken for all purposes to have been exercised by the inspector.

135E Use of force in executing a search warrant

In executing a search warrant, an inspector executing the warrant may use such force against persons and things as is necessary and reasonable in the circumstances.

135F Announcement before entry under warrant

- (1) An inspector must, before entering premises under a search warrant:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
 - (c) give any person at the premises an opportunity to allow entry to the premises.

- (2) However, an inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
 - (a) to ensure the safety of a person (including the inspector or a person assisting the inspector); or
 - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
 - (a) the inspector does not comply with subsection (1) because of subsection (2); and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;the inspector must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

135G Inspector must be in possession of search warrant

If a search warrant is being executed in relation to premises, an inspector executing the warrant must be in possession of:

- (a) the warrant issued under section 135Z or a copy of that warrant; or
- (b) the form of warrant completed under subsection 136(7), or a copy of that form.

Subdivision B—Obligations of inspectors

135H Consent

- (1) An inspector must, before obtaining the consent of an occupier of premises for the purposes of paragraph 135(3)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) If an inspector enters premises because the occupier of the premises consented to the entry, the inspector, and a person assisting the inspector, must leave the premises if the consent ceases to have effect.

135J Details of search warrant etc. must be given to the occupier of the premises

If:

- (a) a search warrant is being executed in relation to premises;
and
- (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
an inspector executing the warrant must, as soon as practicable:
- (c) do one of the following:
 - (i) if the warrant was issued under section 135Z—make a copy of the warrant available to the occupier or other person (which need not include the signature of the judge who issued it);
 - (ii) if the warrant was signed under section 136—make a copy of the form of warrant completed under subsection 136(7) available to the occupier or other person; and
- (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Subdivision C.

Subdivision C—Occupier’s etc. rights and responsibilities

135K Occupier etc. entitled to observe execution of search warrant

(1) If:

- (a) a search warrant is being executed in relation to premises;
and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
the occupier or other person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the search warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the search warrant in 2 or more areas of the premises at the same time.

135L Occupier etc. to provide inspector etc. with facilities and assistance

- (1) A person commits an offence if:
 - (a) the person is:
 - (i) the occupier of premises to which a search warrant relates; or
 - (ii) another person who apparently represents the occupier of those premises; and
 - (b) the person fails to provide:
 - (i) an inspector executing the warrant; and
 - (ii) a person assisting the inspector;with all reasonable facilities and assistance for the effective exercise of their powers.

Penalty:

- (a) if the person is a body corporate—600 penalty units; or
 - (b) if the person is not a body corporate—120 penalty units or imprisonment for 2 years, or both.
- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

135M Receipts for seized consumer goods and equipment

- (1) If consumer goods are seized under a search warrant, an inspector must provide a receipt for the goods.
- (2) If equipment is seized under a search warrant, an inspector must provide a receipt for the equipment.
- (3) One receipt may cover:
 - (a) consumer goods and equipment that have been so seized; and
 - (b) 2 or more kinds of consumer goods or equipment that have been so seized.

135N Return of seized consumer goods and equipment

- (1) Subject to any order under section 135P, if an inspector seizes consumer goods or equipment under a search warrant, the inspector

must take reasonable steps to return the consumer goods or equipment if:

- (a) the reason for the seizure no longer exists; or
 - (b) the period of 60 days after the seizure ends;
- whichever happens first.
- (2) Subsection (1) does not apply if:
 - (a) the consumer goods are, or the equipment is, forfeited or forfeitable to the Commonwealth; or
 - (b) the consumer goods are, or the equipment is, the subject of a dispute as to ownership.
 - (3) If, apart from this subsection, the inspector would be required to take reasonable steps to return consumer goods or equipment under subsection (1) because of paragraph (b) of that subsection, the inspector is not required to do so if:
 - (a) the return of the consumer goods or equipment could cause an imminent risk of death, serious illness or serious injury; or
 - (b) the inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or a Territory) to retain, destroy, dispose of or otherwise deal with the consumer goods or equipment.
 - (4) Consumer goods that are required to be returned under this section must be returned to the person from whom they were seized (or to the owner if that person is not entitled to possess them).
 - (5) Equipment that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

135P Judge may permit consumer goods or equipment to be retained

- (1) An inspector who has seized consumer goods or equipment under a search warrant may, before the end of the period referred to in paragraph 135N(1)(b), apply to a judge of the Federal Court for an order that the inspector may retain the consumer goods or equipment for a further period of up to 60 days.
- (2) If:
 - (a) an application to a judge is made under subsection (1); and

- (b) the judge is satisfied that it is necessary in all the circumstances for the inspector to continue to retain the consumer goods or equipment;
the judge may order that the inspector may retain the consumer goods or equipment for a further period (not exceeding 60 days) specified in the order.
- (3) Before making the application under subsection (1), the inspector must:
 - (a) take reasonable steps to discover who has an interest in the retention of the consumer goods or equipment; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

Subdivision D—Provisions relating to seizure

135Q Recovery of reasonable costs of seizing consumer goods or equipment

- (1) If an inspector seizes consumer goods or equipment under a search warrant:
 - (a) the person from whom the consumer goods were seized, or the equipment was seized; or
 - (b) if that person is not entitled to possess the consumer goods or equipment—the owner of the consumer goods or equipment;is liable to pay an amount equal to the costs reasonably incurred by the inspector in seizing the consumer goods or equipment.
- (2) An amount payable by a person under subsection (1):
 - (a) is a debt due by the person to the Commonwealth; and
 - (b) may be recovered by action in a court of competent jurisdiction.

135R Destruction or disposal of seized consumer goods or equipment

- (1) If:
 - (a) an inspector seizes consumer goods, or equipment used to supply product-related services, under a search warrant; and
-

- (b) apart from this section, the inspector is required to return the consumer goods or equipment to a person; and
 - (c) either:
 - (i) the inspector cannot, despite making reasonable efforts, locate the person; or
 - (ii) the person has refused to take possession of the consumer goods or equipment;
- a court may, on the application of the inspector, make an order authorising the inspector to destroy or otherwise dispose of the consumer goods or equipment.
- (2) If subparagraph (1)(c)(ii) applies, the inspector must, before making an application under subsection (1), inform the person referred to in that subparagraph that the inspector proposes to make an application under that subsection.
 - (3) If:
 - (a) an order is made under subsection (1); and
 - (b) subparagraph (1)(c)(ii) applies;the person referred to in that subparagraph is liable to pay an amount equal to the costs reasonably incurred by the inspector in destroying or disposing of the consumer goods or equipment.
 - (4) An amount payable by a person under subsection (3):
 - (a) is a debt due by the person to the Commonwealth; and
 - (b) may be recovered by action in a court of competent jurisdiction.

Subdivision E—Embargo notices

135S Embargo notices

- (1) An inspector who enters premises under a search warrant may give an ***embargo notice*** to the occupier of the premises.
- (2) The inspector may give the notice to the occupier of the premises:
 - (a) by causing a copy of the notice to be served on the occupier; or
 - (b) if the occupier cannot be located after all reasonable steps have been taken to do so—by:

- (i) causing a copy of the notice to be served on a person on the premises who is reasonably believed to be in regular contact with the occupier; or
 - (ii) causing a copy of the notice to be affixed to the premises, or to a thing on the premises, in a prominent position.
- (3) The embargo notice must:
 - (a) be in writing; and
 - (b) specify the consumer goods, or product related services, to which the notice relates; and
 - (c) if the notice relates to consumer goods—state that the specified consumer goods must not be:
 - (i) supplied in or from the premises; or
 - (ii) transferred, moved, altered, destroyed or otherwise interfered with;during the period specified in the notice; and
 - (d) if the notice relates to product related services—state that the specified product related services must not be supplied in or from the premises during the period specified in the notice; and
 - (e) explain the effect of section 135V or 135W.
- (4) Despite anything in any other law, a contract for a supply of consumer goods or product related services that is prohibited by an embargo notice is void.
- (5) If consumer goods are supplied in contravention of an embargo notice:
 - (a) the supplier must immediately return or refund to the person who acquired the goods any consideration (or the value of any consideration) that that person gave:
 - (i) under an agreement for the supply; or
 - (ii) under a related contract or instrument; and
 - (b) if the goods have been removed from the premises in which they were subject to the embargo notice—the person who acquired the goods must:
 - (i) return the goods to the premises; or
 - (ii) notify the supplier of the place where the supplier may collect the goods; and

- (c) if subparagraph (b)(ii) applies—the supplier must collect the goods from the place notified to the supplier, and return them to the premises.

135T Embargo period for embargo notices

Embargo period

- (1) Subject to this section, the embargo period for an embargo notice must not be longer than:
 - (a) if the inspector giving the notice secures consumer goods under section 135V or secures equipment under section 135W—24 hours; or
 - (b) otherwise—28 days.

Extensions of embargo period

- (2) An inspector may, before the embargo period ends, apply to a judge of the Federal Court for an extension of the period.
- (3) If an inspector intends to make an application under subsection (2), the inspector must, before making the application, notify the occupier of the premises to which the embargo notice relates of that intention.
- (4) The occupier of the premises is entitled to be heard in relation to the application.
- (5) The judge may extend the embargo period for a specified period if the judge is satisfied that the extension is necessary in all the circumstances.

135U Multiple embargo notices for the same consumer goods or product related services

An inspector must not give an embargo notice in relation to consumer goods, or product related services, of a particular kind if:

- (a) an embargo notice (the *earlier embargo notice*) has already been given in relation to consumer goods, or product related services, of that kind; and
- (b) the embargo period for the earlier embargo notice did not end at least 5 days ago.

135V Power of inspectors to secure consumer goods

If:

- (a) an embargo notice relates to consumer goods; and
- (b) the inspector who gives the notice believes on reasonable grounds that it is necessary to secure the consumer goods in order to ensure that the notice is complied with;

the inspector may, during the embargo period for the embargo notice, do anything that the inspector thinks is necessary to secure those consumer goods (whether by locking them up, placing a guard or otherwise).

135W Power of inspectors to secure equipment used to supply product related services

If:

- (a) an embargo notice relates to product related services; and
- (b) the inspector who gives the notice believes on reasonable grounds that it is necessary to secure equipment used to supply the services in order to ensure that the notice is complied with;

the inspector may, during the embargo period for the embargo notice, do anything that the inspector thinks is necessary to secure that equipment (whether by locking it up, placing a guard or otherwise).

135X Consent to supply etc. embargoed consumer goods etc.

- (1) If an embargo notice relating to consumer goods has been given, the owner of the goods or another person who has an interest in the goods may, in writing, request consent to do any of the following:
 - (a) to supply the goods;
 - (b) to transfer, move, alter, destroy or otherwise interfere with the goods.
- (2) If an embargo notice relating to product related services has been given, the following persons may, in writing, request consent to supply the services:
 - (a) the person who would, but for the embargo notice, supply the services;

- (b) another person whose interests would be affected if the services were not supplied.
- (3) If a request for consent is made under subsection (1) or (2), the requested consent may be given, in writing, by the Commonwealth Minister, the Chairperson or any inspector.
- (4) A consent given under subsection (3) is not a legislative instrument.

135Y Compliance with embargo notices

- (1) A person commits an offence if:
 - (a) the person knows that an embargo notice has been given; and
 - (b) the person, contrary to the embargo notice, does an act or omits to do an act.

Penalty:

- (a) if the person is a body corporate—200 penalty units; or
- (b) if the person is not a body corporate—40 penalty units.

- (2) A person commits an offence if:
 - (a) the person knows that an embargo notice has been given; and
 - (b) the person causes another person:
 - (i) to do an act that is contrary to the embargo notice; or
 - (ii) contrary to the embargo notice, to omit to do an act.

Penalty:

- (a) if the person is a body corporate—200 penalty units; or
- (b) if the person is not a body corporate—40 penalty units.

- (3) Subsection (1) or (2) does not apply in relation to:
 - (a) an act done in accordance with a consent given under section 135X; or
 - (b) if the embargo notice relates to consumer goods—an act done for the purpose of protecting or preserving the consumer goods; or
 - (c) if the embargo notice relates to product related services—an act done for the purpose of protecting or preserving equipment used to supply the services.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (4) Strict liability applies to paragraphs (1)(b) and (2)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Subdivision F—Issue of search warrants

135Z Issue of search warrants

Application for warrant

- (1) An inspector may apply to a judge of the Federal Court for a warrant in relation to premises.

Issue of warrant

- (2) The judge may issue the warrant if:
- (a) an affidavit has been given to the judge setting out the grounds on which the issue of the warrant is being sought; and
 - (b) the applicant, or some other person, has given to the judge such further information (if any) as the judge requires concerning the grounds on which the issue of the warrant is being sought; and
 - (c) the judge is satisfied that there are reasonable grounds for issuing the warrant.

Content of warrant

- (3) The warrant must:
- (a) specify the purpose for which the warrant is issued; and
 - (b) describe the premises to which the warrant relates; and
 - (c) state that the warrant is issued under this section; and
 - (d) name one or more inspectors; and
 - (e) authorise the inspector or inspectors so named:
 - (i) to enter the premises; and
 - (ii) to exercise search-related powers in relation to the premises; and
 - (f) state whether the entry is authorised to be made at any time of the day or night, or during specified hours of the day or night; and

- (g) specify a day (which must not be more than 7 days after the day the warrant is issued) on which the warrant ceases to be in force.

136 Search warrants by telephone, fax etc.

Application for warrant

- (1) An inspector may apply to a judge of the Federal Court by telephone, fax or other electronic means for a warrant under section 135Z in relation to premises if the inspector believes on reasonable grounds that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

- (2) The judge may require communication by voice to the extent that it is practicable in the circumstances.

Affidavit

- (3) Before applying for the warrant, the inspector must prepare an affidavit of the kind mentioned in paragraph 135Z(2)(a).
- (4) If it is necessary to do so, the inspector may apply for the warrant before the affidavit has been sworn.

Signing of warrant

- (5) If the judge is satisfied:
 - (a) after considering the terms of the affidavit; and
 - (b) after receiving such further information (if any) as the judge requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the judge may complete and sign the same warrant that the judge would issue under section 135Z if the application had been made under that section.

Notification

- (6) If the judge completes and signs the warrant, the judge must inform the inspector, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
 - (b) the day on which and the time at which the warrant was signed.

Form of warrant

- (7) The inspector must then complete a form of warrant in the same terms as the warrant completed and signed by the judge, stating on the form the name of the judge and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to judge

- (8) The inspector must also, not later than the day after the day on which the warrant ceased to be in force or the day of execution of the warrant, whichever is the earlier, send to the judge:
- (a) the form of warrant completed by the inspector; and
 - (b) the affidavit referred to in subsection (3), which must have been duly sworn.

Attachment

- (9) The judge must attach to the documents provided under subsection (8) the warrant signed by the judge.

Authority of warrant

- (10) A form of warrant duly completed under subsection (7) is authority for the same powers as are authorised by the warrant signed by the judge.
- (11) If:
- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the judge authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.
-

136A Offence relating to warrants by telephone, fax etc.

An inspector commits an offence if the inspector:

- (a) states in a document that purports to be a form of warrant under section 136 the name of a judge unless that judge signed the warrant; or
- (b) states on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the judge under that section; or
- (c) purports to execute, or presents to another person, a document that purports to be a form of warrant under that section that the inspector knows:
 - (i) has not been approved by a judge under that section; or
 - (ii) departs in a material particular from the terms of a warrant signed by a judge under that section; or
- (d) gives to a judge a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

Subdivision G—Miscellaneous

136B Powers of judges

Powers conferred personally

- (1) A power conferred on a judge by this Division is conferred on the judge:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The judge need not accept the power conferred.

Protection and immunity

- (3) A judge exercising a power conferred by this Division has the same protection and immunity as if he or she were exercising the power:

- (a) as the court of which the judge is a member; or
- (b) as a member of the court of which the judge is a member.

Division 7—Remedies

137 Limit on occupational liability

State or Territory professional standards law limits liability

- (1) A professional standards law of a State, the Australian Capital Territory or the Northern Territory applies to limit occupational liability relating to an action for a contravention of section 18 of the Australian Consumer Law in the same way as it limits occupational liability arising under a law of the State or Territory.
- (2) However, the professional standards law applies for that purpose:
 - (a) only in relation to a scheme that was prescribed by the regulations at the time (the *contravention time*) of the contravention; and
 - (b) as if the scheme were in force under that law at the contravention time, in the form the scheme would have been in if:
 - (i) the scheme had not been amended or revoked under that law since the scheme was first prescribed; and
 - (ii) any additions, omissions, substitutions and other modifications prescribed by the regulations at the contravention time had been made to the scheme.

Operation of choice of law rules

- (3) For the purposes of working out whether a professional standards law of a particular State or Territory applies under subsection (1) in relation to a particular contravention of section 18 of the Australian Consumer Law, choice of law rules operate in relation to the contravention in the same way as they operate in relation to a tort.

Professional standards laws

- (4) A **professional standards law** is a law that provides for the limitation of occupational liability by reference to schemes for limiting that liability that were formulated and published in accordance with that law.

Occupational liability

- (5) **Occupational liability** is civil liability arising directly or vicariously from anything done or omitted by a person who:
- (a) does or omits to do the thing in the course of his or her profession, trade or occupation; and
 - (b) is a member of a body:
 - (i) that represents the interests of persons who have the same profession, trade or occupation; and
 - (ii) whose membership is limited principally to such persons.

137A Contributory acts or omissions to reduce compensation in defective goods actions

- (1) If the loss or damage to which a defective goods action under section 138 or 139 of the Australian Consumer Law relates was caused by both:
- (a) an act or omission of:
 - (i) the individual who suffers the injuries referred to in that section; or
 - (ii) a person for whom that individual is responsible; and
 - (b) a safety defect of the goods to which the action relates;
- the amount of the loss or damage is to be reduced to such extent (which may be to nil) as the court thinks fit having regard to that individual's share in the responsibility for the loss or damage.
- (2) If the loss or damage to which a defective goods action under section 140 or 141 of the Australian Consumer Law relates was caused by both:
- (a) an act or omission of:
 - (i) the person who suffered the loss or damage; or
 - (ii) another person for whom that person is responsible; and
 - (b) a safety defect of the goods to which the action relates;

the amount of the loss or damage is to be reduced to such extent (which may be to nil) as the court thinks fit having regard to the person's share in the responsibility for the loss or damage.

137B Reduction of the amount of loss or damage if the claimant fails to take reasonable care

If:

- (a) a person (the *claimant*) makes a claim under subsection 236(1) of the Australian Consumer Law in relation to economic loss, or damage to property, suffered by the claimant because of the conduct of another person; and
- (b) the conduct contravened section 18 of the Australian Consumer Law; and
- (c) the claimant suffered the loss or damage as result:
 - (i) partly of the claimant's failure to take reasonable care; and
 - (ii) partly of the conduct of the other person; and
- (d) the other person did not intend to cause the loss or damage and did not fraudulently cause the loss or damage;

the amount of the loss or damage that the claimant may recover under subsection 236(1) of the Australian Consumer Law is to be reduced to the extent to which a court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

137C Limits on recovery of amounts for death or personal injury

- (1) A person is not entitled to recover an amount of loss or damage by action under subsection 236(1) of the Australian Consumer Law to the extent to which:
 - (a) the action would be based on the conduct contravening a provision of Part 2-1 or 3-1 of the Australian Consumer Law; and
 - (b) the loss or damage is, or results from, death or personal injury; and
 - (c) the death or personal injury does not result from smoking or other use of tobacco products.

- (2) Divisions 2 and 7 of Part VIB of this Act apply to an action under subsection 236(1) of the Australian Consumer Law for loss or damage a person suffers to the extent to which:
- (a) the action is based on the conduct contravening a provision of Part 2-1 or 3-1 of the Australian Consumer Law; and
 - (b) the loss or damage is, or results from, death or personal injury; and
 - (c) the death or personal injury results from smoking or other use of tobacco products;

as if the action were a proceeding to which Part VIB of this Act applied.

Note 1: Division 2 of Part VIB of this Act deals with the limitation periods that apply for claims for damages or compensation for death or personal injury and, to the extent to which that Division is applied to the action by this subsection, it overrides subsection 236(2) of the Australian Consumer Law.

Note 2: Division 7 of Part VIB of this Act deals with structured settlements for claims for damages or compensation for death or personal injury.

137D Compensation orders etc. arising out of unfair contract terms

In determining whether to make an order under subsection 237(1) or 238(1) of the Australian Consumer Law in relation to:

- (a) a contravention of a provision of Part 2-2 of the Australian Consumer Law; or
- (b) a term of a consumer contract that has been declared under section 250 of the Australian Consumer Law to be an unfair term;

the court may have regard to the conduct of the parties to the proceeding referred to in that subsection since the contravention occurred or the declaration was made.

137E Limits on compensation orders etc. for death or personal injury

- (1) A court must not make an order under subsection 237(1) or 238(1) of the Australian Consumer Law to compensate a person for loss or damage the person suffers because of the conduct of another person to the extent to which:

- (a) the action would be based on the conduct contravening a provision of Part 2-1 or 3-1 of the Australian Consumer Law; and
 - (b) the loss or damage is, or results from, death or personal injury; and
 - (c) the death or personal injury does not result from smoking or other use of tobacco products.
- (2) Division 2 of Part VIB of this Act applies to an application for an order under subsection 237(1) of the Australian Consumer Law to compensate a person for loss or damage the person suffers because of the conduct of another person to the extent to which:
- (a) the action would be based on the conduct contravening a provision of Part 2-1 or 3-1 of the Australian Consumer Law; and
 - (b) the loss or damage is, or results from, death or personal injury; and
 - (c) the death or personal injury results from smoking or other use of tobacco products;
- as if the proceeding in relation to the application were a proceeding to which Part VIB of this Act applies and as if the making of the application were the commencement of the proceeding.

Note: Division 2 of Part VIB of this Act deals with the limitation periods that apply for claims for damages or compensation for death or personal injury and, to the extent to which that Division is applied to the application by this subsection, it overrides subsection 237(3) of the Australian Consumer Law.

- (3) Division 7 of Part VIB of this Act applies to a proceeding in which an order under subsection 237(1) or 238(1) of the Australian Consumer Law to compensate a person for loss or damage the person suffers because of the conduct of another person is made, to the extent to which:
- (a) the action would be based on the conduct contravening a provision of Part 2-1 or Part 3-1 of the Australian Consumer Law; and
 - (b) the loss or damage is, or results from, death or personal injury; and
 - (c) the death or personal injury results from smoking or other use of tobacco products;

as if the proceeding were a proceeding to which Part VIB of this Act applied.

Note: Division 7 of Part VIB of this Act deals with structured settlements for claims for damages or compensation for death or personal injury.

137F Court may make orders for the purpose of preserving money or other property held by a person

- (1) A court may, on the application of the Commonwealth Minister or the Commission, make an order or orders mentioned in subsection (3) if:
 - (a) proceedings of a kind referred to in subsection (2) have been taken against a person, or proceedings of a kind referred to in paragraph (2)(d) may be taken against a person; and
 - (b) the court is satisfied that it is necessary or desirable to make the order or orders for the purpose of preserving money or other property held by, or on behalf of, the person if the person is liable, or may become liable, under the Australian Consumer Law:
 - (i) to pay money by way of a fine, damages, compensation, refund or otherwise; or
 - (ii) to transfer, sell or refund other property; and
 - (c) the court is satisfied that the making of such an order or orders will not unduly prejudice the rights and interests of any other person.

Kinds of proceedings taken against the person

- (2) For the purposes of paragraph (1)(a), the kinds of proceedings taken against the person are:
 - (a) proceedings against the person for an offence against a provision of Chapter 4 of the Australian Consumer Law; or
 - (b) an application under section 232 of the Australian Consumer Law for an injunction against the person in relation to:
 - (i) a contravention of a provision of Chapter 2, 3 or 4 of the Australian Consumer Law; or
 - (ii) a term of a consumer contract in relation to which a declaration under section 250 of the Australian Consumer Law has been made; or
 - (c) an action under subsection 236(1) of the Australian Consumer Law against the person in relation to a
-

contravention of a provision of Part 2-1 or Chapter 3 of the Australian Consumer Law; or

- (d) an application for an order under subsection 237(1) or 239(1) of the Australian Consumer Law against a person in relation to:
 - (i) a contravention of a provision of Chapter 2, 3 or 4 of the Australian Consumer Law; or
 - (ii) a term of a consumer contract in relation to which a declaration under section 250 of the Australian Consumer Law has been made.

Kinds of orders that may be made

- (3) The court may make the following orders under subsection (1) of this section in a relation to money or other property held by, or on behalf of, a person (the *respondent*):
 - (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the respondent, or to an associate of the respondent, from making a payment, in total or partial discharge of the debt:
 - (i) to the respondent; or
 - (ii) to another person at the direction or request of the respondent;
 - (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the respondent, or on behalf of an associate of the respondent:
 - (i) from paying all or any of the money to the respondent, or to another person at the direction or request of the respondent; or
 - (ii) from transferring the other property to the respondent, or to another person at the direction or request of the respondent, or otherwise parting with possession of that property;
 - (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the respondent, or of an associate of the respondent, to a place outside the State or Territory in which the money is held;

- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the respondent, or of an associate of the respondent, to a place outside the State or Territory in which that property is located;
- (e) if the respondent is a natural person—an order appointing a receiver or trustee of the property, or of part of the property, of the respondent with such powers as are specified in the order.

Operation of order

- (4) If the court makes such an order, the order operates:
 - (a) for the period specified in the order (which must not be longer than 30 days if the application for the order was an ex parte application); or
 - (b) if proceedings in relation to which the order is made are concluded before the end of that period—until the conclusion of those proceedings.

Other

- (5) This section:
 - (a) has effect subject to the *Bankruptcy Act 1966*; and
 - (b) does not affect any other powers of the court.

137G Compliance with orders made under section 137F

- (1) A person commits an offence if:
 - (a) an order made under section 137F applies to the person; and
 - (b) the person contravenes, or refuses or fails to comply with, the order.

Penalty:

- (a) if the person is a body corporate—900 penalty units; or
 - (b) if the person is not a body corporate—180 penalty units.
- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

137H Finding in proceedings to be evidence

- (1) In an action against a person under subsection 236(1) of the Australian Consumer Law:
 - (a) a finding of a fact by a court to which subsection (3) of this section applies is prima facie evidence of that fact; and
 - (b) the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (2) In proceedings for an order against a person under subsection 237(1) or 239(1) of the Australian Consumer Law:
 - (a) a finding of a fact by a court to which subsection (3) of this section applies is prima facie evidence of that fact; and
 - (b) the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (3) This subsection applies to a finding of a fact by a court that is made in proceedings under section 228, 232, 246, 247 or 248 of the Australian Consumer Law, or for an offence against a provision of Chapter 4 of the Australian Consumer Law, in which the person has been found:
 - (a) to have contravened a provision of Chapter 2, 3 or 4 of the Australian Consumer Law; or
 - (b) to have attempted to contravene such a provision; or
 - (c) to have aided, abetted, counselled or procured a person to contravene such a provision; or
 - (d) to have induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
 - (e) to have been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) to have conspired with others to contravene such a provision.

Division 8—Jurisdictional matters

138 Conferring jurisdiction on the Federal Court

- (1) Jurisdiction is conferred on the Federal Court in relation to any matter arising under this Part or the Australian Consumer Law in
-

respect of which a civil proceeding has been instituted under this Part or the Australian Consumer Law.

- (2) The jurisdiction conferred by subsection (1) on the Federal Court is exclusive of the jurisdiction of any other court other than:
 - (a) the jurisdiction of the Federal Magistrates Court under section 138A; and
 - (b) the jurisdiction of the several courts of the States and Territories under section 138B; and
 - (c) the jurisdiction of the High Court under section 75 of the Constitution.

138A Conferring jurisdiction on the Federal Magistrates Court

- (1) Subject to this section, jurisdiction is conferred on the Federal Magistrates Court in relation to any matter arising under this Part or the Australian Consumer Law in respect of which a civil proceeding is instituted by a person other than the Commonwealth Minister.
- (2) If proceedings under Part 3-5, or section 236, of the Australian Consumer Law are instituted in, or transferred to, the Federal Magistrates Court, the Federal Magistrates Court does not have jurisdiction to award an amount for loss or damage that exceeds:
 - (a) \$750,000; or
 - (b) if another amount is specified in the regulations—that other amount.

Note: For transfers from the Federal Court to the Federal Magistrates Court: see section 32AB of the *Federal Court of Australia Act 1976*.

138B Conferring jurisdiction on State and Territory Courts

- (1) Jurisdiction is conferred on the several courts of the States and Territories in relation to any matter arising under this Part or the Australian Consumer Law in respect of which a civil proceeding is instituted by a person other than the Commonwealth Minister or the Commission.
- (2) However, subsection (1) does not apply in relation to a matter arising under:
 - (a) Division 3 of Part 3-1 of the Australian Consumer Law; or
 - (b) Part 3-5 of the Australian Consumer Law.

- (3) The jurisdiction conferred by subsection (1) on the several courts of the States is conferred within the limits of their several jurisdictions, whether those limits are as to locality, subject matter or otherwise.
- (4) The jurisdiction conferred by subsection (1) on the several courts of the Territories is conferred to the extent that the Constitution permits.
- (5) This section is not to be taken to enable an inferior court of a State or a Territory to grant a remedy other than a remedy of a kind that the court is able to grant under the law of that State or Territory.

138C Transfer of matters by the Federal Court

- (1) Subject to subsections (2) and (3), if:
 - (a) a civil proceeding instituted by a person (other than the Commonwealth Minister or the Commission) is pending in the Federal Court; and
 - (b) a matter for determination in the proceeding arises under this Part or the Australian Consumer Law;the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the matter, and any other matter for determination in the proceeding, to a court of a State or a Territory.
 - (2) The Federal Court must not transfer a matter to another court under subsection (1) unless:
 - (a) the other court has power to grant the remedies sought before the Federal Court in the matter; and
 - (b) it appears to the Federal Court that:
 - (i) the matter arises out of, or is related to, a proceeding that is pending in the other court; or
 - (ii) it is otherwise in the interests of justice that the matter be determined by the other court.
 - (3) Subsection (1) does not apply in relation to a matter arising under:
 - (a) Division 3 of Part 3-1 of the Australian Consumer Law; or
 - (b) Part 3-5 of the Australian Consumer Law.
 - (4) If the Federal Court transfers a matter to another court under subsection (1):
-

- (a) further proceedings in the matter must be as directed by the other court; and
- (b) the judgment of the other court in the matter is enforceable throughout Australia and the external Territories as if it were a judgment of the Federal Court.

138D Transfer of matters by a State or Territory court

- (1) This section applies if:
 - (a) a proceeding is pending in a court (other than the Supreme Court) of a State or a Territory; and
 - (b) a matter for determination in the proceeding arises under this Part or the Australian Consumer Law, other than under:
 - (i) Division 3 of Part 3-1 of the Australian Consumer Law; or
 - (ii) Part 3-5 of the Australian Consumer Law; or
 - (iii) Chapter 4 of the Australian Consumer Law.
 - (2) The court must, if directed to do so by the Federal Court, transfer to the Federal Court:
 - (a) the matter; and
 - (b) such other matters for determination in the proceeding, the determination of which would (apart from any law of a State or of the Northern Territory relating to cross-vesting of jurisdiction) be within the jurisdiction of the Federal Court, as the Federal Court determines.
 - (3) Subject to subsection (4), the court may, on the application of a party to the proceeding or of its own motion, transfer the matter to a court (other than the Supreme Court) of another State or Territory.
 - (4) The court (the *first court*) must not transfer a matter to another court under subsection (3) unless:
 - (a) the other court has power to grant the remedies sought before the first court in the matter; and
 - (b) it appears to the first court that:
 - (i) the matter arises out of, or is related to, a proceeding that is pending in the other court; or
 - (ii) it is otherwise in the interests of justice that the matter be determined by the other court.
-

- (5) If the court transfers a matter to another court under subsection (3), further proceedings in the matter must be as directed by the other court.

138E Transfer of proceedings to Family Court

- (1) If:
- (a) a civil proceeding is pending in the Federal Court; and
 - (b) a matter for determination in the proceeding arises under this Part or the Australian Consumer Law, other than under:
 - (i) Division 3 of Part 3-1 of the Australian Consumer Law; or
 - (ii) Part 3-5 of the Australian Consumer Law;
- the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.
- (2) Subject to subsection (3), if a proceeding is transferred to the Family Court under subsection (1):
- (a) the Family Court has jurisdiction to hear and determine the proceeding; and
 - (b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether because of paragraph (a) or otherwise):
 - (i) that are associated with matters arising in the proceeding; or
 - (ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding; and
 - (c) the Family Court may, in and in relation to the proceeding:
 - (i) grant such remedies; and
 - (ii) make orders of such kinds; and
 - (iii) issue, and direct the issue of, writs of such kinds; as the Federal Court could have granted, made, issued or directed the issue of, in and in relation to the proceeding; and
 - (d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court; and

- (e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and
- (f) subject to paragraphs (a) to (e) of this subsection, this Act, the regulations, the *Federal Court of Australia Act 1976*, the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:
 - (i) a reference to the Federal Court (other than in the expression *the Court or a Judge*) included a reference to the Family Court; and
 - (ii) a reference to a Judge of the Federal Court (other than in the expression *the Court or a Judge*) included a reference to a Family Court Judge; and
 - (iii) a reference to the expression *the Court or a Judge* when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers; and
 - (iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and
 - (v) any other necessary changes were made.
- (3) If any difficulty arises in the application of paragraphs (2)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.
- (4) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Act to the Family Court.

Division 9—Miscellaneous

139 Intervention by the Commission

- (1) The Commission may, with the leave of a court and subject to any conditions imposed by the court, intervene in any proceeding instituted under this Part or the Australian Consumer Law.

- (2) If the Commission intervenes in a proceeding, the Commission is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

139A Terms excluding consumer guarantees from supplies of recreational services

- (1) A term of a contract for the supply of recreational services to a consumer by a person is not void under section 64 of the Australian Consumer Law only because the term excludes, restricts or modifies, or has the effect of excluding, restricting or modifying:
- (a) the application of all or any of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law; or
 - (b) the exercise of a right conferred by such a provision; or
 - (c) any liability of the person for a failure to comply with a guarantee that applies under that Subdivision to the supply.
- (2) **Recreational services** are services that consist of participation in:
- (a) a sporting activity or a similar leisure time pursuit; or
 - (b) any other activity that:
 - (i) involves a significant degree of physical exertion or physical risk; and
 - (ii) is undertaken for the purposes of recreation, enjoyment or leisure.
- (3) This section does not apply unless the exclusion, restriction or modification is limited to liability for:
- (a) death; or
 - (b) a physical or mental injury of an individual (including the aggravation, acceleration or recurrence of such an injury of the individual); or
 - (c) the contraction, aggravation or acceleration of a disease of an individual; or
 - (d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual:
 - (i) that is or may be harmful or disadvantageous to the individual or community; or

- (ii) that may result in harm or disadvantage to the individual or community.
- (4) This section does not apply if the exclusion, restriction or modification would apply to significant personal injury suffered by a person that is caused by the reckless conduct of the supplier of the recreational services.
- (5) The supplier's conduct is *reckless conduct* if the supplier:
 - (a) is aware, or should reasonably have been aware, of a significant risk that the conduct could result in personal injury to another person; and
 - (b) engages in the conduct despite the risk and without adequate justification.

139B Conduct of directors, employees or agents of bodies corporate

- (1) If, in a proceeding under this Part or the Australian Consumer Law in respect of conduct that is engaged in by a body corporate and to which this Part or the Australian Consumer Law applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show:
 - (a) that a director, employee or agent of the body corporate engaged in that conduct within the scope of the actual or apparent authority of the director, employee or agent; and
 - (b) that the director, employee or agent had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
 - (a) by a director, employee or agent of the body corporate within the scope of the actual or apparent authority of the director, employee or agent; or
 - (b) by any other person:
 - (i) at the direction of a director, employee or agent of the body corporate; or
 - (ii) with the consent or agreement (whether express or implied) of such a director, employee or agent;if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;is taken, for the purposes of this Part or the Australian Consumer Law, to have been engaged in also by the body corporate.

139C Conduct of employees or agents of persons other than bodies corporate

- (1) If, in a proceeding under this Part or the Australian Consumer Law in respect of conduct that is engaged in by a person (the *principal*) other than a body corporate and to which this Part or the Australian Consumer Law applies, it is necessary to establish the state of mind of the principal, it is sufficient to show:
- (a) that an employee or agent of the principal engaged in that conduct within the scope of the actual or apparent authority of the employee or agent; and
 - (b) the employee or agent had that state of mind.
- (2) Any conduct engaged in on behalf of a person (the *principal*) other than a body corporate:
- (a) by an employee or agent of the principal within the scope of the actual or apparent authority of the employee or agent; or
 - (b) by any other person:
 - (i) at the direction of an employee or agent of the principal; or
 - (ii) with the consent or agreement (whether express or implied) of such an employee or agent;if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;
- is taken, for the purposes of this Part or the Australian Consumer Law, to have been engaged in also by the principal.
- (3) If:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) subsection (1) or (2) applied in relation to the conviction on the basis that the person was the principal mentioned in that subsection; and
 - (c) the person would not have been convicted of the offence if that subsection had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.

139D Enforcement and recovery of certain fines

- (1) If a person defaults in paying a fine that has been imposed on the person for an offence against a provision of Chapter 4 of the Australian Consumer Law or section 137G of this Act, a court may:
 - (a) exercise any power that the court has apart from this section in relation to the enforcement and recovery of the fine; or
 - (b) make an order (the ***enforcement order***), on the application of the Commonwealth Minister or the Commission, declaring that the fine is to have effect, and may be enforced, as if it were a judgment debt under a judgment of the court.
- (2) If:
 - (a) the court makes an enforcement order; and
 - (b) the person gives security for the payment of the fine;the court must cancel the enforcement order.
- (3) If the court makes an enforcement order, the court may, at any time before the enforcement order is executed:
 - (a) allow the person a specified time in which to pay the fine; or
 - (b) allow the person to pay the fine by specified instalments.
- (4) If the court allows the person a specified time in which to pay the fine:
 - (a) the enforcement order must not be executed unless the person fails to pay the fine within that time; and
 - (b) if the person pays the fine within that time—the enforcement order is taken to have been discharged.
- (5) If the court allows the person to pay the fine by specified instalments:
 - (a) the enforcement order must not be executed unless the person fails to pay such an instalment at or before the time when it becomes payable; and
 - (b) if the person pays all those instalments—the enforcement order is taken to have been discharged.
- (6) The term of a sentence of imprisonment imposed by an order under a law of a State or a Territory applied by section 15A of the *Crimes Act 1914* (including an order described in subsection 15A(1AA) of that Act) in respect of a fine is to be calculated at the rate of one

day's imprisonment for each \$25 of the amount of the fine that is from time to time unpaid.

139DA Application of section 229 of the Australian Consumer Law to a person other than a body corporate

If, as a result of the operation of Part 2.4 of the *Criminal Code*, a person other than a body corporate is:

- (a) convicted of an offence (the *relevant offence*) against subsection 229(1) of the Australian Consumer Law; or
- (b) convicted of an offence (the *relevant offence*) against section 11.4 of the *Criminal Code* in relation to an offence referred to in subsection 229(1) of the Australian Consumer Law;

the relevant offence is taken to be punishable on conviction by a fine not exceeding \$550.

139E Cessation of enforcement orders etc.

- (1) Subject to this section, an enforcement order in relation to a fine ceases to have effect:
 - (a) on payment of the fine; or
 - (b) if the fine is not paid—on full compliance with the enforcement order.
- (2) Subject to this section, if a person is required under one or more enforcement orders to serve periods of imprisonment, those periods must be served consecutively.
- (3) If:
 - (a) a person would, but for this subsection, be required under one or more enforcement orders that relate to 3 or more fines to serve periods of imprisonment that in aggregate are longer than 3 years; and
 - (b) those fines were imposed (whether or not in the same proceedings) for offences constituted by contraventions:
 - (i) that occurred within a period of 2 years; and
 - (ii) that appear to a court to have been of the same nature or of a substantially similar nature;

the court must, by order, declare that the enforcement order or orders cease to have effect in respect of those fines after the person has served an aggregate of 3 years' imprisonment.

- (4) If subsection (3) would, but for this subsection, apply to a person with respect to offences committed by the person within 2 or more overlapping periods of 2 years, the court must make an order under that subsection in relation to only one of those periods.
- (5) The order under subsection (4) must relate to the period which would give the person the maximum benefit under subsection (3).
- (6) For the purposes of subsection (4), the court may vary or revoke an order made under subsection (3).

139F Compensation for acquisition of property

- (1) If the operation of this Part (including Schedule 2 as applied by this Part) would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

139G Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by Schedule 2 to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to that Schedule.
- (2) Before the Governor-General makes a regulation for the purposes of paragraph 25(n) of Schedule 2 prescribing a kind of term of a

consumer contract, or a kind of effect that such a term has, the Commonwealth Minister must take into consideration:

- (a) the detriment that a term of that kind would cause to consumers; and
 - (b) the impact on business generally of prescribing that kind of term or effect; and
 - (c) the public interest.
- (3) Before the Governor-General makes a regulation under subsection (1) for the purposes of paragraph 65(1)(a) of Schedule 2 in relation to supplies of a particular kind, the Commonwealth Minister must be satisfied that:
- (a) the laws of the Commonwealth; and/or
 - (b) the laws of the States and Territories;
- adequately provide for consumer rights in relation to supplies of that kind.
- (4) The regulations may, either unconditionally or subject to such conditions as are specified in the regulations, exempt from the application of Schedule 2 or of specified provisions of Schedule 2:
- (a) conduct engaged in by a specified organisation or body that performs functions in relation to the marketing of primary products; or
 - (b) any of the following:
 - (i) a specified contract or proposed contract made;
 - (ii) contracts included in a specified class of contracts made;
 - (iii) specified conduct entered into; pursuant to or for the purposes of a specified agreement, arrangement or understanding between the Government of Australia and the Government of a foreign country; or
 - (c) prescribed conduct engaged in in the course of a business carried on by the Commonwealth or by a prescribed authority of the Commonwealth.
- (5) Strict compliance with a form of application or notice prescribed for the purposes of Schedule 2 is not, and is taken never to have been, required and substantial compliance is, and is taken always to have been, sufficient.

Part XIAA—Application of the Australian Consumer Law as a law of a State or Territory

140 Definitions

In this Part:

application law means:

- (a) a law of a participating jurisdiction that applies the applied Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the applied Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications.

applied Australian Consumer Law means (according to the context):

- (a) the text described in section 140B; or
- (b) that text, applying as a law of a participating jurisdiction, either with or without modifications.

apply, in relation to the applied Australian Consumer Law, means apply the applied Australian Consumer Law by reference:

- (a) as in force from time to time; or
- (b) as in force at a particular time.

Commonwealth entity means:

- (a) an authority of the Commonwealth; or
- (b) an officer of the Commonwealth.

imposes a duty has the meaning given by section 140G.

modifications includes additions, omissions and substitutions.

officer, in relation to the Commonwealth, includes the following:

- (a) a Minister;
- (b) a person who holds:

- (i) an office established by or under an Act; or
- (ii) an appointment made under an Act; or
- (iii) an appointment made by the Governor-General or a Minister but not under an Act;
- (c) a person who is a member or officer of an authority of the Commonwealth;
- (d) a person who is:
 - (i) in the service or employment of the Commonwealth, or of an authority of the Commonwealth; or
 - (ii) employed or engaged under an Act.

participating jurisdiction means a participating State or participating Territory.

participating State means a State that is a party to the Intergovernmental Agreement for the Australian Consumer Law and applies the applied Australian Consumer Law as a law of the State, either with or without modifications.

participating Territory means a Territory that is a party to the Intergovernmental Agreement for the Australian Consumer Law and applies the applied Australian Consumer Law as a law of the Territory, either with or without modifications.

Territory means the Australian Capital Territory or the Northern Territory.

140A Object of this Part

The object of this Part is to facilitate the application of the Australian Consumer Law by participating States and participating Territories.

140B The applied Australian Consumer Law

The applied Australian Consumer Law consists of:

- (a) Schedule 2; and
- (b) the regulations made under section 139G of this Act.

140C Federal Court may exercise jurisdiction under application laws of Territories

The Federal Court may exercise jurisdiction (whether original or appellate) conferred on that Court by an application law of a Territory with respect to matters arising under the applied Australian Consumer Law.

140D Exercise of jurisdiction under cross-vesting provisions

This Part does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, relating to cross-vesting of jurisdiction.

140E Commonwealth consent to conferral of functions etc. on Commonwealth entities

- (1) An application law may confer functions or powers, or impose duties, on a Commonwealth entity for the purposes of the applied Australian Consumer Law.

Note: Section 140G sets out when such a law imposes a duty on a Commonwealth entity.

- (2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by an application law to the extent to which:
 - (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Commonwealth entity; or
 - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) The Commonwealth entity cannot perform a duty or function, or exercise a power, under an application law unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

140F How duty is imposed

Application

- (1) This section applies if an application law purports to impose a duty on a Commonwealth entity.

Note: Section 140G sets out when such a law imposes a duty on a Commonwealth entity.

State or Territory legislative power sufficient to support duty

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
- (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
 - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the entity.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 140E to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
 - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the entity.

(6) Subsections (1) to (5) do not limit section 140E.

140G When an application law imposes a duty

For the purposes of this Part, an application law *imposes a duty* on a Commonwealth entity if:

- (a) the law confers a function or power on the entity; and
- (b) the circumstances in which the function or power is conferred give rise to an obligation on the entity to perform the function or to exercise the power.

140H Application laws may operate concurrently with this Act

This Act is not intended to exclude the operation of any application law, to the extent that the application law is capable of operating concurrently with this Act.

140J No doubling-up of liabilities

- (1) If:
 - (a) an act or omission is an offence against this Act and is also an offence against an application law; and
 - (b) the offender has been punished for the offence under the application law;the offender is not liable to be punished for the offence against this Act.
- (2) If a person has been ordered to pay a pecuniary penalty under an application law, the person is not liable to a pecuniary penalty under this Act in respect of the same conduct.

140K References in instruments to the Australian Consumer Law

- (1) A reference in any instrument to the Australian Consumer Law is a reference to:
 - (a) the Australian Consumer Law as applied under Division 2 of Part XI; and
 - (b) the applied Australian Consumer Laws of any or all of the participating jurisdictions.

- (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

Schedule 3—Amendment of the Corporations legislation

Australian Securities and Investments Commission Act 2001

1 Subsection 12BA(1)

Insert:

assert a right to payment has the meaning given by
section 12BEA.

2 Subsection 12BA(1) (definition of *infringement notice provision*)

Omit “, subsection 12DC(2)”.

3 Subsection 12BA(1) (definition of *misleading*)

Omit “has”, substitute “includes”.

4 Subsection 12BA(1) (paragraph (a) of the definition of *services*)

Omit “*Trade Practices Act 1974*”, substitute “*Competition and
Consumer Act 2010*”.

5 Subsection 12BA(1)

Insert:

unsolicited financial products means financial products supplied
to a person without any request made by the person or on the
person’s behalf.

6 Section 12BB

Repeal the section, substitute:

12BB Misleading representations with respect to future matters

(1) If:

- (a) a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act); and
 - (b) the person does not have reasonable grounds for making the representation;the representation is taken, for the purposes of Subdivision D (sections 12DA to 12DN), to be *misleading*.
- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation made with respect to a future matter by:
 - (a) a party to the proceeding; or
 - (b) any other person;the party or other person is taken not to have had reasonable grounds for making the representation, unless evidence is adduced to the contrary.
- (3) To avoid doubt, subsection (2) does not:
 - (a) have the effect that, merely because such evidence to the contrary is adduced, the person who made the representation is taken to have had reasonable grounds for making the representation; or
 - (b) have the effect of placing on any person an onus of proving that the person who made the representation had reasonable grounds for making the representation.
- (4) Subsection (1) does not by implication limit the meaning of a reference in this Division to:
 - (a) a misleading representation; or
 - (b) a representation that is misleading in a material particular; or
 - (c) conduct that is misleading or is likely or liable to mislead;and, in particular, does not imply that a representation that a person makes with respect to any future matter is not misleading merely because the person has reasonable grounds for making the representation.

7 Subsection 12BC(1)

After “use” (wherever occurring), insert “or consumption”.

8 At the end of Subdivision B of Division 2 of Part 2

Add:

12BEA Asserting a right to payment

- (1) For the purposes of this Division, a person is taken to *assert a right to payment* from another person if the 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 that:
 - (i) states the amount of the payment; or
 - (ii) sets out the price of unsolicited financial services; or
 - (iii) sets out the charge for an advertisement, for financial services or financial products, that has been published; and does not contain a statement, to the effect that the document is not an assertion of a right to a payment, that complies with any requirements prescribed by the regulations.
- (2) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person is taken to have been sent by that person unless the contrary is established.

9 Paragraph 12CC(2)(j)

Repeal the paragraph, substitute:

- (j) if there is a contract between the supplier and the service recipient for the supply of the financial services:
- (i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the service recipient; and
 - (ii) the terms and conditions of the contract; and

- (iii) the conduct of the supplier and the service recipient in complying with the terms and conditions of the contract; and
- (iv) any conduct that the supplier or the service recipient engaged in, in connection with their commercial relationship, after they entered into the contract; and

10 Paragraph 12CC(2)(ja)

Before “whether”, insert “without limiting paragraph (j),”.

11 Paragraph 12CC(3)(j)

Repeal the paragraph, substitute:

- (j) if there is a contract between the acquirer and the business supplier for the acquisition of the financial services:
 - (i) the extent to which the acquirer was willing to negotiate the terms and conditions of the contract with the business supplier; and
 - (ii) the terms and conditions of the contract; and
 - (iii) the conduct of the acquirer and the business supplier in complying with the terms and conditions of the contract; and
 - (iv) any conduct that the acquirer or the business supplier engaged in, in connection with their commercial relationship, after they entered into the contract; and

12 Paragraph 12CC(3)(ja)

Before “whether”, insert “without limiting paragraph (j),”.

13 Subsection 12CC(11) (definition of *applicable industry code*)

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

14 Subsection 12CC(11) (definition of *industry code*)

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

15 Subsection 12DB(1)

Repeal the subsection, substitute:

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:
- (a) make a false or misleading representation that services are of a particular standard, quality, value or grade; or
 - (b) make a false or misleading representation that a particular person has agreed to acquire services; or
 - (c) make a false or misleading representation that purports to be a testimonial by any person relating to services; or
 - (d) make a false or misleading representation concerning:
 - (i) a testimonial by any person; or
 - (ii) a representation that purports to be such a testimonial; relating to services; or
 - (e) make a false or misleading representation that services have sponsorship, approval, performance characteristics, uses or benefits; or
 - (f) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
 - (g) make a false or misleading representation with respect to the price of services; or
 - (h) make a false or misleading representation concerning the need for any services; or
 - (i) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including an implied warranty under section 12ED); or
 - (j) make a false or misleading representation concerning a requirement to pay for a contractual right that:
 - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including an implied warranty under section 12ED); and
 - (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (1A) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in
-

paragraph (1)(c) or (d), the representation is taken to be misleading unless evidence is adduced to the contrary.

(1B) To avoid doubt, subsection (1A) does not:

- (a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or
- (b) have the effect of placing on any person an onus of proving that the representation is not misleading.

16 Subsection 12DC(2)

Repeal the subsection.

Note: The heading to section 12DC is altered by omitting “**representations and other misleading or offensive conduct**”, and substituting “**or misleading representations**”.

17 Subsection 12DC(2B)

Repeal the subsection.

18 Subsection 12DC(2C)

Omit “paragraphs (2)(b) and (2A)(b)”, substitute “paragraph (2A)(b)”.

19 Paragraph 12DE(1)(a)

Omit “gifts, prizes or other free items”, substitute “any rebate, gift, prize or other free item”.

Note: The heading to section 12DE is altered by omitting “**gifts and prizes**”, and substituting “**rebates, gifts, prizes etc.**”.

20 Paragraph 12DE(1)(b)

Repeal the paragraph, substitute:

- (b) the person offers the rebate, gift, prize or other free item in trade or commerce, in connection with:
 - (i) the supply or possible supply of financial services; or
 - (ii) the promotion by any means of the supply or use of financial services; or
 - (iii) the sale or grant, or the possible sale or grant, of a financial product that consists of, or includes, an interest in land; or
 - (iv) the promotion by any means of a financial product that consists of, or includes, an interest in land; and

21 Paragraph 12DE(1)(c)

Omit “them” (wherever occurring), substitute “it”.

22 After subsection 12DE(2)

Insert:

(2A) A person contravenes this subsection if:

- (a) the person offers any rebate, gift, prize or other free item; and
- (b) the person offers the rebate, gift, prize or other free item in trade or commerce, in connection with:
 - (i) the supply or possible supply of financial services; or
 - (ii) the promotion by any means of the supply or use of financial services; or
 - (iii) the sale or grant, or the possible sale or grant, of a financial product that consists of, or includes, an interest in land; or
 - (iv) the promotion by any means of a financial product that consists of, or includes, an interest in land; and
- (c) the person fails, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, to provide the rebate, gift, prize or other free item in accordance with the offer.

Note: Failure to comply with this subsection is an offence (see section 12GB).

(2B) Subsection (2A) does not apply if:

- (a) the person’s failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person’s control; and
- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(2C) Subsection (2A) does not apply to an offer that the person makes to another person if:

- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and
- (b) the other person agrees to receive the different rebate, gift, prize or other free item.

- (2D) For the purposes of the application of the *Criminal Code* in relation to subsection (2A), paragraph (2A)(b) is taken to be a circumstance in which the conduct described in paragraph (2A)(a) occurs.

23 Subsection 12DE(3)

Omit “paragraph (1)(b)”, substitute “paragraphs (1)(b) and (2A)(b) and (c)”.

24 At the end of section 12DE

Add:

- (4) In this section:

interest, in relation to land, has the same meaning as in subsection 12DC(3).

25 At the end of subsection 12DM(1)

Add “or unsolicited financial products”.

Note: The heading to section 12DM is altered by adding at the end “etc.”.

26 After subsection 12DM(1A)

Insert:

- (1AA) A person must not, in trade or commerce, send to another person an invoice or other document that:
- (a) states the amount of a payment, or sets out the charge, for supplying unsolicited financial services or unsolicited financial products; and
 - (b) does not contain a warning statement that complies with the requirements set out in the regulations.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (1AB) Subsection (1AA) does not apply if the person had reasonable cause to believe that there was a right to the payment or charge.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1AB), see subsection 13.3(3) of the *Criminal Code*.

27 Subsection 12DM(1B)

After “subsection (1)”, insert “or (1AA)”.

28 Subsections 12DM(2) and (3)

Repeal the subsections.

29 After section 12DM

Insert:

12DMA Liability of recipient for unsolicited financial services etc.

If a person, in trade or commerce, supplies unsolicited financial services or unsolicited financial products to another person, the other person:

- (a) is not liable to make any payment for the services or products; and
- (b) is not liable for loss or damage as a result of the supply of the services or products.

12DMB Assertion of right to payment for unauthorised advertisements

- (1) A person must not assert a right to payment from another person of a charge for placing, in a publication, an advertisement, for financial services or financial products, relating to:
 - (a) the other person; or
 - (b) the other person's profession, business, trade or occupation; unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the advertisement.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) A person must not send to another person an invoice or other document that:
 - (a) states the amount of a payment, or sets out the charge for placing, in a publication, an advertisement, for financial services or financial products, relating to:
 - (i) the other person; or
 - (ii) the other person's profession, business, trade or occupation; and
 - (b) does not contain a warning statement that complies with the requirements set out in the regulations;

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the advertisement.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (3) Subsections (1) and (2) do not apply to an advertisement that is placed in a publication published by a person who is:
- (a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations; or
 - (b) a body corporate related to such a publisher; or
 - (c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or
 - (d) a person specified in the regulations.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the Criminal Code.

- (4) A person:
- (a) is not liable to make any payment to another person; and
 - (b) 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 placing, in a publication, an advertisement for financial services or financial products, unless the person has authorised the publishing of the advertisement.
- (5) A person is not taken for the purposes of this section to have authorised the placing, in a publication, of an advertisement, unless:
- (a) a document authorising the placing of the advertisement has been signed by the person or by another person authorised by him or her; and
 - (b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the advertisement is asserted; and
 - (c) the document specifies:
 - (i) the name and address of the person placing the advertisement; and
 - (ii) particulars of the advertisement; and

- (iii) the amount of the charge for the placing of the advertisement, or the basis on which the charge is, or is to be, calculated.
- (6) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person knew or had reasonable cause to believe that the person against whom a right to payment was asserted had authorised the placing of the advertisement.

30 Section 12DN

Repeal the section, substitute:

12DN Application of provisions of this Division to information providers

General rule

- (1) Sections 12DA, 12DB, 12DC and 12DF do not apply to a publication of matter by an information provider if:
 - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
 - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.

Exception—advertisements

- (2) Subsection (1) does not apply to a publication of an advertisement.

Exception—information provider connected with supply of financial services

- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, financial services (the **publicised financial services**), if:
 - (a) the publicised financial services were services of a kind supplied by the information provider or, if the information

provider is a body corporate, by a body corporate that is related to the information provider; or

- (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies financial services of the same kind as the publicised financial services; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies financial services of the same kind as the publicised financial services.

Exception—information provider connected with sale etc. of financial products consisting of etc. interests in land

- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of financial products that consist of, or include, interests in land, or the promotion by any means of the sale or grant of financial products that consist of, or include, interests in land (the **publicised financial products**), if:
 - (a) the publicised financial products were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
 - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants financial products of the same kind as the publicised financial products; or
 - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants financial products of the same kind as the publicised financial products.

Definitions

- (5) In this section:

information provider means a person who carries on a business of providing information.

interest, in relation to land, has the same meaning as in subsection 12DC(3).

- (6) Without limiting subsection (5), each of the following is an *information provider*:
- (a) the holder of a licence granted under the *Broadcasting Services Act 1992*;
 - (b) a person who is the provider of a broadcasting service under a class licence under that Act;
 - (c) the holder of a licence continued in force by section 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*;
 - (d) the Australian Broadcasting Corporation;
 - (e) the Special Broadcasting Service Corporation.

31 Section 12GXC (table item 2)

Omit “, subsection 12DC(2)”.

32 Paragraphs 102(2)(e) and (2B)(b)

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

Corporations Act 2001

33 Section 206EA

Repeal the section, substitute:

206EA Disqualification under the *Competition and Consumer Act 2010* etc.

A person is disqualified from managing corporations if a court order disqualifying the person from managing corporations is in force under:

- (a) section 86E of the *Competition and Consumer Act 2010*; or
- (b) section 248 of Schedule 2 to that Act, as that section applies as a law of the Commonwealth, a State or a Territory.

34 At the end of subsection 1349(1)

Add:

; or (o) an order under section 12GLD of the ASIC Act.

35 At the end of subsection 1349(3)

Add:

; or (m) an order under section 12GLD of the ASIC Act.

36 At the end of subsection 1349(4)

Add:

; or (j) an order under section 12GLD of the ASIC Act.

Schedule 4—Enforcement of industry codes

Trade Practices Act 1974

1 Before section 51ACA

Insert:

Division 1—Preliminary

2 Subsection 51ACA(1)

Insert:

related contravention: a person engages in conduct that constitutes a ***related contravention*** of an applicable industry code, if the person:

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

3 Before section 51AD

Insert:

Division 2—Contravention of industry codes

4 After section 51AD

Insert:

Division 3—Public warning notices

51ADA Commission may issue a public warning notice

Commission may issue a public warning notice

- (1) The Commission may issue to the public a written notice containing a warning about the conduct of a person if:
 - (a) the Commission has reasonable grounds to suspect that the conduct may constitute:
 - (i) if the person is a corporation—a contravention of an applicable industry code by the corporation; or
 - (ii) in any case—a related contravention of an applicable industry code by the person; and
 - (b) the Commission is satisfied that one or more persons has suffered, or is likely to suffer, detriment as a result of the conduct; and
 - (c) the Commission is satisfied that it is in the public interest to issue the notice.

Notice is not a legislative instrument

- (2) A notice issued under subsection (1) is not a legislative instrument.

Division 4—Orders to redress loss or damage suffered by non-parties etc.

51ADB Orders to redress loss or damage suffered by non-parties etc.

Orders

- (1) If:
 - (a) a person engaged in conduct (the *contravening conduct*) that:
 - (i) if the person was a corporation—constituted a contravention of an applicable industry code; or
 - (ii) in any case—constituted a related contravention of an applicable industry code; and

- (b) the contravening conduct caused, or is likely to cause, a class of persons to suffer loss or damage; and
- (c) the class includes persons (*non-parties*) who are not, or have not been, parties to a proceeding (an *enforcement proceeding*) instituted under Part VI in relation to the contravening conduct;

any court having jurisdiction in the matter may, on the application of the Commission, make such order or orders (other than an award of damages) as the court thinks appropriate against a person referred to in subsection (2) of this section.

Note: The orders that the court may make include all or any of the orders set out in section 51ADC.

- (2) An order under subsection (1) may be made against:
 - (a) the person mentioned in paragraph (1)(a); or
 - (b) a person involved in the contravening conduct.
- (3) A court must not make an order under subsection (1) unless the court considers that the order will:
 - (a) redress, in whole or in part, the loss or damage suffered by the non-parties in relation to the contravening conduct; or
 - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the non-parties in relation to the contravening conduct.

Application for orders

- (4) An application may be made under subsection (1) even if an enforcement proceeding in relation to the contravening conduct has not been instituted.
- (5) An application under subsection (1) may be made at any time within 6 years after the day on which the cause of action that relates to the contravening conduct accrues.

Determining whether to make an order

- (6) In determining whether to make an order under subsection (1) against a person referred to in subsection (2), a court may have regard to the conduct of:
 - (a) the person; and
 - (b) the non-parties;

in relation to the contravening conduct, since the contravention occurred.

- (7) In determining whether to make an order under subsection (1), a court need not make a finding about either of the following matters:
- (a) which persons are non-parties in relation to the contravening conduct;
 - (b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

When a non-party is bound by an order etc.

- (8) If:
- (a) an order is made under subsection (1) against a person; and
 - (b) the loss or damage suffered, or likely to be suffered, by a non-party in relation to the contravening conduct to which the order relates has been redressed, prevented or reduced in accordance with the order; and
 - (c) the non-party has accepted the redress, prevention or reduction;
- then:
- (d) the non-party is bound by the order; and
 - (e) any other order made under subsection (1) that relates to that loss or damage has no effect in relation to the non-party; and
 - (f) despite any other provision of this Act or any other law of the Commonwealth, or a State or Territory, no claim, action or demand may be made or taken against the person by the non-party in relation to that loss or damage.

51ADC Kinds of orders that may be made to redress loss or damage suffered by non-parties etc.

Without limiting subsection 51ADB(1), the orders that a court may make under that subsection against a person (the *respondent*) include all or any of the following:

- (a) an order declaring the whole or any part of a contract made between the respondent and a non-party referred to in that subsection, or a collateral arrangement relating to such a contract:
 - (i) to be void; and
-

- (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (b) an order:
 - (i) varying such a contract or arrangement in such manner as is specified in the order; and
 - (ii) if the court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;
- (d) an order directing the respondent to refund money or return property to a non-party referred to in that subsection;
- (e) an order directing the respondent, at his or her own expense, to repair, or provide parts for, goods that have been supplied under the contract or arrangement to a non-party referred to in that subsection;
- (f) an order directing the respondent, at his or her own expense, to supply specified services to a non-party referred to in that subsection;
- (g) an order, in relation to an instrument creating or transferring an interest in land (within the meaning of section 53A), directing the respondent to execute an instrument that:
 - (i) varies, or has the effect of varying, the first-mentioned instrument; or
 - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.

Division 5—Investigation power

51ADD Commission may require corporation to provide information

- (1) This section applies if a corporation is required to keep, to generate or to publish information or a document under an applicable industry code.

- (2) The Commission may give the corporation a written notice that requires the corporation to give the information, or to produce the document, to the Commission within 21 days after the notice is given to the corporation.
- (3) The notice must:
 - (a) name the corporation to which it is given; and
 - (b) specify:
 - (i) the information or document to which it relates; and
 - (ii) the provisions of the applicable industry code which require the corporation to keep, to generate or to publish the information or document; and
 - (c) explain the effect of sections 51ADE, 51ADF and 51ADG.
- (4) The notice may relate to more than one piece of information or more than one document.

51ADE Extending periods for complying with notices

- (1) A corporation that has been given a notice under section 51ADD may, at any time within 21 days after the notice was given to the corporation, apply in writing to the Commission for an extension of the period for complying with the notice.
- (2) The Commission may, by written notice given to the corporation, extend the period within which the corporation must comply with the notice.

51ADF Compliance with notices

A corporation that is given a notice under section 51ADD must comply with it within:

- (a) the period of 21 days specified in the notice; or
- (b) if the period for complying with the notice has been extended under section 51ADE—the period as so extended.

51ADG False or misleading information etc.

- (1) A corporation must not, in compliance or purported compliance with a notice given under section 51ADD:
 - (a) give to the Commission false or misleading information; or

- (b) produce to the Commission documents that contain false or misleading information.
- (2) This section does not apply to:
 - (a) information that the corporation could not have known was false or misleading; or
 - (b) the production to the Commission of a document containing false or misleading information if the document is accompanied by a statement of the corporation that the information is false or misleading.

Division 6—Miscellaneous

5 Application provision

Division 4 of Part IVB of the *Competition and Consumer Act 2010*, inserted by this Schedule, does not apply in relation to contravening conduct that occurred before the commencement of this item.

Schedule 5—Other amendments of the Trade Practices Act 1974

1 Title

Omit “**certain Trade Practices**”, substitute “**competition, fair trading and consumer protection, and for other purposes**”.

2 Section 1

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

3 Subsection 4(1) (definition of *Australian Consumer Law*)

Repeal the definition, substitute:

Australian Consumer Law means Schedule 2 as applied under Subdivision A of Division 2 of Part XI.

4 Subsection 4(1) (definition of *commencing date*)

Repeal the definition.

5 Subsection 4(1) (definition of *consumer contract*)

Repeal the definition.

6 Subsection 4(1) (definition of *enforcement proceeding*)

Repeal the definition.

6A Subsection 4(1) (definition of *Family Court Judge*)

Repeal the definition.

7 Subsection 4(1) (definition of *financial product*)

Repeal the definition.

8 Subsection 4(1) (definition of *financial service*)

Repeal the definition.

9 Subsection 4(1) (definition of *infringement notice*)

Repeal the definition.

10 Subsection 4(1) (definition of *infringement notice compliance period*)

Repeal the definition.

11 Subsection 4(1) (definition of *infringement notice provision*)

Repeal the definition.

12 Subsection 4(1) (definition of *non-party consumer*)

Repeal the definition.

13 Subsection 4(1) (definition of *personal injury*)

Repeal the definition, substitute:

personal injury includes:

- (a) pre-natal injury; or
- (b) impairment of a person's physical or mental condition; or
- (c) disease;

but does not include an impairment of a person's mental condition unless the impairment consists of a recognised psychiatric illness.

14 Subsection 4(1) (definition of *provision*) (the definition inserted by item 4 of Schedule 1 to the *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010*)

Repeal the definition.

15 Subsection 4(1) (definition of *rely on*)

Repeal the definition.

16 Subsection 4(1) (definition of *substantiation notice*)

Repeal the definition.

17 Subsection 4(1) (definition of *substantiation notice compliance period*)

Repeal the definition.

18 Subsection 4(1)

Insert:

this Act includes Schedule 2 to the extent that it is applied under Subdivision A of Division 2 of Part XI.

19 Subsection 4(1) (definition of *unfair*)

Repeal the definition.

20 Subsection 4(1) (definition of *unsolicited goods*)

Repeal the definition.

21 Subsection 4(1) (definition of *unsolicited services*)

Repeal the definition.

22 Section 4KA

Repeal the section, substitute:

4KA Definitions etc. that do not apply in Part XI or Schedule 2

Despite any other provision of this Act, sections 4 to 4K do not affect the meaning of any expression used in Part XI or Schedule 2, unless a contrary intention appears.

23 Sections 4KB and 4KC

Repeal the sections.

24 Section 4L

Omit “section 87, 87AAA or 87A”, substitute “section 51ADB or 87”.

25 Paragraphs 5(1)(b) to (ea)

Repeal the paragraphs, substitute:

- (b) Part XI;
- (c) the Australian Consumer Law (other than Part 5-3);

26 Paragraph 5(1)(f)

Omit “, (c), (e) or (ea)”, substitute “or (c)”.

27 Subsection 5(3)

After “section 82”, insert “, or under section 236 of the Australian Consumer Law,”.

28 Subsection 5(4)

After “or (1A)”, insert “, or under subsection 237(1) or 238(1) of the Australian Consumer Law,”.

29 Paragraph 6(2)(a)

Omit “45DB, 55 or 75AZH”, substitute “45DB, or section 33 or 155 of the Australian Consumer Law,”.

30 Paragraph 6(2)(b)

Repeal the paragraph, substitute:

(b) the following provisions:

- (i) sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45, 45B, 45D to 45EB (other than section 45DB), 46 and 46A;
- (ii) Part VIII;
- (iii) sections 31 and 43, Division 3 of Part 3-1, and sections 50, 153, 163, 164 and 168, of the Australian Consumer Law;

were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct takes place in the course of or in relation to:

- (iv) trade or commerce between Australia and places outside Australia; or
- (v) trade or commerce among the States; or
- (vi) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (vii) the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth; and

31 Paragraph 6(2)(c)

Omit “Division 2 of Part V”, substitute “Division 1 of Part 3-2 of the Australian Consumer Law”

32 Paragraph 6(2)(c)

Omit “Division 2A of that Part or in Part VA to the supply of goods”, substitute “Part 3-5 or 5-4 of the Australian Consumer Law to the supply of goods or services”.

33 Paragraph 6(2)(c)

Omit “or the supply of goods”, substitute “or the supply of goods or services”.

34 Paragraph 6(2)(ca)

Omit “Part 2”, substitute “Part 2-3”.

35 Paragraph 6(2)(h)

After “or 151AJ”, insert “or in section 229 of the Australian Consumer Law,”.

36 Subsection 6(3)

Omit “Part IVA, of Divisions 1, 1A and 1AA of Part V and of Divisions 2 and 3 of Part VC”, substitute “Parts 2-1, 2-2, 3-1 (other than Division 3), 3-3, 3-4, 4-1 (other than Division 3), 4-3, 4-4 and 5-3 of the Australian Consumer Law”.

37 Paragraph 6(3)(a)

Omit “sections 55 and 75AZH”, substitute “sections 33 and 155 of the Australian Consumer Law”.

38 Paragraph 6(3)(b)

Omit “those provisions”, substitute “the provisions of Part XI”.

39 Subsection 6(3A)

Omit “Part 2”, substitute “Part 2-3”.

40 Subsection 6(4)

Omit “Part IVA and of Division 1 (other than sections 53A and 55) and Divisions 1AAA and 1AA of Part V and of Division 2 of Part VC (other than sections 75AZD, 75AZH and 75AZO)”, substitute “Parts 2-2, 3-1 (other than sections 30 and 33), Part 4-1 (other than sections 152, 155 and 164) and 5-3 of the Australian Consumer Law”.

41 Subsection 6(5)

Omit “section 73”, substitute “sections 279, 282 and 283 of the Australian Consumer Law”.

42 Subsection 6(5)

Omit “that section has”, substitute “those sections have”.

43 Subsection 6(5)

Omit “paragraph 73(6)(a)”, substitute “paragraphs 279(3)(a), 282(2)(a) and 283(5)(a) of the Australian Consumer Law”.

44 Subsection 6(5)

Omit “the supplier had”, substitute “the supplier has”.

45 Subsection 6(6)

Repeal the subsection.

46 Section 6AA

Omit “, VC”.

47 Subsection 26(1)

Repeal the subsection, substitute:

- (1) The Commission may, by resolution, delegate:
- (a) any of its functions and powers under or in relation to Parts VI and XI and the Australian Consumer Law; and
 - (b) any of its powers under Part XII that relate to those Parts or the Australian Consumer Law;
- to a staff member of the Australian Securities and Investments Commission within the meaning of section 5 of the *Australian Securities and Investments Commission Act 2001*.

Note: The heading to section 26 is altered by omitting “**in relation to unconscionable conduct and consumer protection**” and substituting “**of certain functions and powers**”.

48 Paragraph 29(1A)(b)

Omit “section 65J, 65K, 65M or 65N”, substitute “Division 3 of Part XI”.

49 Parts IVA, V, VA and VC

Repeal the Parts.

50 Subsection 75B(1)

Omit “Part IV, IVA, IVB, V or VC, or of section 95AZN or of the Australian Consumer Law”, substitute “Part IV or IVB, or of section 95AZN”.

51 Sections 76E and 76F

Repeal the sections.

Note: The heading to section 76 is altered by omitting “—restrictive trade practices etc.”.

52 Subsection 77(1)

Omit “or 76E”.

53 Subsection 77A(3) (definition of *civil liability*)

Omit “, or a pecuniary penalty under section 76E”.

54 Paragraph 78(a)

Repeal the paragraph, substitute:

(a) has contravened a provision of Part IV (other than section 44ZZRF or 44ZZRG); or

Note: The heading to section 78 is altered by omitting “or V or Australian Consumer Law”.

55 Subsection 79(1)

Omit “or a provision of Part VC”.

Note: The heading to section 79 is altered by omitting “or Part VC etc.”.

56 Subsections 79(2), (3) and (4)

Repeal the subsections.

57 Subsection 79(5)

Omit “or a provision of Part VC”.

58 Subsection 79(6)

Repeal the subsection.

59 Subsection 79A(1)

Repeal the subsection, substitute:

(1) If:

- (a) a fine has been imposed on a person for:
 - (i) an offence against section 44ZZRF, 44ZZRG, 154Q or 155; or
 - (ii) an offence against section 149.1 of the *Criminal Code* that relates to Part XID; and
 - (b) the person defaults in payment of the fine;
- a Court may:
- (c) exercise any power that the Court has apart from this section with respect to the enforcement and recovery of fines imposed by the Court; or
 - (d) make an order, on the application of the Minister or the Commission, declaring that the fine is to have effect, and may be enforced, as if it were a judgment debt under a judgment of the Court.

60 Subparagraph 79B(a)(i)

Omit “or 76E”.

61 Subparagraph 79B(a)(ii)

Omit “or Part VC”.

62 Paragraph 80(1)(a)

Repeal the paragraph, substitute:

- (a) a contravention of a provision of:
 - (i) Part IV; or
 - (ii) Division 2 or 5 of Part IVB; or

63 Subsection 80(1C)

Repeal the subsection.

64 Subsection 82(1)

Omit “Subject to subsection (1AAA), a person”, substitute “A person”.

65 Subsection 82(1)

Omit “Part IV, IVA, IVB or V or section 51AC, or a provision of the Australian Consumer Law,”, substitute “Part IV or IVB”.

66 Subsections 82(1AAA) to (1B)

Repeal the subsections.

67 Subsection 82(2) (note)

Repeal the note.

68 Subsection 82(3)

Repeal the subsection.

69 Section 83

Omit “subsection 87(1A) or 87AAA(1)”, substitute “subsection 51ADB(1) or 87(1A)”.

70 Section 83

Omit “or a provision of Part VC”.

71 Section 83

Omit “Part IV, IVA, IVB, V or VC, or of the Australian Consumer Law,”, substitute “Part IV or IVB”.

72 Paragraphs 84(1)(b) and (3)(b)

Omit “Part IVA, IVB, V or VC, or a provision of the Australian Consumer Law,”, substitute “Part IVB”.

73 Section 85

Repeal the section, substitute:

85 Defences

If, in any proceedings under this Part against a person other than a body corporate, it appears to the Court that the person has or may have:

- (a) engaged in conduct in contravention of a provision of Part IV; or
- (b) engaged in conduct referred to in paragraph 76(1)(b), (c), (d), (e) or (f);

but that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability to any penalty or damages on such terms as the Court thinks fit.

74 Subsection 86(1)

Omit “or has been instituted in relation to subsection 2(1) or 6(1) of the Australian Consumer Law (as applied under Division 1 of Part XI)”.

75 Subsection 86(1A)

Omit “, Part IVA, Part IVB, Division 1, 1AAA, 1A or 2A of Part V or Part VA, or a provision of the Australian Consumer Law,”, substitute “or Part IVB”.

76 Subsection 86(2)

Omit “Part IVA or IVB or Division 1, 1A or 1AA of Part V, or a provision of the Australian Consumer Law,”, substitute “Part IVB”.

77 Section 86AA

Omit “Part VA or”.

78 Paragraph 86A(1)(b)

Omit “Part IVA or IVB or Division 1, 1A or 1AA of Part V, or a provision of the Australian Consumer Law”, substitute “Part IVB”.

79 Subsections 86A(4) to (7)

Repeal the subsections.

80 Section 86B

Repeal the section.

81 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

Repeal the paragraph, substitute:

(a) contravenes Part IV or IVB or section 95AZN; or

82 Paragraph 86D(1)(a)

Omit “or 76E”.

83 Paragraph 86D(1)(b)

Omit “or Part VC”.

84 Section 86DA

Repeal the section.

85 Subsection 86E(1B)

Repeal the subsection.

86 Subsection 86E(2)

Omit “, (1A) or (1B)”, substitute “or (1A)”.

87 Subsection 86E(3)

Omit “or (1B)”.

88 Subsection 87(1)

Omit “Subject to subsection (1AA) but without limiting”, substitute “Without limiting”.

89 Subsection 87(1)

Omit “or Part VC”.

90 Subsection 87(1)

Omit “Part IV, IVA, IVB, V or VC or of the Australian Consumer Law”, substitute “Division 2 of Part IVB”.

91 Subsection 87(1A)

Omit “Subject to subsection (1AA) but without limiting the generality of section 80 or 87AAA”, substitute “Without limiting the generality of sections 51ADB and 80”.

92 Paragraph 87(1A)(a)

Omit “Part IVA, IVB, V or VC, or a provision of the Australian Consumer Law”, substitute “Division 2 of Part IVB”.

93 Paragraph 87(1A)(b)

Omit “, IVA, IVB, V or VC, or a provision of the Australian Consumer Law”, substitute “or Division 2 of Part IVB”.

94 Subsections 87(1AA) to (1AC)

Repeal the subsections.

95 Paragraph 87(1B)(a)

Omit “, IVA, IVB, V or VC, or a provision of the Australian Consumer Law”, substitute “or Division 2 of Part IVB”.

96 Subsection 87(1C)

Omit “Part IV, IVA, IVB, V or VC, or a provision of the Australian Consumer Law,”, substitute “Part IV or Division 2 of Part IVB”.

97 Subsections 87(1D), (2A) and (5A)

Repeal the subsections.

98 Subsection 87(6)

Repeal the subsection, substitute:

- (6) In subsection (2), *interest*, in relation to land, means:
- (a) a legal or equitable estate or interest in the land; or
 - (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or
 - (c) a right, power or privilege over, or in connection with, the land.

99 Subsection 87(7)

Repeal the subsection.

100 Sections 87AAA, 87AAB, 87A, 87AB, 87AC and 87CAA

Repeal the sections.

100A Subsection 87CB(1)

Omit “section 82”, substitute “section 236 of the Australian Consumer Law”.

101 Subsection 87CB(1)

Omit “section 52”, substitute “section 18 of the Australian Consumer Law”.

102 Section 87D (paragraph (a) of the definition of *plaintiff*)

Omit “section 75AQ or paragraph 87(1A)(b)”, substitute “paragraph 87(1A)(b), or under section 149 or paragraph 237(1)(b) of the Australian Consumer Law”.

103 Subsection 87E(1)

Omit “this Act”, substitute “the Australian Consumer Law”.

104 Paragraph 87E(1)(a)

Omit “Part IVA, to Division 1A or 2A of Part V or to Part VA”, substitute “Part 2-2, 3-3, 3-4 or 3-5, or Division 2 of Part 5-4, of the Australian Consumer Law”.

105 Parts VIC and VID

Repeal the Parts.

106 Subsection 89(6)

Omit “the *Trade Practices Act 1974*”, substitute “this Act”.

107 Paragraph 95(2)(b)

Omit “section 65J or 65M”, substitute “Division 3 of Part XI”.

108 Subsection 155AAA(21) (paragraph (a) of the definition of *core statutory provision*)

Repeal the paragraph, substitute:

- (a) a provision of Part IV, VII, VIII, XI, XIB or XIC; or

109 Subsection 155AAA(21) (paragraph (c) of the definition of *core statutory provision*)

After “regulations”, insert “made under section 172”.

110 Subsection 155AAA(21) (at the end of the definition of *core statutory provision*)

Add:

- ; or (d) a provision of the Australian Consumer Law (other than Part 5-3); or
- (e) a provision of the regulations made under section 139G so far as it relates to a provision covered by paragraph (d).

111 Paragraph 157(1)(d)

Before “section 86C”, insert “, subsection 51ADB(1),”.

112 Paragraph 157(1)(d)

Omit “, 87AAA(1) or 87A(1)”.

113 After subsection 157(1)

Insert:

(1AA) Subject to subsections (1AB) and (1A), if an application for an order against a person is made under:

- (a) section 137F; or
- (b) subsection 237(1), or section 246 or 247, of the Australian Consumer Law;

the Commission must, at the request of the person and upon payment of the prescribed fee (if any), give the person:

- (c) a copy of every document that has been given to, or obtained by, the Commission in connection with the matter to which the application relates and tends to establish the case of the person; and
- (d) a copy of any other document in the possession of the Commission that comes to the attention of the Commission in connection with the matter to which the application relates and tends to establish the case of the person.

(1AB) Subsection (1AA) does not apply to a document obtained from the person, or prepared by an officer or professional adviser of the Commission.

114 Paragraph 162(1)(b)

Omit “section 65J, 65M, 90A, 93A or 151AZ”, substitute “section 90 or 93A, Division 3 of Part XI or section 151AZ”.

115 Subparagraph 163A(1)(a)(i)

Repeal the subparagraph.

116 After paragraph 163A(1)(a)

Insert:

- (aaa) a declaration in relation to the operation or effect of any provision of the Australian Consumer law other than Division 1 of Part 3-2 or Part 5-4; or

117 Paragraph 170(1)(a)

Omit “Part VA,”.

118 Paragraph 170(1)(a)

After “section 163A”, insert “, or under Part 3-5 or Chapter 5 of the Australian Consumer Law”.

119 Paragraph 170(1)(c)

Omit “Part VA,”.

120 Paragraph 170(1)(c)

After “section 163A”, insert “, or under Part 3-5 or Chapter 5 of the Australian Consumer Law”.

121 After paragraph 171(3)(c)

Insert:

(ca) the number of search warrants issued by a judge under section 135Z or signed by a judge under section 136; and

122 Paragraphs 171(3)(da) and (db)

After “search warrants”, insert “referred to in paragraph (ca) or (d)”.

123 Paragraph 171(3)(dc)

Before “Part XIX”, insert “section 133B or 133C, Division 6 of Part XI or”.

124 Subsection 172(1)

After “permitted by this Act”, insert “(other than Schedule 2)”.

125 Subsection 172(1)

After “giving effect to this Act”, insert “(other than Schedule 2)”.

126 Subsection 172(1A)

Repeal the subsection.

127 Subsection 172(2)

After “Part IV” (wherever occurring), insert “or Schedule 2”.

128 Subsection 45DA(2) of Schedule 1 (note)

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

129 Paragraph 51(1)(a) of Schedule 1

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

Schedule 6—Amendment of other Acts to change references to the Trade Practices Act 1974

Part 1—Bulk amendments

1 Amendment of Acts

The specified provisions of the Acts listed in this Part are amended by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Administrative Decisions (Judicial Review) Act 1977

2 Paragraphs 2(e) and (f) of Schedule 3

Agricultural and Veterinary Chemicals Code Act 1994

3 Section 100

Airports Act 1996

4 Section 4

5 Subsection 147(2) (including the note) (wherever occurring)

6 Subsection 147(3)

7 Section 148

Note: The heading to section 148 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

8 Subsection 158(2) (including the note) (wherever occurring)

9 Subsection 158(3)

10 Section 159

Note: The heading to section 159 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

11 Subsection 171(1)

12 Subsection 171(2) (definition of *goods*)

13 Subsection 171(2) (definition of *services*)

14 Subsection 171(2) (definition of *supply*)

15 Sections 191 and 193

Note: The heading to section 193 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

16 Section 241

17 Subsections 248(1) and (2)

Note: The heading to section 248 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Air Services Act 1995

18 Subsection 55(1)

Note: The heading to section 55 is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

19 Paragraph 55(2)(a)

20 Subsections 55(3), (4) and (5)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

21 Section 5 (paragraphs (e) and (f) of the definition of *loan*)

22 Subsection 6(2) (table items 10, 11, 12, and 13, column headed “Provision of a designated service”)

23 Subsection 6(2) (paragraphs (b) and (c) of the cell at table item 51, column headed “Provision of a designated service”)

Australian Communications and Media Authority Act 2005

24 Subparagraph 8(1)(j)(vi)

Australian Energy Market Act 2004

25 Section 3 (definition of *Australian Energy Regulator*)

26 Subsection 13A(1) (notes 2, 3 and 4)

Australian Maritime Safety Authority Act 1990

27 Subsection 47(2)

28 Paragraph 47(4)(a)

29 Subsection 47(5)

30 Paragraph 47(7)(a)

31 Subsection 47(10)

Australian Postal Corporation Act 1989

32 Subsection 32(5)

33 Paragraph 32B(1)(da)

34 Subsection 32B(2)

35 Section 32D

Note: The heading to section 32D is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

36 Subsection 33A(6A)

37 Section 90E (paragraph (a) of the definition of *consumer protection law*)

Banking Act 1959

38 Section 16AA

Note: The heading to section 16AA is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

39 Section 16AU

Note: The heading to section 16AU is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Broadcasting Services Act 1992

40 Section 77

Note: The heading to section 77 is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

41 Paragraphs 96(5)(a) and 97(2)(a)

42 Subsection 97(3)

43 Section 116B

Note: The heading to section 116B is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

44 Section 130

Note: The heading to section 130 is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

45 Subsection 130B(8) (definition of *supply*)

46 Subsection 130BA(8) (definition of *supply*)

47 Subsection 130BB(8) (definition of *supply*)

Note: This item does not commence at all if Schedule 1 to the *Broadcasting Legislation Amendment (Digital Television) Act 2010* does not commence. (See table item 4 in subsection 2(1) of this Act.)

48 Subsection 130F(3) (definition of *supply*)

Crimes Act 1914

49 Paragraph 4AB(3)(a)

Customs Act 1901

50 Subsection 269U(9)

Do Not Call Register Act 2006

51 Section 4 (definition of *acquire*)

52 Section 4 (definition of *goods*)

53 Section 4 (definition of *services*)

54 Section 4 (paragraph (a) of the definition of *supply*)

Environment Protection and Biodiversity Conservation Act 1999

55 Paragraph 524(3)(h)

Evidence and Procedure (New Zealand) Act 1994

56 Subparagraph 14(2)(a)(iv)

Federal Court of Australia Act 1976

57 Paragraph 23AB(4)(a)

58 Section 23CD (note)

59 Section 32B (paragraphs (a) and (b) of the definition of *Australian proceeding*)

60 Subsection 58DB(2A)

***Financial Sector (Business Transfer and Group Restructure)
Act 1999***

61 Subsections 43(6), (9) and (9A)

***Health Insurance Commission (Reform and Separation of
Functions) Act 1997***

62 Subsection 18(10) (definition of *goods*)

63 Subsection 18(10) (definition of *services*)

64 Subsection 18(10) (definition of *supply*)

65 Subsection 20(8) (definition of *goods*)

66 Subsection 20(8) (definition of *services*)

67 Subsection 20(8) (definition of *supply*)

Insurance Act 1973

68 Section 62ZN

Note: The heading to section 62ZN is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

69 Section 62ZZV

Note: The heading to section 62ZZV is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Jurisdiction of Courts (Cross-vesting) Act 1987

70 Subsection 3(1) (paragraphs (a) and (aa) of *special federal matter*)

71 Subsection 3(4)

72 Paragraphs 4(4)(c) and (d)

Life Insurance Act 1995

73 Section 179A

Note: The heading to section 179A is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Liquid Fuel Emergency Act 1984

74 Section 43 (including the note) (wherever occurring)

Note: The heading to section 43 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Medibank Private Sale Act 2006

75 Subparagraphs 20(11)(b)(i) and (12)(c)(i) of Schedule 2

Northern Territory National Emergency Response Act 2007

76 Subsection 122(2)

Occupational Health and Safety Act 1991

77 Subsections 18(4), 19(3) and 20(2)

Occupational Health and Safety (Maritime Industry) Act 1993

78 Section 18

Note: The heading to section 18 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

79 Section 21

Note: The heading to section 21 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

80 Section 26

Note: The heading to section 26 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

81 Subsections 12(5), 13(4) and 14(3) of Schedule 3

Patents Act 1990

82 Paragraphs 133(2)(b) and (5)(b) and 134(2)(b)

Payment Systems (Regulation) Act 1998

83 Subsection 18A(1)

Note: The heading to section 18A is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Private Health Insurance Act 2007

84 Section 172-5 (note)

85 Section 244-20

Proceeds of Crime Act 2002

86 Section 338 (paragraph (ed) of the definition of *serious offence*)

Protection of the Sea (Powers of Intervention) Act 1981

87 Subsection 3(1) (definition of *goods*)

88 Subsection 3(1) (definition of *services*)

89 Subsection 3(1) (definition of *supply*)

Radiocommunications Act 1992

90 Paragraph 51(2)(d)

91 Section 68A

92 Subsections 71A(1) and 106A(1)

Schedule 6 Amendment of other Acts to change references to the Trade Practices Act 1974

Part 1 Bulk amendments

Note: The heading to section 106A is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

93 Section 114A

Note: The heading to section 114A is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

94 Section 118PF (note)

95 Sections 118PG and 312

Note: The heading to section 312 is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

Social Security (Administration) Act 1999

96 Section 123TC (definition of *acquire*)

97 Section 123TC (definition of *goods*)

98 Section 123TC (definition of *service*)

99 Section 123TC (definition of *supply*)

Spam Act 2003

100 Section 4 (definition of *acquire*)

101 Section 4 (definition of *goods*)

102 Section 4 (definition of *services*)

103 Section 4 (paragraph (a) of the definition of *supply*)

Sydney Airport Demand Management Act 1997

104 Section 5A

Note: The heading to section 5A is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Telecommunications Act 1997

105 Subsections 3(1) and (2)

106 Section 7 (definition of *ACCC official*)

107 Section 7 (paragraphs (c), (d) and (e) of the definition of *ACCC's telecommunications functions and powers*)

108 Section 7 (paragraph (d) of the definition of *ACMA's telecommunications powers*)

109 Subsection 61A(5) (definition of *eligible service*)

110 Subsection 61A(5) (definition of *substantial degree of power*)

111 Subsection 61A(5) (definition of *telecommunications market*)

112 Section 62 (including the note) (wherever occurring)

Note: The heading to section 62 is altered by omitting "*Trade Practices Act 1974*" and substituting "*Competition and Consumer Act 2010*".

113 Subsection 69(7) (including the note) (wherever occurring)

114 Subsection 69B(8)

115 Subsection 70(4) (including the note) (wherever occurring)

116 Paragraph 70(5)(c)

117 Subsections 98(2), 102(6) and 103(3) (including the notes) (wherever occurring)

118 Subsection 103(4)

119 Subsection 350A(5) (including the note) (wherever occurring)

120 Subsection 367(7) (definition of *engaging in conduct*)

121 Subsection 384(1) (note)

122 Subsection 384(9) (definition of *declared service*)

123 Section 389

124 Subsection 458(6)

125 Section 483

Note: The heading to section 483 is altered by omitting “Trade Practices Act” and substituting “Competition and Consumer Act”.

126 Section 506

127 Paragraphs 564(3)(d) and (e)

128 Subsection 564(3) (notes 3 and 4)

129 Paragraphs 571(3)(d) and (e)

130 Subsection 571(3) (notes 3 and 4)

131 Subsection 589(6) (paragraph (b) of the definition of *this Act*)

132 Subclause 17(3) of Schedule 1

133 Clause 45 of Schedule 1 (definition of *active declared service*)

134 Clause 45 of Schedule 1 (definition of *eligible service*)

135 Subclause 47(3) of Schedule 1

136 Clause 50 of Schedule 1 (definition of *eligible service*)

137 Subclauses 50A(2) and (4) of Schedule 1

138 Subclause 27(6) of Schedule 3

Telecommunications (Consumer Protection and Service Standards) Act 1999

139 Subsection 158C(3)

Telecommunications (Interception and Access) Act 1979

140 Paragraphs 5D(5B)(a), (b), (c) and (d)

Trade Marks Act 1995

141 Section 6 (definition of *Commission*)

Trans-Tasman Proceedings Act 2010

142 Subparagraphs 36(2)(a)(iv) and 81(2)(a)(i) and (ii)

Note: This item does not commence at all if section 3 of the *Trans-Tasman Proceedings Act 2010* does not commence. (See table item 6 in subsection 2(1) of this Act.)

Water Act 2007

143 Paragraphs 100A(b) and 100D(b)

Wheat Export Marketing Act 2008

144 Section 5 (definition of *access undertaking*)

145 Section 5 (definition of *port terminal service*)

146 Subparagraph 24(1)(d)(i)

147 Paragraph 24(2)(c)

148 Subparagraph 24(2)(d)(i)

149 Paragraph 24(3)(a)

Part 2—Other amendments

Administrative Decisions (Judicial Review) Act 1977

150 After paragraph 2(f) of Schedule 3

Insert:

- (fa) an Act of a State, the Australian Capital Territory or the Northern Territory that applies Schedule 2 to the *Competition and Consumer Act 2010* as a law of the State or Territory;

Agricultural and Veterinary Chemicals Act 1994

151 Subsection 7(3)

Omit “section 65F of the *Trade Practices Act 1974*”, substitute “section 122 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth”.

Agricultural and Veterinary Chemicals (Administration) Act 1992

152 Subsection 69H(3)

Omit “section 75AL of the *Trade Practices Act 1974*”, substitute “section 148 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth”.

Agricultural and Veterinary Chemicals Code Act 1994

153 Section 106

Omit “Section 65R of the *Trade Practices Act 1974*”, substitute “Section 128 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth,”.

Note: The heading to section 106 is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

Airports Act 1996

154 Division 7 of Part 7 (heading)

Repeal the heading, substitute:

Division 7—Part supplements the Competition and Consumer Act 2010

155 Division 8 of Part 8 (heading)

Repeal the heading, substitute:

Division 8—Part supplements the Competition and Consumer Act 2010

156 Division 2 of Part 13 (heading)

Repeal the heading, substitute:

Division 2—Application of the access regime in Part IIIA of the Competition and Consumer Act 2010

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

157 Section 5 (definition of *credit card*)

Omit “section 63A of the *Trade Practices Act 1974*”, substitute “Schedule 2 to the *Competition and Consumer Act 2010*”.

158 Section 5 (definition of *debit card*)

Omit “section 63A of the *Trade Practices Act 1974*”, substitute “Schedule 2 to the *Competition and Consumer Act 2010*”.

Banking Act 1959

159 Subdivision G of Division 2AA of Part II (heading)

Repeal the heading, substitute:

Subdivision G—Exceptions to Part IV of the Competition and Consumer Act 2010

Carriage of Goods by Sea Act 1991

160 Section 18

Omit “Division 2 of Part V of the *Trade Practices Act 1974*”, substitute “Division 1 of Part 3-2 of Schedule 2 to the *Competition and Consumer Act 2010*, as that Division applies as a law of the Commonwealth.”.

Note: The heading to section 18 is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

Federal Court of Australia Act 1976

161 Section 33ZH

Repeal the section, substitute:

33ZH Special provision relating to claims under Part VI of the *Competition and Consumer Act 2010* etc.

- (1) For the purposes of the following provisions, a group member in a representative proceeding is to be taken to be a party to the proceeding:
 - (a) subsection 87(1) of the *Competition and Consumer Act 2010*;
 - (b) subsection 238(1) of Schedule 2 to that Act, as that subsection applies as a law of the Commonwealth.
- (2) An application by a representative party in a representative proceeding under:
 - (a) subsection 87(1A) of the *Competition and Consumer Act 2010*; or
 - (b) subsection 237(1) of Schedule 2 to that Act, as that subsection applies as a law of the Commonwealth;is to be taken to be an application by the representative party and all the group members.

Food Standards Australia New Zealand Act 1991

162 Paragraph 13(1)(j)

Omit “Division 1A of Part V of the *Trade Practices Act 1974*”, substitute “Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010*, as that Part applies as a law of the Commonwealth”.

163 Paragraph 13(1)(j)

Omit “that Division”, substitute “that Part”.

Insurance Act 1973

164 Division 5 of Part VC (heading)

Repeal the heading, substitute:

Division 5—Exceptions to Part IV of the Competition and Consumer Act 2010

Jurisdiction of Courts (Cross-vesting) Act 1987

165 Paragraph 10(b)

Omit “Part IVA or Division 1 or 1A of Part V of the *Trade Practices Act 1974*”, substitute “Part 2-2, 3-1, 3-3 or 3-4 of Schedule 2 to the *Competition and Consumer Act 2010*, as that Part applies as a law of the Commonwealth”.

Note: The heading to section 10 is altered by omitting “**Division 1 or 1A of Part V of the Trade Practices Act**” and substituting “**the Australian Consumer Law**”.

Motor Vehicle Standards Act 1989

166 Subsection 5(1)

Insert:

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

167 Section 41

Omit “For the purpose of sections 65C (other than subsection 65C(8)) and 65F of the *Trade Practices Act 1974*”, substitute “For the purpose of sections 106 and 122 (other than subsection 106(7)) of the Australian Consumer Law”.

Note: The heading to section 41 is altered by omitting “**Trade Practices Act**” and substituting “**the Australian Consumer Law**”.

168 Section 41

Omit “prescribed consumer product safety standard”, substitute “safety standard (within the meaning of the Australian Consumer Law)”.

National Transmission Network Sale Act 1998

169 Section 3 (definition of access seeker)

Omit “Trade Practices Act”, substitute “Competition and Consumer Act”.

170 Section 3

Insert:

Competition and Consumer Act means the *Competition and Consumer Act 2010*.

171 Section 3 (paragraphs (a) and (b) of the definition of telecommunications access regime)

Omit “Trade Practices Act”, substitute “Competition and Consumer Act”.

172 Section 3 (definition of Trade Practices Act)

Repeal the definition.

173 Paragraphs 13(2)(a) and (c)

Omit “Trade Practices Act”, substitute “Competition and Consumer Act”.

174 Subsections 16(1), (2), (3) and (4) and 17(1), (2) and (3)

Omit “Trade Practices Act”, substitute “Competition and Consumer Act”.

175 Section 25

Omit “Trade Practices Act”, substitute “Competition and Consumer Act”.

Note: The heading to section 25 is altered by omitting “**Trade Practices Act**” and substituting “**Competition and Consumer Act**”.

Olympic Insignia Protection Act 1987

176 Subsection 2(1)

Insert:

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

177 Subsection 9A(1)

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

Note: The heading to section 9A is altered by omitting “*Trade Practices Act 1974*” and substituting “**Australian Consumer Law**”.

178 Subsection 9A(1)

Omit “section 52 of that Act”, substitute “section 18 of the Australian Consumer Law”.

179 Paragraph 9A(1)(a)

Omit “paragraph 53(c) of that Act”, substitute “paragraph 29(1)(g) of the Australian Consumer Law”.

180 Paragraph 9A(1)(b)

Omit “paragraph 53(d) of that Act”, substitute “paragraph 29(1)(h) of the Australian Consumer Law”.

181 Subsection 9A(2)

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

182 Subsection 9A(2)

Omit “that Act”, substitute “the Australian Consumer Law”.

183 Subsection 48(2)

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

184 Subsection 48(2)

Omit “section 52 of that Act”, substitute “section 18 of the Australian Consumer Law”.

185 Paragraph 48(2)(a)

Omit “paragraph 53(c) of that Act”, substitute “paragraph 29(1)(g) of the Australian Consumer Law”.

186 Paragraph 48(2)(b)

Omit “paragraph 53(d) of that Act”, substitute “paragraph 29(1)(h) of the Australian Consumer Law”.

187 Subsection 48(4)

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

188 Subsection 48(4)

Omit “that Act”, substitute “the Australian Consumer Law”.

Radiocommunications Act 1992

189 Subdivision D of Division 1 of Part 3.2 (heading)

Repeal the heading, substitute:

**Subdivision D—Rules about section 50 and related provisions
of the Competition and Consumer Act**

Wheat Export Marketing Act 2008

190 Section 5

Insert:

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

191 Subparagraphs 13(1)(c)(x) and 19(1)(c)(x)

Omit “or section 76 of the *Trade Practices Act 1974*”, substitute “, section 76 of the *Competition and Consumer Act 2010* or section 224 of the Australian Consumer Law”.

Schedule 7—Transitional matters

1 Definitions

In this Schedule:

Australian Consumer Law has the same meaning as in Part XI of the *Competition and Consumer Act 2010* as substituted by Schedule 2 to this Act.

Commonwealth Minister has the same meaning as in the Australian Consumer Law.

2 Declarations of goods to be unsafe goods

A notice under subsection 65C(5) of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if:

- (a) it were an interim ban imposed under section 109 of the Australian Consumer Law by the Commonwealth Minister; and
- (b) it starts on the day of that commencement.

3 Permanent bans

A notice under subsection 65C(7) of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if it were a permanent ban imposed under section 114 of the Australian Consumer Law.

4 Prescribed consumer product safety standards

A prescribed consumer product safety standard under section 65C of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if it were a safety standard made under section 104 of the Australian Consumer Law.

5 Prescribed consumer product information standards

A prescribed consumer product information standard under section 65D of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if it were an information standard made under section 134 of the Australian Consumer Law.

6 Acts or omissions that occurred before commencement

- (1) The *Trade Practices Act 1974* as in force immediately before the commencement of this item continues to apply, after that commencement, in relation to acts or omissions that occurred before that commencement.
- (2) Without limiting subitem (1), action may be taken, under or in relation to Part VC or VI of that Act as so in force, in relation to those acts or omissions.

7 Proceedings already commenced

- (1) The *Trade Practices Act 1974* as in force immediately before the commencement of this item continues to apply to or in relation to any proceedings, under or in relation to that Act, that were commenced, but not concluded, before that commencement.
- (2) However, to the extent that any such proceeding are proceedings for an injunction under section 80 of that Act as so in force, the proceedings are taken, after that commencement, to be proceedings for an injunction under section 232 of the Australian Consumer Law.

8 Unfair contract terms

- (1) Part 2-3 of the Australian Consumer Law applies to a contract entered into on or after the commencement of this item.
 - (2) That Part does not apply to a contract entered into before that commencement. However:
 - (a) if the contract is renewed on or after that commencement—that Part applies to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or
 - (b) if a term of the contract is varied on or after that commencement, and paragraph (a) has not already applied in relation to the contract—that Part applies to the term as varied, on and from the day (the *variation day*) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.
 - (3) If paragraph (2)(b) applies to a term of a contract, subsection 23(2) and section 27 of the Australian Consumer Law apply to the contract.
-

-
- (4) Despite paragraphs (2)(a) and (b) and subitem (3), that Part does not apply to a contract, or a term of a contract, to the extent that the operation of that Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

9 Requests for itemised bills

Section 101 of the Australian Consumer Law does not apply in relation to a supply of services to the extent that the services were supplied before the commencement of this item.

10 Pecuniary penalties—having regard to previous findings

The reference in paragraph 224(2)(c) of the Australian Consumer Law to proceedings under Chapter 4 or Part 5-2 of Schedule 2 includes a reference to proceedings, commenced before the commencement of this item, under or in relation to:

- (a) Part VC or VI of the *Trade Practices Act 1974*; or
- (b) equivalent provisions of a law of a State or a Territory.

11 Regulations relating to professional standards laws

Regulations made for the purposes of section 87AB of the *Trade Practices Act 1974* that were in force immediately before the commencement of this item have effect, after the commencement of this item, as if they had been made for the purposes of section 137 of that Act as amended by this Act.

12 General power for regulations to deal with transitional matters

The Governor-General may make regulations prescribing matters of a transitional, application or saving nature in relation to the amendments and repeals made by the Schedules to this Act.

*[Minister's second reading speech made in—
House of Representatives on 17 March 2010
Senate on 24 June 2010]*

(74/10)

396 *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* No.
103, 2010