

**Version No. 007**  
**Australian Consumer Law and Fair Trading**  
**Act 2012**

**No. 21 of 2012**

Version incorporating amendments as at  
1 July 2014

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**No. 21 of 2012**

Version incorporating amendments as at  
1 July 2014

**The Parliament of Victoria enacts:**

**CHAPTER 1—PRELIMINARY**

**1 Purposes**

The main purposes of this Act are—

- (a) to promote and encourage fair trading practices and a competitive and fair market;
- (b) to protect consumers;
- (c) to regulate trade practices;
- (d) to provide for codes of practice;
- (e) to provide for the powers and functions of the Director of Consumer Affairs Victoria including powers to conciliate disputes under this Act and powers to carry out investigations into alleged breaches of this Act;
- (f) to promote uniformity with the consumer laws of other jurisdictions through the interpretation and application of the Australian Consumer Law in Victoria consistently with those laws;
- (g) to regulate certain businesses;
- (h) to repeal and re-enact with amendments the **Fair Trading Act 1999**;

- (i) to repeal the **Disposal of Uncollected Goods Act 1961**, the **Carriers and Innkeepers Act 1958** and the **Landlord and Tenant Act 1958**;
- (j) to amend the **Credit (Administration) Act 1984** to close the Consumer Credit Fund and transfer any funds to the Victorian Consumer Law Fund.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2012, it comes into operation on that day.

## 3 Definitions

- (1) In this Act—

***accommodation*** means a room or other area at an accommodation place that contains sleeping facilities;

***accommodation place*** means any place that provides accommodation for use by members of the travelling public as part of a commercial transaction, but does not include accommodation in or on something that is being used, or is ordinarily used, as means of transportation;

### **Example**

Accommodation places include backpacker hostels, bed and breakfast providers, hotels, motels, resorts, serviced apartments and similar facilities.

***accommodation provider*** means a person who operates a business that includes providing accommodation;

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***Authority*** means the Business Licensing Authority established under the **Business Licensing Authority Act 1998**;

***bailment*** includes bailment for reward, bailment in the course of business, gratuitous bailment, involuntary bailment and any sub-bailment;

***business day***, in relation to an introduction agent, means a day on which the introduction agent is open for business;

***business licensing Act*** has the same meaning as in the **Business Licensing Authority Act 1998**;

***commercial transaction*** includes an arrangement under which accommodation is provided without charge if the arrangement is commercial in nature;

***Consumer Act*** means—

- (a) an Act listed in Schedule 1; or
- (b) Part 4 of the **Veterans Act 2005**;

***consumer debt*** means any debt that is incurred by a natural person wholly or predominately in connection with personal, domestic or household purposes;

***contract of supply*** includes an agreement to supply;

***court***—

- (a) in Part 3.1, in relation to any legal proceeding, includes VCAT and a person acting judicially;
- (b) in Part 3.2, in relation to any matter, means the court or arbitrator by or before whom the matter falls to be determined;



(c) in Part 4.2, means any court of competent jurisdiction and includes VCAT;

**Note**

See section 223 for the meaning of *court* in the Australian Consumer Law (Victoria).

***credit report*** means any written, oral, or other communication with respect to the credit worthiness, credit standing, or credit capacity of a person but does not include a report containing information solely as to transactions or communications between the person making the report and the person who is the subject of the report;

***credit reporting agent*** means a person who engages in the practice of providing credit reports to any other person, whether for profit or reward or on a regular co-operative basis;

***dealer*** means a person by whom or on whose behalf any antecedent negotiations are conducted but does not include the supplier or an agent of the supplier acting with the authority of the supplier;

***debt***, in Part 4.1, includes an alleged debt;

***Director*** means the person who, for the time being, is employed as Director of Consumer Affairs Victoria under the **Public Administration Act 2004**;

***discharge***, in Chapter 3, in relation to a contract of supply of goods or services, means discharge of the contract so far as it is executory;

***discharged contract*** means a contract to which Part 3.2 applies;

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**disposal costs** means the costs incurred by the receiver for the disposal of goods under Part 4.2;

**enforcement expenses** has the same meaning as it has in the National Credit Code;

**engage in debt collection** means to perform any of the following for remuneration or reward—

- (a) to find, or repossess, for another person any goods or chattels that the other person is entitled to repossess under an agreement or goods mortgage;
- (b) to collect, attempt to collect, or request payment of, debts owed to another person;

**fault** means negligence or another act or omission giving rise to a liability;

**the Fund** means the Victorian Consumer Law Fund referred to in section 134(1);

**guest** means a person to whom, or for whom, accommodation is provided by an accommodation provider during a period of accommodation, but does not include—

- (a) a person who is at the accommodation place merely to obtain beverages or food or to visit someone else; or
- (b) a person who usually lives at the accommodation place;

**high value**, for goods, means the goods are of a value more than or equal to—

- (a) in the case of a motor vehicle, \$1000 or, if another value is prescribed by the regulations, that other value; or

S. 3(1) def. of *high value* amended by No. 57/2013 s. 6.

- (b) in any other case, \$5000 or, if another value is prescribed by the regulations, that other value;

*hire-purchase agreement* includes—

- (a) a letting of goods with an option to purchase; and  
(b) an agreement for the purchase of goods by instalments (whether that agreement describes the instalments as rent or hire or otherwise);

but does not include any agreement—

- (c) by which the property in the goods in the agreement passes at the time of the agreement or on or at any time before the delivery of the goods; or  
(d) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement; or  
(e) that is a regulated contract within the meaning of the **Credit Act 1984**; or  
(f) that is a credit contract within the meaning of the National Credit Code;

*innkeeper's liability* means innkeeper's liability under the common law but only in relation to the strict liability imposed on an innkeeper for failing to safeguard the property of the innkeeper's guests that is brought to the innkeeper's inn;

*innkeeper's lien* means the common law right allowing an innkeeper—

- (a) to take possession of the property of the innkeeper's guests that is brought to the innkeeper's inn; and
- (b) to keep the property until the innkeeper receives payment for accommodation, beverages, food and other services provided to the guest;

*innocent misrepresentation*, in Part 3.1, in relation to a contract of supply of goods or services means misrepresentation that is not fraudulent;

*inspector* means a person appointed as an inspector under section 142;

*introduction agent* has the meaning given by section 81;

*introduction agreement* means an agreement to provide an introduction service;

*introduction service* has the meaning given by section 82;

*licence*, in Division 3 of Part 6.2, means—

- (a) a licence issued or granted under—
  - (i) the **Conveyancers Act 2006**; or
  - (ii) the **Estate Agents Act 1980**; or
  - (iii) the **Motor Car Traders Act 1986**; or
  - (iv) the **Sex Work Act 1994**; or

S. 3(1) def. of  
*licence*  
amended by  
No. 16/2014  
s. 5.

\* \* \* \* \*

- (b) a right to act as an agent's representative within the meaning of the **Estate Agents Act 1980**; or

- (c) a right to participate in a customer service capacity in the business of a motor car trader within the meaning of the **Motor Car Traders Act 1986**; or
- (d) an approval under Division 5 of Part 3 of the **Sex Work Act 1994**; or
- (e) a registration or endorsement of registration under the **Second-Hand Dealers and Pawnbrokers Act 1989**;

*licence suspension period*, in relation to a licence in Division 3 of Part 6.2, means the period—

- (a) commencing on the date of service of the notice in relation to the licence under section 120; and
- (b) ending on—
  - (i) the lapsing of the suspension of the licence under section 122; or
  - (ii) the date of an order referred to in section 122(2) relating to the suspension of the licence;

*licensee*, in relation to a licence in Division 3 of Part 6.2, means the person who is the holder of the licence;

*loss*, in Part 5.2, includes damage or destruction;

*low value*, for goods, means the goods are of a value less than—

- (a) in the case of a motor vehicle, \$1000 or, if another value is prescribed by the regulations, that other value; or
- (b) in any other case, \$200 or, if another value is prescribed by the regulations, that other value;

*medium value*, for goods other than motor vehicles, means the goods are—

- (a) of a value equal to or more than \$200 or, if another value is prescribed by the regulations, that other value; and
- (b) less than \$5000 or, if another value is prescribed by the regulations, that other value;

\* \* \* \* \*

S. 3(1) def. of *member of the police force* repealed by No. 37/2014 s. 10(Sch. item 6.1(b)).

*motor vehicle*, in Part 4.2, has the same meaning as it has in the **Road Safety Act 1986**;

*National Credit Code* has the same meaning as in the National Consumer Credit Protection Act 2009 of the Commonwealth;

*non-party order* means an order referred to in section 135(1);

*occupier*, in relation to a premises, means a person who appears to be of or over 16 years of age and who appears to be in control of the premises;

*officer*—

- (a) in relation to a body corporate which is a corporation within the meaning of the Corporations Act, has the same meaning as officer of a corporation has in section 9 of that Act; and

(b) in relation to a body corporate which is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate or an employee of the body corporate;

*owner*, in Part 4.2, in relation to a motor vehicle, means the registered operator within the meaning of the **Road Safety Act 1986**;

*period of accommodation* means the period of time during which a guest is entitled to use accommodation in an accommodation place;

*police officer* has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 6.1(a)).

*post box* means post office box, document exchange, mail collection agency or mail forwarding agency;

*private residence* includes any part of the allotment on which the private residence is situated;

*prohibited person* means a person who is prohibited from engaging in debt collection under section 47(1) and who does not hold a current permission given by the Authority under section 49;

*property of a guest* means the property brought to the accommodation place or its precincts by or for the guest, but does not include—

(a) a motor vehicle brought to the accommodation or its precincts by or for the guest, or other things owned by

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the guest left in or on the motor vehicle;  
or

- (b) property taken from the accommodation or its precincts by or for the guest;

*provide*, in Part 5.2, includes offering to provide;

*provider*, in Part 4.2, means the person who gives possession of goods under a bailment (whether or not the person is the owner of the goods);

*public auction*, in Part 4.2, includes an auction conducted on the Internet;

*public holiday* has the same meaning as in the **Public Holidays Act 1993**;

*publicly registered interest*, in Part 4.2, means an interest in goods that is recorded—

- (a) in the register within the meaning of the Personal Property Securities Act 2009 of the Commonwealth if the goods are described by serial number in that register; or
- (b) in any register prescribed by the regulations;

*receiver*, in Part 4.2, means the person who takes possession of goods under a bailment;

*Registrar*, in Part 4.2, means the Registrar appointed under section 4 of the **Unclaimed Money Act 2008**;

*related body corporate* has the same meaning as in the Corporations Act;

*relevant charge* has the meaning given by section 55;



*rescission*, in Part 3.1, in relation to a contract of supply of goods or services means avoidance of the contract as from its beginning;

*safekeeping service* means a service provided at an accommodation place where property of guests is deposited with the accommodation provider for safekeeping, but does not include a safe facility located in a unit of accommodation;

*Secretary* means the Secretary to the Department of Justice;

*time of discharge*, in Part 3.2, in relation to any contract, means the time at which—

- (a) performance of the contract becomes impossible; or
- (b) the contract is otherwise frustrated; or
- (c) the contract is avoided by the operation of section 12 of the **Goods Act 1958**;

*uncollected goods* has the meaning given by section 54;

*workplace* includes any land used in conjunction with a workplace for the purposes of the workplace.

- (2) Without limiting subsection (1), unless the contrary intention appears the words and expressions used in this Act have the same meanings as they have in the Australian Consumer Law (Victoria).

#### **4 Crown bound**

Subject to section 19, this Act binds the Crown not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

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**5 Extra-territorial application of this Act**

- (1) This Act applies within and outside Victoria.
  - (2) This Act applies outside Victoria to the full extent of the extra-territorial legislative power of the Parliament.
  - (3) Without limiting subsection (1) or (2), this Act applies to—
    - (a) the engaging in conduct in Victoria by persons outside Victoria;
    - (b) the engaging in conduct outside Victoria by persons in Victoria;
    - (c) a supply of goods or services in Victoria where the contract for the supply of goods or services is made in Victoria;
    - (d) in a case where a contract for the supply of goods or services is made outside Victoria, to the supply of those goods or services to—
      - (i) a person normally resident in Victoria;
      - (ii) a body corporate whose principal place of business is in Victoria.
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## CHAPTER 2—THE AUSTRALIAN CONSUMER LAW

### PART 2.1—DEFINITIONS

#### 6 Definitions

- (1) In this Chapter, unless the contrary intention appears—

*application law* means—

- (a) the law of a participating jurisdiction that applies the 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 Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications;

*Australian Consumer Law* means (according to the context)—

- (a) the Australian Consumer Law text; or
- (b) the Australian Consumer Law text, applying as a law of a participating jurisdiction, either with or without modifications;

*Australian Consumer Law text* means the text described in section 7;

*instrument* means any document whatever, including the following—

- (a) an Act or an instrument made under an Act;

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- (b) a law of this jurisdiction or an instrument made under such a law;
  - (c) an award or other industrial determination or order, or an industrial agreement;
  - (d) any other order (whether executive, judicial or otherwise);
  - (e) a notice, certificate or licence;
  - (f) an agreement;
  - (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose;
  - (h) an indictment, presentment, summons or writ;
  - (i) any other pleading in, or process issued in connection with, a legal or other proceeding;

***Intergovernmental Agreement*** means the Intergovernmental Agreement for the Australian Consumer Law made on 2 July 2009 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being;

***jurisdiction*** means a State or the Commonwealth;

***law***, in relation to a Territory, means a law of, or in force in, that Territory;

***modifications*** includes additions, omissions and substitutions;

***month*** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month;

***participating jurisdiction*** means a jurisdiction that is a party to the Intergovernmental Agreement and applies the Australian Consumer Law as a law of the jurisdiction, either with or without modifications;

***State*** includes a Territory;

***Territory*** means the Australian Capital Territory or the Northern Territory of Australia;

***this jurisdiction*** means Victoria.

- (2) Terms used in this Chapter and also in the Australian Consumer Law (Victoria) have the same meanings in this Chapter as they have in that Law.
- (3) For the purposes of this Chapter—
  - (a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and
  - (b) that corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

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**PART 2.2—APPLICATION OF AUSTRALIAN CONSUMER  
LAW**

**7 The Australian Consumer Law text**

The Australian Consumer Law text consists of—

- (a) Schedule 2 to the Competition and Consumer Act 2010 of the Commonwealth; and
- (b) the regulations under section 139G of that Act.

**8 Application of Australian Consumer Law**

- (1) The Australian Consumer Law text, as in force from time to time—
  - (a) applies as a law of this jurisdiction; and
  - (b) as so applying may be referred to as the Australian Consumer Law (Victoria); and
  - (c) as so applying is a part of this Act.
- (2) This section has effect subject to sections 9, 10 and 11.

**9 Future modifications of Australian Consumer Law text**

- (1) A modification made by a Commonwealth law to the Australian Consumer Law text after the commencement of this section does not apply under section 8, if the modification is declared by Order of the Governor in Council published in the Government Gazette to be excluded from the operation of that section.
- (2) An Order under subsection (1) has effect only if published before the end of 2 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further Order so provides.

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- (4) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is registered under the Legislative Instruments Act 2003 of the Commonwealth.

**10 Meaning of generic terms in Australian Consumer Law for purposes of this jurisdiction**

- (1) In the Australian Consumer Law (Victoria), *regulator* means the Director.
- (2) For the purposes of the application of the Australian Consumer Law (Victoria), *court* has the meaning given in section 223 of this Act.

**11 Interpretation of Australian Consumer Law**

- (1) The Acts Interpretation Act 1901 of the Commonwealth applies as a law of this jurisdiction to the Australian Consumer Law (Victoria).
- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if—
- (a) the statutory provisions in the Australian Consumer Law (Victoria) were a Commonwealth Act; and
  - (b) the regulations in the Australian Consumer Law (Victoria) or instruments under that Law were regulations or instruments under a Commonwealth Act.
- (3) The **Interpretation of Legislation Act 1984** does not apply to—
- (a) the Australian Consumer Law (Victoria); or
  - (b) any instrument under that Law.
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## 12 Application of Australian Consumer Law

- (1) The Australian Consumer Law (Victoria) applies to and in relation to—
  - (a) persons carrying on business within this jurisdiction; or
  - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
  - (c) persons ordinarily resident in this jurisdiction; or
  - (d) persons otherwise connected with this jurisdiction.
- (2) Subject to subsection (1), the Australian Consumer Law (Victoria) extends to conduct, and other acts, matters or things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

### 12A Certain instruments are not legislative instruments under Subordinate Legislation Act 1994

S. 12A  
inserted by  
No. 57/2013  
s. 7.

The following instruments made under the Australian Consumer Law (Victoria) are not legislative instruments for the purposes of the **Subordinate Legislation Act 1994**—

- (a) a safety standard published under section 104(1);
  - (b) a safety standard declared under section 105(1);
  - (c) an interim ban on consumer goods published under section 109(1);
  - (d) an interim ban on product related services published under section 109(2);
  - (e) a notice of extension of an interim ban period under section 111(2);
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**s. 12A**

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- (f) a notice of extension of an interim ban period under section 111(4);
  - (g) a notice of further extension of an interim ban period under section 111(6);
  - (h) a notice of revocation of an interim ban published under section 113;
  - (i) a permanent ban on consumer goods published under section 114(1);
  - (j) a permanent ban on product related services published under section 114(2);
  - (k) a notice of revocation of a permanent ban published under section 117;
  - (l) a recall notice published under section 122(1);
  - (m) an information standard published under section 134(1);
  - (n) an information standard declared under section 135(1).
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**PART 2.3—REFERENCES TO AUSTRALIAN CONSUMER  
LAW**

**13 References to Australian Consumer Law**

- (1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law 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.

**14 References to Australian Consumer Law of other jurisdictions**

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
  - (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.
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**PART 2.4—APPLICATION OF AUSTRALIAN CONSUMER  
LAW TO CROWN**

**15 Part does not apply to Commonwealth**

In this Part, *participating jurisdiction* or *other jurisdiction* does not include the Commonwealth.

**16 Application law of this jurisdiction**

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

**17 Application law of other jurisdictions**

- (1) The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.
- (2) If, because of this Chapter, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

**18 Activities that are not business**

- (1) For the purposes of sections 16 and 17, the following do not amount to carrying on a business—
  - (a) imposing or collecting—
    - (i) taxes; or
    - (ii) levies; or
    - (iii) fees for authorisations;

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- (b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions);
- (c) a transaction involving—
- (i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of a State); or
  - (ii) only persons who are all acting for the same authority of a State; or
  - (iii) only the Crown in right of a State and one or more non-commercial authorities of that State; or
  - (iv) only non-commercial authorities of the same State;
- (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because—
- (i) the body chooses to acquire the products; or
  - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subjection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 16 and 17.
- (3) In this section—
- acquisition of primary products by a government body under legislation*** includes vesting of ownership of primary products in a government body by legislation;
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**authorisation** means a licence, permit, certificate or other authorisation that allows the holder of the authorisation to supply goods or services;

**government body** means a State or an authority of a State;

**primary products** means—

- (a) agricultural or horticultural produce; or
  - (b) crops, whether on or attached to the land or not; or
  - (c) animals (whether dead or alive); or
  - (d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of a State is **non-commercial** if—
- (a) it is constituted by only one person; and
  - (b) it is neither a trading corporation nor a financial corporation.

## **19 Crown not liable to pecuniary penalty or prosecution**

- (1) Nothing in the application law of this jurisdiction makes the Crown in any capacity liable to a pecuniary penalty or to be prosecuted for an offence.
- (2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes the Crown in right of this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

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**PART 2.5—MISCELLANEOUS**

**20 Conferral of functions and powers on certain bodies**

- (1) The authorities and officers of the Commonwealth referred to in the Australian Consumer Law (Victoria) have the functions and powers conferred or expressed to be conferred on them under the Australian Consumer Law (Victoria).
- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.
- (3) The Commonwealth Minister who has the functions and powers conferred or expressed to be conferred on him or her under the Australian Consumer Law (Victoria) is not a public authority for the purposes of section 38 of the **Charter of Human Rights and Responsibilities Act 2006**.

**21 No doubling-up of liabilities**

- (1) If—
  - (a) an act or omission is an offence against the Australian Consumer Law (Victoria) and is also an offence against an application law of another participating jurisdiction; and
  - (b) the offender has been punished for the offence under the application law of the other jurisdiction—

the offender is not liable to be punished for the offence against the Australian Consumer Law (Victoria).

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- (2) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to pay a pecuniary penalty under the Australian Consumer Law (Victoria) in respect of the same conduct.
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## CHAPTER 3—CONTRACTS

### PART 3.1—IMPLIED CONDITIONS AND WARRANTIES IN CERTAIN CONTRACTS OF SUPPLY

#### Division 1—Supply of goods or services

#### 22 Limitation of liability in relation to supply of recreational services

- (1) Subject to subsection (2), a term of a contract of supply of recreational services is not void under section 64 of the Australian Consumer Law (Victoria) by reason only that the term excludes, restricts or modifies, or has the effect of excluding, restricting or modifying—
  - (a) the application of any or all of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) to the supply of the recreational services under the contract; or
  - (b) the exercise of a right conferred by the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) in relation to the supply of the recreational services under the contract; or
  - (c) any liability of the supplier for a failure to comply with a guarantee under that Subdivision in relation to the supply of the recreational services under the contract.
- (2) Subsection (1) only applies if—
  - (a) the contract of supply of recreational services was entered into on or after 1 June 2004; and
  - (b) the exclusion, restriction or modification contained in the term is limited to liability for death or personal injury; and



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- (c) the term—
- (i) contains the prescribed particulars (if any) and is in the prescribed form (if any); or
  - (ii) is specified, or is of a class of term specified, in an Order made under section 23; and
- (d) if there is a prescribed form for the term, the supplier has not made a false or misleading statement as to a material particular in or in relation to the term; and
- (e) the term was brought to the attention of the purchaser prior to the supply of the recreational services.
- (3) Despite subsection (1), a person is not entitled to rely on a term of a contract in relation to the supply of recreational services which complies with subsection (2) if—
- (a) the person has done or omitted to do something in relation to the supply of those recreational services that but for subsection (1) would—
    - (i) be an act or omission to which all or any of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) would apply; or
    - (ii) give rise to the exercise of a right conferred by all or any of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria); or
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- (iii) constitute a failure to comply with a guarantee that applies under Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria); and
- (b) the act or omission was done or omitted to be done with reckless disregard, with or without consciousness, for the consequences of the act or omission.

(4) In this section—

*disease* includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin;

*injury* means any physical or mental injury;

*personal injury* means—

- (a) an injury of a natural person (including the aggravation, acceleration or recurrence of an injury of the individual); or
- (b) the contraction, aggravation, acceleration or recurrence of a disease of a natural person; or
- (c) 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 a natural person that is or may be harmful or disadvantageous to, or result in harm or disadvantage to—
  - (i) the person; or
  - (ii) the community;

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*recreational services* means 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.
- (5) The definition of injury in subsection (4) does not, by implication, affect the meaning of the expression injury when used in a provision of this Act other than this section.

### **23 Exemption from waiver form requirement**

- (1) The Governor in Council, on the recommendation of the Minister, may, by order published in the Government Gazette, provide that a specified term of a contract of supply of recreational services, or a class of such term, does not need to comply with the requirements of section 22(2)(c)(i).
  - (2) The Governor in Council may make an Order under this section subject to any conditions the Governor in Council thinks fit and specifies in the Order.
  - (3) An Order under this section has effect according to its terms.
  - (4) The Governor in Council, on the recommendation of the Minister, may, by Order published in the Government Gazette, vary or revoke an Order made under this section.
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- (5) An Order made under this section ceases to have effect on—
- (a) the expiry of the anniversary of the date the Order was published in the Government Gazette; or
  - (b) if an earlier expiry date is specified in the Order, the earlier date.
- (6) On or before the 6th sitting day after an Order under this section is published in the Government Gazette, the Minister must ensure that a copy of the Order is laid before each House of the Parliament.
- (7) A failure to comply with subsection (6) does not affect the operation or effect of the Order but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of Parliament.
- (8) An Order may be disallowed in whole or in part by either House of Parliament.
- (9) Part 5 of the **Subordinate Legislation Act 1994** applies to an Order as if—
- (a) a reference in that Part to a "statutory rule" were a reference to the Order; and
  - (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to subsection (6) of this section.

## **24 Rescission for innocent misrepresentation**

- (1) If a purchaser enters into a contract of supply of goods after an innocent misrepresentation is made to the purchaser and, if the misrepresentation had been fraudulent, the purchaser would have been entitled to rescind the contract by reason of the misrepresentation, the purchaser may rescind the contract by notice given to the supplier before, or within a reasonable period after—
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- (a) in the case of a contract of supply by way of lease, delivery of the goods; and
  - (b) in any other case, acceptance of the goods.
- (2) Subsection (1) applies whether or not the misrepresentation has become a term of the contract.

**25 Discharge or rescission of contract of supply of goods**

- (1) This section applies if a purchaser—
- (a) discharges a contract of supply of goods by reason of repudiation or breach of condition by the supplier; or
  - (b) in accordance with section 24(1) rescinds a contract of supply of goods after an innocent representation is made.
- (2) If the goods have been delivered to the purchaser and have not been returned to the supplier, the purchaser must return the goods to the supplier or permit the supplier to take possession of the goods.
- (3) The purchaser is liable to the supplier for loss or damage caused to the goods—
- (a) by the purchaser wilfully or by the purchaser's negligence while the goods are in the purchaser's possession during a period of 21 days after discharging or rescinding the contract; and
  - (b) by the purchaser wilfully while the goods are in the purchaser's possession after the expiration of a period of 21 days after discharging or rescinding the contract.
- (4) If the property in the goods passed to the purchaser before the discharge or the rescission, the property re-vests in the supplier.
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(5) The supplier is liable to the purchaser for money paid and for the value of any other consideration paid or provided under the contract by the purchaser to the supplier.

(6) If—

(a) the purchaser used the goods before the discharge or rescission; and

(b) the supplier acted honestly and reasonably in supplying the goods—

the court may, if it is satisfied that, in all the circumstances, it is just and convenient to do so, allow the supplier to recover from the purchaser an amount equal to the whole or any part of the fair value to the purchaser of the purchaser's use of the goods.

## **26 When does a discharge or rescission have effect?**

(1) If a purchaser purports to discharge or rescind a contract of supply of goods, the purported discharge or rescission has effect only if—

(a) the supplier is aware that the purchaser treats the contract as at an end, whether by reason of the return of the goods to the supplier or by reason of any other information which comes to the knowledge of the supplier; or

(b) if the purchaser is unable, due to the conduct or omission of the supplier, after taking reasonable steps, to inform the supplier or to cause the supplier to become aware that the purchaser treats the contract as at an end—

(i) the purchaser treats the contract as at an end; and

(ii) by the purchaser's conduct, shows unequivocally that the purchaser treats the contract as at an end.

- (2) This section does not apply to a rejection under the Australian Consumer Law (Victoria).

**27 Liability of supplier and person conducting antecedent negotiations**

- (1) In a contract of supply of goods or services, a representation made to the purchaser in the course of any antecedent negotiations by a dealer or by a person acting on behalf of the supplier (otherwise than as an agent of the supplier acting with the authority of the supplier) confers on the purchaser—
- (a) as against the supplier, the same right to rescind the contract and the same right of action in damages as the purchaser would have had if the representation had been made by an agent of the supplier acting with the authority of the supplier; and
  - (b) as against the person by whom the representation was made, the same right of action in damages as the purchaser would have had if the purchaser had purchased the goods or services from that person; and
  - (c) if the antecedent negotiations were conducted on behalf of another person, as against that other person the same right of action in damages as the purchaser would have had if the purchaser had purchased the goods or services from that other person.
- (2) In a contract of supply of goods or services, a warranty given to the purchaser in the course of any antecedent negotiations by a dealer or by a person acting on behalf of the supplier (otherwise than as an agent of the supplier acting with the authority of the supplier) confers on the purchaser—

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- (a) as against the person by whom the warranty was given, the same right of action in damages as the purchaser would have had if—
- (i) the warranty had been given in consideration of the purchaser purchasing the goods or services from that person; and
  - (ii) the purchaser had purchased the goods or services from that person; and
- (b) if the antecedent negotiations were conducted on behalf of a dealer, as against the dealer the same right of action in damages as the purchaser would have had if—
- (i) the warranty had been given in consideration of the purchaser purchasing the goods or services from the dealer; and
  - (ii) the purchaser had purchased the goods or services from the dealer.
- (3) For the purposes of subsections (1) and (2) it is immaterial whether or not the goods or services supplied to the purchaser were purchased by the supplier from a dealer by whom or on whose behalf any antecedent negotiations were conducted.
- (4) Nothing in this section prevents a statement being both a representation and a warranty.
- (5) Nothing in this section confers on a purchaser an entitlement to an amount of damages arising from a representation or a warranty exceeding the amount of the loss suffered by the purchaser.
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## **28 Indemnity for supplier or dealer**

- (1) Without prejudice to any other rights or remedies to which a supplier may be entitled, a supplier is entitled to be indemnified—
- (a) by a person by whom any antecedent negotiations were conducted who made a representation or gave a warranty; and
  - (b) by a dealer on whose behalf any antecedent negotiations were conducted by another person who made a representation or gave a warranty—

against any damage suffered by the supplier by reason of the operation of section 27.

- (2) Without prejudice to any other rights or remedies to which a dealer may be entitled, a dealer is entitled to be indemnified by a person who conducted any antecedent negotiations on behalf of the dealer and made a representation or gave a warranty against any damage suffered by the dealer by reason of the operation of section 27.

## **29 Certain contracts or provisions void**

A contract of supply of goods or services or a provision in or that relates to a contract of supply of goods or services is void if that contract or provision—

- (a) purports to have the effect of excluding, restricting or modifying the provisions of section 27 or 28; or
- (b) purports to have the effect of precluding a right of action or a defence based on or arising out of a representation or a warranty referred to in section 27(1) or (2).

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**30 Penalty for including void provision relating to antecedent negotiations**

A supplier or a person by whom or on whose behalf any antecedent negotiations are conducted must not include or permit to be included in a contract of supply of goods or services a provision that by reason of section 29 is void.

Penalty: 60 penalty units, in the case of a natural person;

120 penalty units, in the case of a body corporate.

**Division 2—General**

**31 Application of Goods Act 1958 to contracts of supply**

- (1) Sections 17, 18, 19(a) and (b) and 20 of the **Goods Act 1958** do not apply to contracts of supply to which Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) applies.
  - (2) Section 4(2) of the **Goods Act 1958** is taken to apply in relation to this Part and Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) as if—
    - (a) the reference to Part were a reference to Part 3-2 of the Australian Consumer Law (Victoria); and
    - (b) the reference to contracts for the sale of goods included a reference to contracts of supply of goods.
  - (3) A reference in Part I of the **Goods Act 1958** to a condition includes a reference to a guarantee within the meaning of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria).
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- (4) Except as otherwise expressly provided by Division 1 of Part 3-2 of the Australian Consumer Law (Victoria), nothing in that Division affects the application to a contract of supply of goods or services of the **Goods Act 1958** or any other Act or law.

### **32 Limit of liability of guarantors**

- (1) If there is a contract of guarantee in relation to the performance of the obligations of a purchaser under a contract of supply of goods or services, the liability of the guarantor in relation to the performance of those obligations does not include liability in respect of an amount exceeding the sum of—
- (a) the amount for which the purchaser is liable by reason of the breach of the contract of supply; and
  - (b) the reasonable costs of and incidental to enforcing the contract of guarantee.
- (2) Subject to subsection (3), a guarantor of the obligations of a purchaser under a contract of supply of goods or services where the purchaser is a minor is liable under the contract of guarantee to the same extent as the guarantor would be liable if the purchaser had not been a minor when the contract of supply was made.
- (3) Subsection (2) does not apply with respect to a contract of guarantee unless, when it was made, it included a prominent statement immediately above or below the place where the guarantor signed the contract to the effect that a person who enters into a guarantee in respect of the obligations of a purchaser who is minor may not have a right to recover from the purchaser amounts that the guarantor is liable to pay under the contract of supply.
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(4) In this section—

***domestic partner*** of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
  - (i) for fee or reward; or
  - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

***guarantee*** includes indemnity;

***guarantor*** means a person who enters into a contract of guarantee in respect of the performance of the obligations of a purchaser under a contract of supply of goods or services or of a person who enters into a contract of indemnity in relation to a contract of supply of goods or services but does not include—

- (a) a person who is the supplier, or spouse or domestic partner of the supplier of goods or services to which the contract relates; or

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- (b) if the supplier is a body corporate, a person who is a director or an officer of the body corporate or is a related body corporate within the meaning of the Corporations Act or a director or an officer of a related body corporate or spouse or domestic partner of that director or officer; or
  - (c) a person who enters into a contract of guarantee or a contract of indemnity in respect of the obligations, under a contract of supply of goods or services, of a person who deals in goods or services of the kind to which the contract of supply relates.

*spouse* of a person means a person to whom the person is married.

- (5) For the purposes of the definition of *domestic partner* in subsection (4)—
  - (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
  - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
  - (c) a person is not a domestic partner of another person only because they are co-tenants.

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**33 Limit of liability under security**

If a mortgage, charge, pledge or other security is provided by a person to secure the obligations of a purchaser under a contract of supply of goods or services, the amount secured in respect of the liability of that person in respect of those obligations does not exceed liability in respect of the sum of—

- (a) the amount for which the purchaser is liable by reason of the breach of the contract of supply of goods or services; and
- (b) the reasonable costs of, and incidental to, enforcing the mortgage, charge, pledge, lien or other security.

**34 Contract of supply not illegal etc.**

- (1) A contract of supply of goods or services is not illegal, void or unenforceable by reason only that the supplier is guilty of an offence under this Part.
  - (2) If a supplier commits an offence referred to in subsection (1), the purchaser does not, by reason only of having been a party to the contract, aid, abet, counsel or procure the commission of the offence.
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**PART 3.2—FRUSTRATED CONTRACTS**

**Division 1—Introductory**

**35 Contracts to which this Part applies**

- (1) This Part applies to a contract if the parties to the contract are discharged from the further performance of the contract because—
  - (a) performance of the contract becomes impossible; or
  - (b) the contract is otherwise frustrated; or
  - (c) the contract is avoided by the operation of section 12 of the **Goods Act 1958**.
- (2) This Part applies to contracts made before or after 1 July 2008 if the time of discharge of the contract is after 29 September 1959.
- (3) This Part does not apply to—
  - (a) any charter-party, except a time charter-party or a charter-party by way of demise; or
  - (b) any contract (other than a charter-party) for the carriage of goods by sea; or
  - (c) any contract of insurance except as provided for in section 40.

**Division 2—Consequences of frustrated contract**

**36 Adjustment of amounts paid or payable to parties to discharged contracts**

- (1) All amounts paid to any party under a discharged contract before the time of discharge are recoverable.

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- (2) All amounts payable to any party under a discharged contract before the time of discharge cease to be payable.

**37 Court may allow amounts paid or payable to be recovered or paid**

Despite section 36, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow a party to a discharged contract—

- (a) to whom amounts were paid or are payable under that contract before the time of discharge; and
- (b) who has incurred expenses before the time of discharge in or for the purpose of the performance of that contract—

to retain or recover (as the case may be) the whole or any part of the amounts paid or payable to that party under the contract in an amount not exceeding the expenses incurred.

**38 Parties to pay an amount for valuable benefits obtained**

- (1) This section applies if a party to a discharged contract obtained a valuable benefit (other than a payment of money to which section 36 or 37 applies) before the time of discharge because of anything done by another party in or for the purpose of the performance of the contract.
- (2) Despite section 36, the benefited party is liable to pay to that other party any amount (not exceeding the value of the benefit obtained) that the court considers just having regard to all the circumstances of the case.



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- (3) For the purpose of subsection (2), the court may have regard to—
- (a) the amount of any expenses the benefited party incurred before the time of discharge in or for the purpose of the performance of the contract, including any amount paid or payable by the benefited party to any other party under the contract and retained or recoverable by that party under section 36 or 37; or
  - (b) the effect, in relation to the benefit obtained, of the circumstances giving rise to the frustration or avoidance of the contract.
- (4) For the purpose of this section, if a party to the contract has assumed obligations under the contract in consideration of the conferral of a benefit by another party to the contract on any other person (whether or not that person is a party to the contract), the court may, if in all the circumstances of the case it considers it just to do so, treat any benefit conferred on that other person as a benefit obtained by the party who has assumed those obligations.

### **39 Calculation of expenses incurred**

In estimating, for the purposes of this Division, the amount of any expenses incurred by any party to a discharged contract, the court may include an amount that appears reasonable for—

- (a) overhead expenses; and
- (b) work or services performed personally by the party.

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**40 Circumstances in which amounts payable under contract of insurance excluded**

In considering whether any amount is to be retained or recovered by any party to a discharged contract, the court must not take into account any amounts payable to a party under a contract of insurance because of the circumstances giving rise to the frustration or avoidance of the contract unless an obligation to insure is imposed—

- (a) by an express provision in the frustrated or avoided contract; or
- (b) by or under any enactment.

**Division 3—General**

**41 Circumstances in which contract provisions continue to have effect despite frustration**

If any contract to which this Part applies contains a provision that on the true construction of the contract—

- (a) is intended to continue to have effect in circumstances that operate or would, but for that provision, operate to frustrate or avoid the contract; or
- (b) is intended to have effect whether or not circumstances that operate or would, but for that provision, operate to frustrate or avoid the contract arise—

the court must give effect to that provision and must only give effect to Division 2 to the extent that the court is satisfied that it is consistent with the provision of the contract.

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#### **42 Performed part of contract not frustrated**

If it appears to the court that part of a contract to which this Part applies—

- (a) is wholly performed before the time of discharge; or
- (b) is wholly performed before the time of discharge except for payment in respect of that part of the contract of amounts that are or can be ascertained under the contract—

the court must treat that part of the contract as if it were a separate contract that had not been frustrated or avoided and Division 2 will only apply to the remainder of that contract.

#### **43 Nature of action**

All actions and proceedings to recover amounts under this Part are taken to be founded on simple contract.

#### **44 Limitation period**

Subject to Part II of the **Limitation of Actions Act 1958**, a cause of action under this Part is taken to have first accrued at the time of discharge.

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## CHAPTER 4—GENERAL BUSINESS PROVISIONS

### PART 4.1—DEBT COLLECTION

#### 45 Prohibited debt collection practices

- (1) A person must not in trade or commerce engage in a prohibited debt collection practice while—
- (a) collecting or attempting to collect a debt; or
  - (b) repossessing or attempting to repossess goods.

Penalty: 240 penalty units, in the case of a natural person;  
1200 penalty units, in the case of a body corporate.

- (2) In subsection (1), prohibited debt collection practice means—
- (a) using physical force or undue harassment or coercion;
  - (b) entering or threatening to enter a private residence without lawful authority;
  - (c) using any threat, deception or misrepresentation to obtain consent to enter a private residence;
  - (d) refusing to leave a private residence or workplace when requested to do so;
  - (e) doing or threatening to do any act that may intimidate a person or a member of that person's family;

#### **Example**

Carrying a firearm within the meaning of the **Firearms Act 1996** or a dangerous article within the meaning of the **Control of Weapons Act 1990**.

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- (f) doing or threatening to do any act that may expose to ridicule a person or a member of that person's family;

**Example**

Parking a vehicle outside a debtor's private residence that displays information that a person is engaged in debt collection.

- (g) using a document that is not an official document but that resembles or purports to be an official document;

**Examples**

Any document that gives the appearance of having been authorised, issued or approved by a court, government or government agency when it has not been.

Serving a summons that has not been issued.

- (h) impersonating an employee or agent of the State, another state, a Territory or the Commonwealth;
- (i) attempting to take possession of or threatening to take possession of any property to which the person, or the person's principal, is not entitled to possession;

**Example**

Making a representation that immediate possession will be taken of a debtor's home or other property when a debt is not secured by that property or the creditor has not obtained judgment for the debt.

- (j) disclosing or threatening to disclose debt information, without the consent of the debtor, to any other person who does not have a clear and legitimate interest in the information;
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**Example**

Disclosing debt information when contacting a person who is not the debtor while attempting to locate or identify the debtor.

- (k) making a false or misleading representation in connection with—
  - (i) the nature of a debt; or
  - (ii) the extent of a debt; or
  - (iii) the consequences of not paying a debt; or
  - (iv) the method of recovering a debt;

**Examples**

- 1 Falsely representing that a debt is a fine or other pecuniary penalty, or that a person has committed an offence.
  - 2 Using a letterhead which is liable to mislead the person to whom the letter is sent as to the identity, status or role of the person who used the letterhead.
  - 3 Falsely representing to a person who is not a debtor that, in relation to a debt, the person must prove or make a statutory declaration that he or she does not owe the debt.
  - 4 Threatening to give a credit reporting agency information that could affect a person's creditworthiness that could not be given or that would, if given, be false or misleading.
- (l) contacting a person by a method that the person has asked not to be used, unless there is no other method available;
  - (m) contacting a person about a debt after the person advises in writing that no further communication should be made about that debt, unless the contact is by way of—
    - (i) an action issued through a court or VCAT; or
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- (ii) the threat of an action that the person to whom the debt is owed is entitled to issue through a court or VCAT and which the person intends to take;
  - (n) communicating with a person under 18 years of age in relation to a debt, if the person is not the debtor;
  - (o) demanding the payment of a debt from a person without having a belief on reasonable grounds that the person is—
    - (i) the debtor or the debtor's agent or representative; and
    - (ii) liable for the debt;
  - (p) communicating with a person in a manner that is unreasonable in its frequency, nature or content.
- (3) In subsection (2), *debtor* includes a mortgagor or guarantor of a debtor.
- (4) For the purposes of subsection (2)(g), *official document* includes a summons, a court document, a VCAT document, a notice issued under the **Infringements Act 2006** and any other communication that is authorised, issued or approved by a court, VCAT, a government or a government agency.

**Note**

Section 38 of the **Interpretation of Legislation Act 1984** defines *document*.

- (5) This section does not apply to any of the following acting in an official capacity—
- (a) the sheriff or a sheriff's officer;
  - (b) a police officer;

S. 45(5)(b)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 6.2).

- (c) a bailiff;
- (d) any other employee or agent of the State, another state, a Territory or the Commonwealth.

**46 Additional remedy for contraventions of section 45**

- (1) A natural person who has experienced humiliation or distress due to a course of conduct of another person in contravention of section 45 with respect to a consumer debt may apply to a court or VCAT for an order that the person engaging in that conduct, or a person involved in that conduct, pay damages of up to \$10 000 (or another prescribed amount).
- (2) In subsection (1)—
  - course of conduct* means conduct that occurs on at least 2 occasions;
  - person involved* has the meaning given by section 197.
- (3) Subsection (1)—
  - (a) applies in addition to any other available remedy;
  - (b) is not intended to affect any other available remedy.
- (4) Clauses 28BB and 28GG of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** do not apply in a proceeding where damages are sought under this section.
- (5) Part VBA of the **Wrongs Act 1958** does not apply to a claim under this section.



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**47 Certain persons prohibited from engaging in debt collection**

- (1) A person is prohibited from engaging in debt collection if that person—
- (a) in the case of a natural person—
    - (i) is under 18 years of age; or
    - (ii) is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
    - (iii) is an insolvent under administration; or
    - (iv) who, in the preceding 5 years, held a private security licence under the **Private Security Act 2004** that was cancelled or suspended under section 56 or 61 of that Act; or
    - (v) who, in the preceding 5 years, held a private security registration under the **Private Security Act 2004** that has been cancelled or suspended under section 111 or 116 of that Act; or
    - (vi) who, in the preceding 5 years, has been found guilty or convicted in Victoria or elsewhere, of an offence involving fraud, dishonesty, drug trafficking or violence punishable by imprisonment of 3 months or more; or
    - (vii) who, in the preceding 5 years, has been found to have been involved in the use of physical force, undue harassment or coercion in contravention of—
      - (A) section 12DJ of the Australian Securities and Investments Commission Act 2001 of the Commonwealth; or
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- (B) an equivalent provision in an Act of the Commonwealth or Act of another State or Territory; or
  - (C) this Act or the regulations (except if damages have been awarded under section 46);
  - (viii) who, in the preceding 5 years, has been found guilty or convicted of an offence against section 45;
  - (b) in the case of a body corporate—
    - (i) is an externally administered body corporate; or
    - (ii) is a body corporate—
      - (A) one or more of the directors of which is a person referred to in paragraph (a); or
      - (B) managed or effectively controlled by a natural person who is a person referred to in paragraph (a); or
    - (iii) has, in the preceding 5 years, been found guilty or convicted of an offence against section 45; or
    - (iv) has, in the preceding 5 years, been found to have contravened section 53A(2) or 60 of the Trade Practices Act 1974 of the Commonwealth or section 50 of Schedule 2 to the Competition and Consumer Act 2010 of the Commonwealth while engaging in debt collection.
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- (2) A prohibited person must not engage in debt collection.

Penalty: 240 penalty units or 2 years imprisonment, in the case of a natural person;  
1200 penalty units, in the case of a body corporate.

**48 Applications by prohibited persons for permission to engage in debt collection**

- (1) Subject to subsection (4), a prohibited person may apply to the Authority at any time for permission to—
- (a) engage in debt collection;
  - (b) be a director of a corporation that engages in debt collection;
  - (c) manage or effectively control a corporation that engages in debt collection.
- (2) An application under this section must—
- (a) be in the form approved by the Authority; and
  - (b) contain the information required by the Authority; and
  - (c) be accompanied by the documents required by the Authority; and
  - (d) be accompanied by the prescribed fee (if any).
- (3) In considering an application under this section, the Authority may—
- (a) conduct any inquiries it thinks fit;

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- (b) require the applicant to provide any further information relating to the application that the Authority thinks fit in the manner required by the Authority;
  - (c) seek advice and information on the application from any other person or body as it thinks fit.
- (4) The Authority may refuse to give its permission if the applicant does not provide the further information required, or his or her consent for the Authority to obtain that information, within a reasonable time after the requirement is made.
- (5) An application may be withdrawn at any time before the Authority determines it.
- (6) Subsection (1) does not apply to a person who is—
- (a) under the age of 18 years; or
  - (b) a represented person within the meaning of the **Guardianship and Administration Act 1986**.

#### **49 Permission from the Authority**

The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.

#### **50 Authority may impose conditions**

- (1) In giving its permission under this Part, the Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.
  - (2) The Authority may vary any of the conditions it has imposed—
    - (a) on the application of the person given the permission, upon the payment of the prescribed fee (if any);
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- (b) on the application of the Director;
  - (c) of its own motion.
- (3) The person given the permission must comply with any conditions imposed in respect of that permission.
- Penalty: 240 penalty units or 2 years imprisonment, in the case of a natural person;
- 1200 penalty units, in the case of a body corporate.
- (4) If the Authority is satisfied that any condition imposed in respect of a permission has been contravened or not complied with, it may revoke the permission.
- (5) Before taking any action under this section the Authority may seek and use information and advice from any person or body or other source as it thinks fit.

### **51 Application for review**

- (1) A person whose interests are affected by a decision of the Authority under sections 49 and 50 may apply to VCAT for review of the decision.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made; or
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

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## 52 Offence to charge debtor for cost of debt collection

- (1) A debt collector must not recover, or attempt to recover, from a debtor any remuneration or payment in connection with the collection of a debt including the costs and expenses of a debt collector for—
- (a) finding or attempting to find goods or chattels of the debtor;
  - (b) repossessing or attempting to repossess goods or chattels from the debtor;
  - (c) collecting or attempting to collect a debt owed by the debtor.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply in respect of a debt collector who is recovering or attempting to recover on behalf of a creditor enforcement expenses reasonably incurred by that creditor—
- (a) if a credit contract allows the recovery of those expenses; or

### Note

See section 107 of the National Credit Code.

- (b) in the case of a debt that was not wholly or predominately accrued in connection with personal, domestic or household purposes, if a term of an agreement between the creditor and the debtor permits the recovery of those expenses.
- (3) It is a defence for an offence against subsection (1) that the debt collector had an honest and reasonable belief that the enforcement expenses that he or she was recovering or attempting to recover did not exceed those reasonably incurred by the creditor.

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- (4) Any costs or expenses recovered in contravention of subsection (1)—
- (a) may be recovered by the debtor as a debt; and
  - (b) if the debt collector is the creditor—
    - (i) may be set off against the debt; or
    - (ii) may be recovered by the debtor from the debt collector or the creditor.

- (5) In this section—

**costs** do not include—

- (a) stamp duty; or
- (b) legal costs fixed by, or payable under, rules of court or a court order;

**credit contract** has the meaning given by section 4 of the National Credit Code;

**creditor** includes a partner, employer, employee, principal or agent of the creditor or a person who is in any way acting in collusion with the creditor;

**debt collector** means a person who engages in debt collection—

- (a) as a principal or agent;
- (b) as an employee of a principal or agent in exchange for salary, wages or commission;

**debtor** includes a person from whom goods or chattels may be lawfully repossessed.

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**53 Offence to purchase debt for the purpose of collection**

A prohibited person must not knowingly purchase, or accept an assignment of, a consumer debt from a creditor for the purpose of collecting that debt.

Penalty: 240 penalty units or 2 years imprisonment, in the case of a natural person;  
1200 penalty units, in the case of a body corporate.

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**PART 4.2—DISPOSAL OF UNCOLLECTED GOODS**

**Division 1—Preliminary**

**54 Uncollected goods**

- (1) Goods under bailment are uncollected goods if—
  - (a) the goods are ready for delivery to the provider in accordance with the terms of the bailment, but the provider has not taken delivery of the goods and has not given directions as to their delivery; or
  - (b) the receiver is required to give notice to the provider when the goods are ready for delivery but cannot locate or communicate with the provider; or
  - (c) the receiver can reasonably expect to be relieved of any duty to safeguard the goods on giving notice to the provider but cannot locate or communicate with the provider; or
  - (d) the provider has not paid the relevant charge payable to the receiver in relation to the goods within a reasonable time after being informed by the receiver that the goods are ready for delivery.
- (2) Goods are not uncollected goods for the purposes of subsection (1)(a) if the provider's failure to take delivery arises from—
  - (a) the receiver refusing to make delivery; or
  - (b) the receiver preventing the provider from taking delivery.

**55 Relevant charge**

- (1) The relevant charge is the amount payable by the provider to the receiver for goods under bailment and payment of which entitles the provider to take delivery of the goods.

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- (2) Unless determined otherwise by a court order, the amount payable to the receiver is the sum of the following—
- (a) for any carriage or storage of the goods or for any repairs, cleaning, treatment or other work done in connection with the goods—
    - (i) the amount agreed to by the provider and receiver as the charge payable to the receiver; or
    - (ii) in the absence of an agreement, an amount that is reasonable;
  - (b) the amount of costs for any storage, maintenance or insurance of the goods incurred by the receiver from—
    - (i) the giving of a notice under Division 2 of the receiver's intention to dispose of the goods until the disposal of the goods; or
    - (ii) the making of an application for a court order under Division 3 until the disposal of the goods.

### **56 Application**

- (1) This Part applies to the possession of goods under a bailment regardless of whether possession was taken before or after the commencement of this Part.
- (2) This Part does not apply to—
  - (a) goods left behind at the end of a tenancy to which the **Residential Tenancies Act 1997** applies;
  - (b) unsolicited goods;

S. 56(2)(d)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 6.3).

- (c) second-hand goods received in pawn under the **Second-Hand Dealers and Pawnbrokers Act 1989**;
- (d) any unclaimed property to which section 57 of the **Victoria Police Act 2013** applies;
- (e) any unclaimed non-monetary prize to which section 7.4.12 of the **Gambling Regulation Act 2003** applies;
- (f) any goods or lost property within the meaning of section 251A of the **Transport (Compliance and Miscellaneous) Act 1983**;
- (g) any vehicle that is able to be moved or impounded under clause 4 of Schedule 4 to the **Road Management Act 2004**;
- (h) any goods that are the subject of an order for forfeiture to which section 134 of the **Petroleum (Submerged Lands) Act 1982** applies;
- (i) any goods seized to which section 171 of the **Gene Technology Act 2001** applies;
- (j) any motor vehicle not collected or released to which section 84Z of the **Road Safety Act 1986** applies;
- (k) any unclaimed property to which section 16 of the **National Gallery of Victoria Act 1966** applies;
- (l) any unclaimed property to which section 51 of the **Libraries Act 1988** applies;
- (m) any unclaimed property to which section 25 of the **Museums Act 1983** applies;

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- (n) any goods forfeited or recovered by the Magistrates' Court of Victoria to which section 137 of the **Magistrates' Court Act 1989** applies;
  - (o) uncollected goods under any other Act that is prescribed for the purposes of this paragraph.
- (3) Subject to the exclusions in subsection (2), this Part applies in addition to any other remedy or right that may be available to dispose of uncollected goods under any other Act.
  - (4) This Part applies to the disposal of uncollected goods—
    - (a) if there is no agreement between the provider and the receiver about their disposal; or
    - (b) if there is an agreement about their disposal, only in respect of matters not dealt with by the agreement.
  - (5) This Part does not apply to a lease or other agreement to which Part IVA of the **Landlord and Tenant Act 1958** applied immediately before the commencement of section 236 of this Act.
  - (6) For the avoidance of doubt, this Part does not affect the right of a provider and receiver to make an agreement about the disposal of uncollected goods.

### **57 Common law**

The common law relating to the bailment of goods remains in force to the extent to which it is not affected by this Part and a person is entitled to exercise any rights that the person may have at common law in relation to the recovery of goods or compensation for the loss of or damage to goods except to the extent to which this Part otherwise provides.

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**Division 2—Disposal of Uncollected Goods**

**58 Receiver may dispose of uncollected goods**

- (1) Subject to subsection (2), a receiver may dispose of uncollected goods under this Division.
- (2) A receiver must not dispose of uncollected goods if—
  - (a) a dispute exists between the provider and receiver regarding the relevant charge, including such a dispute about the condition of the goods or the nature or quality of any repairs or other work done in connection with the goods; and
  - (b) an application has been made to the court under section 69.
- (3) Subsection (2) does not prevent the receiver from giving notice under this Division of the receiver's intention to dispose of the uncollected goods.
- (4) A receiver who disposes of uncollected goods in accordance with this Division is not liable in relation to the goods by reason of the disposal.

**59 Payment of relevant charge**

The provider, the owner of the uncollected goods or any other person with an interest in the goods is entitled, on payment of the relevant charge, to delivery of the goods at any time before their disposal.

**60 Low value uncollected goods**

- (1) A receiver may dispose of low value uncollected goods if—
  - (a) the receiver has given the provider written notice of the receiver's intention to dispose of the goods; and

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- (b) 28 days have elapsed since the giving of the notice and the provider has not taken delivery of the goods or given directions as to their delivery.
  - (2) A receiver may dispose of low value uncollected goods if—
    - (a) the receiver cannot locate or communicate with the provider in order to provide written notice under subsection (1) after making reasonable attempts to do so; and
    - (b) 60 days have elapsed since the goods became uncollected goods.
  - (3) Goods may be disposed of under this section by sale, destruction, appropriation or any other means.

#### **61 Medium value uncollected goods**

- (1) A receiver may dispose of medium value uncollected goods if—
  - (a) the receiver has given written notice of the receiver's intention to dispose of the goods to the following—
    - (i) the provider; and
    - (ii) in a case where the provider and the owner are different people and the receiver is aware of that fact, the owner of the goods; and
  - (b) 28 days have elapsed since the giving of the notice and the provider has not taken delivery of the goods or given directions as to their delivery.

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- (2) A receiver may dispose of medium value uncollected goods if—
- (a) the receiver cannot locate or communicate with the provider or the owner of the goods in order to provide written notice under subsection (1) after making reasonable attempts to do so; and
  - (b) 90 days have elapsed since the goods became uncollected goods.
- (3) Goods must be disposed of under this section by public auction or by private sale and with reasonable care to ensure that the goods are sold for the best price that can be reasonably obtained, having regard to the circumstances existing when the goods are sold.

## **62 High value uncollected goods**

- (1) A receiver may dispose of high value uncollected goods if—
- (a) the receiver has given written notice of the receiver's intention to dispose of the goods to the following—
    - (i) the provider; and
    - (ii) in a case where the provider and the owner are different people and the receiver is aware of that fact, the owner of the goods; and
    - (iii) any person who has a publicly registered interest in the goods; and
    - (iv) any other person having or claiming an interest in the goods of which the receiver is aware; and

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- (b) 28 days have elapsed since giving the notice and neither of the following persons have taken delivery of the goods or given directions as to their delivery—
- (i) the provider; or
  - (ii) the owner of the goods.
- (2) A receiver may dispose of high value uncollected goods if—
- (a) the receiver cannot locate or communicate with the provider or the owner of the goods in order to provide written notice under subsection (1) after making reasonable attempts to do so; and
  - (b) 180 days have elapsed since the goods became uncollected goods.
- (3) Goods must not be disposed of under this section otherwise than—
- (a) by way of public auction that is either—
    - (i) advertised at least 7 days in advance; or
    - (ii) held over a period of at least 7 days; or
  - (b) subject to subsection (4), by way of private sale.
- (4) Goods may only be disposed of under subsection (3)(b) if—
- (a) notice has been given in accordance with subsection (1); and
  - (b) the receiver has a reasonable belief that the best price could only be achieved by private sale; and
  - (c) the receiver takes reasonable care to ensure that the goods are sold for the best price that can reasonably be obtained, having regard to
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the circumstances at the time the goods are sold.

### **63 Additional requirement for disposal of motor vehicles**

A receiver must not dispose of a motor vehicle that is of a high value unless the receiver has obtained in relation to that motor vehicle a written search result under section 170(2)(b) of the Personal Property Securities Act 2009 of the Commonwealth.

Penalty: 60 penalty units, in the case of a natural person;  
120 penalty units, in the case of a body corporate.

### **64 Details of registered operator**

- (1) A receiver of a motor vehicle may apply to the Roads Corporation in accordance with subsection (2) for a certificate setting out the details of the registered operator of a motor vehicle.
- (2) The application must—
  - (a) be accompanied by the fee prescribed (if any) under the **Road Safety Act 1986** for an extract from the register within the meaning of that Act; and
  - (b) be in the form of a statutory declaration; and
  - (c) include the following particulars—
    - (i) if the receiver is a natural person, the receiver's full name, address and date of birth;
    - (ii) if the receiver is a body corporate, the receiver's business name and address and ABN;

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- (iii) the vehicle's last registration number (if available) and vehicle identification number;
  - (iv) if the receiver intends to dispose of the vehicle under section 62, a copy of any notice given under that section;
  - (v) if the receiver has applied under section 68 for an order to dispose of the vehicle, a copy of the application;
  - (vi) a copy of any written search result obtained under section 63;
  - (vii) any other information prescribed by the regulations.
- (3) On receipt of an application under subsection (1), the Roads Corporation, if it is satisfied that the application is being made for the purposes of this Part, must give to the receiver a certificate setting out the details of the registered operator of the motor vehicle.
- (4) In this section—
- registered operator* has the same meaning as it has in the **Road Safety Act 1986**;
- Roads Corporation* has the same meaning as it has in the **Transport Integration Act 2010**;
- vehicle identification number* has the same meaning as it has in the **Road Safety Act 1986**.

## 65 Perishable goods

- (1) A receiver may dispose of perishable uncollected goods by sale, appropriation or destruction if—
- (a) the receiver has given the provider oral or written notice of the receiver's intention to dispose of the goods; and

- (b) having regard to the nature and condition of the goods, a reasonable time in which to collect the goods has elapsed since the giving of the notice.

**Note**

Perishable goods need not have perished to be disposed of under this subsection.

- (2) A receiver may dispose of uncollected goods by any means if the goods have perished but must make reasonable attempts to give the provider oral or written notice of the disposal of the goods within a reasonable time after the disposal.

**66 Form of notices under this Division**

A notice of the receiver's intention to dispose of uncollected goods under this Division must specify—

- (a) the receiver's name;
- (b) a description of the goods;
- (c) an address at which the goods may be collected;
- (d) a statement of the relevant charge payable to the receiver for the goods and, if the relevant charge is likely to increase, a statement of the current relevant charge and an estimate of further charges that will accrue;
- (e) a statement to the effect that on or after a specified date the goods will be disposed of unless they are collected and the relevant charge paid;
- (f) if applicable, a statement to the effect that the receiver will retain from the proceeds of sale of the goods an amount not exceeding the sum of the relevant charge and the disposal costs.

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**67 Giving notice**

- (1) A notice under this Division may be given to the person personally or left at, or sent by post to, the person's last known address.
- (2) A notice to a person with a publicly registered interest in uncollected goods is taken to have been given if it has been sent by post to the person's address in the register in which the interest is recorded.

**Division 3—Applications to court, court order and related provisions**

**68 Application to court for disposal order**

- (1) A receiver may apply to a court for an order to dispose of uncollected goods.
- (2) The application must—
  - (a) state fully the grounds on which it is made;
  - (b) include the information in section 66(a) to (d);
  - (c) in the case of the disposal of a motor vehicle, include the written search result required under section 63 and any certificate obtained under section 64.
- (3) The receiver must give a copy of the application to—
  - (a) the provider, if the provider can be located after reasonable enquiries have been made;
  - (b) the owner of the goods, if the owner can be located after reasonable enquiries have been made;
  - (c) any person with a publicly registered interest in the goods;

- (d) any other person known by the receiver to have or to be claiming an interest in the goods.

### **69 Other applications to court**

If a dispute exists between the provider and the receiver regarding the relevant charge for uncollected goods, either party may apply to a court for an order determining the amount of the relevant charge payable to the receiver.

### **70 Court orders**

- (1) On an application under section 68 or 69, the court may make any of the following orders—
- (a) an order authorising the disposal of specified goods under bailment;
  - (b) an order determining the relevant charge payable to the receiver;
  - (c) any other orders that it considers necessary to give effect to an order made under paragraph (a) or (b).
- (2) An order under subsection (1)(a) must specify the following—
- (a) the authorised means of disposal of the goods;
  - (b) the date by which the goods may be disposed of;
  - (c) the amount of the relevant charge payable to the receiver for the goods.

### **71 Payment of relevant charge**

If a court order has been made for the disposal of uncollected goods, the provider, the owner of the uncollected goods or any other person with an interest in the goods is entitled, on payment to the

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receiver of the relevant charge, to delivery of the goods at any time before their disposal.

## **72 Effect of other proceeding**

- (1) If, at any time before the disposal of uncollected goods under Division 2, a person (other than the provider) starts a proceeding for the recovery of the goods, an order made under section 70 is suspended until the proceeding is decided.
- (2) If an order is made for the recovery of the goods, the order made under section 70 ceases to have effect.

### **Division 4—Miscellaneous**

## **73 Proceeds of sale**

- (1) If uncollected goods are sold under Division 2, the receiver is entitled to retain the relevant charge payable to the receiver for the goods and the disposal costs.
- (2) The balance (if any) of the proceeds of sale are to be dealt with as if the receiver were a business and the money were unclaimed money for the purposes of the **Unclaimed Money Act 2008**.
- (3) If the proceeds of the sale are insufficient to pay the relevant charge and disposal costs, the receiver may recover the deficiency from the provider as a debt in court.

## **74 Records held by receiver**

- (1) Within 7 days after disposing of uncollected goods under Division 2, the receiver must prepare a record of the following particulars—
  - (a) a description of the goods;

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- (b) if the goods were disposed of under section 60, 61, 62 or 65—
    - (i) the date and means of giving notice of intention to dispose of the goods; and
    - (ii) the name and address of any person to whom the notice was given;
  - (c) the date of disposal;
  - (d) the manner of disposal;
  - (e) if the goods were sold—
    - (i) the name and address of the purchaser;
    - (ii) the sale price;
    - (iii) the amount retained by the receiver to cover the relevant charge payable to the receiver for the goods;
    - (iv) the amount retained by the receiver to cover the disposal costs;
  - (f) if the goods were sold by public auction, the name and address of the principal place of business of the auctioneer who sold the goods;
  - (g) if applicable, the amount of the balance of the proceeds of sale paid to the Registrar and the date of payment.

Penalty: 10 penalty units, in the case of a natural person;

50 penalty units, in the case of a body corporate.

- (2) The receiver must—
  - (a) retain the record for 6 years from the date of disposal; and

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- (b) make the record available on request by any of the following—
- (i) the provider;
  - (ii) the owner;
  - (iii) any other person claiming to have an interest in the goods.

### **75 Good title**

- (1) The purchaser of goods sold under Division 2 acquires good title to the goods, free from any interest that existed in the goods in favour of another person before the goods were sold, if the purchaser buys the goods—
- (a) without notice of any failure of the receiver to comply with this Part; and
  - (b) without notice of any defect or want of title of the provider.
- (2) A receiver who disposes of goods by appropriation in accordance with Division 2 acquires good title to the goods.

### **76 Receiver to provide purchaser of motor vehicle with receipt**

- (1) If a receiver sells a motor vehicle under Division 2, the receiver must provide the purchaser with a receipt that complies with this section.

Penalty: 10 penalty units, in the case of a natural person;  
50 penalty units, in the case of a body corporate.

- (2) The receipt must contain the following—
- (a) if the receiver is a natural person, the receiver's full name, address and date of birth;



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- (b) if the receiver is a body corporate, the receiver's business name and address and ABN;
  - (c) the vehicle's last registration number (if available) and vehicle identification number;
  - (d) the purchaser's full name, address and date of birth;
  - (e) the date of sale;
  - (f) the sale price;
  - (g) the name of the owner of the vehicle;
  - (h) any other prescribed information.
- (3) The receipt must state that the vehicle has been disposed of under this Part and must be signed by both the purchaser and the receiver.

**77 Application of other provisions**

- (1) For the purposes of Chapter 7—
    - (a) a provider is taken to be a consumer; and
    - (b) a receiver is taken to be a trader; and
    - (c) any dispute under this Part between a provider and a receiver is taken to be a consumer and trader dispute.
  - (2) Section 153 does not apply to this Part.
  - (3) Part 8.2 does not apply to this Part.
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**PART 4.3—FAIR REPORTING**

**78 Correction of errors**

- (1) A consumer who disputes the accuracy or completeness in relation to the consumer of any information compiled by a credit reporting agent may request the agent to correct the information.
- (2) A request under subsection (1) must be by written notice which must—
  - (a) include details of the matters in dispute; and
  - (b) be served on the agent personally or by post or by electronic communication.
- (3) If a consumer makes a request under subsection (1), the credit reporting agent must, within 30 days, inform the consumer—
  - (a) as to whether or not the agent has made any amendment or supplement to or deletion from the information recorded in relation to that consumer; and
  - (b) if so, of the full details of the amendment, supplement or deletion.
- (4) If a credit reporting agent amends, supplements or deletes information, the agent must give written notice of that fact to the following persons within 30 days—
  - (a) all persons who have been supplied with information with respect to the consumer within 6 months before the amendment, supplement or deletion is made;
  - (b) any persons to whom the credit reporting agent has supplied information and whom the consumer requires the agent to notify of the amendment, supplement or deletion.

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- (5) In this section, *consumer* means any person with respect to whom—
- (a) a credit report is made; or
  - (b) any information is held by a credit reporting agent.

**79 Consumer may apply to Magistrates' Court where agent fails to correct information etc.**

- (1) This section applies if a consumer makes a request under section 78 and—
- (a) does not receive any of the information referred to in section 78(3) within 30 days after making the request; or
  - (b) is informed that the credit reporting agent has not made any amendment or supplement to or deletion from the information recorded in relation to the consumer; or
  - (c) is not satisfied with any amendment supplement or deletion of which the consumer is informed.
- (2) The consumer may apply to the Magistrates' Court for an order requiring the credit reporting agent to make any or any further amendment or supplement to or deletion from information compiled in relation to that consumer.
- (3) A consumer must serve written notice of an application under subsection (2) on the credit reporting agent within 7 days after making the application.

**80 Powers of Court on application**

- (1) On an application under section 79, the Magistrates' Court may—
- (a) order that all or any persons or any class or description of persons be excluded from the Court during all or any of the proceedings
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- and, in case of disobedience, order the removal from the Court of those persons; or
- (b) by order prohibit the publication of a report of the proceedings; or
  - (c) make orders under both paragraphs (a) and (b).
- (2) On hearing an application under section 79, the Magistrates' Court may order a credit reporting agent—
- (a) to amend, supplement, or delete any item of information concerning the consumer that is in the agent's possession or under the agent's control—
    - (i) which the Court is satisfied is inaccurate, misleading, or irrelevant to the purpose for which the information is kept; or
    - (ii) which the Court is of the opinion should be amended, supplemented, or deleted by reason of the effluxion of time; and
  - (b) to give full details of that amendment, supplement, or deletion to any person to whom the credit reporting agent has provided information with respect to the consumer and who is specified in the order.
- (3) A credit reporting agent must comply with an order under this section.

Penalty: 60 penalty units or imprisonment for 6 months.

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## CHAPTER 5—SPECIFIC BUSINESS PROVISIONS

### PART 5.1—INTRODUCTION AGENTS

#### Division 1—Interpretation

#### 81 Meaning of introduction agent

An *introduction agent* is a person who carries on a business of providing, or offering to provide, an introduction service.

#### 82 Meaning of introduction service

(1) An *introduction service* is any one or more of the following—

- (a) giving a name (or other identifying details) to a person; or
- (b) giving a document containing names (or other identifying details) to a person; or

**Note**

Section 38 of the **Interpretation of Legislation Act 1984** defines *document*.

- (c) arranging for a person to attend a meeting; or
- (d) doing anything else specified by the regulations for the purposes of this subsection in relation to a person—

for the purpose of introducing the person to one or more other persons who might be interested in having a personal relationship with the person, or in attending a social outing with the person.

(2) For the purposes of subsection (1), it is irrelevant—

- (a) whether the intended introduction is direct or indirect; or
- (b) whether the personal relationship is intended to be for a long or short time.

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### 83 Who carries on a business?

- (1) For the purposes of this Part, a person carries on a business if the person—
  - (a) owns, or partly owns, the business; or
  - (b) is entitled to share in the proceeds of the business; or
  - (c) is in effective control of the business.
- (2) A person is in effective control of a business if he or she—
  - (a) is regularly or usually in charge of the business; or
  - (b) regularly directs the staff of the business in their duties; or
  - (c) establishes and oversees the office procedures of the business; or
  - (d) employs or directs any person who does anything referred to in paragraph (a), (b) or (c).

### 84 Introduction agency not to use sex work service premises

- (1) A person must not act as an introduction agent on any premises that are occupied by a sex work service provider and on or from which the sex work service provider is operating a brothel or escort agency.

Penalty: 240 penalty units.

- (2) In this section, *brothel*, *escort agency* and *sex work service provider* have the same meanings as they have in the **Sex Work Act 1994**.

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**Division 2—Persons who are not introduction agents**

**85 Effect of this Division**

If this Division states that a person does not act as an introduction agent in carrying out an activity, nothing in this Part applies to that person in carrying out that activity.

**86 Exemption for activities with a community purpose**

- (1) A person does not act as an introduction agent by carrying out an activity if—
- (a) the activity is carried out for a community purpose; and
  - (b) the net proceeds from the activity are solely applied (or to be applied) to furthering that purpose.
- (2) In this section, *community purpose* means—
- (a) a philanthropic or benevolent purpose (including the promotion of art, culture, science, religion, education, medicine or charity); or
  - (b) a sporting or recreational purpose (including the benefiting of any sporting or recreational club or association).

**87 Exemption for non-profit activities**

A person does not act as an introduction agent by carrying out an activity—

- (a) that does not have a significant commercial purpose or character; and
- (b) that does not primarily seek to make a profit for the person or any other person.

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**88 Exemption for publishers of advertisements etc.**

- (1) A person does not act as an introduction agent by—
- (a) publishing or making available, details of persons who are seeking a personal or social relationship with one or more other persons—
    - (i) in a newspaper, magazine or similar document that is readily available to members of the public; or
    - (ii) in a television, radio or similar broadcast that is readily accessible to members of the public who possess the necessary equipment; and
  - (b) providing a means of enabling persons seeing or hearing the details to make contact with the persons supplying the details.
- (2) Subsection (1) applies even if—
- (a) it is necessary for members of the public to pay to obtain the newspaper, magazine, document or broadcast; and
  - (b) a charge is imposed on persons making use of the means referred to in subsection (1)(b).

**89 Exemption for information service providers**

- (1) In this section—
- information provider* means a person who operates an information service;
- information service* means the provision of details of persons seeking a personal or social relationship with one or more other persons.
- (2) An information provider does not act as an introduction agent in operating an information service if—
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- (a) a person can obtain details of persons seeking a personal or social relationship with one or more other persons from the information service without the need to speak to, or to otherwise communicate with, the information provider (or any person employed by the information provider); and
  - (b) a person who provides information to the information provider (or any person employed by the information provider) for the purpose of having that information provided to other persons is not, by providing that information, placed under any obligation—
    - (i) to use the service again; or
    - (ii) to pay a fee of more than \$250 (or any other amount fixed by the regulations for the purposes of this paragraph); and
  - (c) a person to whom the information is provided is not, by using the information service, placed under any obligation—
    - (i) to use the service again; or
    - (ii) to pay a fee of more than \$250 (or any other amount fixed by the regulations for the purposes of this paragraph).
- (3) If the fees for providing information to, or obtaining information from, an information service are based on the length of time a person has electronic or mechanical access to the information service and the length of that time is automatically recorded by electronic or mechanical means, subsections (2)(b)(ii) and (2)(c)(ii) do not apply in determining whether an information provider falls within the exemption provided by subsection (2).
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**90 Exemption for organisers of dances etc.**

- (1) A person does not act as an introduction agent merely by organising a social activity with the intention of enabling persons to meet if—
  - (a) the activity is publicly advertised and is open to any member of the public who is willing to pay the admission cost set for the activity; and
  - (b) the admission cost is the only cost a person attending the activity is liable to pay the organiser of the activity; and
  - (c) no person attending the activity is placed under any obligation to the organiser of the activity by reason of being allowed to attend the activity, other than an obligation concerning the person's conduct at the activity itself.
- (2) The condition specified by subsection (1)(a) is met even if a member of the public is refused admission to the activity, if the refusal is based on a failure by that person to obtain admission to the activity before a limit on the number of persons who could attend the activity was reached.
- (3) The condition specified by subsection (1)(b) is met even if food or drink is sold by the organiser in relation to the activity.
- (4) A reference in this section to the organiser of an activity includes a reference to any agent or person associated with the organiser.

**91 Other exemptions**

- (1) A person who is a licensee or an approved manager under the **Sex Work Act 1994** does not act as an introduction agent merely by providing a sex work service or by doing anything incidental to the provision of a sex work service.

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- (2) A person does not act as an introduction agent merely by providing a means that enables another person to offer to provide an introduction service.

**Division 3—Persons who must not act as introduction agents**

**92 Certain persons not to act as introduction agents**

- (1) Subject to section 94, a natural person must not act as an introduction agent if he or she—
- (a) is under 18 years of age; or
  - (b) is an insolvent under administration; or
  - (c) has been found guilty of a serious offence within the last 5 years; or
  - (d) it has been found guilty of an offence under the **Introduction Agents Act 1997** or an equivalent offence in another jurisdiction within the last 5 years; or
  - (e) in offering to provide, or in the provision of, an introduction service, has been found guilty of an offence under this Part or an equivalent offence in another jurisdiction within the last 5 years; or
  - (f) in offering to provide, or in the provision of, an introduction service, has been found guilty of an offence under Part 2 of the **Fair Trading Act 1999** (as in force immediately before 1 January 2011) or under Part 3-2 of the Australian Consumer Law (Victoria) or an equivalent offence in another jurisdiction within the last 5 years; or
  - (g) is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
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(h) is a licensee or an approved manager under the **Sex Work Act 1994**.

Penalty: 120 penalty units or imprisonment for 12 months.

(2) A body corporate must not act as an introduction agent if—

- (a) one or more of its directors is disqualified from acting as an introduction agent by subsection (1); or
- (b) it has been found guilty of a serious offence within the last 5 years; or
- (c) it has been found guilty of an offence under the **Introduction Agents Act 1997** or an equivalent offence in another jurisdiction within the last 5 years; or
- (d) in offering to provide, or in the provision of, an introduction service, it has been found guilty of an offence under this Part or an equivalent offence in another jurisdiction within the last 5 years; or
- (e) in offering to provide, or in the provision of, an introduction service, it has been found guilty of an offence under Part 2 of the **Fair Trading Act 1999** (as in force immediately before 1 January 2011) or under Part 3-2 of the Australian Consumer Law (Victoria) or an equivalent offence in another jurisdiction within the last 5 years; or
- (f) it is an externally-administered body corporate.

Penalty: 600 penalty units.

(3) In this section—

*externally-administered body corporate* has the same meaning as in the Corporations Act;

*serious offence* means an offence involving—

- (a) fraud; or
- (b) dishonesty; or
- (c) drug trafficking; or
- (d) violence—

punishable by imprisonment for 3 months or more regardless of whether the offence occurred in Australia or elsewhere.

#### **Division 4—Permission for disqualified persons to act as introduction agents**

##### **93 Disqualified person may apply for permission to act as an introduction agent**

- (1) A person who is disqualified from acting as an introduction agent by section 92 (other than a person referred to in section 92(1)(a), (g) or (h)) may apply to the Authority at any time for permission to act as an introduction agent.
- (2) An application must—
  - (a) be in a form approved by the Authority; and
  - (b) contain the information required by the Authority; and
  - (c) be accompanied by any documents required by the Authority; and
  - (d) be accompanied by the prescribed fee (if any).
- (3) An application may be withdrawn at any time before the Authority determines it.

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**94 Permission to act as an introduction agent**

- (1) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.
- (2) Without limiting its discretion to do so, the Authority may refuse to give its permission if the applicant—
  - (a) refuses to provide any further information required by the Authority under subsection (3)(b); or
  - (b) fails to provide any further information required by the Authority under subsection (3)(b) within a reasonable time after the requirement is made.
- (3) In determining whether to give its permission, the Authority—
  - (a) is not required to conduct a hearing; and
  - (b) may require the applicant to provide such further information as the Authority considers necessary in the manner required by the Authority; and
  - (c) may seek advice and information on the application from any other person or body as the Authority thinks fit.
- (4) The Authority may revoke a permission granted under this section by notice in writing issued to the person in respect of whom the permission was granted if the Authority is satisfied that it is in the public interest for it to do so.
- (5) The Authority must not revoke a permission without giving the person an opportunity to be heard.

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**95 Authority may impose conditions on permission**

- (1) In giving its permission under section 94(1), the Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.
- (2) The person given the permission, or the Director, may apply to the Authority for a variation or revocation of any conditions the Authority has imposed in respect of the permission.
- (3) A person given permission under section 94(1) must comply with any conditions imposed in respect of that permission.

Penalty: 120 penalty units or 12 months imprisonment, in the case of a natural person;  
600 penalty units, in the case of a body corporate.

- (4) If the Authority is satisfied that any condition imposed in respect of a permission has been contravened or not complied with, it may revoke the permission by notice in writing issued to the person in respect of whom the permission was granted.
- (5) Before taking any action under this section, the Authority may seek and use information and advice from any person or body or other source as it thinks fit.

**96 Application for review**

- (1) A person whose interests are affected by a decision of the Authority under section 94 or 95 may apply to VCAT for review of the decision.

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- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

#### **Division 5—Introduction agreements**

##### **97 What must an introduction agreement contain?**

An introduction agent must not enter into an agreement to provide a person with an introduction service unless the agreement—

- (a) is in writing and is readily legible; and
- (b) starts with the words "Important Notice" printed in at least 14 point bold type followed by the statement set out in Schedule 2 which (apart from any insertions made by hand) must be printed in at least 12 point type; and
- (c) states the names, addresses and telephone numbers of the parties to the agreement; and
- (d) sets out a full description of the service to be provided by the agent under the agreement and the terms on which the service is offered; and
- (e) states the price of the service and the method of payment; and
- (f) contains a statement in bold type that is in at least 12 point type that this Act forbids the payment of more than 30% of the price of



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- the service before any part of the service is provided; and
- (g) sets out the period of the agreement; and
  - (h) states the conditions under which refunds will be made; and
  - (i) is in English and is expressed clearly; and
  - (j) sets out in full all other terms of the agreement; and
  - (k) is signed by the introduction agent (or the introduction agent's authorised agent) and the person who is to be provided with the introduction service under the agreement; and
  - (l) complies with any other requirements set out in the regulations.

Penalty: 240 penalty units.

### **98 Restriction on prepayments**

- (1) An introduction agent must not demand or receive, before any part of an introduction service is provided, an amount that is more than 30% of the price at which the agent agrees to provide the service.

Penalty: 240 penalty units.

- (2) This section does not apply to an introduction agreement if—
    - (a) the amount that is to be paid under the agreement is \$1000 (or any other amount fixed by the regulations) or less; and
    - (b) the total of that amount and all amounts that the person entering into the agreement with the introduction agent paid, or became liable to pay, the agent in respect of any other introduction agreements—
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- (i) in the 30 days immediately before the date the agreement was signed is \$1000 (or any other amount fixed by the regulations) or less; and
  - (ii) in the 12 months immediately before the date of the agreement was signed is \$5000 (or any other amount fixed by the regulations) or less.

**99 Person may withdraw from agreement within 3 days without penalty**

- (1) A person who has entered into an introduction agreement may withdraw from the agreement at any time before the expiration of 3 clear business days after he or she receives a copy of the signed agreement.
- (2) To do this, the person must within that time—
  - (a) give, or cause to be delivered to, the introduction agent; or
  - (b) leave at the address shown as the agent's address in the agreement; or
  - (c) send by facsimile or by other electronic means to the agent—

a written notice signed by the person that states that he or she withdraws from the agreement.
- (3) If a person withdraws from an agreement under this section—
  - (a) the introduction agent is entitled to \$250 (or any other amount fixed by the regulations) or 10% of the total amount that is to be paid to the agent under the agreement (whichever is the lower amount); and

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- (b) the agent must refund all money paid to the agent under the agreement by (or on behalf of) the person (other than any amount the agent is entitled to under paragraph (a)); and
- (c) the person is not liable to the agent in any way for withdrawing from the agreement (regardless of anything to the contrary in the agreement).
- (4) An introduction agent who must refund money to a person under subsection (3)(b) must do so within 7 days after receiving the notice of withdrawal.

Penalty: 240 penalty units.

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**PART 5.2—LIABILITY OF ACCOMMODATION PROVIDERS**

**100 Application of common law**

For innkeeper's lien and innkeeper's liability—

- (a) an accommodation provider, and only an accommodation provider, is an innkeeper;
- (b) an accommodation place, and only an accommodation place, is an inn.

**101 Liability of accommodation providers under this Part**

- (1) Subject to subsection (2) and section 102, an accommodation provider is liable to make good the loss of any property of a guest if the property is lost—
  - (a) in the accommodation place during the period of accommodation; or
  - (b) while the property is deposited for safekeeping with the accommodation provider.
- (2) This liability of an accommodation provider under this Part does not include liability for the loss of any property of a guest if the loss was due to an intentional or negligent act or omission of the guest.

**102 Limitation on accommodation providers' liability for property of guest**

- (1) Subject to subsection (2), the liability of an accommodation provider to make good the loss of, or damage to, any property of a guest under section 101 is limited to \$300 per unit of accommodation or any higher prescribed amount if the notice set out in Schedule 3 was displayed in accordance with section 104—
    - (a) at all times during the accommodation period; and
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- (b) at the time of the arrival of the guest at the accommodation place.
- (2) Subsection (1) does not apply if—
- (a) the property of the guest had been deposited by or on behalf of the guest for safekeeping with the accommodation provider in accordance with section 103; or
  - (b) the accommodation provider had represented that a safekeeping service was available at the accommodation place before the guest agreed to purchase the accommodation and the accommodation provider—
    - (i) had unreasonably refused to accept the property for safekeeping; or
    - (ii) was unable to accept the property for safekeeping due to the default of the accommodation provider; or
  - (c) the loss or damage was caused by the intentional or negligent act or omission of the accommodation provider or its employees or agents.

**103 Accommodation provider to provide safekeeping service**

- (1) An accommodation provider must accept the property of a guest for deposit in a safekeeping service unless the accommodation provider has a reasonable excuse for not doing so.
  - (2) If a guest asks to use an accommodation provider's safekeeping service, the accommodation provider—
    - (a) may inspect the property to be deposited by the guest;
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- (b) may ask the guest to describe the nature of the property and the approximate value of the property;
  - (c) must provide the guest with a receipt for the property, which contains the information given under paragraph (b);
  - (d) may require the guest to place the property in a container and fasten or seal the container.
- (3) An accommodation provider is liable for the loss of a guest's property if it happens after the accommodation provider accepts the property for depositing in the safekeeping service.
- (4) Subject to subsection (5), the liability of an accommodation provider under subsection (3) is limited to \$3000 (or another prescribed amount) for each unit of accommodation provided for the use of the guest on the day of the loss, irrespective of—
- (a) the number of guests who are provided with the use of that unit of accommodation on the day; and
  - (b) the value of the loss on the day.
- (5) The limitation on liability under subsection (4) does not apply if, before or at the time the accommodation provider accepts the property for depositing in the safekeeping service—
- (a) the guest, in writing given to the accommodation provider, declares the value of the property is more than \$3000 (or the amount prescribed under subsection (4)); and
  - (b) the accommodation provider agrees, in writing given to the guest, to accept liability for the value of the property stated under paragraph (a); and
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- (c) the guest agrees to pay a fee for the accommodation provider accepting the property for depositing in the safekeeping service, if asked to do so by the accommodation provider.
- (6) For the purposes of subsection (1), a reasonable excuse includes—
- (a) that the guest does not place the property in a container and fasten or seal it, in response to a requirement under subsection (2)(d);
  - (b) in a case where subsection (5) applies, that the guest does not agree to pay any fee requested under subsection (5)(c);
  - (c) that the accommodation provider reasonably considers that depositing the property in the safekeeping service would be unreasonable having regard to the property's nature, size or value and the type of accommodation and tariff charged for the accommodation.

#### **104 Notice about this Part**

- (1) An accommodation provider must cause the notice set out in Schedule 3 to be conspicuously displayed so it may easily be read by a person when the person is in the reception area of, or the main entrance to, the accommodation place.
  - (2) An accommodation provider must cause the notice set out in Schedule 3—
    - (a) to be conspicuously displayed in each unit of accommodation that is provided to guests so it may easily be read by a guest who has use of that unit of accommodation; or
    - (b) to be given to the guest in respect of each unit of accommodation, provided that the notice is specifically identified and mentioned to the guest.
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**105 Innkeeper's lien**

If a person is a guest of an accommodation provider and the guest's actions would, if the accommodation provider were an innkeeper at common law, give rise to an innkeeper's lien for the guest's property, the accommodation provider may exercise an innkeeper's lien for the guest's property.

**106 Chapter 8 not to apply**

Chapter 8 does not apply to this Part.

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## CHAPTER 6—CONSUMER AFFAIRS VICTORIA

### PART 6.1—ADMINISTRATION

#### 107 Director of Consumer Affairs Victoria

There is to be a Director of Consumer Affairs Victoria employed under Part 3 of the **Public Administration Act 2004**.

#### 108 Staff

There may be employed under Part 3 of the **Public Administration Act 2004** any other employees that are necessary for the administration of this Act.

#### 109 Functions of the Director

The Director has the following functions—

- (a) to advise persons of their rights and obligations under this Act or a Consumer Act;
- (b) to receive complaints from persons and to deal with them in accordance with this Act or a Consumer Act;
- (c) to monitor compliance with this Act and the regulations and the Consumer Acts and the regulations under the Consumer Acts;
- (d) to prepare and publish guidelines in relation to the operation and enforcement of this Act or the regulations or a Consumer Act or the regulations under a Consumer Act;
- (e) to investigate breaches of this Act or the regulations or of a Consumer Act or the regulations under a Consumer Act;
- (f) to prosecute breaches of this Act or the regulations or of a Consumer Act or the regulations under a Consumer Act;

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- (g) to institute and defend proceedings to achieve the purposes of this Act or the purposes of a Consumer Act;
  - (h) to encourage the preparation and use of codes of practice for guidance in safeguarding and promoting the interests of purchasers of goods and services;
  - (i) to prepare codes of practice safeguarding and promoting the interests of purchasers of goods and services and submit those codes of practice to the Minister for inclusion in the regulations under this Act;
  - (j) in respect of matters affecting the interests of purchasers and suppliers—
    - (i) to investigate those matters; and
    - (ii) to conduct research; and
    - (iii) to collect and collate information;
  - (k) to report to the Minister on any matter in relation to fair trading which he or she has investigated, either on his or her own motion or at the request of the Minister;
  - (l) to educate and inform people on fair trading issues;
  - (m) any power that, before the repeal of the **Companies (Administration) Act 1981**, could be exercised by the Commissioner for Corporate Affairs under that or any other Act, including the power to commence proceedings under section 10 of that Act;
  - (n) any other function conferred on the Director by or under this Act or any other Act.

### 110 Powers of the Director

The Director has all the powers necessary to perform his or her functions.

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### **111 Powers of delegation**

The Director, by instrument, may delegate to any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act, any of the Director's functions or powers under this Act, other than this power of delegation or a power of the Director under section 126.

### **112 Director's report**

- (1) The Director must submit an annual report on the operation of this Act to the Minister on or before 31 December in each year.
  - (2) The Minister must cause a report received under subsection (1) to be laid before each House of Parliament within 21 sitting days of that House after it is received.
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**PART 6.2—POWERS OF DIRECTOR**

**Division 1—Disputes**

**113 Making a complaint**

- (1) Any person may complain to the Director about any matter which the Director has power to refer to conciliation under section 114.
- (2) A person may complain to the Director in writing.
- (3) The Director may ask a person who has made a complaint to give more information about the complaint within the time fixed by the Director.
- (4) A person who has made a complaint must give his or her name to the Director and such other information relating to his or her identity as the Director may require.

**114 Conciliation and mediation**

- (1) The Director may refer to a consumer affairs employee for conciliation or mediation any dispute—
  - (a) between a purchaser (who is a natural person) or a possible purchaser (who is a natural person) and a supplier about a supply or possible supply of goods or services in trade or commerce;
  - (b) between a consumer (other than a natural person) or a possible consumer (other than a natural person) and a supplier about a supply or possible supply of goods or services in trade or commerce.

**Note**

Section 3 of the Australian Consumer Law (Victoria) defines *consumer*.

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- (2) A dispute referred to a consumer affairs employee under subsection (1) must be reasonably likely to be settled.
  - (3) If the whole or any part of a dispute under subsection (1) falls within the jurisdiction of any prescribed person or body, the Director must refer the dispute, or that part of the dispute, to the person within whose jurisdiction it falls.
  - (4) Subsection (1) applies whether or not a person has made a complaint under section 113.
  - (5) In this section—

*consumer affairs employee* means any person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.

#### **115 Powers of the Director in relation to proceedings on behalf of consumers**

- (1) The Director may, subject to this section, institute or continue proceedings on behalf of, or defend proceedings brought against, a person or persons in respect of a consumer dispute.
  - (2) The Director must not, under subsection (1), institute or continue or defend proceedings unless the Director is satisfied—
    - (a) that the person or persons have a good cause of action or a good defence to an action relating to the consumer dispute; and
    - (b) that the person or persons are not bringing proceedings against a natural person who is acquiring goods or services of a kind ordinarily used for personal, household or domestic purposes; and
    - (c) that it is in the public interest to institute, continue or defend proceedings on behalf of the person or persons.
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- (3) The Director must not, under subsection (1), institute, continue or defend proceedings on behalf of a person or persons unless—
- (a) the person has or the persons have given consent in writing; or
  - (b) in the case of group proceedings or representative proceedings, the representative party has given consent; or
  - (c) the proceedings are instituted, continued or defended under a provision of an Act that expressly provides that the consent of the person on whose behalf the proceedings are instituted, continued or defended is not required for the purposes of this section.

**Note**

See, for example, sections 209 and 399A of the **Residential Tenancies Act 1997**.

- (4) After consent has been given under subsection (3)(a) or (b), the Director may institute or continue a proceeding or defence on behalf of a person or persons even if the person or any of the persons revokes the consent.
- (5) In this section—

***consumer dispute*** means a dispute between a purchaser or purchasers or a possible purchaser or purchasers and a supplier about a supply or supplies or possible supply or supplies of goods or services in trade or commerce, other than a dispute under or in relation to the National Consumer Credit Protection Act 2009 of the Commonwealth;

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*proceeding* includes group proceeding and representative proceeding.

**Note**

This section is not intended to displace or limit the procedures for applications under section 149 or 277 of the Australian Consumer Law (Victoria).

**116 Proceedings and costs**

- (1) If the Director institutes, continues or defends proceedings on behalf of a person under section 115—
    - (a) the Director may settle the proceedings either with or without obtaining judgment in the proceedings; and
    - (b) if a judgment is obtained in the proceedings in favour of the person, the Director may take such steps as are necessary to enforce the judgment; and
    - (c) subject to subsections (2) and (3), an amount (other than an amount in respect of costs) recovered by the Director in respect of the person in the proceedings is payable to the person; and
    - (d) an amount in respect of costs recovered in the proceedings is payable to the Director; and
    - (e) subject to subsection (2), the person is liable to pay an amount (not being an amount of costs) awarded against the person in the proceedings; and
    - (f) the Director is liable to pay the costs of or incidental to the proceedings that are payable by the person.
  - (2) If the Director institutes, defends or continues proceedings on behalf of a person without that person's consent or after the person revokes the
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consent to the institution, defence or continuation of the proceedings—

- (a) the Director must compensate the person for—
    - (i) any loss suffered as the result of the loss of any settlement offer made to the person; and
    - (ii) out-of-pocket expenses incurred by the person during the proceedings after the revocation of consent; and
  - (b) the Director is liable to pay any amount awarded against the person in the proceedings.
- (3) If the Director institutes, defends or continues proceedings on behalf of a person without that person's consent or after the person revokes the consent to the institution, defence or continuation of the proceedings, any amount recovered by the Director in respect of the person in the proceedings (including any amount for costs) that exceeds the amount payable to the person under subsection (2) may be applied to the payment of the costs of, and incidental to, the proceedings for which the Director is liable or that are incurred by the Director in relation to the proceedings.
- (4) If, in proceedings instituted, continued or defended on behalf of a person under section 115—
- (a) a party to the proceedings files a counterclaim; or
  - (b) the person is entitled to file a counterclaim—
- and the counterclaim is not or would not be related to the proceedings and to the interests of the person in the dispute, the Director may apply to the court or VCAT hearing the proceedings for



an order that the counterclaim not be heard in the course of those proceedings.

- (5) If the court or VCAT makes an order under subsection (4), the court or VCAT may make any ancillary or consequential orders that it thinks just.

### **117 Grants of legal assistance**

- (1) The Director may grant legal assistance to a person who claims to be involved in a consumer dispute if the person—
- (a) wishes to bring legal proceedings (other than criminal proceedings) arising out of the supply or the failure to supply to the person of goods or services or the disposal to the person of an interest in land; or
  - (b) wishes to make an appeal or seek judicial review in relation to legal proceedings of a kind referred to in paragraph (a); or
  - (c) is a party to legal proceedings or proceedings relating to an appeal or review referred to in paragraph (a) or (b).
- (2) For the purposes of subsection (1), the Director—
- (a) must be satisfied that the person has reasonable grounds for bringing, or being a party to, the proceedings; and
  - (b) must be of the opinion that it is desirable, in the general interests of consumers or of any class of consumers, that assistance should be granted; and
  - (c) must obtain the written approval of the Minister to grant the assistance.
- (3) Despite subsections (1) and (2), the Director may decide not to grant assistance if the Director is of the opinion that it should not be granted because of the person's financial position.

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- (4) If the Director decides to grant assistance under subsection (1)—
- (a) the Director must notify the person to whom the assistance is being granted; and
  - (b) the person must not, without the consent of the Director, withdraw from the proceedings or discharge any Australian legal practitioner acting in the proceedings.
- (5) Assistance granted under this section does not extend to expenses other than—
- (a) the costs of legal representation; and
  - (b) prescribed expenses.
- (6) Expenses incurred in the provision of assistance under this section and court fees must be met out of money from the Consolidated Fund, which is, to the necessary extent, appropriated accordingly.
- (7) In this section, *consumer dispute* has the same meaning as it has in section 115.

**118 Costs and expenses relating to proceedings to which assisted person is a party**

- (1) If a person is granted assistance under section 117, the court must, in making an order for costs—
- (a) in favour of the assisted person—make the same order (except against another assisted person) as the court would have made in favour of the assisted person if the person had not been an assisted person; or
  - (b) against the assisted person—make the same order (except in favour of another assisted person) as the court would have made against the assisted person if the person had not been an assisted person.

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- (2) If an order for costs is made under subsection (1)(a)—
- (a) the costs are payable to the Director instead of the person in whose favour the order is made;
  - (b) the costs may be recovered by the Director as a debt due to the Crown;
  - (c) the costs, upon being paid to or recovered by the Director, must be paid into the Consolidated Fund.
- (3) If an order for costs is made under subsection (1)(b), the costs must be paid by the Director.
- (4) Except in the case of costs payable to the Director, money awarded by a court in favour of an assisted person is payable to the person without deduction.

#### **Division 2—Show cause notices**

##### **119 Show cause notice**

- (1) The Director may, by notice in writing, require a supplier to show cause why the supplier should be allowed to continue carrying on the business of supplying goods or services.
- (2) The Director may issue a notice under subsection (1) if the Director is of the opinion that there are reasonable grounds to believe that—
  - (a) the supplier has engaged in conduct that contravenes this Act or the regulations; and
  - (b) it is likely that the supplier will continue to engage in that conduct; and
  - (c) there is a danger that a person may suffer harm, loss or damage as a result of that conduct unless action is taken urgently.

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- (3) A notice under subsection (1) must—
- (a) be served—
    - (i) personally on a supplier who is a natural person; or
    - (ii) at the registered office and the last known business address of a supplier that is a corporation; or
    - (iii) at the last known business address of a supplier that is a body corporate, other than a corporation;
  - (b) specify the conduct which the supplier is believed to have engaged in;
  - (c) state the time period within which the supplier must respond to the notice, that time period being not less than 14 days from the date of service of the notice;
  - (d) state what steps need to be taken by the supplier to respond to the notice;
  - (e) state the consequences for the supplier of not responding to the notice.
- (4) Despite subsection (3)(a)(i), if, on the application of the Director, it appears to VCAT that service cannot be promptly effected on a supplier who is a natural person, VCAT may order that the notice be served—
- (a) by sending it by post, facsimile or other electronic transmission to the supplier at his or her usual or last known residential or business address; or
  - (b) by leaving it at the supplier's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there.
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- (5) If a supplier has not responded to a notice under this section in accordance with subsection (3) within the period specified in the notice, the supplier must, at the end of that period, cease to carry on a business of supplying goods or services to which the notice relates or any business of a like kind.

Penalty: 600 penalty units, in the case of a natural person;  
1200 penalty units, in the case of a body corporate.

- (6) A supplier to whom a notice under this section applies may apply to VCAT for a review of the decision to issue the notice.

- (7) A supplier must not, in response to the notice, make a statement to the Director that is false or misleading in a material particular.

Penalty: 600 penalty units, in the case of a natural person;  
1200 penalty units, in the case of a body corporate.

### **Division 3—Licence suspension**

#### **120 Director may suspend licence**

- (1) Despite anything to the contrary in a business licensing Act or any other Act or law other than this Division, the Director may suspend a licence by notice in writing issued to the licensee.
- (2) The Director may only suspend a licence under this section if the Director has reasonable grounds to believe that—
- (a) the licensee has engaged in conduct that under the relevant business licensing Act would constitute grounds for the initiation of disciplinary action against the licensee or the
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- bringing of proceedings for an offence or for an injunction; and
- (b) it is likely that the licensee will continue to engage in that conduct; and
  - (c) there is a danger that a person may suffer substantial harm, loss or damage as a result of that conduct unless action is taken urgently.
- (3) A notice under subsection (1)—
- (a) must be served—
    - (i) personally on a licensee who is a natural person; or
    - (ii) at the registered office and the last known business address of a licensee that is a corporation; or
    - (iii) at the last known business address of a licensee that is a body corporate, other than a corporation;
  - (b) must specify the conduct which the licensee is believed to have engaged in;
  - (c) must state the rights of review open to the licensee;
  - (d) has effect, whether or not the licensee has been afforded an opportunity to be heard on the matter.
- (4) Despite subsection (3)(a)(i), if, on the application of the Director, it appears to VCAT that service cannot be promptly effected on a licensee who is a natural person, VCAT may order that the notice be served—
- (a) by sending it by post, facsimile or other electronic transmission to the person at his or her usual or last known residential or business address; or
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(b) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there.

(5) The suspension takes effect on the service of the notice.

### 121 Effect of suspension

(1) This section applies despite anything to the contrary in a business licensing Act or any other Act or law other than this Division.

(2) If a notice is issued under this Division suspending—

(a) an estate agent's licence under the **Estate Agents Act 1980**; or

(b) a motor car trader's licence under the **Motor Car Traders Act 1986**; or

(c) a licence within the meaning of the **Sex Work Act 1994**—

S. 121(2)(c)  
amended by  
No. 16/2014  
s. 6(a).

S. 121(2)(d)  
repealed by  
No. 16/2014  
s. 6(b).

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the licence is deemed to be suspended for the purposes of that Act for the licence suspension period.

(3) If a notice is issued under this Division suspending a licensee's right to act as an agent's representative within the meaning of the **Estate Agents Act 1980**, the licensee is deemed to be ineligible to act as an agent's representative for the purposes of that Act for the licence suspension period.

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- (4) If a notice is issued under this Division suspending a licensee's right to participate in a customer service capacity in the business of a motor car trader within the meaning of the **Motor Car Traders Act 1986**, the licensee is deemed, for the purposes of that Act, not to be permitted to be employed in a customer service capacity by a motor car trader for the licence suspension period.
- (5) If a notice is issued under this Division suspending an approval under Division 5 of Part 3 of the **Sex Work Act 1994**, the approval is deemed to be suspended for the purposes of that Act for the licence suspension period.
- (6) If a notice is issued under this Division suspending the registration or endorsement of registration of a licensee under the **Second-Hand Dealers and Pawnbrokers Act 1989**, the registration or endorsement is deemed to be suspended for the purposes of that Act for the licence suspension period.
- (7) If a notice is issued under this Division suspending a licensee's licence under the **Conveyancers Act 2006**, the licensee is deemed for the purposes of that Act to be prohibited from doing either or both of the following during the licence suspension period—
- (a) carrying on a conveyancing business;
  - (b) undertaking conveyancing work as an employee of a conveyancing business.

## 122 Lapsing or continuation of suspension

- (1) A suspension under this Division lapses if within the required period after the service of the notice—



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- (a) an application is not made to VCAT under a business licensing Act to inquire into the conduct of the licensee that is the subject of the notice; or
- (b) proceedings have not commenced in a court in relation to the conduct of the licensee that is the subject of the notice.
- (2) If within the required period after the service of the notice—
- (a) an application is made to VCAT under a business licensing Act to inquire into the conduct of the licensee that is the subject of the notice; or
- (b) proceedings are commenced in a court in relation to the conduct of the licensee that is the subject of the notice—
- the suspension continues until a further order is made by VCAT or the court.
- (3) If a suspension lapses under this section after service of a notice, the Director must not serve another notice on the licensee under this Division for a period of 6 months from the date of service of the first notice.
- (4) The power conferred by this Division is in addition to and does not limit or displace a power conferred on the Director or any other person or body by or under a business licensing Act to suspend or cancel a licence or to take action against a licensee in respect of the conduct concerned.
- (5) In this section *required period* means—
- (a) 14 days; or
- (b) if VCAT or a court makes an order under section 123 extending that period, that extended period.
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### **123 Extension of period**

- (1) The Director may apply to VCAT or the court within 14 days after the service of a notice under section 120 or, if an extension of that period has been granted under this section, before the end of the period of the extension, to extend the period within which an application must be made or proceedings commenced for the purposes of section 122(1) and (2).
- (2) On an application under subsection (1), VCAT or the court—
  - (a) must consider the likelihood that an application or proceedings referred to in section 122(1) and (2) will be made or commenced; and
  - (b) may make an order extending the period if in all the circumstances it considers it just and convenient to do so.
- (3) An extension may be for a period not exceeding 14 days.
- (4) VCAT or the court may adjourn any application under this section to enable notice of the application to be given to any person.

### **124 Right of review**

A licensee may apply to VCAT for a review of the decision to issue a notice under this Division.

## **Division 4—Obtaining information, documents and evidence**

### **125 Power to obtain information and documents to monitor compliance**

- (1) The Director may, by notice in writing, require a person who the Director believes is capable of providing information or producing documents that may assist the Director in monitoring compliance with this Act or the regulations—
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- (a) to provide to the Director, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, that information; or
- (b) to produce to the Director, or to a person specified in the notice acting on the Director's behalf, in accordance with the notice, those documents; or
- (c) to appear before the Director at a time and place specified in the notice to give that information, either orally or in writing, and produce those documents.
- (2) A person must not—
- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
- (b) in purported compliance with a notice under this section, knowingly provide information or give evidence that is false or misleading; or
- (c) obstruct or hinder the Director in exercising a power under this section.
- Penalty: 20 penalty units.
- (3) Subject to subsection (4), a person is not excused from answering a question, providing information or producing or permitting the inspection of a document on the ground that the answer, information or document may tend to incriminate the person.
- (4) Despite subsection (3), the answer by a person to any question asked in a notice under this section or the provision by a person of any information or the production by any person of a document in compliance with a notice under this section, is not
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admissible in evidence against the person in any proceedings other than proceedings under this section.

- (5) If any documents are produced to the Director under this section, the Director may make copies of or take extracts from the documents and retain possession of those copies and extracts.
- (6) Section 127 does not apply to documents produced under this section.

**126 Power to obtain information, documents and evidence**

- (1) If the Director believes that a person is capable of providing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of this Act, the Director may, by notice in writing, require that person—
  - (a) to provide to the Director, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, that information; or
  - (b) to produce to the Director, or to a person specified in the notice acting on the Director's behalf, in accordance with the notice, those documents; or
  - (c) to appear before the Director, or a person specified in the notice acting on the Director's behalf, at a time and place specified in the notice to give that evidence, either orally or in writing, and produce those documents.

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- (2) The Director or the person specified in the notice acting on the Director's behalf may require the evidence referred to in subsection (1)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.
- (3) A person must not—
- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
  - (b) in purported compliance with a notice under this section, knowingly provide information or give evidence that is false or misleading; or
  - (c) obstruct or hinder the Director in exercising a power under this section.

Penalty: 60 penalty units.

- (4) Subject to subsection (5), a person is not excused from answering a question, providing information or producing or permitting the inspection of a document on the ground that the answer, information or document may tend to incriminate the person.
- (5) Despite subsection (4), the answer by a person to any question asked in a notice under this section or the provision by a person of any information in compliance with a notice under this section, is not admissible in evidence against the person—
- (a) in the case of a person not being a body corporate—in any criminal proceedings other than proceedings under this section; or
  - (b) in the case of a body corporate—in any criminal proceedings other than proceedings under this Act.
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### **127 Powers in relation to documents**

If any documents are produced to the Director under this Division, the Director may—

- (a) inspect the documents or authorise a person to inspect the documents;
- (b) make copies of or take extracts of the documents;
- (c) seize the documents if the Director—
  - (i) considers the documents necessary for obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations; or
  - (ii) considers the documents necessary for obtaining evidence for the purpose of any proceedings against any person under any other Consumer Act or the regulations under that Act; or
  - (iii) believes on reasonable grounds that it is necessary to seize the documents to prevent their concealment, loss or destruction or their use in the contravention of any Consumer Act;
- (d) secure any seized documents against interference;
- (e) retain possession of the documents in accordance with this Division.

### **128 Copies of seized documents**

- (1) If the Director retains possession of a document seized from a person under this Division, the Director must give the person, within 21 days of the seizure, a copy of the document certified as correct by the Director.

- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

**129 Retention and return of seized documents**

- (1) If the Director seizes a document under this Division, the Director must take reasonable steps to return the document to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document seized has not been returned within 3 months after it was seized, the Director must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
  - (b) the Magistrates' Court makes an order under section 130 extending the period during which the document may be retained.

**130 Magistrates' Court may extend 3 month period**

- (1) The Director may apply to the Magistrates' Court—
- (a) within 3 months after seizing a document under this Division; or
  - (b) if an extension has been granted under this section, before the end of the period of the extension—
- for an extension (not exceeding 3 months) of the period for which the Director may retain the document but so that the total period of retention does not exceed 12 months.

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- (2) The Magistrates' Court may order such an extension if it is satisfied that—
- (a) it is in the interests of justice; and
  - (b) the total period of retention does not exceed 12 months; and
  - (c) retention of the document is necessary—
    - (i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
    - (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) The Magistrates' Court must consider the interests of the owner of the document or thing and may adjourn an application to enable notice of the application to be given to any person.

### **131 Complaints**

- (1) Any person may complain to the Secretary about the exercise of a power by the Director under this Division.
- (2) The Secretary must—
- (a) investigate any complaint made to the Secretary; and
  - (b) provide a written report to the complainant on the results of the investigation.

### **132 Service of documents**

- (1) A written requirement by the Director under this Division may be given personally or by registered post to a person—
- (a) at the last known place of business, employment or residence of the person; or



- (b) in the case of a body corporate, at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of the Director under this Division may send that document or information to the Director by registered post.

### **133 Information sharing**

- (1) The Director may enter into, or approve of, an arrangement (an *information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information held by the Director and the relevant agency.
- (2) The information to which an information sharing arrangement may relate is limited to the following—
  - (a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters;
  - (b) probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers;
  - (c) any other information affecting the interests of consumers;
  - (d) any other information of a prescribed kind.
- (3) Under an information sharing arrangement, the Director and the relevant agency are authorised—
  - (a) to request and receive information held by the other party to the arrangement; and
  - (b) to disclose information to the other party—but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or a Consumer Act or the functions of the relevant agency concerned.

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- (4) Without limiting subsection (3), the Director may also (whether as part of an information sharing arrangement or otherwise)—
- (a) refer any matter (including any complaint) with respect to fair trading, or that affects the interests of consumers, to a fair trading agency or law enforcement agency;
  - (b) receive any matter of a type described in paragraph (a) from a fair trading agency or law enforcement agency;
  - (c) conduct a joint investigation into any such matter with a fair trading agency or law enforcement agency.
- (5) Any fair trading agency or law enforcement agency referred to in subsection (4) is, despite any other Act or law of the State, authorised to refer a matter referred to in subsection (4) to the Director or to conduct an investigation into the matter jointly with the Director.
- (6) This section does not limit—
- (a) the powers of the Director under this Part; or
  - (b) the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body; or
  - (c) the giving of information—
    - (i) to a court or tribunal in the course of legal proceedings; or
    - (ii) pursuant to an order of a court or tribunal; or
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- (iii) to the extent reasonably required to enable the investigation or the enforcement of a law of the State or of any other State or Territory or of the Commonwealth; or
- (iv) to the Business Licensing Authority established under the **Business Licensing Authority Act 1998**; or
- (v) with the written authority of the Secretary; or
- (vi) with the written authority of the person to whom the information relates.

(7) In this section—

*fair trading agency* means an agency of the State, or of the Commonwealth, or of another State or Territory or of an overseas jurisdiction, that exercises functions under an enactment with respect to fair trading;

*law enforcement agency* means—

- (a) Victoria Police or the police force or police service of another State or Territory or of an overseas jurisdiction; or
- (b) the Australian Federal Police; or
- (c) the Australian Crime Commission; or
- (d) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction;

S. 133(7) def. of *law enforcement agency* amended by No. 37/2014 s. 10(Sch. item 6.4).

*relevant agency* means—

- (a) a fair trading agency; or
- (b) a law enforcement agency; or
- (c) any other agency of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction; or
- (d) any other person or body that exercises functions, in the public interest, that involve protecting the interests of consumers.

#### **Division 5—Victorian Consumer Law Fund**

#### **134 Victorian Consumer Law Fund**

- (1) There is to be kept in the Trust Fund established under the **Financial Management Act 1994**, a trust account to be known as the Victorian Consumer Law Fund.
- (2) The following must be paid into the Fund—
  - (a) any pecuniary penalty ordered by a court under section 224 of the Australian Consumer Law (Victoria) to be paid to the State;
  - (b) any amount ordered by a court under section 239(1) of the Australian Consumer Law (Victoria) to be paid into the Fund;
  - (ba) any amount ordered by a court under section 80 or 81 of the **Fire Services Levy Monitor Act 2012** to be paid into the Fund;
  - (c) amounts paid under section 86A of the **Credit Act 1984**;
  - (d) amounts required under the **Consumer Credit (Victoria) Act 1995** to be paid into the Consumer Credit Fund;

S. 134(2)(ba)  
inserted by  
No. 81/2012  
s. 112.

- (e) any other amount required under this Act to be paid into the Fund;
  - (f) money appropriated by the Parliament for the purposes of the Fund;
  - (g) interest received on money invested in the Fund.
- (3) Money must not be paid out of the Fund except in accordance with this Part.
- (4) The Treasurer may invest money in the Fund in such manner as the Treasurer determines.

**135 Order for payment to non-party consumers**

- (1) This section applies if, on the application of the Director, a court makes an order (a *non-party order*) under section 239(1) of the Australian Consumer Law (Victoria) for an amount or amounts to be paid into the Fund to provide for the payment of money to non-party consumers.
- (2) The order must—
- (a) require notice to be given to non-party consumers to the extent that is practicable and in the manner specified in the order;
  - (b) specify the manner in which a non-party consumer may make a claim for payment from the Fund;
  - (c) specify the criteria that must be satisfied before a payment is made from the Fund to a non-party consumer;
  - (d) specify the day by which a non-party consumer may make a claim for payment from the Fund;
  - (e) specify the final day (being a day not more than 3 years from the day money is paid into the Fund under the order) on which a

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- payment from the Fund may be made to a non-party consumer;
- (f) specify the treatment of any money remaining on the final payment day from amounts paid into the Fund pursuant to the order, and the interest earned on those amounts, which may include—
- (i) the return of some or all of the remaining money to the person against whom the order is made;
  - (ii) making some or all of the remaining money available for the purposes of sections 136 and 137;
  - (iii) any other treatment that the court considers appropriate.
- (3) The court may specify in the order that any amount paid into the Fund pursuant to the order may be applied to the costs of disbursing payments to non-party consumers made pursuant to the order.
- (4) The Director is responsible for the distribution of money from the Fund to non-party consumers pursuant to a non-party order.
- (5) The distribution of money from the Fund to non-party consumers must be made in accordance with the non-party order and may only be made from the amount or amounts paid into the Fund pursuant to the order.

### **136 Special purpose grants**

- (1) The Minister may, on the recommendation of the Director, make payments out of the Fund for—
- (a) the purposes of improving consumer wellbeing, consumer protection or fair trading; or

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- (b) any other purpose consistent with the objects of the Australian Consumer Law (Victoria).
  - (2) A payment under subsection (1) may be made to the Director or to any other person or organisation.
  - (3) A payment under subsection (1) may only be made from the following money—
    - (a) any pecuniary penalty paid into the Fund under section 134(2)(a) and the interest earned on that payment;
    - (b) money appropriated by the Parliament for the Fund and the interest earned on that money;
    - (c) any money paid into the Fund pursuant to a non-party order remaining on the final payment day that the order has specified may be applied for the purposes of this section.

**137 Administration expenses**

- (1) The Director may approve payment from the Fund for any reasonable expenses incurred in administering the Fund.
  - (2) A payment under subsection (1) may only be made from the following money—
    - (a) any pecuniary penalty paid into the Fund under section 134(2)(a) and the interest earned on that payment;
    - (b) money appropriated by the Parliament for the Fund and the interest earned on that money;
    - (c) any money paid into the Fund pursuant to a non-party order—
      - (i) that the order specifies may be applied to the cost of disbursing payments to non-party consumers; or
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- (ii) remaining on the final payment day and that the order has specified may be applied for the purposes of this section.

**Division 6—Fire Services Levy Monitor Act 2012**

Pt 6.2 Div. 6  
(Heading and  
s. 137A)  
inserted by  
No. 81/2012  
s. 116.

**137A Director to succeed Fire Services Levy Monitor**

S. 137A  
inserted by  
No. 81/2012  
s. 116.

- (1) In this section, *relevant day* means 31 December 2014.
- (2) The Director is, by force of this section, substituted as a party to any proceedings pending or existing in any court immediately before the relevant day to which the Fire Services Levy Monitor was a party.
- (3) Any act, matter or thing of a continuing nature which was commenced by the Fire Services Levy Monitor before the relevant day may be continued and completed by the Director.
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**PART 6.3—CODES OF PRACTICE**

**138 Preparation of draft code of practice by the Director**

- (1) The Director may, with the approval of the Minister, prepare for submission to the Minister a draft code of practice for fair trading—
  - (a) between a particular class of suppliers and any purchasers; or
  - (b) by a particular class of persons and a particular class of purchasers; or
  - (c) in relation to the supply of a particular kind of goods or services.
- (2) The Director must prepare and submit a draft code of practice under subsection (1) if directed by the Minister.

**139 Consideration of draft code of practice**

If the Director is satisfied that suppliers of goods or services or persons associated with the supply of goods or services have, in consultation with other interested persons, agreed to abide by a particular code of practice in the supply of those goods or services, the Director may submit the code to the Minister for consideration together with any recommendations of the Director with respect to the code.

**140 Prescribing codes of practice**

The Minister may—

- (a) recommend to the Governor in Council that the Governor in Council make regulations prescribing a code of practice which—
  - (i) has been prepared and submitted to the Minister under section 138; or
  - (ii) has been submitted to the Minister under section 139; or

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- (b) recommend that the Governor in Council make regulations prescribing such a code of practice with the amendments made by the Minister.

**141 Offence to breach code of practice**

A person must comply with a code of practice prescribed under this Act.

Penalty: 20 penalty units.

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**PART 6.4—INSPECTION POWERS**

**Division 1—Inspectors**

**142 Appointment of inspectors**

- (1) The Director may appoint as an inspector—
  - (a) person employed under Part 3 of the **Public Administration Act 2004**;
  - (b) a person appointed as an inspector, enforcement officer or authorised officer by or under any other Act;
  - (c) a person appointed or authorised as an inspector, investigator, authorised officer or authorised person under a prescribed interstate Act.
- (2) An appointment under subsection (1) must be made by instrument.
- (3) The Director must not appoint a person as an inspector unless the Director is satisfied that the person is appropriately qualified or has successfully completed appropriate training.
- (4) An inspector appointed under subsection (1)(a) or (1)(b) may also be appointed or authorised under a prescribed interstate Act as an inspector, investigator, authorised officer or authorised person under that Act.
- (5) In this section—

*interstate Act* means an Act of another State or Territory.

**143 Inspector's identification**

- (1) The Director must issue identification to each inspector.
  - (2) Identification must contain a photograph of the inspector to whom it is issued.
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#### **144 Production of identification**

- (1) An inspector must produce his or her identification for inspection—
  - (a) before exercising a power under this Part; and
  - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to—
  - (a) a requirement made by post; or
  - (b) the exercise of a power under section 152.

#### **Division 2—Requirements to produce information**

#### **145 Inspector may seek court order**

- (1) If an inspector believes on reasonable grounds that a person may have contravened this Act or the regulations, the inspector may apply to the Magistrates' Court for an order requiring any person at a time and place specified by the inspector—
  - (a) to answer orally or in writing any questions put by an inspector in relation to the alleged contravention;
  - (b) to supply orally or in writing information required by an inspector in relation to the alleged contravention;
  - (c) to produce to an inspector specified documents or documents of a specified class relating to the alleged contravention.
- (2) An application under subsection (1) must be made with the written approval of the Director.

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- (3) The Magistrates' Court may make the order if the court is satisfied that there are reasonable grounds to believe that a person may have contravened this Act or the regulations.
  - (4) An order must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.

**146 Inspection of documents under court order**

- (1) If any documents are produced to an inspector under an order made under section 145, the inspector may—
  - (a) inspect the documents or authorise a person to inspect the documents;
  - (b) make copies of or take extracts of the documents;
  - (c) seize the documents;
  - (d) secure any seized documents against interference;
  - (e) retain possession of the documents in accordance with this Part.
- (2) An inspector may only seize documents under subsection (1)(c) if the inspector considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations or any other Consumer Act or the regulations under that Act.

**147 Notification of execution of court order**

- (1) An inspector who executes an order under this Division must, as soon as practicable after the execution of the order, notify the Magistrates' Court in writing of—
    - (a) the time and place of execution; and
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- (b) the documents or classes of documents seized; and
  - (c) if documents were seized under section 146(1)(c) in respect of an alleged contravention other than a contravention for which the order was made, the alleged contravention in respect of which the documents were seized.
- (2) The Magistrates' Court may direct the inspector to bring before the court a document to which subsection (1)(c) applies so that the matter may be dealt with according to law.
  - (3) The Magistrates' Court may direct that a document brought before it under subsection (2) be returned to its owner, if in the opinion of the court the document can be returned consistently with the interests of justice.
  - (4) A direction under subsection (3) may be subject to any condition the court thinks fit.

**148 Publisher required to produce information**

- (1) For the purpose of monitoring compliance with this Act or the regulations, the Director or an inspector may in writing require a publisher to produce specified information which—
  - (a) is required by this Act or the regulations to be kept by the publisher; or
  - (b) has been published by the publisher.
- (2) A publisher must produce information in the form in which it is retained by the publisher.
- (3) A requirement of an inspector under subsection (1) must be made with the written approval of the Director.

(4) In this section—

***publisher*** means a person who publishes 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).

### **Division 3—Entry and search of premises with consent**

#### **149 Entry and search with consent**

- (1) If an inspector believes on reasonable grounds that a person has contravened this Act or the regulations, the inspector, with the consent of the occupier of premises, may—
  - (a) enter and search the premises; and
  - (b) exercise a power referred to in subsection (2) and (3) at the premises.
- (2) An inspector may—
  - (a) seize any thing the inspector finds on the premises if the inspector believes on reasonable grounds the thing is connected with the alleged contravention;
  - (b) examine, take and keep samples of any goods the inspector finds on the premises if the inspector believes on reasonable grounds the goods are connected with the alleged contravention;
  - (c) in the case of any document on the premises, do any of the following in relation to the document, if the inspector believes on reasonable grounds the document is connected with the alleged contravention—
    - (i) require the document to be produced for examination;

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- (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
  - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document.
- (3) An inspector may make any still or moving image or audio-visual recording if the inspector believes on reasonable grounds it is necessary to do so for the purpose of establishing the alleged contravention.

#### **150 Notice before entry and search**

An inspector must not enter and search any premises under section 149 unless, before the occupier consents to the entry and search, the inspector has—

- (a) produced his or her identification for inspection; and
  - (b) informed the occupier—
    - (i) of the purpose of the search; and
    - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
    - (iii) that the occupier may refuse to give consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
    - (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
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**151 Acknowledgement of consent to entry and search**

- (1) If an occupier of premises consents to the entry and search of the premises by an inspector under section 149, the inspector must, before entering the premises, ask the occupier to sign an acknowledgment.
  - (2) For the purpose of subsection (1), the acknowledgment must state—
    - (a) that the occupier has been informed—
      - (i) of the purpose of the search; and
      - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
      - (iii) that the occupier may refuse to give consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
      - (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings; and
    - (b) that the occupier has consented to the entry and search; and
    - (c) the date and time that the occupier consented.
  - (3) If an occupier of premises consents to the seizure or taking of any thing during a search of the premises by the inspector, the inspector must, before seizing or taking the thing, ask the occupier to sign an acknowledgement.
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- (4) For the purpose of subsection (3), the acknowledgment must state—
    - (a) that the occupier has consented to the seizure or taking of the thing; and
    - (b) the date and time that the occupier consented.
  - (5) An inspector must give a copy of a signed acknowledgement to the occupier before leaving the premises.
  - (6) If, in any proceeding, a signed acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

#### **Division 4—Entry and search of premises without consent**

##### **152 Entry of premises open to the public**

An inspector may enter and inspect any part of a premises that is, at the time of the entry and inspection, open to the public.

##### **153 Emergency entry**

- (1) An inspector may enter and search any premises at any time, if the inspector believes on reasonable grounds that there is evidence of goods being supplied from the premises which are—
  - (a) dangerous if used; or
  - (b) which are being supplied in contravention of an interim ban or permanent ban.
- (2) An inspector may enter and search premises under subsection (1) with the assistance of—
  - (a) another inspector; or

S. 153(2)(b)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 6.5).

(b) a police officer; or

(c) any other person necessary to provide technical assistance to the inspector.

#### **154 Powers during emergency entry**

- (1) If an inspector, during a search under section 153(1), finds goods referred to in that section on the premises, and believes on reasonable grounds that the goods present a threat of imminent injury or death, the inspector may—
  - (a) seize the goods;
  - (b) secure the seized goods against interference;
  - (c) require the occupier to remove the goods;
  - (d) examine, take and keep samples of the goods.
- (2) In addition to subsection (1), if the inspector believes on reasonable grounds that it is necessary to do so, the inspector may—
  - (a) in the case of any document on the premises—
    - (i) require the document to be produced for examination;
    - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
    - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
  - (b) make any still or moving image or audio-visual recording.

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- (3) If an inspector finds goods referred to in section 153(1), not being goods that the inspector believes on reasonable grounds present a threat of imminent injury or death, the inspector may prohibit the removal of the goods by notice—
- (a) given to the occupier of the premises or the person who has or may reasonably be presumed to have control over the business conducted on the premises; or
  - (b) affixed to the goods.
- (4) Sections 163, 164 and 165 extend and apply to a notice given under subsection (3) (with any necessary modifications) as if—
- (a) a reference to an embargo notice were a reference to a notice under subsection (3); and
  - (b) a reference to section 162(4) were a reference to subsection (7).
- (5) A notice under subsection (3) ceases to have effect at the end of 72 hours after the notice is given or affixed under that subsection, whichever is the earlier.
- (6) If an inspector exercises a power of entry under this section in the absence of the owner or occupier the inspector must, on leaving the premises, leave a notice setting out—
- (a) the time of entry; and
  - (b) the purpose of entry; and
  - (c) a description of things done while on the premises; and
  - (d) the time of departure; and
  - (e) the procedure for contacting the Director for further details of the entry.
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- (7) A person must not remove goods from premises in contravention of a notice under this section.

Penalty: 60 penalty units.

**155 Entry without consent or warrant**

- (1) For the purpose of monitoring compliance with this Act or the regulations, or an order made by a court or tribunal under this Act or the regulations, an inspector may enter and search any premises at which the inspector believes on reasonable grounds—
- (a) a person is conducting a business or supplying goods or services; or
  - (b) a person is keeping a record or document that—
    - (i) is required to be kept by this Act or the regulations; or
    - (ii) may show whether or not this Act or the regulations are being complied with.
- (2) An inspector who enters and searches premises under subsection (1) may—
- (a) examine any thing found on the premises;
  - (b) seize any thing found on the premises or secure any thing found on the premises against interference, if the inspector believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
  - (c) take and keep samples of any thing found on the premises, if the inspector believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;

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- (d) examine and test any equipment found on the premises that is of a kind used in connection with the supply of goods or services;
  - (e) in the case of any document on the premises, do all or any of the following—
    - (i) require the document to be produced for examination;
    - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
    - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
  - (f) make any still or moving image or audio-visual recording;
  - (g) bring any equipment onto the premises that the inspector believes on reasonable grounds is necessary for the examination or processing of things (including documents) found at the premises in order to determine whether they are things that may be seized under this section.
- (3) A power under subsection (1)—
- (a) must not be exercised in any part of the premises that is used for residential purposes; and
  - (b) must be exercised between the hours of 9 a.m. to 5 p.m., or when the premises are open for business.
- (4) If an inspector exercises a power of entry under this section without the owner or occupier being present the inspector must, on leaving the premises, leave a notice setting out—
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- (a) the time of entry; and
  - (b) the purpose of entry; and
  - (c) a description of things done while on the premises; and
  - (d) the time of departure; and
  - (e) the procedure for contacting the Director for further details of the entry.

**156 Use or seizure of electronic equipment at premises**

- (1) If an inspector, during a search under section 155—
  - (a) finds a thing at the premises that is or includes a disc, tape or other device for the storage of information; and
  - (b) there is at the premises equipment that may be used with the disc, tape or other storage device; and
  - (c) the inspector believes on reasonable grounds that information stored in the disc, tape or other storage device may be relevant to determine whether this Act or the regulations have been complied with—

the inspector may operate, or may require the occupier of the premises or an employee of the occupier to operate, the equipment to access the information.
- (2) If the inspector believes on reasonable grounds that a disc, tape or other storage device at the premises contains, stores or is otherwise used in the transmission of information that is relevant to determine whether this Act or the regulations have been complied with, the inspector may—

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- (a) put the information in a documentary form and seize the documents so produced; or
  - (b) copy the information to another disc, tape or other storage device and remove that disc, tape or storage device from the premises; or
  - (c) if it is not practicable to put the information in a documentary form or to copy the information, seize the disc, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An inspector must not operate or seize equipment for a purpose set out in this section unless the inspector believes on reasonable grounds that the operation can be carried out without damage to the equipment.

## **Division 5—Entry and search of premises with warrant**

### **157 Search warrants**

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises evidence that a person may have contravened this Act or the regulations.
- (2) An application under subsection (1) must be made with the written approval of the Director.
- (3) If a magistrate is satisfied by the evidence, on oath or by affidavit, that there are reasonable grounds to believe that there is a thing, or thing of a particular kind, connected with a contravention of this Act or the regulations on the premises, the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989**.



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### **158 Form and content of search warrants**

- (1) A search warrant issued under section 157(3) may authorise the inspector named in the warrant to enter premises specified in the warrant, if necessary by force, and do any of the following—
- (a) if the inspector believes on reasonable grounds that a thing, or thing of a particular kind, named or described in the warrant is connected with the alleged contravention—
    - (i) search for the thing;
    - (ii) seize the thing;
    - (iii) secure the thing against interference;
    - (iv) examine, inspect and take and keep samples of the thing;
  - (b) in the case of any document, or document of a particular kind, named or described in the warrant, if the inspector believes on reasonable grounds that the document is connected with the alleged contravention—
    - (i) require the document to be produced for inspection;
    - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
    - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
  - (c) make any still or moving image or audio-visual recording of any thing of a particular kind named or described in the warrant, if the inspector believes on reasonable grounds that it is connected with the alleged contravention.
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- (2) A search warrant issued under section 157(3) may authorise, in addition to an inspector, any other person named or otherwise identified in the warrant to execute the warrant.
- (3) A search warrant issued under section 157(3) must state—
- (a) the purpose for which the search is required and the nature of the alleged contravention; and
  - (b) any conditions to which the warrant is subject; and
  - (c) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants issued under section 157(3).

**159 Announcement before entry**

- (1) On executing a search warrant issued under section 157(3), the inspector named in the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises; and
  - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

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- (2) 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 to ensure—
- (a) the safety of any person; or
  - (b) that the effective execution of the search warrant is not frustrated.

**160 Details of warrant to be given to occupier**

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to the occupier; and
  - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to a person at the premises; and
  - (b) give to the person a copy of the warrant.

**161 Seizure of things not mentioned in the warrant**

A search warrant issued under section 157(3) authorises an inspector named in the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—

- (a) the inspector believes on reasonable grounds that the thing—
  - (i) is of a kind which could have been included in a search warrant issued under this Part; or

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- (ii) will afford evidence about the contravention of any Consumer Act; and
  - (b) in the case of the seizure of a thing, the inspector believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or any other Consumer Act.

### **Division 6—Embargo notices**

#### **162 Embargo notices**

- (1) An inspector executing a search warrant issued under section 157(3) authorising the seizure of any thing may issue an embargo notice, if the thing cannot, or cannot readily, be physically seized and removed.
- (2) An embargo notice must be issued—
  - (a) by serving a copy of the notice on the occupier; or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the thing in a prominent position.
- (3) An embargo notice must be in the prescribed form.
- (4) A person who knows that an embargo notice relates to a thing must not—
  - (a) sell; or
  - (b) lease; or
  - (c) without the written consent of the inspector who issued the embargo notice, move; or

- (d) transfer; or
- (e) otherwise deal with—

the thing or any part of the thing.

Penalty: 60 penalty units.

- (5) It is a defence to a prosecution for an offence against subsection (4) to prove that the accused moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (6) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

### **163 Monitoring compliance with embargo notices**

- (1) For the purpose of monitoring compliance with section 162(4), an inspector may apply to the Magistrates' Court for—
  - (a) an order requiring the owner of the thing to which an embargo notice relates, or the occupier of the premises where the thing is kept or required under the notice to be kept, to answer questions or produce documents at a time and place specified by the inspector; and
  - (b) any other order incidental to or necessary for monitoring compliance with section 162(4).
- (2) An application under subsection (1) must be made with the written approval of the Director.
- (3) The Magistrates' Court may make the order sought.

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**164 Search warrants in relation to embargo notices**

- (1) If a thing is subject to an embargo notice, an inspector may apply to a magistrate for the issue of a search warrant permitting entry to the premises where the thing is kept or required to be kept for the purpose of monitoring compliance with a relevant provision or order.
- (2) An application under subsection (1) must be made with the written approval of the Director.
- (3) If a magistrate is satisfied by the evidence, on oath or by affidavit, that it is necessary for the effective monitoring of compliance with a relevant provision or order, the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989**.
- (4) In this section—  
*relevant provision or order* means—
  - (a) section 162(4);
  - (b) a safety standard;
  - (c) an interim ban;
  - (d) a permanent ban;
  - (e) an information standard;
  - (f) a recall notice.

**165 Form and content of search warrants in relation to embargo notices**

- (1) A search warrant issued under section 164(3) may authorise an inspector named in the warrant to enter the premises specified in the warrant, if necessary by force.
  - (2) A search warrant issued under section 164(3) may authorise an inspector who enters premises to do any of the following—
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- (a) search for, seize and secure against interference the thing named in the warrant;
  - (b) test the thing named in the warrant to determine whether it complies with—
    - (i) a safety standard;
    - (ii) an interim ban;
    - (iii) a permanent ban;
    - (iv) an information standard;
    - (v) a recall notice.
  - (3) A search warrant issued under section 164(3) may authorise, in addition to an inspector, any other person named or otherwise identified in the warrant to execute the warrant.
  - (4) Sections 159 and 160 extend and apply to a search warrant issued under section 164(3).
  - (5) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants issued under section 164(3).

#### **Division 7—Documents**

##### **166 Copies of seized documents**

- (1) If an inspector retains possession of a document seized from a person under this Part, the inspector must give the person, within 21 days after the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

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**167 Retention and return of seized documents or things**

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
  - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
  - (b) the Magistrates' Court makes an order under section 168 extending the period during which the document or thing may be retained; or
  - (c) a court makes an order under section 174 permitting the destruction of the thing.
- (3) This section does not apply to a sample taken by an inspector in the exercise of a power under this Part.

**168 Magistrates' Court may extend 3 month period**

- (1) If an inspector seizes a document or other thing under this Part, the inspector may apply to the Magistrates' Court for an order for an extension, not exceeding 3 months, of the period for which the inspector may retain the document or thing.
- (2) An application under subsection (1) must be made—
  - (a) within 3 months after seizing a document or other thing under this Part; or



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- (b) if an extension has been granted under this section, before the end of the period of the extension.
  - (3) The Magistrates' Court may make the order if it is satisfied that—
    - (a) it is in the interests of justice; and
    - (b) the total period of retention does not exceed 12 months; and
    - (c) retention of the document or other thing is necessary—
      - (i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
      - (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
  - (4) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

#### **Division 8—Offences**

##### **169 Refusal or failure to comply with requirement**

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of the Director or an inspector under this Part.

Penalty: 60 penalty units.

##### **170 Protection against self-incrimination**

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the

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doing of that other thing would tend to incriminate the person.

- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

**171 Offence to give false or misleading information**

- (1) A person must not give information to an inspector under this Part that the person believes to be false or misleading in any material particular.

Penalty: 60 penalty units.

- (2) A person must not produce a document to an inspector under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

**172 Offence to hinder or obstruct inspector**

A person must not, without reasonable excuse, hinder or obstruct an inspector who is exercising a power under this Part.

Penalty: 60 penalty units.

**173 Offence to impersonate inspector**

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

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**Division 9—Miscellaneous**

**174 Court may order destruction of dangerous goods**

- (1) The Director may apply to a court for an order permitting the destruction of goods seized by an inspector under this Part, if the goods are subject to—
  - (a) a safety standard; or
  - (b) an interim ban; or
  - (c) a permanent ban.
- (2) On an application under subsection (1), the court may—
  - (a) make an order permitting the destruction of the goods, if it is satisfied that it is appropriate to do so; and
  - (b) make any other order that it considers to be appropriate, including—
    - (i) an order relating to the payment by the owner of the goods of the costs of, and any costs incidental to, the destruction of the goods; or
    - (ii) if the court is satisfied that the owner of the goods cannot be found after all reasonable attempts have been made, an order relating to the payment by the supplier of the goods of the costs of, and any costs incidental to, the destruction of the goods.
- (3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the goods described in the application or to the person from whom the goods described in the application were seized.

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**175 Taking samples**

- (1) If an inspector proposes to take a sample in exercise of a power under this Part, the inspector must advise the person in possession of the sample of the reason why the sample is being taken.
- (2) The inspector, at the request of the person from whom the sample was taken, must give part of the sample taken to that person.
- (3) If an inspector takes a sample in the exercise of a power under this Part, the inspector must return the sample to the person from whom it was taken within 28 days, if the sample is not required for the purposes of proceedings under this Act or the regulations or any other Consumer Act or the regulations under that Act.

**176 Entry to be reported to the Director**

- (1) If an inspector exercises a power of entry under this Part, the inspector must report the exercise of the power to the Director within 7 days after the entry.
- (2) The report must include all relevant details of the entry including—
  - (a) the time and place of the entry; and
  - (b) the purpose of the entry; and
  - (c) a description of things done while on the premises, including details of things seized, samples taken, copies made and extracts taken; and
  - (d) the time of departure.

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**177 Requirement to assist inspector during entry**

To the extent that it is reasonably necessary to determine compliance with this Act or the regulations, an inspector exercising a power of entry under this Part who produces his or her identification for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

**178 Register of exercise of powers of entry**

The Director must keep a register containing the particulars of all matters reported to the Director under section 176.

**179 Complaints**

- (1) Any person may complain to the Director about the exercise of a power by an inspector under this Part.
- (2) The Director must—
  - (a) investigate any complaint made to the Director; and
  - (b) provide a written report to the complainant on the results of the investigation.

**180 Service of documents**

- (1) A written requirement by an inspector under this Part may be—
  - (a) given personally or sent by registered post to a person at the last known place of business, employment or residence of the person; or

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- (b) in the case of a body corporate, given personally or sent by post at the registered office of the body corporate.
  - (2) A person who provides a document or information in response to a requirement of an inspector under this Part may send that document or information to the Director by registered post.

### **181 Confidentiality**

- (1) An inspector must not disclose to any other person, whether directly or indirectly, any information obtained by the inspector in carrying out his or her functions under this Part.  
Penalty: 60 penalty units.
  - (2) Subsection (1) does not apply to the disclosure of information—
    - (a) to the extent necessary to carry out the inspector's functions under this Part; or
    - (b) to a court or tribunal in the course of legal proceedings; or
    - (c) pursuant to an order of a court or tribunal; or
    - (d) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or
    - (e) to the Business Licensing Authority established under the **Business Licensing Authority Act 1998**; or
    - (f) with the written authority of the Director; or
    - (g) with the written authority of the person to whom the information relates.
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## CHAPTER 7—FUNCTIONS OF VCAT

### 182 What is a consumer and trader dispute?

- (1) In this Chapter a *consumer and trader dispute* is a dispute or claim arising between a purchaser or possible purchaser of goods or services and a supplier or possible supplier of goods or services in relation to a supply or possible supply of goods or services.
- (2) For the purposes of subsection (1), a dispute or claim includes any dispute or claim in negligence, nuisance or trespass that relates to the supply or possible supply of goods or services but (except as provided in subsection (3)) does not include a dispute or claim related to a personal injury.
- (3) For the purposes of subsection (1), a dispute or claim includes a claim related to personal injury if—
  - (a) the claim is for an amount not exceeding \$10 000; and
  - (b) the claim relates to a supply or possible supply of goods or services; and
  - (c) the supply or possible supply of goods or services is the subject of a related consumer and trader dispute.

### 183 What is a small claim?

In this Chapter *small claim* means a consumer and trader dispute in relation to—

- (a) a claim for payment of money in an amount not exceeding \$10 000 or other prescribed amount; or

- (b) a claim for performance of work of a value not exceeding \$10 000 or other prescribed amount—

that in either case arises out of a contract for the supply of goods or the provision of services other than a contract of life insurance.

**184 Settlement of consumer and trader disputes or small claims**

- (1) VCAT may hear and determine a consumer and trader dispute.
- (2) VCAT may do one or more of the following in relation to a consumer and trader dispute—
  - (a) refer a dispute to a mediator appointed by VCAT;
  - (b) order the payment of a sum of money—
    - (i) found to be owing by one party to another party;
    - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
    - (iii) by way of restitution;
  - (c) vary any term of a contract;
  - (d) declare that a term of a contract is, or is not, void;
  - (e) order the refund of any money paid under a contract or under a void contract;
  - (f) make an order in the nature of an order for specific performance of a contract;
  - (g) order rescission of a contract;
  - (h) order rectification of a contract;
  - (i) declare that a debt is, or is not, owing;
  - (j) make an order for the possession of land.



- (k) order a party to do or refrain from doing something;

**Example**

If the supplier has default listed the purchaser with a credit reference agency in relation to a perceived debt owing, VCAT, in addition to declaring that there is no debt owing, may order the supplier to contact the credit reference agency and have the default listing removed from the purchaser's credit record.

- (3) The power to make an order under subsection (2)(j) may only be exercised by a judicial member of VCAT.
- (4) In awarding damages in the nature of interest, VCAT may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate it thinks appropriate.

**185 Additional powers of VCAT**

- (1) In addition to its powers under section 184, VCAT, in determining a consumer dispute or a trader-trader dispute, may make any order it considers fair including declaring void any unjust term of a contract or otherwise varying a contract to avoid injustice.
- (2) In determining whether a term of a contract is unjust under subsection (1), VCAT may have regard to—
- (a) the intelligibility of the contract generally, and of the term in particular;
  - (b) the extent to which the term, and its legal and practical effect, were accurately explained to the relevant party before the term was agreed to and the extent to which the relevant party understood the term and its effect;

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- (c) the relative bargaining power of the parties to the contract;
  - (d) the consequences to the parties to the contract if the term is complied with or not complied with and the relative hardship of those consequences to each party;
  - (e) whether or not it was reasonably practicable for the relevant party to reject, or negotiate for a change in, the term before it was agreed to;
  - (f) the relationship of the term to the other terms of the contract;
  - (g) whether the relevant party obtained independent legal or other expert advice before agreeing to the term;
  - (h) whether unfair pressure, undue influence or unfair tactics were used to obtain the relevant party's consent to the contract or the term;
  - (i) whether at the time the term was agreed to the relevant party knew, or could probably have found out by asking, that the term would cause any other relevant party hardship;
  - (j) the conduct of the parties to the contract after the term was agreed to;
  - (k) whether the term is usually found in contracts of that kind;
  - (l) the justification for the term;
  - (m) whether the term is unconscionable, harsh or oppressive;
  - (n) any other factor VCAT thinks is relevant.
- (3) Despite anything to the contrary in this section, in determining whether a term of a contract is unjust, VCAT must not have regard to any injustice
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arising from circumstances that were not reasonably foreseeable when the term was agreed to.

(4) In this section—

*consumer dispute* means a dispute relating to the supply or possible supply of goods or services of a kind ordinarily used for personal, household or domestic purposes but does not include a dispute relating to the supply or possible supply of goods if the supply or the possible supply of the goods is for the purpose of re-supply, in trade or commerce, or for the purpose of using the goods up or transforming the goods in trade or commerce;

*trader-trader dispute* means a dispute between a purchaser or possible purchaser and a supplier or possible supplier in relation to the supply or possible supply of goods or services in trade or commerce which involves—

- (a) a claim for payment of money in an amount not exceeding \$10 000; or
- (b) a claim for performance of work of a value not exceeding \$10 000.

### **186 Who can ask VCAT to resolve a consumer and trader dispute?**

VCAT may only make an order to resolve a consumer and trader dispute on the application of—

- (a) a party to the dispute; or
- (b) the Director acting on behalf of one or more of the parties to the dispute.

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### 187 Exclusion of other jurisdiction

- (1) Once an application has been made to VCAT in accordance with the **Victorian Civil and Administrative Tribunal Act 1998** in respect of a consumer and trader dispute or in respect of any other matter in respect of which VCAT has jurisdiction under this Act, the issues in dispute are not justiciable at any time by a court unless—
  - (a) the proceeding in that court was commenced before the application to VCAT was made and that proceeding is still pending; or
  - (b) the application to VCAT is withdrawn or struck out for want of jurisdiction; or
  - (c) VCAT refers the proceeding to that court under section 77 of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (2) Subsection (1) applies to all the issues in dispute, whether as shown in the application or emerging in the course of the proceeding in VCAT.

### 188 More appropriate forum

- (1) This section applies if a person—
  - (a) commences proceedings in a court; and
  - (b) the proceedings arise wholly or predominantly from a consumer and trader dispute or are other proceedings in respect of which VCAT has jurisdiction under this Act.
- (2) The court must stay the proceedings if—
  - (a) the proceedings could be heard by VCAT under this Act; and
  - (b) the court is satisfied that the proceedings would be more appropriately dealt with by VCAT.

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- (3) In determining whether proceedings would be more appropriately dealt with by VCAT, the court must consider—
- (a) whether, having regard to the likely costs and duration of the proceedings and any other matters the court considers relevant, a party is reasonably likely to gain a material advantage if the proceedings are determined by VCAT; and
  - (b) whether that advantage is outweighed by a material disadvantage that would be reasonably likely to be suffered by another party if the proceedings were determined by VCAT.
- (4) If proceedings are stayed under this section, any party to the proceedings may apply to VCAT for an order with respect to the dispute or matter on which the proceedings were based.
- (5) If a person applies to VCAT under subsection (4) VCAT must notify the court and on such notification the court must dismiss the proceedings.
- (6) Subsection (5) does not apply if VCAT refers the matter to the court under section 77(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

**189 Small claim commenced in court**

- (1) This section applies if a supplier, or person acting on behalf of the supplier—
- (a) commences proceedings in a court; and
  - (b) the proceedings arise wholly or predominantly from a small claim.

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- (2) The court must dismiss the proceedings if—
- (a) the court has not yet commenced to hear the matter; and
  - (b) the purchaser has applied to VCAT to have the matter heard and determined by VCAT; and
  - (c) the purchaser has lodged with VCAT—
    - (i) the whole of the amount sought by the supplier; or
    - (ii) if any payment has been made to the supplier (including any deposit), the outstanding amount sought; and
  - (d) VCAT has notified the court of that application to VCAT and lodgement.
- (3) If the court dismisses the proceedings under subsection (2), the court must not make an order as to costs in respect of those proceedings.

### **190 Small Claims Suspense Account**

- (1) The principal registrar of VCAT must keep an account called the Small Claims Suspense Account and pay into that account all money lodged with VCAT under section 189(2).
- (2) The principal registrar must deal with money lodged with VCAT under section 189(2) as follows—
  - (a) if VCAT makes an order with respect to the money, the principal registrar must comply with the order;
  - (b) if the proceeding is struck out for want of jurisdiction or otherwise withdrawn, the principal registrar must—

- (i) return the money to the person who paid the money or that person's personal or legal representative; or
- (ii) pay it in accordance with the directions of the person who paid the money or that person's personal or legal representative;
- (c) if the person who paid the money dies before a final order is made with respect to the matter, the principal registrar must pay the money to the personal or legal representative of the deceased person.

**191 VCAT may hear dispute regardless of related criminal proceedings**

If a consumer and trader dispute involves the failure, or the alleged failure, of a supplier to comply with this Act or any other Act (or any regulations made under this Act or any other Act), VCAT may make an order to resolve the dispute even though the supplier—

- (a) has not been charged with the offence; or
- (b) has been charged with the offence, but has not had the charge heard; or
- (c) has had the charge heard, but was not convicted of committing the offence; or
- (d) has had the charge heard and was convicted of committing the offence; or
- (e) has been sentenced in relation to the offence; or
- (f) is the subject of pending disciplinary action; or
- (g) may be, or has been, subject to disciplinary action.

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**192 VCAT may order the provision of information**

- (1) A person may apply to VCAT for an order requiring the Director to provide the full name and address of a supplier, who is not registered or licensed or whose details are not contained on any public register established under a business licensing Act or other Act.
  - (2) VCAT may make the order referred to in subsection (1) if it is satisfied that, in all the circumstances, it is just and convenient to do so.
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## CHAPTER 8—ENFORCEMENT AND REMEDIES

### PART 8.1—GENERAL ENFORCEMENT PROVISIONS

#### 193 Prosecutions of offences

Despite section 7 of the **Criminal Procedure Act 2009** a prosecution for an offence under this Act may be commenced not more than 3 years after the commission of the offence.

#### 194 Who can bring proceedings for offences?

- (1) Proceedings for an offence against this Act or the regulations under this Act or a Consumer Act or the regulations under that Act may only be brought by—
  - (a) the Director; or
  - (b) a person authorised by the Director for the purposes of this section.
- (2) In proceedings for an offence against this Act or the regulations under this Act or a Consumer Act or the regulations under that Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.
- (3) This section does not apply to proceedings for an indictable offence.
- (4) Subsection (1) does not apply to a Consumer Act or the regulations under a Consumer Act if express provision is made in that Act specifying who may bring proceedings for offences against that Act or the regulations under that Act.

#### 195 Contraventions by bodies corporate

- (1) If a body corporate contravenes or commits an offence against any provision of this Act, each officer of the body corporate is deemed to have contravened the same provision if the officer

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knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and, in the case of an offence, convicted under a provision in accordance with subsection (1) whether or not the body corporate has been proceeded against under that provision.
- (3) Nothing in this section affects any liability imposed on a body corporate for a contravention of this Act by the body corporate.

**196 Conduct by officers, employees or agents**

- (1) If, in a proceeding under this Act in respect of conduct that is engaged in by a body corporate and to which this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show—
  - (a) that an officer, employee or agent of the body corporate engaged in that conduct within the scope of the actual or apparent authority of the officer, employee or agent; and
  - (b) that the officer, employee or agent had that state of mind.
- (2) The following conduct engaged in on behalf of a body corporate is also taken, for the purposes of this Act, to have been engaged in by the body corporate—
  - (a) conduct by an officer, employee or agent of the body corporate within the scope of the actual or apparent authority of the officer, employee or agent; or

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- (b) conduct by any other person—
- (i) at the direction of an officer, employee or agent of the body corporate; or
  - (ii) with the consent or agreement (whether express or implied) of such an officer, employee or agent—
- if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee or agent.
- (3) If, in a proceeding under this Act in respect of conduct that is engaged in by a person (the *principal*) other than a body corporate and to which this Act 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) that the employee or agent had that state of mind.
- (4) The following conduct engaged in on behalf of a person (the *principal*) other than a body corporate is also taken, for the purposes of this Act, to have been engaged in by the principal—
- (a) conduct by an employee or agent of the principal within the scope of the actual or apparent authority of the employee or agent; or
  - (b) conduct by any other person—
    - (i) at the direction of an employee or agent of the principal; or
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(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.

(5) If—

- (a) a person other than a body corporate is convicted of an offence; and
- (b) subsection (3) or (4) 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.

(6) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

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**PART 8.2—REMEDIES AND LEGAL PROCEEDINGS**

**197 Interpretation**

A reference in this Part to a person involved in a contravention of this Act means a reference to a person who—

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

**198 Undertakings**

- (1) The Director may accept a written undertaking given by a person in connection with—
  - (a) a matter in relation to which the Director has a power or function under this Act; or
  - (b) a matter relating to a contravention of any other Consumer Act.
- (2) The person may withdraw or vary an undertaking at any time, if the person has first obtained the consent of the Director.
- (3) The Director, with the consent of the person who gave an undertaking, may apply, at any time, to the Magistrates' Court for an order directing the person to comply with the undertaking.
- (4) On an application under subsection (3), the Magistrates' Court may by order direct the person who gave the undertaking to comply with the undertaking.

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- (5) If the Director considers that the person who gave the undertaking has breached any of its terms, the Director may apply to the Magistrates' Court for an order under subsection (6).
- (6) If the Magistrates' Court is satisfied that the person has breached a term of the undertaking, the Magistrates' 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 State 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 Magistrates' Court considers appropriate directing the person to compensate any other person who has suffered loss, injury or damage as a result of the breach;
  - (d) any other order that the Magistrates' Court considers appropriate.
- (7) If a body corporate is found to have breached an undertaking, each officer of the body corporate is deemed to have so breached the undertaking if the officer knowingly authorised or permitted the breach and the Magistrates' Court may, against the officer, make all or any of the orders set out in subsection (6) that the Magistrates' Court thinks appropriate.

### **199 Copy of undertaking**

The Director must give a copy of an undertaking under section 198 of this Act or under section 218 of the Australian Consumer Law (Victoria) to the person who made the undertaking.

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## 200 Register of undertakings

- (1) The Director must—
  - (a) maintain a register of undertakings; and
  - (b) register each undertaking in the register of undertakings.
- (2) The register of undertakings must include the following—
  - (a) the name and address of the person who gave the undertaking;
  - (b) the date of the undertaking;
  - (c) a copy of the undertaking.
- (3) The register of undertakings may be inspected by any person at any reasonable time, without charge.
- (4) In this section, *undertaking* includes an undertaking made under section 218 of the Australian Consumer Law (Victoria).

## 201 Injunctions to restrain conduct

- (1) The Minister, Director or any other person may apply to the Supreme Court, County Court or Magistrates' Court for the grant of an injunction restraining a person from engaging in conduct that constitutes—
  - (a) a contravention of any provision of this Act; or
  - (b) attempting or conspiring 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 a person, whether by threats, promises or otherwise, to contravene such a provision; or

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- (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.
- (2) The Court may grant an injunction restraining a person from engaging in conduct of the kind referred to in paragraphs (a) to (e) of subsection (1)—
- (a) if the Court is satisfied that the person is engaging in or has been engaging in conduct of that kind, whether or not it appears to the Court that the person intends to engage again or continue to engage in the conduct; or
  - (b) if it appears to the Court that, in the event that the injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not that person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind; or
  - (c) if the Court determines it to be appropriate, by consent of all the parties to the proceedings, whether or not the person has engaged in, or is likely to engage in conduct of that kind.
- (3) An application for an injunction under this section may be made *ex parte*.

## **202 Injunctions to do an act or thing**

- (1) The Supreme Court or the County Court, on the application of the Minister, the Director or any other person, may grant an injunction requiring a person to do any act or thing if the Court is satisfied that the person is engaging in or has been engaging in conduct that constitutes—
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- (a) a contravention of any provision of this Act;  
or
  - (b) attempting or conspiring 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 a person, whether by threats, promises or otherwise, 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.
- (2) The power of the Court under this section to grant an injunction requiring a person to do an act or thing may be exercised—
- (a) whether or not it appears to the Court that the person intends to 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 person if the first person refuses or fails to do that act or thing.
- (3) Without limiting subsection (1), an injunction under this section may require a person—
- (a) to institute a training program for the person's employees in relation to compliance with this Act;
  - (b) to refund money to purchasers;
  - (c) to transfer property to purchasers;
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- (d) to disclose information about the person's business activities or business associates;
  - (e) to honour any promise made in the course of misleading or deceptive conduct or in a false representation;
  - (f) to destroy or dispose of goods used for the purpose of a contravention of this Act.
- (4) Despite subsections (1) and (3), only the Supreme Court may grant an injunction under this section requiring a person to transfer an interest in land.
- (5) An application for an injunction under this section may be made *ex parte*.

### **203 Interim injunctions**

- (1) The Supreme Court, County Court or Magistrates' Court may grant an interim injunction pending determination of an application under section 201, if, in the opinion of the Court it is desirable to do so—
- (a) whether or not it appears to the Court that the person intends to engage in or continue to engage in conduct of the kind referred to in paragraphs (a) to (e) of section 201(1); or
  - (b) whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (2) The Supreme Court or County Court may grant an interim injunction pending determination of an application under section 202 in relation to an act or thing, if, in the opinion of the Court it is desirable to do so—

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- (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 person if the first person refuses or fails to do that act or thing.
- (3) An application for an injunction under this section may be made *ex parte*.

#### **204 Power to rescind or vary injunctions**

A court may rescind or vary an injunction granted by it under section 201 or 202 or an interim injunction granted by it under section 203.

#### **205 Cease trading injunctions**

- (1) The Minister or the Director may apply to the Supreme Court for the grant of an injunction restraining a person from carrying on a business of supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business) if the person is or has been engaging in conduct that constitutes—
- (a) a contravention of any provision of this Act; or
  - (b) attempting or conspiring 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 a person, whether by threats, promises or otherwise, to contravene such a provision; or

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- (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.
- (2) The Supreme Court may grant the injunction sought—
- (a) if—
- (i) the Court is satisfied that the person is engaging in or has been engaging in conduct of that kind; and
- (ii) it appears to the Court that, in the event that the injunction is not granted, it is likely that the person will engage in conduct of that kind and there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind; or
- (b) if the Court determines it to be appropriate, by consent of all the parties to the proceedings, whether or not the person has engaged in, or is likely to engage in conduct of that kind.
- (3) An injunction under this section may be granted—
- (a) for a specified period; and
- (b) on specified terms and conditions.

### **206 Interim cease trading injunctions**

The Supreme Court may grant an interim injunction pending determination of an application under section 205, if, in the opinion of the Court it is desirable to do so and it appears to the Court that—

- (a) the person intends to engage in or continue to engage in conduct of a kind referred to in paragraphs (a) to (e) of section 205(1); and
- (b) there is an imminent danger of substantial damage to any person if the person referred to in paragraph (a) engages in conduct of that kind.

### **207 Power to rescind or vary cease trading injunctions**

The Supreme Court may rescind or vary an injunction granted by it under section 205 or an interim injunction granted by it under section 206.

### **208 Undertakings as to damages and costs**

- (1) In any application under section 201, 202 or 203 of this Act or under section 232 of the Australian Consumer Law (Victoria), subject to subsection (2), if—
  - (a) the court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
  - (b) the Minister or the Director gives the undertaking—

the court must accept the undertaking by the Minister or the Director and must not require a further undertaking from any other person.
- (2) In an application for an injunction under section 202 or 203 of this Act or under section 232 of the Australian Consumer Law (Victoria), if the application has been made by the Minister or the Director and if the court has determined to grant an interim injunction, the Court must not, as a condition of granting the interim injunction, require the applicant or any other person to give any undertaking as to damages or costs.

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**209 Powers of court if requirement of Director or inspector not complied with**

- (1) Subject to subsection (3), if the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 125, 126 or 148, the Director may certify that failure to a court.
  - (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 148 or 177, the inspector may certify that failure to a court.
  - (3) The Director or an inspector cannot certify a failure to a court under subsection (1) or (2) if the person to whom the failure relates has been charged with an offence against section 125(2), 126(3) or 169 (as applicable).
  - (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.
  - (5) A certification of the Director under subsection (1) is to be taken to be evidence that a person has failed to comply with a requirement under section 125, 126 or 148, unless the person adduces evidence that—
    - (a) the requirement was complied with; or
    - (b) there was a reasonable excuse for failing to comply with the requirement.
  - (6) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence under section 125(2), 126(3) or 169 (as applicable) in respect of that failure.
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**210 Non-punitive orders—Corrective advertising orders**

- (1) A court may, on the application of the Director, make a corrective advertising order in relation to a person if the court is satisfied that the person has contravened or has been involved in a contravention of Part 3.1, Part 4.1 or Part 6.3.
- (2) In this section, a *corrective advertising order*, in relation to a person, means an order that—
  - (a) requires 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; or
  - (b) requires 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.
- (3) This section does not limit a court's powers under any other provision of this Act.

**211 Punitive orders—Adverse publicity orders**

- (1) If in any proceedings for an offence against this Act, a person is found guilty of an offence against this Act, the court, in addition to any other penalty it may fix or order it may make, may, on the application of the Director, make an adverse publicity order in relation to the person.
  - (2) In this section, an *adverse publicity order*, in relation to a person, means an order that—
    - (a) requires 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; or
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- (b) requires 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.
  - (3) This section does not limit a court's powers under any other provision of this Act.

**212 Orders to prohibit payment of money or transfer of other property**

- (1) Subject to this section, a court may in the course of prescribed proceedings against a person (*the relevant person*) under this Act, make one or more of the following orders—
  - (a) an order prohibiting, either absolutely or subject to conditions, the making of a payment by a person in total or partial discharge of a debt owed to the relevant person or an associate of the relevant person;
  - (b) an order prohibiting, either absolutely or subject to conditions, the relevant person from parting with possession of, or transferring or encumbering, any of that person's money or property;
  - (c) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or an associate of the relevant person from paying all or any of the money or parting with possession of, or transferring or encumbering, all or any of the property to the person on whose behalf the money is held or another person at the request of that person;



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- (d) an order prohibiting, either absolutely or subject to conditions, an ADI at which the relevant person holds an account from transferring, or allowing any person to withdraw, money standing to the credit of the account;
  - (e) an order prohibiting, either absolutely or subject to conditions, the taking or sending by a person of money of the relevant person or of an associate of the relevant person to a place outside Victoria;
  - (f) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by a person of other property of the relevant person or of an associate of the relevant person to a place outside Victoria;
  - (g) if the relevant person is a natural person, an order appointing a receiver or trustee of the property or part of the property of the relevant person with such powers as are specified in the order.
- (2) The Minister, the Director or another person who is a party to prescribed proceedings may make an application for an order under this section.
  - (3) Subject to subsection (4), an order under this section may be expressed to operate—
    - (a) for a period specified in the order; or
    - (b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.
  - (4) An order under this section made on an *ex parte* application must not operate for a period of more than 30 days.
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- (5) A person must comply with an order by a court under this section that is applicable to that person.

Penalty: 240 penalty units, in the case of a natural person;  
600 penalty units, in the case of a body corporate.

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

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

- (a) a person holding money or other property on behalf of the other person; or
- (b) if the other person is a body corporate, a related body corporate.

- (8) In this section *prescribed proceedings* means—

- (a) proceedings for an offence against—
  - (i) Part 3.1, Part 4.1 or Part 6.3; or
  - (ii) Chapter 4 of the Australian Consumer Law (Victoria);
- (b) proceedings on an application for an injunction under—
  - (i) section 201, 202, 203, 205 or 206 against a person alleged to have contravened Part 3.1, Part 4.1 or Part 6.3; or
  - (ii) section 232 of the Australian Consumer Law (Victoria) in relation to—
    - (A) an alleged contravention of Chapter 2, 3 or 4 of that Law; or

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- (B) a term of a consumer contract in relation to which a declaration under section 250 of that Law has been made; or
- (c) proceedings on an application for an order under—
- (i) section 216; or
  - (ii) section 237, 238 or 239 of the Australian Consumer Law (Victoria) in relation to—
    - (A) a contravention of Chapter 2, 3 or 4 of that Law; or
    - (B) a term of a consumer contract in relation to which a declaration under section 250 of that Law has been made; or
- (d) proceedings for damages under—
- (i) section 217; or
  - (ii) section 236 of the Australian Consumer Law (Victoria).

### **213 Defences**

- (1) Subject to subsection (2), in a prosecution under this Act in relation to a contravention of a prescribed provision, it is a defence if the accused establishes—
- (a) that the contravention in respect of which the proceeding was instituted was due to a reasonable mistake of fact, including a mistake of fact caused by a reasonable reliance on information supplied by another person; or

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- (b) that—
- (i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the control of the accused; and
  - (ii) the accused took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In subsection (1)(a) and (b), *another person* does not include a person who was—
- (a) an employee or an agent of the accused; or
  - (b) in the case of an accused being a body corporate, an officer, employee or agent of the accused—
- at the time when the contravention occurred.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the accused is not, without leave of the court, entitled to rely on that defence unless the accused has, not later than 14 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted, a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the possession of the accused.
- (4) In a proceeding under this Act in relation to a contravention of a prescribed provision committed by the publication of an advertisement, it is a defence if the accused establishes that—
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- (a) the accused is a person whose business is to publish or arrange for the publication of advertisements; and
  - (b) that the accused received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a prescribed provision.
- (5) In this section *prescribed provision* means a provision of this Act other than section 141, Part 6.2 or Part 6.4.

#### **214 Evidence**

- (1) In any proceedings for an offence against this Act evidence that any person carries on business in a place where goods are kept in stock is evidence that the goods are in the possession of the person for supply.
  - (2) In any proceedings for an offence against this Act, evidence that goods were imported from a particular port of shipment is evidence, and in the absence of evidence to the contrary, is proof, that the goods were manufactured or produced in the country in which that port of shipment is situated.
  - (3) In any proceedings for an offence against this Act, the production by the prosecutor of the certificate of an analyst is proof of the facts stated in the certificate unless the defendant, at least 14 days before the hearing commences, has given notice in writing to the prosecutor that he or she requires the analyst to be called as a witness.
  - (4) In any proceedings under this Act, goods which have been manufactured are presumed, in the absence of evidence to the contrary, to have been manufactured for supply.
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**215 Findings in proceedings to be evidence**

- (1) In a proceeding against a person under section 216 or 217 of this Act, a finding of fact by a court made in proceedings under section 201, 202, 203, 205, 206, 210 or 211 in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of this Act (other than the Australian Consumer Law (Victoria)) is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (2) In a proceeding against a person under section 236, 237, 238 or 239 of the Australian Consumer Law (Victoria), a finding of fact by a court made in proceedings under section 228, 232, 233, 234, 237, 246, 247 or 248 or any provision of Chapter 4 of that Law in which that person has been found to have contravened, or to have been involved in a contravention of, the Australian Consumer Law (Victoria) is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

**216 Orders against persons found to have contravened this Act**

- (1) In any proceedings for an offence against, or a contravention of, this Act, the court may make any order it considers fair if the court finds that—
  - (a) the person against whom the proceedings were brought (*the accused*) has contravened a provision of this Act; and
  - (b) another person (*the injured person*) has suffered or may suffer loss or damage as a result of the contravention of this Act.

- 
- (2) Without limiting subsection (1), the orders that may be made under this section include—
- (a) an order that the whole or any part of a contract between the accused and the injured person which is affected by the contravention or any agreement collateral to such a contract is void on and from the time specified in the order; or
  - (b) an order that the contract or agreement is varied in the manner specified in the order and may specify in the order that the variation takes effect from the time specified in the order; or
  - (c) an order that all or any of the provisions in the contract are not to be enforced; or
  - (d) an order that the accused—
    - (i) refund to the injured person money paid by that person under the contract or agreement; or
    - (ii) return to the injured person property transferred by the injured person under the contract or agreement; or
  - (e) an order that the accused pay the amount of any loss or damage suffered by the injured person as a result of the breach to the injured person; or
  - (f) an order that the accused repair or provide parts for goods provided under the contract or agreement to the injured person; or
  - (g) an order that the accused supply services required to be supplied under the contract or agreement to the injured person; or
  - (h) an order declaring that the accused has contravened a provision of this Act or the regulations.
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- (3) In any proceedings under section 201, 203 or 217, if the court or VCAT finds that—
- (a) a party to the proceedings has contravened the provisions of this Act; and
  - (b) that another person has suffered or is likely to suffer loss or damage as a result of that contravention—
- the court or VCAT may make any order against the party to the proceedings that might be made against an accused under subsection (1).
- (4) The court may also make an order under this section against a person involved in a contravention of a provision of this Act.

#### **217 Actions for damages**

- (1) A person who suffers loss, injury or damage because of a contravention of a provision of this Act may recover the amount of the loss or damage or damages in respect of the injury by proceeding against any person who contravened the provision or was involved in the contravention.
- (2) Except in accordance with section 182(3), a person may not recover in VCAT an amount for any personal injury suffered.
- (3) A proceeding under this section may be brought before VCAT or in any court of competent jurisdiction.
- (4) A proceeding under subsection (1) must not be commenced more than 6 years after the date on which the cause of action accrued.

#### **Note**

This subsection is subject to Part IIA of the **Limitation of Actions Act 1958**.



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**218 Awards of compensation**

- (1) If in any proceedings for an offence against this Act, a person is found guilty of an offence against this Act, the court, in addition to any other penalty it may fix, may order that the person pay to a person who, in the opinion of the court, was humiliated or distressed by the conduct constituting the offence an amount of up to—
- (a) \$10 000; or
  - (b) if a greater amount is prescribed, that prescribed amount.
- (2) An order under this section may be enforced as if it were an order made by the court in its civil jurisdiction.
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**PART 8.3—INFRINGEMENT NOTICES**

**219 Power to serve a notice**

- (1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed a prescribed offence against this Act (including an offence against a provision of the Australian Consumer Law (Victoria)) or the regulations.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that offence is the prescribed infringement penalty in respect of that offence.
- (3) In this Part *authorised officer* means—
  - (a) an inspector;
  - (b) a police officer;
  - (c) a person authorised in writing by the Director.

S. 219(3)(b)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 6.6).

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**PART 8.4—SAFETY AND INFORMATION REQUIREMENTS**

**220 Interim bans, recall notices and safety warning notices**

- (1) The Director may, in respect of goods or services of a particular kind, recommend to the Minister that—
  - (a) an interim ban be made under section 109 of the Australian Consumer Law (Victoria);
  - (b) a recall notice be issued under section 122 of the Australian Consumer Law (Victoria);
  - (c) a safety warning notice be issued under section 129 of the Australian Consumer Law (Victoria).
- (2) The Minister must publish in the Government Gazette a copy of any notice that the Minister publishes on the internet under section 109, 111(2), 113, 122, 129 or 130 of the Australian Consumer Law (Victoria).

**221 Notice of ban or notice**

- (1) The Minister must cause a copy of an interim ban or recall notice to be given to each person who, to the knowledge of the Minister, supplies goods or services of the kind to which the interim ban or recall notice relates.
- (2) A copy of an interim ban or recall notice must be given under subsection (1) within 2 days after the imposition of the interim ban or the issue of the recall notice under the Australian Consumer Law (Victoria), or if that is not practicable, as soon as possible after the end of that period.
- (3) A failure to comply with subsection (1) or (2) in relation to an interim ban or recall notice does not invalidate the interim ban or recall notice.

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**222 Review of ban order or compulsory recall notice**

- (1) A person whose interests are affected by a decision to make an interim ban or a recall notice may apply to VCAT for review of that decision.
  - (2) An application for review must be made within 28 days after the later of—
    - (a) the day on which the interim ban is imposed or the recall notice is issued under the Australian Consumer Law (Victoria); or
    - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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**PART 8.5—ENFORCEMENT OF AUSTRALIAN CONSUMER  
LAW (VICTORIA)**

**223 References to courts and VCAT**

- (1) Subject to subsections (2), (3) and (4) and sections 224 and 225, in the Australian Consumer Law (Victoria), *court* means—
  - (a) the Supreme Court;
  - (b) the County Court;
  - (c) the Magistrates' Court;
  - (d) VCAT.
- (2) In sections 218, 224, 246 and 247 of the Australian Consumer Law (Victoria), *court* does not include VCAT.
- (3) In respect of section 232 of the Australian Consumer Law (Victoria)—
  - (a) VCAT may not issue an order under that section, except for the purposes of subsection (3);
  - (b) only the Supreme Court may issue an order of the kind described in subsection (5).
- (4) In section 250 of the Australian Consumer Law (Victoria), *court* does not include the Magistrates' Court.

**224 Jurisdiction of courts and VCAT**

Subject to section 223, VCAT or any court of competent jurisdiction may hear and determine a cause of action arising under any provision of the Australian Consumer Law (Victoria).

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**225 Jurisdictional limit of Magistrates' Court not to apply to pecuniary penalties under Australian Consumer Law (Victoria)**

The jurisdictional limit for a civil proceeding specified under section 100(1) of the **Magistrates' Court Act 1989** does not apply to the power to order a pecuniary penalty under section 224 of the Australian Consumer Law (Victoria).

**226 Orders against persons found to have contravened Australian Consumer Law (Victoria)**

- (1) In any proceeding for an offence against, or a contravention of, the Australian Consumer Law (Victoria), the Supreme Court, the County Court or the Magistrates' Court may make any order it considers fair if it finds that—
  - (a) the person against whom the proceedings were brought (*the accused*) has contravened a provision of that Law; and
  - (b) another person (*the injured person*) has suffered or may suffer loss or damage as a result of the contravention of that Law.
- (2) Without limiting subsection (1), the orders that may be made under this section include an order declaring that the accused has contravened a provision of the Australian Consumer Law (Victoria).

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## CHAPTER 9—MISCELLANEOUS

### **227 Application of Australian Consumer Law (Victoria) in respect of bills and receipts under Legal Profession Act 2004**

Section 101 of the Australian Consumer Law (Victoria) does not apply to a contract for the provision of legal services to which the **Legal Profession Act 2004** applies.

### **228 Public warning statements**

If satisfied it is in the public interest to do so, the Minister or the Director may publish a public statement or issue a public warning, identifying and giving information about the following—

- (a) goods that are unsatisfactory and the persons who supply those goods;
- (b) services supplied in an unsatisfactory manner and persons who supply those services;
- (c) unfair business practices and persons who engage in those practices;
- (d) any other matter that adversely affects or may adversely affect the interests of persons in connection with the acquisition by them of goods or services from suppliers.

### **229 Complaints etc. are privileged**

If a person in good faith—

- (a) makes a complaint to the Director under section 113; or
- (b) produces or gives a document or any information or evidence to the Director, an inspector or VCAT in relation to a matter that constitutes or may constitute a

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contravention of this Act or another  
Consumer Act—

the person is not liable in any way for any loss,  
damage or injury suffered by another person by  
reason only of the making of that complaint or the  
production or giving of that document,  
information or evidence.

**230 Disapplication of certain provisions to Australian  
Consumer Law (Victoria)**

Sections 197, 198, 201, 202, 205, 210, 211, 213,  
214, 216 and 217 do not apply in respect of the  
Australian Consumer Law (Victoria).

**231 Supreme Court—Limitation of jurisdiction**

It is the intention of sections 187, 188 and 189 to  
alter or vary section 85 of the **Constitution Act  
1975**.

**232 Regulations**

- (1) The Governor in Council may make regulations  
for or with respect to—
- (a) prescribing for the purposes of section 22 the  
form of and the particulars to be included in  
a contractual term or a class of contractual  
term referred to in that section;
  - (b) prescribing calling hours with respect to  
unsolicited consumer agreements under  
section 73 of the Australian Consumer Law  
(Victoria);
  - (c) prescribing codes of practice in accordance  
with Part 6.3;
  - (d) prescribing any other matter or thing  
required or permitted by this Act to be  
prescribed or necessary to be prescribed to  
give effect to this Act.
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- (2) The regulations—
- (a) may be of a general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies;
  - (d) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person, whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
    - (iii) as formulated, issued, prescribed or published from time to time;
  - (e) may provide in a specified case or class of case for the exemption of people or things or a class of people or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified;
  - (f) may impose a penalty, not exceeding 20 penalty units, for a contravention of the regulations.
- (3) Regulations made under section 232(1)(b) may alter the operation of section 73 of the Australian Consumer Law (Victoria).
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**CHAPTER 10—REPEALS, SAVINGS,  
TRANSITIONALS AND CONSEQUENTIAL  
AMENDMENTS**

**233 Repeal of Fair Trading Act 1999**

The **Fair Trading Act 1999** is repealed.

See:  
Act No.  
16/1999.  
Reprint No. 5  
as at  
1 January  
2011  
and  
amending  
Act Nos  
1/2010,  
63/2010,  
67/2010,  
29/2011 and  
36/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

**234 Repeal of Disposal of Uncollected Goods Act 1961**

The **Disposal of Uncollected Goods Act 1961** is  
repealed.

See:  
Act No.  
6815.  
Reprint No. 4  
as at  
19 March  
2009  
and  
amending  
Act No.  
63/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

See:  
Act No.  
6214.  
Reprint No. 10  
as at  
1 September  
1981  
and  
amending  
Act Nos  
1/2010 and  
63/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

### **235 Repeal of Carriers and Innkeepers Act 1958**

**The Carriers and Innkeepers Act 1958 is repealed.**

See:  
Act No.  
6285.  
Reprint No. 9  
as at  
19 August  
2004  
and  
amending  
Act Nos  
18/2005,  
12/2008,  
44/2008,  
68/2009,  
1/2010 and  
63/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

### **236 Repeal of Landlord and Tenant Act 1958**

**The Landlord and Tenant Act 1958 is repealed.**

### **237 Savings and transitional provisions**

Schedule 4 has effect.

### **238 Closure of the Consumer Credit Fund**

Schedule 5 has effect.

### **239 Consequential and other amendments**

On the coming into operation of an item in Schedule 6, the Act specified in the heading to that item is amended as set out in that item.

**240 Amendments relating to Associations Incorporation  
Reform Act 2012**

Schedule 7 has effect.

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Sch. 1

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**SCHEDULES**

**SCHEDULE 1**

**CONSUMER ACTS**

Sch. 1  
amended by  
Nos 21/2012  
s. 240(Sch. 7  
item 3), 9/2013  
s. 42(Sch. 2  
item 3),  
16/2014 s. 7.

**Associations Incorporation Reform Act 2012**  
**Australian Consumer Law and Fair Trading Act 2012**  
**Business Names Act 1962**  
**Consumer Credit (Victoria) Act 1995**  
**Conveyancers Act 2006**  
Co-operatives National Law (Victoria)  
**Credit Act 1984**  
**Credit (Administration) Act 1984**  
**Domestic Building Contracts Act 1995**  
**Estate Agents Act 1980**  
**Fundraising Act 1998**  
**Funerals Act 2006**  
**Goods Act 1958**  
**Motor Car Traders Act 1986**  
**Owners Corporations Act 2006**  
**Partnership Act 1958**  
**Residential Tenancies Act 1997**  
**Retirement Villages Act 1986**  
**Sale of Land Act 1962**  
**Second-Hand Dealers and Pawnbrokers Act 1989**  
**Sex Work Act 1994**

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**SCHEDULE 2**

Section 97

**YOU HAVE A RIGHT TO WITHDRAW FROM THIS  
AGREEMENT WITHIN 3 DAYS**

You may withdraw from this agreement at any time within 3 business days of signing it.

To withdraw from this agreement you must write a letter to the introduction agent, sign it and either—

- give it to the agent personally or leave it at [*insert address*]; or
- have it delivered to [*insert address or a postal address*]; or
- fax it to [*insert fax number*]; or
- send it to [*insert email or Internet or similar address*].

Your letter must reach the agent before            a.m./p.m. on [*date*].

If you withdraw from this agreement the agent is entitled to [\$250 or whatever other amount is fixed by the regulations] or 10% of the total amount that was payable under this agreement (whichever is the smaller amount).

If the agent holds more of your money than this amount, then the agent must refund the rest of your money within 7 days of receiving your letter.

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**SCHEDULE 3**

Sections 102 and 104

**LOSS OF OR DAMAGE TO GUESTS' PROPERTY**

Part 5.2 of the **Australian Consumer Law and Fair Trading Act 2012** may make an accommodation provider liable to make good the loss of a guest's property in certain circumstances even though the loss is not caused by the fault of the accommodation provider, or the provider's agent.

The liability of the accommodation provider under the Act—

applies only to a guest of the accommodation provider;

applies only for the period for which the guest is provided accommodation;

is limited to \$300 for each room provided for the use of the guest on the day, unless the guest's property was placed in a safekeeping service;

is limited to \$3000 for each room in respect of a guest's property that was placed in a safekeeping service (excluding a safe in a room);

does not cover motor vehicles and property owned by the guest left in or on a motor vehicle.

Part 5.2 does not limit any other right or remedy available under the **Australian Consumer Law and Fair Trading Act 2012**.

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**SCHEDULE 4**

Section 237

**SAVINGS AND TRANSITIONAL PROVISIONS**

**1 Definitions**

In this Schedule—

*new Act* means the **Australian Consumer Law and Fair Trading Act 2012**;

*old Act* means the **Fair Trading Act 1999** as in force immediately before the day on which section 233 of the new Act comes into operation.

**2 General transitional provisions**

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) Without limiting subclause (1), in declaring that certain provisions of the new Act are to be treated as re-enacting with modifications certain provisions of the old Act, this Schedule must not be taken—
  - (a) to be an exhaustive list of the provisions of the old Act re-enacted by the new Act; or
  - (b) to limit the operation of any provision of the **Interpretation of Legislation Act 1984** relating to the re-enactment.
- (3) This Schedule applies despite anything to the contrary in any other provision of the new Act.

**Note**

See in particular sections 14 and 16 of the **Interpretation of Legislation Act 1984**.



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### 3 Superseded references

- (1) On and from the commencement day, a reference to the old Act in any Act (other than this Act), or in any instrument made under any Act or in any other document of any kind, must be read as a reference to the new Act unless the context otherwise requires.
- (2) In this clause, *commencement day* means the day on which section 233 of the new Act comes into operation.

### 4 Re-enacted provisions

A provision or provisions of the old Act specified in Column 1 of the Table is to be taken to be re-enacted (with modifications) by the provision or provisions of the new Act appearing opposite in Column 2 of the Table.

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 5	Section 4
Section 6	Section 5
Section 7	Section 6
Section 8	Section 7
Section 9	Section 8
Section 10	Section 9
Section 11	Section 10
Section 12	Section 11
Section 13	Section 12
Section 14	Section 13
Section 15	Section 14
Section 16	Section 15
Section 17	Section 16
Section 18	Section 17

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Australian Consumer Law and Fair Trading Act 2012  
No. 21 of 2012

Sch. 4

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 19	Section 18
Section 20	Section 19
Section 21	Section 20
Section 22	Section 21
Section 32FA	Section 31
Section 32N	Section 22
Section 32NA	Section 23
Section 32OA	Section 24
Section 32P	Section 25
Section 32PA	Section 26
Section 32Q	Section 27
Section 32QA	Section 28
Section 32R	Section 29
Section 32RA	Section 30
Section 32SA	Section 32
Section 32T	Section 33
Section 32TA	Section 34
Section 32ZF	Section 35
Section 32ZG	Section 36
Section 32ZH	Section 37
Section 32ZI	Section 38
Section 32ZJ	Section 39
Section 32ZK	Section 40
Section 32ZL	Section 41
Section 32ZM	Section 42
Section 32ZN	Section 43
Section 32ZO	Section 44

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**Sch. 4**

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 93AB	Section 81
Section 93AC	Section 82
Section 93AD	Section 83
Section 93AE	Section 84
Section 93AF	Section 85
Section 93AG	Section 86
Section 93AH	Section 87
Section 93AI	Section 88
Section 93AJ	Section 89
Section 93AK	Section 90
Section 93AL	Section 91
Section 93AM	Section 92
Section 93AN	Section 93
Section 93AO	Section 94
Section 93AP	Section 95
Section 93AQ	Section 96
Section 93AR	Section 97
Section 93AS	Section 98
Section 93AT	Section 99
Section 93B	Section 78
Section 93C	Section 79
Section 93D	Section 80
Section 93F	Section 47
Section 93G	Section 48
Section 93H	Section 49
Section 93I	Section 50
Section 93J	Section 51

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 93K	Section 52
Section 93L	Section 53
Section 93M	Section 45
Section 93N	Section 46
Section 94	Section 138
Section 95	Section 139
Section 96	Section 140
Section 97	Section 141
Section 98	Section 107
Section 99	Section 108
Section 100(1)	Section 109
Section 100(2)	Section 110
Section 101	Section 111
Section 102	Section 112
Section 102B	Section 134
Section 102C	Section 135
Section 102D	Section 136
Section 102E	Section 137
Section 103	Section 113
Section 104	Section 114
Section 105	Section 115
Section 106	Section 116
Section 106AA	Section 117
Section 106AB	Section 118
Section 106B	Section 119
Section 106D	Section 120
Section 106E	Section 121

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No. 21 of 2012

**Sch. 4**

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 106F	Section 122
Section 106G	Section 123
Section 106H	Section 124
Section 106HA	Section 125
Section 106I	Section 126
Section 106J	Section 127
Section 106K	Section 128
Section 106L	Section 129
Section 106M	Section 130
Section 106N	Section 131
Section 106O	Section 132
Section 106P	Section 133
Section 107	Section 182
Section 107A	Section 183
Section 108	Section 184
Section 109	Section 185
Section 110	Section 186
Section 111	Section 187
Section 112	Section 188
Section 112A	Section 189
Section 112B	Section 190
Section 113	Section 191
Section 113A	Section 192
Section 114	Section 142
Section 115	Section 143
Section 116	Section 144
Section 117(1) to (3)	Section 145

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Sch. 4

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 117(4)	Section 146
Section 117(5) to (7)	Section 147
Section 118	Section 148
Section 119(1)	Section 149
Section 119(2)	Section 150
Section 119(3) to (6)	Section 151
Section 120	Section 152
Section 121(1)	Section 153
Section 121(2) to (6)	Section 154
Section 121A	Section 155
Section 122	Sections 157 and 158
Section 123	Section 159
Section 124	Section 160
Section 125	Section 161
Section 126	Section 162
Section 126A	Section 156
Section 126B(1) and (2)	Section 163
Section 126B(3) and (4)	Section 164
Section 126B(5) and (6)	Section 165
Section 127	Section 166
Section 128	Section 167
Section 129	Section 168
Section 129A	Section 174
Section 130	Section 175
Section 131	Section 177
Section 132	Section 169
Section 133	Section 170

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**Sch. 4**

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 134	Section 171
Section 135	Section 172
Section 136	Section 173
Section 137	Section 176
Section 138	Section 178
Section 139	Section 179
Section 140	Section 180
Section 141	Section 181
Section 142	Section 193
Section 142A	Section 194
Section 143	Section 195
Section 144	Section 196
Section 145	Section 197
Section 146	Section 198
Section 147	Section 199
Section 148	Section 200
Section 149	Section 201
Section 149A	Section 202
Section 150	Section 203
Section 151	Section 204
Section 151A	Section 205
Section 151B	Section 206
Section 151C	Section 207
Section 152	Section 208
Section 152A	Section 209
Section 153	Section 210
Section 153A	Section 211

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<i>Old Act provision</i>	<i>New Act provision</i>
Section 154	Section 212
Section 155	Section 213
Section 156	Section 214
Section 157	Section 215
Section 158	Section 216
Section 159	Section 217
Section 160	Section 218
Section 160A	Section 219
Section 160B	Section 220
Section 160C	Section 221
Section 160D	Section 222
Section 160E	Section 223
Section 160F	Section 224
Section 160G	Section 225
Section 160H	Section 226
Section 161A	Section 227
Section 162A	Section 228
Section 163A	Section 229
Section 163B	Section 230
Section 164	Section 231
Section 165	Section 232
Schedule 1A	Schedule 2

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**5 Savings—Fair Trading (Information Standard)  
(Australian Builders Plate Standard)  
Regulations 2009**

Despite the repeal of sections 47 and 165(1)(a) of the **Fair Trading Act 1999** by the **Fair Trading Amendment (Australian Consumer Law) Act 2010**, the Fair Trading (Information Standard) (Australian Builders Plate Standard) Regulations 2009—

- (a) subject to paragraph (b), continue in operation and may be amended or revoked as if those sections remained in force; and
- (b) are revoked on the coming into operation of section 102 of the **Marine Safety Act 2010**.

**6 Transitional provisions for repeal of Disposal of Uncollected Goods Act 1961**

- (1) In this clause—

*commencement day* means the day on which section 234 of the new Act comes into operation;

*former Act* means the **Disposal of Uncollected Goods Act 1961** as in force immediately before the commencement day.

- (2) This clause applies despite section 56(1) and the repeal of the former Act.
  - (3) If, under section 3 of the former Act, a person has given notice of an intention to sell goods, the former Act continues to apply to those goods.
  - (4) If section 3A or 3B of the former Act applies to uncollected goods, the receiver may elect to dispose of those goods in accordance with Part 4.2 of this Act.
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- (5) Despite the repeal of the former Act, a person who has disposed of uncollected goods under that Act is still required to keep the records required by section 5 of that Act until the expiry of the period specified in that section in relation to those goods.
  - (6) Despite the repeal of the former Act, if an action to reopen a transaction under section 13 of that Act began before the commencement day that section will continue to apply to that action.

#### **7 Transitional provision for Part 4.2**

- (1) For the purposes of section 63, a certificate issued under section 24 of the **Chattel Securities Act 1987** is taken to be a written search result under section 170(2)(b) of the Personal Property Securities Act 2009 of the Commonwealth.
- (2) Subclause (1) expires on the commencement of section 5 of the **Personal Property Securities (Statute Law Revision and Implementation) Act 2010**.<sup>1</sup>

#### **8 Transitional provision for repeal of Carriers and Innkeepers Act 1958**

- (1) A notice in accordance with the Fourth Schedule to the **Carriers and Innkeepers Act 1958** as in force immediately before the commencement day, displayed in accordance with Part 5.2 of this Act, is taken, for a period of one month after the commencement day, to be the notice set out in Schedule 3 to this Act.
- (2) In this clause, *commencement day* means the day on which section 235 of the new Act comes into operation.

**9 Transitional provision for repeal of Part IVA of  
Landlord and Tenant Act 1958**

- (1) Part IVA of the **Landlord and Tenant Act 1958** continues to apply at the end or other determination of a lease of premises to which that Part applied immediately before the commencement day.
  - (2) In this clause, *commencement day* means the day on which section 236 of the new Act comes into operation.
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**SCHEDULE 5**

Section 238

**CLOSURE OF THE CONSUMER CREDIT FUND**

**1 Definition**

In this Schedule—

*Consumer Credit Fund* means the fund established under section 86AA of the **Credit (Administration) Act 1984**;

*liabilities* means all liabilities, duties and obligations, whether actual, contingent or prospective;

*rights* means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

*Victorian Consumer Law Fund* means the fund referred to in section 134(1).

**2 Repeal of Part 5A of the Credit (Administration) Act 1984**

Part 5A of the **Credit (Administration) Act 1984** is repealed.

See:  
Act No.  
10091.  
Reprint No. 5  
as at  
1 May 2008  
and  
amending  
Act Nos  
68/2009,  
11/2010 and  
29/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

**3 Transitional provisions**

On the commencement of clause 2—

- (a) the Consumer Credit Fund is closed and the members of its Advisory Committee established under section 86AC of the

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**Credit (Administration) Act 1984** go out of office as members;

- (b) all money standing to the credit of the Consumer Credit Fund immediately before that commencement forms part of the Victorian Consumer Law Fund;
- (c) all rights and liabilities of the Consumer Credit Fund immediately before that commencement become rights and liabilities of the Victorian Consumer Law Fund;
- (d) a reference to the Consumer Credit Fund in any Act, subordinate instrument, agreement or other document to the extent that it relates to any matter on or after that commencement is taken to be a reference to the Victorian Consumer Law Fund, unless the contrary intention appears.

#### **4 Payments into Victorian Consumer Law Fund**

- (1) Money that a credit provider has agreed or undertaken to pay to a fund with objects similar to those of the Consumer Credit Fund must be paid into the Victorian Consumer Law Fund.

- (2) In this clause—

*credit provider* has the same meaning as in the National Credit Code in Schedule 1 to the National Consumer Credit Protection Act 2009 of the Commonwealth.

#### **5 Consumer Credit (Victoria) Act 1995 amended—section 38**

- (1) In the heading to section 38 of the **Consumer Credit (Victoria) Act 1995**, for "**Consumer Credit Fund**" substitute "**Victorian Consumer Law Fund**".

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- (2) In section 38 of the **Consumer Credit (Victoria) Act 1995**, for "Consumer Credit Fund established under the **Credit (Administration) Act 1984**" substitute "Victorian Consumer Law Fund established under the **Australian Consumer Law and Fair Trading Act 2012**".

**6 Credit Act 1984 amended—section 86A**

- (1) **Insert** the following heading to section 86A of the **Credit Act 1984**—  
**"Payments to Victorian Consumer Law Fund"**.
- (2) In section 86A of the **Credit Act 1984**, for "Consumer Credit Fund established under Part 5A of the **Credit (Administration) Act 1984**" substitute "Victorian Consumer Law Fund established under Division 5 of Part 6.2 of the **Australian Consumer Law and Fair Trading Act 2012**".
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SCHEDULE 6

Section 239

**CONSEQUENTIAL AND OTHER AMENDMENTS**

**1 Accident Towing Services Act 2007**

1.1 In section 75(3)(b), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

**2 Administrative Law Act 1978**

2.1 In section 4(3), for "Part 9 of the **Fair Trading Act 1999**" substitute "Chapter 7 of the **Australian Consumer Law and Fair Trading Act 2012**".

**3 Architects Act 1991**

3.1 In section 47(2)(a), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

**4 Associations Incorporation Act 1981**

4.1 In section 3(1), in the definition of *inspector*, for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

4.2 In section 37A, in the definition of *Director*, for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

4.3 For section 50C, substitute—

**"50C Application of Australian Consumer Law and Fair Trading Act 2012**

(1) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian**

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**Consumer Law and Fair Trading Act 2012** were a reference to this Act.

- (2) For the purposes of subsection (1)—
- (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if—
    - (i) a reference in that section to any section of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to section 125 of that Act (as applied by subsection(1)); and
    - (ii) section 209(2) did not apply;
  - (b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
  - (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act (except Part VIIIA); or
    - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have
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contravened a provision of this Act (except Part VIIIA); or

- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

## 5 Building Act 1993

5.1 In section 137B(4), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

5.2 In section 221S(1)(e)(iv), for "(Victoria)." substitute "(Victoria);".

5.3 After section 221S(1)(e)(iv), insert—

"(v) section 29, 33, 34, 35, 36, 50, 151, 157, 158 or 168 of Schedule 2 to the Competition and Consumer Act 2010 of the Commonwealth."

5.4 In section 221ZD(2)(e)(iv), for "(Victoria)." substitute "(Victoria);".

5.5 After section 221ZD(2)(e)(iv), insert—

"(v) section 29, 33, 34, 35, 36, 50, 151, 157, 158 or 168 of Schedule 2 to the Competition and Consumer Act 2010 of the Commonwealth."

## 6 Bus Safety Act 2009

6.1 In section 3(1), in the definition of *hire and drive bus service*, for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

## 7 Business Licensing Authority Act 1998

7.1 In section 3, in the definition of *Director*, for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

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## 8 Business Names Act 1962

8.1 In section 4(1), in the definition of *Director*, for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

8.2 For section 29, substitute—

**"29 Application of Australian Consumer Law and Fair Trading Act 2012**

- (1) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (2) For the purposes of subsection (1)—
- (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if—
- (i) a reference in that section to any section of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to section 125 of that Act (as applied by subsection (1)); and
- (ii) section 209(2) did not apply;
- (b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;

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- (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
- (i) proceedings for an offence against a provision of this Act (except section 13); or
  - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except section 13); or
  - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

**9 Consumer Affairs Legislation Amendment (Reform) Act 2010**

- 9.1 In section 2(4), for "30 June 2012" substitute "1 December 2012".
- 9.2 Division 1 of Part 2 is **repealed**.
- 9.3 Division 3 of Part 2 is **repealed**.
- 9.4 Section 72(2) is **repealed**.
- 9.5 Section 75 is **repealed**.
- 9.6 Section 78 is **repealed**.
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## 10 Conveyancers Act 2006

- 10.1 In section 3, in the definition of *Consumer Act* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 10.2 In section 3, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 10.3 In section 3, in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 10.4 In section 47(3)(d)(i), for "Part 8 of the **Fair Trading Act 1999**" substitute "Part 6.2 of the **Australian Consumer Law and Fair Trading Act 2012**".
- 10.5 In section 47(3)(d)(ii), for "Part 9 of the **Fair Trading Act 1999**" substitute "Chapter 7 of the **Australian Consumer Law and Fair Trading Act 2012**".
- 10.6 For section 183, substitute—

### "183 Application of Australian Consumer Law and Fair Trading Act 2012

- (1) Sections 152, 172, 173, 176 and 178 of the **Australian Consumer Law and Fair Trading Act 2012** apply (with any necessary modifications) in relation to the exercise or attempted exercise of a power of an inspector under Part 8 as if any reference in those sections to Part 6.4 of that Act were a reference to Part 8.
- (2) Sections 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer**

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**Law and Fair Trading Act 2012** were a reference to this Act.

- (3) For the purposes of subsection (2)—
- (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
  - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act; or
    - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act; or
    - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2))."

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**11 Credit (Administration) Act 1984**

- 11.1 In section 4, in the definition of *Consumer Act* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 11.2 In section 4, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 11.3 In section 4, in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 11.4 In section 40, for "116, 120, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999**" substitute "144, 152, 172, 173, 176, 178 and 179 of the **Australian Consumer Law and Fair Trading Act 2012**".

**12 Credit (Commonwealth Powers) Act 2010**

- 12.1 In section 11, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

**13 Credit Act 1984**

- 13.1 In section 5(1), in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 13.2 In section 5(1), in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 13.3 In section 5(1), in the definition of *security interest* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

**14 Domestic Building Contracts Act 1995**

- 14.1 In section 3(1), in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
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14.2 For section 124A, substitute—

**"124A Application of provisions of Australian Consumer Law and Fair Trading Act 2012**

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except sections 152 and 153) extends and applies (with any necessary modifications) to this Act as if any reference in that Part to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
  - (2) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
  - (3) For the purposes of subsection (2)—
    - (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2);
    - (b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
    - (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to
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prescribed proceedings were a reference to—

- (i) proceedings for an offence against a provision of this Act (except an offence applied by subsection (1)); or
- (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act (except an offence applied by subsection (1)); or
- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2))."

14.3 In section 125(1), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

## **15 Electricity Industry Act 2000**

15.1 In section 3, in the definition of *ACCC* for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

15.2 In section 33(a), for "section 88(9)(a) or (b) of the Trade Practices Act 1974" substitute "section 88(9) of the Competition and Consumer Act 2010".

15.3 In section 33(b)(i), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

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- 15.4 In section 68(8)(a), for "section 88(9)(a) or (b) of the Trade Practices Act 1974" **substitute** "section 88(9) of the Competition and Consumer Act 2010".
- 15.5 In section 68(8)(b)(i), for "Trade Practices Act 1974" **substitute** "Competition and Consumer Act 2010".
- 15.6 In section 68(8AA), for "Trade Practices Act 1974" **substitute** "Competition and Consumer Act 2010".

**16 Estate Agents Act 1980**

- 16.1 In section 4(1), in the definition of *Director* for "**Fair Trading Act 1999**" **substitute** "**Australian Consumer Law and Fair Trading Act 2012**".
- 16.2 In section 4(1), in the definition of *inspector* for "**Fair Trading Act 1999**" **substitute** "**Australian Consumer Law and Fair Trading Act 2012**".
- 16.3 In section 70W, for "120, 121A, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999**" **substitute** "152, 155, 172, 173, 176, 178 and 179 of the **Australian Consumer Law and Fair Trading Act 2012**".
- 16.4 In section 70W, for "Part 10" **substitute** "Part 6.4".
- 16.5 For section 93A **substitute**—
- "93A Application of Australian Consumer Law and Fair Trading Act 2012**
- (1) Sections 195 and 196 and Part 8.2 (except sections 209 and 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
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- (2) For the purposes of subsection (1), section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (3) For the purposes of subsection (1)—
- (a) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
- (i) proceedings for an offence against a provision of this Act (except Division 2 of Part VI and section 93); or
- (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Division 2 of Part VI and section 93); or
- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

16.6 In section 95A(2)(a), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

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## 17 Fundraising Act 1998

17.1 In section 3, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

17.2 In section 3, in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

17.3 For section 68, substitute—

**"68 Application of Australian Consumer Law and Fair Trading Act 2012**

(1) Sections 125, 195 and 196 and Part 8.2 of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.

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

(a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if—

(i) a reference in that section to any section of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to section 125 of that Act (as applied by subsection (1)); and

(ii) section 209(2) did not apply;

(b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair**

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**Trading Act 2012** were a reference to this Act;

- (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
- (i) proceedings for an offence against a provision of this Act (except Part 5); or
  - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Part 5); or
  - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

## **18 Funerals Act 2006**

- 18.1 In section 3, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 18.2 In section 3, in the definition of *inspector* for "section 114 of the **Fair Trading Act 1999**" substitute "section 142 of the **Australian Consumer Law and Fair Trading Act 2012**".

18.3 For section 54, **substitute**—

**"54 Incorporation of provisions of Australian Consumer Law and Fair Trading Act 2012**

- (1) Sections 195 and 196 and Part 8.2 (other than section 214) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if a reference in any of those provisions to that Act were a reference to this Act.
- (2) For the purposes of subsection (1)—
  - (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
  - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act; or
    - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act; or

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- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1));
  - (c) section 213 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if—
    - (i) in subsection (1), the words "in relation to a contravention of a prescribed provision" were omitted; and
    - (ii) subsections (4) and (5) were omitted."

## **19 Gambling Regulation Act 2003**

- 19.1 In the heading to section 2.5.19F, for "**Trade Practices Act**" substitute "**Competition and Consumer Act**".
- 19.2 In section 2.5.19F(1), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".
- 19.3 In the heading to section 3.4.59R, for "**Trade Practices Act**" substitute "**Competition and Consumer Act**".
- 19.4 In section 3.4.59R(1), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".
- 19.5 In the heading to section 3.4A.34, for "**Trade Practices Act**" substitute "**Competition and Consumer Act**".
- 19.6 In section 3.4A.34(1), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

19.7 In the heading to section 4.9.1, for "**Trade Practices Act**" substitute "**Competition and Consumer Act**".

19.8 In section 4.9.1(1), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

19.9 In section 4.9.1(1A), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

## 20 Gas Industry Act 2001

20.1 In section 3, in the definition of *ACCC*, for "Trade Practices Act" substitute "Competition and Consumer Act 2010".

20.2 In section 3, the definition of *Trade Practices Act* is repealed.

20.3 In section 3 insert the following definition—

*"Competition and Consumer Act 2010* means the Competition and Consumer Act 2010 of the Commonwealth;"

20.4 In section 129(3)(a), for "section 88(9)(a) or (b) of the Trade Practices Act" substitute "section 88(9) of the Competition and Consumer Act 2010".

20.5 In section 129(3)(b)(i), for "Trade Practices Act" substitute "Competition and Consumer Act 2010".

20.6 In section 129(3A), for "Trade Practices Act" substitute "Competition and Consumer Act 2010".

## 21 Health Services Act 1988

21.1 In section 134O, for "Trade Practices Act 1974" (wherever occurring) substitute "Competition and Consumer Act 2010".

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**22 Interpretation of Legislation Act 1984**

22.1 In section 38F, for "Part 2 of the **Fair Trading Act 1999**" substitute "Chapter 2 of the **Australian Consumer Law and Fair Trading Act 2012**".

**23 Jurisdiction of Courts (Cross-vesting) Act 1987**

23.1 In section 10(b), for "Division 1 or 1A of Part V of the Trade Practices Act 1974" substitute "Part 3-1, Part 3-3 and Part 3-4 of Schedule 2 of the Competition and Consumer Act 2010".

**24 Legal Profession Act 2004**

24.1 In the heading to section 3.5.5, for "**Trade Practices Act**" substitute "**Competition and Consumer Act**".

24.2 In section 3.5.5, for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

**25 Limitation of Actions Act 1958**

25.1 In section 27A(2), for "section 159 of the **Fair Trading Act 1999**" substitute "section 217 of the **Australian Consumer Law and Fair Trading Act 2012**".

25.2 In section 27B(4), for "section 159(3) of the **Fair Trading Act 1999**" substitute "section 217(4) of the **Australian Consumer Law and Fair Trading Act 2012**".

**26 Liquor Control Reform Act 1998**

26.1 In the heading to section 146C, for "**Trade Practices Act**" substitute "**Competition and Consumer Act**".

26.2 In section 146C, for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".



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## 27 Major Sporting Events Act 2009

27.1 In the note at the foot of section 28, for "Trade Practices Act 1974 of the Commonwealth and the **Fair Trading Act 1999**" substitute "Competition and Consumer Act 2010 of the Commonwealth and the **Australian Consumer Law and Fair Trading Act 2012**".

## 28 Motor Car Traders Act 1986

28.1 In section 3(1), in the definition of *Consumer Act* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

28.2 In section 3(1), in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

28.3 In section 3(1), in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

28.4 In section 82AU, for "120, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999**" substitute "152, 172, 173, 176, 178 and 179 of the **Australian Consumer Law and Fair Trading Act 2012**".

28.5 In section 82AU, for "Part 10" substitute "Part 6.4".

28.6 For section 82I, substitute—

### **"82I Application of Australian Consumer Law and Fair Trading Act 2012**

- (1) Sections 195 and 196 and Part 8.2 (except sections 209 and 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian**

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**Consumer Law and Fair Trading Act 2012** were a reference to this Act.

- (2) For the purposes of subsection (1)—
- (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
  - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act (except Division 1); or
    - (ii) proceedings on an application for an injunction under sections 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Division 1); or
    - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

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28.7 In section 85A(3), in paragraph (b) in the definition of *prescribed class of hearing* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

**29 National Electricity (Victoria) Act 2005**

29.1 In the note at the foot of section 16D, for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

29.2 In section 29(5), in the definition of *Tribunal*, for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

**30 National Gas (Victoria) Act 2008**

30.1 In section 33(5), in the definition of *Tribunal*, for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

**31 Outworkers (Improved Protection) Act 2003**

31.1 In section 28, for "Trade Practices Act 1974" (wherever occurring) substitute "Competition and Consumer Act 2010".

**32 Owner Drivers and Forestry Contractors Act 2005**

32.1 In the heading to section 64, for "**Trade Practices Act**" substitute "**Competition and Consumer Act**".

32.2 In section 64(1), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

**33 Owners Corporations Act 2006**

33.1 In section 3, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

33.2 In section 3, in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

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33.3 In section 161(2), for "section 103(4) of the **Fair Trading Act 1999**" substitute "section 113(4) of the **Australian Consumer Law and Fair Trading Act 2012**".

33.4 In section 194(j), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

33.5 For section 199, substitute—

**"199 Application of Australian Consumer Law and Fair Trading Act 2012**

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except sections 152, 153 and 175) extends and applies (with any necessary modifications) to this Part as if any reference in that Part to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Part.
- (2) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Part as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Part.
- (3) For the purposes of subsection (2)—
  - (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Part;

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- (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
- (i) proceedings for an offence against a provision of this Part (except an offence applied by subsection (1)); or
  - (ii) proceedings on an application for an injunction under sections 201, 202 or 203 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Part (except an offence applied by subsection (1)); or
  - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2))."

#### **34 Partnership Act 1958**

- 34.1 In section 49(1), in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 34.2 In section 81, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

#### **35 Port Management Act 1995**

- 35.1 In section 62(5), for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

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**36 Residential Tenancies Act 1997**

36.1 In section 3(1), in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

36.2 After section 14(2) insert—

"(3) This Act does not apply to premises that were prescribed premises within the meaning of Part V of the **Landlord and Tenant Act 1958** immediately before that Act was repealed."

36.3 Section 15(1) is **repealed**.

36.4 For section 507A, substitute—

**"507A Application of provisions of Australian Consumer Law and Fair Trading Act 2012**

(1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except section 153) extends and applies (with any necessary modifications) to this Act (except Part 14) as if—

(a) any reference in Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act; and

(b) the reference in section 155(3)(a) of the **Australian Consumer Law and Fair Trading Act 2012** to "premises that is used for residential purposes" were taken to exclude a common area within the meaning of this Act in a rooming house.

(2) Sections 125, 126, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary

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modifications) to this Act (except Part 14) as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act (except Part 14).

- (3) For the purposes of subsection (2)—
- (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2);
  - (b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
  - (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act (except Part 14 and an offence applied by subsection (1)); or
    - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this
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Act (except Part 14 and an offence applied by subsection (1)); or

- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2))."

36.5 After Division 3 of Schedule 1 **insert**—

**"Division 4—Australian Consumer Law and Fair Trading Act 2012**

**12 Commencement day**

In this Division, *commencement day* means the day on which section 236 of the **Australian Consumer Law and Fair Trading Act 2012** comes into operation.

**13 Saving for protected tenants**

Part V of the **Landlord and Tenant Act 1958** continues to apply to a lease of premises to which that Part applied immediately before the commencement day for so long as those premises remain prescribed premises.

**14 Part V leases of prescribed premises to be transitioned to Residential Tenancies Act 1997 except in certain circumstances**

- (1) If a lessee in possession of premises to which Part V of the **Landlord and Tenant Act 1958** applies dies on or after the commencement day, only the partner of the lessee who is residing with the lessee at the time of that death may take over the protected tenancy pursuant to section 106 of that Act.



- (2) Despite section 14(3) and except in the circumstances described in subclause (1), Part V of the **Landlord and Tenant Act 1958** will cease to apply on and from the date of death of a lessee who was in possession of premises under a lease to which that Part applied."

### **37 Retail Leases Act 2003**

- 37.1 In section 3, in the definition of *applicable industry code*, for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".
- 37.2 In section 3, in the definition of *industry code*, for "Trade Practices Act 1974" substitute "Competition and Consumer Act 2010".

### **38 Retirement Villages Act 1986**

- 38.1 In section 3(1), in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 38.2 In section 18, for "**Fair Trading Act 1999**" (wherever occurring) substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 38.3 For section 40, substitute—

#### **"40 Application of Australian Consumer Law and Fair Trading Act 2012**

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except sections 152, 153 and 175) extends and applies (with any necessary modifications) to this Act as if any reference in that Part to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.

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- (2) Sections 125, 195 and 196 and Part 8.2 (except sections 205, 206, 207, 210, 211 and 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (3) For the purposes of subsection (2)—
- (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2);
  - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act (except an offence applied by subsection (1));  
or
    - (ii) proceedings on an application for an injunction under section 201, 202 or 203 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act (except an offence applied by subsection (1));  
or
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- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2))."

### 39 Road Safety Act 1986

39.1 In section 3(1), in the definition of *hire-purchase agreement* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

39.2 After section 92(3)(f), insert—

- "(fa) for the purposes of Part 4.2 of the **Australian Consumer Law and Fair Trading Act 2012**;"

### 40 Sale of Land Act 1962

40.1 For section 48A, substitute—

#### "48A Application of Australian Consumer Law and Fair Trading Act 2012

- (1) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (2) For the purposes of subsection (1), section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to any section of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to section 125 of that Act (as applied by

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subsection (1)) and section 209(2) did not apply.

- (3) For the purposes of subsection (1)—
- (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
  - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act; or
    - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act; or
    - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

40.2 In section 48B(4)(a), for "section 114 of the **Fair Trading Act 1999**" substitute "section 142 of the **Australian Consumer Law and Fair Trading Act 2012**".

**41 Second-Hand Dealers and Pawnbrokers Act 1989**

41.1 In section 3(1), in the definition of *Consumer Act* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

41.2 In section 3(1), in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

41.3 In section 3(1), in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

41.4 In section 26X, for "116, 120, 121A, 133, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999**" substitute "144, 152, 155, 170, 172, 173, 176, 178 and 179 of the **Australian Consumer Law and Fair Trading Act 2012**".

41.5 In section 26X, for "Part 10" substitute "Part 6.4".

41.6 In section 26ZA(a), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

41.7 For section 30, substitute—

**"30 Application of Australian Consumer Law and Fair Trading Act 2012**

- (1) Sections 195 and 196 and Part 8.2 (except sections 209 and 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian**

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**Consumer Law and Fair Trading Act 2012** were a reference to this Act.

- (2) For the purposes of subsection (1)—
- (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
  - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
    - (i) proceedings for an offence against a provision of this Act (except Divisions 1 and 2 of Part 5 and section 28A(2)); or
    - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Divisions 1 and 2 of Part 5 and section 28A(2)); or
    - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

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## 42 Sex Work Act 1994

- 42.1 In section 3(1), in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 42.2 In section 3(1), in the definition of *the Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 42.3 In section 61A in the definition of *Consumer Act* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".
- 42.4 In section 61X, for "120, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999**" substitute "152, 172, 173, 176, 178 and 179 of the **Australian Consumer Law and Fair Trading Act 2012**".
- 42.5 In section 61X, for "Part 10" substitute "Part 6.4".
- 42.6 For section 86A, substitute—
- "86A Application of Australian Consumer Law and Fair Trading Act 2012**
- (1) Sections 195 and 196 and Part 8.2 (except sections 209 and 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (2) For the purposes of subsection (1)—
- (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the
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**Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;

- (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
- (i) proceedings for an offence against a provision of this Act (except Division 8A of Part 3); or
  - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Division 8A of Part 3); or
  - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."

#### **43 State Owned Enterprises Act 1992**

- 43.1 In the heading to section 86, for "**Trade Practices Act 1974**" substitute "**Competition and Consumer Act 2010**".
- 43.2 In section 86, for "Trade Practices Act 1974" substitute "**Competition and Consumer Act 2010**".



Sch. 6

43.3 In section 86A, for "Trade Practices Act 1974"  
**substitute** "Competition and Consumer Act  
2010".

Sch. 6 item 44  
repealed by  
No. 16/2014  
s. 8.

\* \* \* \* \*

**45 Veterans Act 2005**

45.1 In section 3(1), in the definition of *Director* for  
"Fair Trading Act 1999" **substitute** "Australian  
Consumer Law and Fair Trading Act 2012".

45.2 In section 3(1), in the definition of *inspector* for  
"Fair Trading Act 1999" **substitute** "Australian  
Consumer Law and Fair Trading Act 2012".

45.3 For section 59, **substitute**—

**"59 Incorporation of Australian Consumer  
Law and Fair Trading Act 2012  
enforcement provisions**

(1) Sections 195 and 196 and Part 8.2 (other  
than sections 205, 206, 207, 210, 211  
and 214) of the **Australian Consumer Law  
and Fair Trading Act 2012** extend and  
apply (with any necessary modifications) to  
this Act as if a reference in any of those  
provisions to that Act were a reference to  
this Act.

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

(a) section 212 of the **Australian  
Consumer Law and Fair Trading Act  
2012** applies as if a reference to  
prescribed proceedings were a  
reference to—

(i) proceedings for an offence against  
a provision of this Act (except  
sections 60 to 81); or

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- (ii) proceedings on an application for an injunction under section 201, 202 or 203 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except sections 60 to 81); or
  - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1));
- (b) section 213 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if in subsection (1), the words "in relation to a contravention of a prescribed provision" were omitted and subsections (4) and (5) were omitted."

45.4 For the note at the foot of section 59, **substitute—**

**"Note**

Sections 201, 202, 203 and 204 are in Part 8.2 of the **Australian Consumer Law and Fair Trading Act 2012** and are in respect of applications for injunctions where any provision of that Act, and by incorporation, any provision of this Act, is being contravened.

Under section 201, the Minister, Director or any other person may apply to the Supreme Court, County Court or Magistrates' Court for the grant of an injunction to restrain a person's conduct.

Under section 202, the Minister, Director or any other person may apply to the Supreme Court or the County Court for the grant of an injunction requiring a person to do any act or thing.

Under section 203(1), the Supreme Court, County Court or Magistrates' Court may grant an interim injunction pending determination of an application under section 201.

Under section 203(2), the Supreme Court or County Court may grant an interim injunction pending determination of an application under section 202.

Under section 204, a court may rescind or vary an injunction granted under section 201 or 202 or an interim injunction under section 203."

45.5 In section 83, for "**Fair Trading Act 1999**" (wherever occurring) substitute "**Australian Consumer Law and Fair Trading Act 2012**".

45.6 In section 83, for "section 102" substitute "section 112".

#### **46 Victorian Civil and Administrative Tribunal Act 1998**

46.1 In section 3, in the definition of *Director* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

46.2 In section 73(2), for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

46.3 After Part 2A to Schedule 1, insert—

#### **"PART 2AB—AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012**

##### **4C What is a *small claim*?**

In this Part *small claim* has the meaning that it has in Chapter 7 of the **Australian Consumer Law and Fair Trading Act 2012**.

##### **4D Representation**

(1) A party to a proceeding relating to a small claim may be represented by a professional advocate only if—

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- (a) the Tribunal is satisfied that no other party to the proceeding will be unfairly disadvantaged if the representation is allowed; and
  - (b) either—
    - (i) all parties to the proceeding agree; or
    - (ii) the Tribunal directs that the representation be allowed.
- (2) Section 62(1)(b) does not apply to a proceeding relating to a small claim.

**4E Withdrawal of application**

Despite section 74(1), a person who lodges an application relating to a small claim may withdraw that application without the leave of the Tribunal.

**4F Tribunal cannot extend time for commencing proceedings**

Section 126(1) does not apply to a proceeding relating to a small claim.

**4G Member of Tribunal can mediate**

- (1) Section 88(6) does not apply to a proceeding relating to a small claim.
- (2) If the mediator is a member of the Tribunal a party may object to the mediator constituting the Tribunal (whether with or without others) for the purpose of hearing the proceeding.
- (3) An objection under subclause (2) must be made to the Tribunal before or at the commencement of the hearing.

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**4H Resolution of objection to certain members constituting the Tribunal**

- (1) If a party to a proceeding relating to a small claim objects to the member who presided over a compulsory conference in the proceeding, or to a mediator in the proceeding, constituting the Tribunal for the purpose of hearing the proceeding (whether with or without others), the Tribunal must determine whether or not the member may continue to constitute the Tribunal for that purpose.
- (2) For the purpose of making a determination under subclause (1), the Tribunal may be constituted (whether with or without others) by the member against whom the objection was made.
- (3) Section 86(3) does not apply to a proceeding relating to a small claim.

**4I Costs and security for costs**

- (1) The Tribunal cannot order costs in a proceeding relating to a small claim, except in a review of a determination under section 120 in respect of such a proceeding.
- (2) Section 79 does not apply to a review of a determination under section 120 in respect of a proceeding relating to a small claim.

**4J Reasons must be requested at time of decision**

Despite anything to the contrary in section 117(2), the Tribunal is not obliged to give a person written reasons for an order made in a proceeding relating to a small claim unless the person has made a request to the Tribunal for written reasons for orders that may be made in the proceeding before or

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at the time of the giving or notification of the  
Tribunal's decision in the proceeding."

46.4 Part 7AA to Schedule 1 is **repealed**.

**47 Water Industry Act 1994**

47.1 In section 183, for "Trade Practices Act 1974"  
**substitute** "Competition and Consumer Act  
2010".

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**SCHEDULE 7**

Section 240

**AMENDMENTS RELATING TO ASSOCIATIONS  
INCORPORATION REFORM ACT 2012**

**1 Definitions**

In section 3 of the **Associations Incorporation Reform Act 2012** in the definition of *inspector* for "**Fair Trading Act 1999**" substitute "**Australian Consumer Law and Fair Trading Act 2012**".

**2 Application of Fair Trading Act 1999**

For section 219 of the **Associations Incorporation Reform Act 2012** substitute—

**"219 Application of Australian Consumer Law and Fair Trading Act 2012**

- (1) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with the necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (2) For the purposes of subsection (1)—
  - (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if—
    - (i) a reference in that section to any section of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to section 125 of that Act (as applied by subsection (1)); and

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- (ii) section 209(2) of the **Australian Consumer Law and Fair Trading Act 2012** did not apply;
- (b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1, 4.1 or 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
- (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
- (i) proceedings for an offence against a provision of this Act (except Part 12); or
  - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Part 12); or
  - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (1))."
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**3 Amendment of Schedule 1 to this Act**

In Schedule 1 to the **Australian Consumer Law and Fair Trading Act 2012** for "Associations Incorporation Act 1981" substitute "Associations Incorporation Reform Act 2012".

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 8 December 2011*

*Legislative Council: 17 April 2012*

The long title for the Bill for this Act was "A Bill for an Act to re-enact with amendments laws relating to fair trading and consumer protection, to regulate certain businesses, to repeal the **Fair Trading Act 1999**, the **Disposal of Uncollected Goods Act 1961**, the **Carriers and Innkeepers Act 1958** and the **Landlord and Tenant Act 1958**, to make related and consequential amendments to other Acts and for other purposes."

#### **Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 8 December 2011*

*Legislative Council: 17 April 2012*

*Absolute majorities:*

*Legislative Assembly: 15 March 2012*

*Legislative Council: 1 May 2012*

The **Australian Consumer Law and Fair Trading Act 2012** was assented to on 8 May 2012 and came into operation as follows:

Sections 1, 2, 239 and Schedule 6 item 9 on 5 June 2012: Special Gazette (No. 172) 29 May 2012 page 1; sections 3–53, 78–99, 107–233, 237, 238, Schedule 1, Schedule 2, Schedule 4 clauses 1–5, 7, Schedule 5 and Schedule 6 items 1–8, 10–35, 36.1, 36.4, 37–47 on 1 July 2012: Special Gazette (No. 214) 28 June 2012 page 1; sections 54–77, 100–106, 234–236, Schedule 3, Schedule 4 clauses 6, 8, 9 and Schedule 6 items 36.2, 36.3, 36.5 on 1 September 2012: Special Gazette (No. 291) 28 August 2012 page 1; section 240 and Schedule 7 on 26 November 2012: Special Gazette (No. 384) 20 November 2012 page 1.

## 2. Table of Amendments

This Version incorporates amendments made to the **Australian Consumer Law and Fair Trading Act 2012** by Acts and subordinate instruments.

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### **Australian Consumer Law and Fair Trading Act 2012, No. 21/2012**

*Assent Date:* 8.5.12  
*Commencement Date:* S. 240(Sch. 7 item 3) on 26.11.12: Special Gazette (No. 384) 20.11.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Australian Consumer Law and Fair Trading Act 2012**

### **Fire Services Levy Monitor Act 2012, No. 81/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 112, 116 on 19.12.12: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Australian Consumer Law and Fair Trading Act 2012**

### **Co-operatives National Law Application Act 2013, No. 9/2013**

*Assent Date:* 13.3.13  
*Commencement Date:* S. 42(Sch. 2 item 3) on 3.3.14: Special Gazette (No. 46) 18.2.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Australian Consumer Law and Fair Trading Act 2012**

### **Consumer Affairs Legislation Amendment Act 2013, No. 57/2013**

*Assent Date:* 22.10.13  
*Commencement Date:* Ss 6, 7 on 23.10.13: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Australian Consumer Law and Fair Trading Act 2012**

### **Travel Agents Repeal Act 2014, No. 16/2014**

*Assent Date:* 18.3.14  
*Commencement Date:* Ss 5–8 on 1.7.14: Special Gazette (No. 170) 3.6.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Australian Consumer Law and Fair Trading Act 2012**

### **Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 6) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Australian Consumer Law and Fair Trading Act 2012**

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### 3. Explanatory Details

- <sup>1</sup> Sch. 4 cl. 7(2): Section 5 of the **Personal Property Securities (Statute Law Revision and Implementation) Act 2010** commenced on 30 January 2012.