

Fair Trading Act 1999

Act No. 16/1999

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Victoria

No. 16 of 1999

Fair Trading Act 1999[†]

[Assented to 18 May 1999]

The Parliament of Victoria enacts as follows:

PART 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 regulate trade practices;
- (c) to provide for the safety of goods or services supplied in trade or commerce and for the information which must be provided with

goods or services supplied in trade or commerce;

- (d) to regulate off-business-premises sales and lay-by sales;
- (e) to provide for codes of practice;
- (f) to provide for the powers and functions of the Director of Fair Trading including powers to conciliate disputes under this Act and powers to carry out investigations into alleged breaches of this Act;
- (g) to repeal the **Consumer Affairs Act 1972**, the **Ministry of Consumer Affairs Act 1973**, the **Fair Trading Act 1985** and the **Market Court Act 1978**.

2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 February 2000, it comes into operation on that day.

3. Definitions

In this Act—

"auction" means any sale of goods or services at which some or all of the persons present compete for the purchase of goods or services, whether by way of increasing bids or by the offer of goods or services to be bid for at successively decreasing prices or otherwise;

"business day" means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

"cancellation charge" in relation to a lay-by means any amount which, under the terms of the lay-by, the supplier may charge for the cancellation of the lay-by;

"compulsory recall notice" means a notice under section 50;

"contact sales agreement" has the meaning given in section 60;

"cooling-off period" means—

- (a) in the case of a contact sales agreement, the period within which the purchaser is entitled under the agreement and section 63 to cancel the agreement; or
- (b) in the case of a non-contact sales agreement, the period within which the purchaser is entitled under the agreement and section 71 to cancel the agreement;

"dangerous" means likely to cause death or serious injury to the body or health of any person, whether directly or indirectly;

"Director" means the person who, for the time being, is employed as Director of Fair Trading under the **Public Sector Management and Employment Act 1998**;

"engaging in conduct", in relation to a person, includes all or any of the following—

- (a) the doing of any act by the person;
 - (b) the refusal by the person to do any act;
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- (c) the person refraining (otherwise than inadvertently) from doing an act;
 - (d) the person making it known that an act will not be done;
 - (e) the person offering to do an act or to do an act on a particular condition;
 - (f) the person making it known that he or she will accept applications, offers or proposals to do the act or to do the act on a particular condition;

"goods" includes—

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

"hire-purchase agreement" has the same meaning as in the **Hire-Purchase Act 1959**;

"interim ban order" means an interim ban order under section 35;

"inspector" means a person appointed to be an inspector under section 114;

"lay-by" means the supply of goods ordinarily used for personal, household or domestic purposes on terms (express or implied) which provide that—

- (a) the goods will not be delivered to or available for collection by the purchaser until the whole of the price has been paid; and

(b) the price is to be paid by 3 or more payments—

whether or not the goods are in existence or in the supplier's possession when the terms are agreed upon;

"lay-by statement" means a statement of lay-by terms given under section 83;

"member of the police force" has the same meaning as "member of the force" in the **Police Regulation Act 1958**;

"non-contact sales agreement" has the meaning given by section 68;

"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 Law, has the same meaning as in section 82A of that Law; and

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

"OFTBA Act" means an Act listed in Schedule 1;

"permanent ban order" means a permanent ban order under section 39 or 40;

"prescribed information standard" means an information standard prescribed in accordance with section 47;

"prescribed safety standard" means a safety standard prescribed in accordance with section 34;

"price" includes a charge of any description;

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

"purchaser" in relation to a supply of goods or services means the person to whom the goods or services have been or are to be supplied;

"related body corporate" means a body corporate that, in accordance with the Corporations Law, is related to another body corporate;

"related contract or instrument" in relation to a contact sales agreement or non-contact sales agreement means—

- (a) a contract of guarantee or indemnity that is related to that agreement; or
- (b) an instrument related to that agreement that creates a mortgage or charge in favour of the supplier, or a person nominated by the supplier; or
- (c) any other contract or instrument (not being an instrument of the kind referred to in paragraph (b)) that is collateral or related to the agreement;

"services" includes any rights (including rights in relation to, and interests in real or personal property), benefits, privileges or facilities

that are, or are to be, provided, granted or conferred in trade or commerce, including the rights, benefits, privileges or facilities that are, or are to be provided, granted or conferred under a contract for or in relation to—

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

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service;

"supplier" in relation to a supply of goods or services, means the person who has supplied or is to supply the goods or services;

"supply" includes—

- (a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase agreement; and
 - (b) in relation to services—provide, grant or confer; and
 - (c) in Part 3, in relation to goods—
 - (i) exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-
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purchase or for any purpose of advertisement, trade or business; and

- (ii) offer as a prize or reward or give away for the purpose of advertisement or in furtherance of trade or business;

"trade-in" in relation to goods, means goods—

- (a) which were purchased or accepted; or
(b) in respect of which there was an agreement to purchase or accept—

before or at the time of the entering into of an agreement, as part of the consideration for the transaction to which the agreement relates;

"trade or commerce" includes a business not carried on for profit;

"Tribunal" means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

"unsolicited goods" means goods supplied to a person without any request made by or on behalf of the person;

"unsolicited services" means services supplied to a person without any request made by or on behalf of the person;

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

4. Representations as to future matters

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- (1) For the purposes of Part 2, if a person makes a representation about a future matter, including the doing of, or the refusing to do any act, and the person does not have reasonable grounds for making the representation, the representation is deemed to be misleading.
- (2) In any proceeding under this Act concerning a representation made by a person about a future matter, the person making the representation bears the burden of proving that he or she had reasonable grounds for making the representation.
- (3) Sub-section (1) is deemed not to limit by implication a reference in Part 2 to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

5. *Crown bound*

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.

6. *Extraterritoriality*

- (1) Unless otherwise expressly provided for in or under this Act, this Act applies to a supply of goods or services—
 - (a) if the person by or to whom the goods or services are to be supplied enters into an agreement in Victoria relating to that supply;
or
 - (b) if the goods or services are proposed to be supplied in Victoria.
 - (2) This Act applies to the engaging in conduct outside Victoria by—
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- (a) a body corporate whose principal place of business is in Victoria; or
 - (b) by persons ordinarily resident in Victoria.
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PART 2—UNFAIR PRACTICES**7. *Unconscionable conduct within the meaning of the unwritten law***

- (1) A person must not, in trade or commerce, engage in conduct which is unconscionable, within the meaning of the unwritten law, from time to time.
- (2) This section does not apply to conduct that is prohibited by section 8.

8. *Unconscionable conduct*

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services of a kind ordinarily used for personal, household or domestic purposes to a purchaser, engage in conduct that is, in all the circumstances, unconscionable.
 - (2) Without in any way limiting the matters to which a court or the Tribunal may have regard for the purpose of determining whether a person has contravened sub-section (1), a court or the Tribunal may have regard to—
 - (a) the relative strengths of the bargaining positions of the supplier and the purchaser; and
 - (b) whether, as a result of conduct engaged in by the supplier, the purchaser was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
 - (c) whether the purchaser was able to understand any documents relating to the supply or possible supply of the goods or services; and
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- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against the purchaser or a person acting on behalf of the purchaser by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and
- (e) the amount for which, and the circumstances under which, the purchaser could have been supplied with identical or equivalent goods or services from a person other than the supplier.
- (3) A person must not be taken to have contravened sub-section (1) by reason only that the person institutes legal proceedings in relation to the supply or possible supply of goods or services to a purchaser.
- (4) For the purpose of determining whether a supplier has contravened sub-section (1)—
- (a) the court or the Tribunal must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) the court or the Tribunal may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.
- (5) This section does not apply 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.
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9. *Misleading or deceptive conduct*

- (1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) Nothing in the succeeding provisions of this Part is to be taken as limiting by implication the generality of sub-section (1).

10. *Misleading conduct in relation to goods*

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Penalty: 240 penalty units, in the case of a natural person.

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

11. *Misleading conduct in relation to services*

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

Penalty: 240 penalty units, in the case of a natural person.

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

12. *False representations in relation to goods and services*

A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion or advertising by any means of the supply or use of goods or services—

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- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
 - (b) falsely represent that services are of a particular standard, quality, value or grade or have had a particular previous use; or
 - (c) falsely represent that goods are new; or
 - (d) falsely represent that a particular person has agreed to acquire goods or services; or
 - (e) represent that goods or services have a sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have; or
 - (f) represent that any person has a sponsorship, approval or affiliation that the person does not have; or
 - (g) make a false or misleading representation with respect to the price of goods or services; or
 - (h) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
 - (i) make a false or misleading representation concerning the place of origin of goods; or
 - (j) make a false or misleading representation concerning the need for any goods or services; or
 - (k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy; or
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- (l) make a false or misleading representation about the production, manufacture, preparation or supply of any goods; or
- (m) make a representation which is unnecessary for the reasonable care and maintenance of any goods; or
- (n) make a representation that is false, misleading or deceptive in any material particular.

Penalty: 240 penalty units, in the case of a natural person.

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

13. *False representations in relation to employment*

A person must not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment.

Penalty: 240 penalty units, in the case of a natural person.

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

14. *False testimonials*

(1) A person must not, in trade or commerce, make a representation—

- (a) which purports to be a testimonial by any person regarding goods or services; or

(b) about a testimonial or a representation which purports to be a testimonial regarding goods or services—

if that representation is false or misleading in any particular.

Penalty: 120 penalty units, in the case of a natural person.

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

(2) In any proceedings for an offence against this section the defendant bears the burden of proving that a representation made by the defendant is not false or misleading in any particular.

15. *Cash price to be stated in certain circumstances*

A person must not, in trade or commerce, in connection with—

(a) the supply or possible supply of goods or services; or

(b) the promotion by any means of the supply or use of goods or services—

make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies the cash price for the goods or services.

Penalty: 120 penalty units, in the case of a natural person.

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

16. *Offering gifts and prizes*

A person who, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the

promotion by any means of the supply or use of goods or services, offers any gift, prize or other free item and—

- (a) intends either not to provide the gift, prize or other item, or to provide a gift, prize or item which is not in accordance with the offer; or
- (b) does not within a reasonable time from the making of the offer provide a gift, prize or item which is in accordance with the offer—

is guilty of an offence and liable to a penalty of not more than—

- (c) 120 penalty units, in the case of a natural person; or
- (d) 240 penalty units, in the case of a body corporate.

17. *Bait advertising*

- (1) A person must not, in trade or commerce, advertise for supply at a specified price, goods or services if there are reasonable grounds, of which the person is aware or ought reasonably to be aware, for believing that the person will not be able to offer those goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Penalty: 120 penalty units, in the case of a natural person.

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

- (2) If a person has, in trade or commerce, advertised goods or services for supply at a specified price that person must offer those goods or services for supply at that price for a period that is, and in
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quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Penalty: 120 penalty units, in the case of a natural person.

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

(3) In proceedings for an offence under sub-section (2), it is a defence to establish that the person made an offer to the purchaser—

(a) to supply, or to procure another person to supply, goods or services of the kind advertised within a reasonable time, in a reasonable quantity and at the advertised price; or

(b) to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised—

and, in either case, where the offer was accepted by the purchaser, the person has so supplied, or procured another person to so supply, the goods or services.

18. Referral selling

(1) A supplier must not, in trade or commerce, induce a purchaser to enter into a consumer contract by representing that the purchaser may, after the contract is made, receive a rebate, commission or other benefit in return for—

(a) giving the supplier the names of prospective customers; or

(b) otherwise assisting the supplier to supply goods or services to other persons—

if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Penalty: 120 penalty units, in the case of a natural person.

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

(2) In this section "**consumer contract**" means a contract for the supply of goods or services of a kind ordinarily used for personal, household or domestic purposes to a person for the purposes of the ordinary personal, household or domestic use of those goods or services.

19. *Accepting payment without being able to supply as ordered*

(1) A person who, in trade or commerce, accepts payment or other consideration for the supply of goods or services, and who—

(a) does not supply all the goods or services within the period specified by the person or, if no period is specified, within a reasonable time; or

(b) supplies goods or services that are materially different from the goods or services to which the agreement to supply related—

is guilty of an offence and liable to a penalty of not more than—

(c) 240 penalty units, in the case of a natural person; or

(d) 600 penalty units, in the case of a body corporate.

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- (2) Sub-section (1) applies whether or not the payment or other consideration accepted by the person represents the whole or a part of the payment or other consideration for the supply of the goods or services.

20. *Misleading representations about certain business activities*

- (1) A person must not, in trade or commerce, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

Penalty: 240 penalty units, in the case of a natural person.

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

- (2) If a person, in trade or commerce, invites persons, whether by advertisement or otherwise—

(a) to engage or participate in a business activity; or

(b) to offer or apply to engage or participate in a business activity—

requiring—

(c) the performance by the persons so invited of work; or

(d) the investment of money by the persons so invited and the performance by those persons of work associated with the investment—

the first-mentioned person must not make a representation that is false or misleading in a material particular, with respect to the profitability

or risk or any other material aspect of the business activity.

Penalty: 240 penalty units, in the case of a natural person.

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

21. *Harassment and coercion*

- (1) A person must not use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to another person or the payment for goods or services by another person.

Penalty: 240 penalty units, in the case of a natural person.

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

- (2) Without limiting sub-section (1) the following conduct is deemed to be a contravention of sub-section (1)—
- (a) using a document resembling a court document or a Tribunal document or an official document to mislead a person in connection with a debt or the consequences of not paying a debt;
 - (b) making a misrepresentation to a debtor about the consequences of not paying a debt or about the method of recovering a debt;
 - (c) serving a summons which has not been issued;
 - (d) impersonation of a bailiff or a member of the police force;
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- (e) 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**;
 - (f) use of a letterhead by a person 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;
 - (g) disclosure or threat of disclosure of debt information, without the consent of the debtor, to other persons who do not have a clear and legitimate interest in the information;
 - (h) unreasonable communication with a debtor;
 - (i) any communication with a person under 18 years of age in relation to a debt, if the person is not the debtor;
 - (j) doing or threatening to do any act that may intimidate, harass or expose to ridicule a debtor or a member of a family of a debtor;
 - (k) refusal to leave a person's private residence or workplace when requested to do so;
 - (l) contact with a debtor by a method which the debtor has asked not to be used, unless—
 - (i) there is no other method available; or
 - (ii) the contact is by way of an action issued through the court or the threat of an action which the person to whom the debt is owed is entitled to issue through the court and which the person intends to take.
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22. Pyramid selling

- (1) A person must not establish, promote or take any part in a pyramid selling scheme.

Penalty: 120 penalty units, in the case of a natural person.

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

- (2) A person must not induce another person to establish, promote or take any part in a pyramid selling scheme.

Penalty: 120 penalty units, in the case of a natural person.

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

- (3) In this section—

"pyramid selling scheme" means a scheme for the supply of goods, services or financial benefit where—

- (a) a person, in order to take part in the scheme, makes a payment or provides another benefit to or for the benefit of any other person, whether or not the other person is described in the scheme; and

- (b) the person who makes the payment or provides the benefit—

(i) receives a payment or other benefit; or

(ii) receives the promise of a payment or other benefit or the promise that another person will receive a payment or other benefit—

for—

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- (iii) inducing or enabling any other person or persons to take part in the scheme; or
 - (iv) enabling or assisting participants in the scheme to be promoted, transferred or to have their status changed; or
 - (v) providing participants in the scheme with, or enabling participants in the scheme to be provided with, training, facilities or other services; and
- (c) if goods or services are supplied under the scheme, any payment made or other benefit provided for them bears no reasonable relationship to their value—
- whether or not the scheme or any agreement under or related to the scheme is in writing.
- (4) The Governor in Council may, by Order published in the Government Gazette, declare that this section does not apply or did not at a particular time apply to the whole or any part of a scheme for the supply of goods, services or financial benefit.

23. *Unsolicited prescribed cards*

- (1) A person must not give or send a prescribed card to another person except—
 - (a) in pursuance of a request in writing by the other person to do so; or

- (b) in renewal or replacement of, or in substitution for—
- (i) a prescribed card of the same kind previously given or sent to the other person, and, in pursuance of a request in writing by the other person to the person who issued the card to do so; or
 - (ii) a prescribed card of the same kind previously given or sent to the other person and used for a purpose for which it was intended to be used.

Penalty: 120 penalty units, in the case of a natural person.

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

- (2) Sub-section (1) applies only in relation to the giving or sending of a prescribed card by or on behalf of the person who issued the card.
- (3) A person must not take any action that enables another person—
- (a) who has a credit card to use the card as a debit card; or
 - (b) who has a debit card to use the card as a credit card—

except in accordance with a request in writing by the other person.

Penalty: 240 penalty units, in the case of a natural person.

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

(4) In this section—

"article" includes a token, card or document;

"credit card" means any article of a kind commonly known as a credit card or any similar article intended for use in obtaining cash, goods or services on credit, and includes any article of a kind commonly issued by persons carrying on business to customers or prospective customers of those persons for use in obtaining goods or services from those persons on credit;

"debit card" means an article intended for use by a person in obtaining access to an account held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services;

"prescribed card" means any of the following—

- (a) an electronic or magnetic card enabling the transfer of funds;
- (b) a stored value card;
- (c) a credit card;
- (d) a debit card;
- (e) an article that may be used as a credit card and a debit card;
- (f) any other prescribed article;

"stored value card" means an article which has been encoded with monetary value which can be drawn upon and which may or may not be rechargeable.

24. Right to payment for unsolicited goods or services

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

Penalty: 120 penalty units, in the case of a natural person.

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

- (2) In proceedings for an offence under sub-section (1), the burden of proving that the defendant had reasonable cause to believe there was a right to payment lies on the defendant.

25. Liability of recipient of unsolicited goods

- (1) A person to whom unsolicited goods are supplied in trade or commerce, is not liable—
- (a) to make any payment for the goods; or
 - (b) for loss or damage as a result of the supply of the goods other than loss or damage resulting from a wilful and unlawful act done by that person in relation to the goods during the period determined in accordance with sub-section (4).
- (2) Subject to sub-section (3), if in trade or commerce, a person supplies unsolicited goods to another person—
- (a) neither the supplier nor any person claiming on behalf of the supplier is entitled after the expiration of the period determined in accordance with sub-section (4) to take action for the recovery of the goods from the person to whom the goods were supplied; and
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- (b) upon the expiration of that period the goods become, by force of this section, the property of the person to whom the goods were supplied freed and discharged from all liens and charges of any description.
- (3) Sub-section (2) does not apply to or in relation to unsolicited goods supplied to a person if—
- (a) the person has at any time during the period determined in accordance with sub-section (4) unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods; or
 - (b) the supplier or the owner of the goods has within the period taken possession of the goods; or
 - (c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for that person.
- (4) For the purposes of sub-sections (1), (2) and (3) the period referred to in those sub-sections is—
- (a) if the person to whom the unsolicited goods were supplied gives notice with respect to the goods to the supplier in accordance with sub-section (5)—
 - (i) the period of one month next following the day on which the notice is given; or
 - (ii) the period of three months next following the day on which the goods were supplied to the person—
- whichever first expires; or
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- (b) in any other case, the period of three months next following the day on which the goods were supplied to the person.
- (5) A notice under sub-section (4) must be in writing and must—
 - (a) state the name and address of the person to whom the goods were supplied; and
 - (b) state the address at which possession may be taken of the goods if it is an address other than that of the person; and
 - (c) contain a statement to the effect that the goods are unsolicited goods.

26. *Liability of recipient of unsolicited services*

A person to whom unsolicited services are supplied by another person, in trade or commerce, is not liable to make any payment for the services and is not liable for loss or damage as a result of the supply of the services.

27. *Right to payment for unauthorised entries or advertisements*

- (1) If the publisher of a publication contacts another person directly and invites that person to place an entry or advertisement relating to that person or the profession, business, trade or occupation of that person in the publication, the publisher must not assert a right to payment for a charge for the placing of the entry or advertisement unless the person has given to the publisher—
 - (a) at the time of publication, a written instruction or authorisation for the placing of the entry or advertisement; or
 - (b) at any time before publication, a written instruction or authorisation signed by the person to the placing of entries or
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advertisements in the nature of the entry or advertisement.

Penalty: 120 penalty units, in the case of a natural person.

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

- (2) If the publisher of a publication contacts another person directly and invites that person to place an entry or advertisement relating to that person or the profession, business, trade or occupation of that person in the publication, that person—
- (a) is not liable to make any payment to the publisher; and
 - (b) is entitled to recover against the publisher, in a court of competent jurisdiction, any payment made to the publisher in full or part satisfaction of a charge for the placing of the entry or advertisement in the publication—
if the person has not given to the publisher—
 - (c) at the time of publication, a written instruction or authorisation for the placing of the entry or advertisement; or
 - (d) at any time before publication, a written instruction or authorisation signed by the person for the placing of entries or advertisements in the nature of the entry or advertisement.
- (3) For the purposes of this section a person is deemed not to have given written instruction or authorisation for the placing of an entry or advertisement unless—
- (a) a document giving instructions for or authorising the placing of the entry or advertisement has been signed by the person

- or by another person authorised by that person; and
- (b) a copy of the signed document has been given to the publisher before the right to payment for a charge is asserted; and
 - (c) the document specifies—
 - (i) the name of the publication, the area of circulation of the publication and the total number of copies of the publication to be circulated; and
 - (ii) the name and business address of the publisher; and
 - (iii) the name and address of the person on whose behalf the publication is published; and
 - (iv) particulars of the entry or advertisement; and
 - (v) the date or dates on which the advertisement or entry is to appear in the publication; and
 - (vi) the amount of the charge for the placing of the entry or advertisement or the basis on which the charge is, or is to be, calculated.
- (4) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person is deemed to have been sent by the person unless the contrary is established.
- (5) This section does not apply to a publication which is published by a person—
- (a) if the person is—
 - (i) a public company (within the meaning of the Corporations Law) or a
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subsidiary (within the meaning of the Corporations Law) of such a public company; or

(ii) the publisher of any publication which has an audited circulation of 10 000 copies or more per week, or a person which is a related body corporate to such a person; or

(iii) a servant of the Crown, a body corporate which represents the Crown or a Council (within the meaning of the **Local Government Act 1989**); or

(iv) any other prescribed person; and

(b) if the person has not been found guilty of an offence under section 24.

(6) In this section—

"audited circulation" in relation to a publication means the circulation of that publication as confirmed by the most recent audit of the publication by a body approved by the Director;

"publisher" in relation to a publication, means a person who is a publisher of that publication.

28. *When right to payment deemed to be asserted*

For the purposes of sections 24 and 27, a person is deemed to assert a right to a payment if that person—

(a) makes a demand for the payment or asserts a present or prospective right to the payment; or

(b) threatens to bring any legal proceedings with a view to obtaining the payment; or

- (c) places or causes to be placed on a list of debtors or defaulters the name of the person against whom the right to payment is being asserted, or threatens to do so, with a view to obtaining the payment; or
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the placing of the entry or advertisement.

29. *Address to be included in documents*

(1) A person who—

- (a) publishes a document, statement or advertisement or causes a document, statement or advertisement to be published; or
- (b) gives a document, statement or advertisement to any person or causes a document, statement or advertisement to be given to any person to whom goods or services are or may be supplied—

that—

- (c) is intended or likely to promote the supply of goods or services; and
- (d) contains a reference to a means of contacting the person that does not include the name and the address of the place of business or residence of the person—

must include in the document, statement or advertisement—

- (e) the name of the person or the business; and
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- (f) the full address (not being a post office box) of the place of business or residence of the person.

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

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

- (2) In this section, "**publish**" in relation to a document, statement or advertisement means to make the document, statement or advertisement generally known in any manner.

30. *Mock auctions*

- (1) A person must not promote or conduct or assist in the promotion or conduct of an auction—

(a) at which—

(i) a lot is sold or purported to be sold at a price lower than the highest bid for that lot; or

(ii) part of the price for the sale or purported sale of a lot is repaid or credited to the person to whom the lot is sold or purported to be sold or is stated to be so repaid or credited; or

(b) at which the right to bid for any lot is restricted or is stated to be restricted to persons who have bought or who have agreed to buy other goods or services; or

(c) at which any goods or services are given away or offered as gifts.

Penalty: 120 penalty units, in the case of a natural person.

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

- (2) Sub-section (1)(a) does not apply where the lower price, repayment or credit is—
- (a) because of a defect discovered after the highest bid has been made and it is a defect of which the person conducting the auction was unaware when the bid was made; or
 - (b) because of damage sustained after the bid has been made.
- (3) For the purposes of sub-section (1), anything done in or about the place where an auction is held, if done in connection with the auction, is deemed to be done at the auction, whether or not it is done at the time of the auction or before or after the auction.
- (4) Nothing in this section derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under this Act.

31. *Simplification of proof*

In any proceedings for an offence under section 30, evidence that a bid at an auction was stated to have been made by or on behalf of the person conducting the auction by an announcement made to the persons present at the auction is evidence, and in the absence of evidence to the contrary, is proof of the fact that the bid was made.

32. *Publications which are not prohibited*

- (1) Sections 9, 10, 11, 12 and 20 do not apply to a publication which is made by an information provider in the course of carrying on the business of providing information unless the publication—
- (a) is an advertisement; or
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(b) relates to—

(i) goods or services supplied or the possible supply of goods or services; or

(ii) a business activity carried on—

by the information provider or, if the information provider is a body corporate, a related body corporate.

(2) In this section—

"information provider" means any of the following—

(a) a person who holds a commercial television broadcasting licence under the Broadcasting Services Act 1992 of the Commonwealth;

(b) the Australian Broadcasting Corporation;

(c) the Special Broadcasting Service;

(d) any other person who carries on the business of providing information.

PART 3—SAFETY AND INFORMATION REQUIREMENTS**Division 1—Safety standards****33. *Offence to supply goods or services which do not comply with safety standards***

- (1) A person must not, in trade or commerce, supply goods that are intended to be used, or are of a kind ordinarily used for personal, household or domestic purposes if—
- (a) the goods are of a kind in respect of which there is a prescribed safety standard; and
 - (b) the goods do not comply with that standard.

Penalty: 240 penalty units, in the case of a natural person.

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

- (2) A person must not, in trade or commerce, supply services that are intended to be used or are of a kind ordinarily used for personal, household or domestic purposes if—
- (a) the services are of a kind in respect of which there is a prescribed safety standard; and
 - (b) the services do not comply with that standard.

Penalty: 240 penalty units, in the case of a natural person.

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

34. Prescribed safety standards

- (1) The regulations may, in respect of goods of a particular kind, prescribe a safety standard consisting of such requirements as to—
- (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
 - (b) testing of the goods during, or after the completion of, manufacture or processing; and
 - (c) the form and content of markings, warnings or instructions to accompany the goods; and
 - (d) conditions or limitations on the supply of goods—

as are reasonably necessary to prevent or reduce the risk of injury to any person.

- (2) The regulations may, in respect of services of a particular kind, prescribe a safety standard consisting of such requirements as to—
- (a) the manner in which the services are to be supplied; and
 - (b) the form and manner of disclosure of warnings, instructions or other information to be communicated to a person to whom services are to be supplied—

as are reasonably necessary to prevent or reduce the risk of injury to any person.

35. Interim ban order

- (1) The Director may recommend to the Minister that an interim ban order be made under this section in respect of goods or services of a particular kind.

- (2) If a recommendation is made under sub-section (1) in respect of goods or services of a particular kind, and it appears to the Minister that the goods or services are dangerous, the Minister may make an interim ban order—
 - (a) declaring the goods or services to be dangerous goods or services; and
 - (b) conditionally or unconditionally prohibiting or restricting the supply of those goods or services.
- (3) An interim ban order must be published in the Government Gazette.

36. Operation of interim ban order

- (1) An interim ban order takes effect on the date of its publication in the Government Gazette.
- (2) An interim ban order remains in force until the end of 3 months after the date of its publication in the Government Gazette unless it is revoked before the end of that period.
- (3) The Minister may, by order published in the Government Gazette, amend or revoke an interim ban order.
- (4) An interim ban order may be renewed for a further period of 3 months from its expiry.

37. Notice of order

- (1) The Minister must cause a copy of an interim ban order—
 - (a) to be given to each person who, to the knowledge of the Minister, supplies goods or services of the kind to which the order relates; or
 - (b) to be published in a newspaper circulating generally throughout the State.
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- (2) A copy of an order must be given or published under sub-section (1) within 2 days after the publication of the order in the Government Gazette, or if that is not practicable, as soon as possible after the end of that period.
 - (3) A failure to comply with sub-section (1) or (2) in relation to an interim ban order does not invalidate the order.

38. *Offence to contravene interim ban order*

A person must not supply goods or services in contravention of an interim ban order.

Penalty: 240 penalty units, in the case of a natural person.

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

39. *Permanent ban order after interim ban order*

If an interim ban order has been made in respect of goods or services and, on the expiry of that interim ban order, there is not a prescribed safety standard in respect of those goods or services, the Minister, on the recommendation of the Director, may make a permanent ban order conditionally or unconditionally prohibiting or restricting the supply of the goods or services.

40. *General power to make permanent ban order*

- (1) The Minister may make a permanent ban order conditionally or unconditionally prohibiting or restricting the supply of goods or services of a particular kind.
- (2) The Minister must not make a permanent ban order under sub-section (1) unless—
 - (a) the Director recommends to the Minister the making of that order; or

- (b) the supply of goods or services of that kind has been permanently prohibited under a law of the Commonwealth or another State or Territory of the Commonwealth by reason of those goods or services being dangerous.
- (3) The Director must not make a recommendation under sub-section (2)(a) unless the Director—
 - (a) has fully investigated the matter; and
 - (b) is satisfied that—
 - (i) those goods or services or goods or services of that kind are dangerous; and
 - (ii) that supply of those goods or services or goods or services of that kind should be prohibited.
- (4) If a permanent ban order is made under this section, any interim ban order applying to the goods or services to which the permanent ban order relates is revoked.

41. *When does a permanent ban order take effect?*

- (1) A permanent ban order must be published in the Government Gazette.
- (2) A permanent ban order takes effect on the date on which it is published in the Government Gazette.

42. *Notice of order*

- (1) The Minister must cause a copy of a permanent ban order—
 - (a) to be given to each person who, to the knowledge of the Minister, supplies goods or services of the kind to which the order relates; or
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(b) to be published in a newspaper circulating generally throughout the State.

- (2) A copy of an order must be given or published under sub-section (1) within 2 days after the publication of the order in the Government Gazette, or if that is not practicable, as soon as possible after the end of that period.
- (3) A failure to comply with sub-section (1) or (2) in relation to a permanent ban order does not invalidate the order.

43. *Revocation or amendment of permanent ban orders*

The Minister may, by order published in the Government Gazette, revoke or amend a permanent ban order.

44. *Offence to contravene permanent ban order*

A person must not supply goods or services in contravention of a permanent ban order.

Penalty: 240 penalty units, in the case of a natural person.

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

45. *Loss, injury or damage arising from a contravention of this Division*

- (1) If—
- (a) goods or services have been supplied in contravention of section 33; and
- (b) a person suffers loss, injury or damage by reason of a defect in, or a dangerous characteristic of, the goods or services or because of not having particular information in relation to the goods or services; and

- (c) the person would not have suffered the loss, injury or damage if the goods or services had complied with that standard—

the person is deemed for the purposes of this Act to have suffered the loss, injury or damage as a result of the supplying of the goods or services.

(2) If—

- (a) goods or services have been supplied in contravention of an interim ban order or a permanent ban order; and
- (b) a person suffers loss, injury or damage by reason of a defect in, or a dangerous characteristic of, the goods or services or because of not having particular information as to a characteristic of the goods or services—

the person is deemed for the purposes of this Act to have suffered the loss, injury or damage as a result of the supplying of the goods or services.

Division 2—Information standards

46. *Offence to supply goods or services which do not comply with information standards*

- (1) A person must not, in trade or commerce, supply goods that are intended to be used, or are of a kind ordinarily used for personal, household or domestic purposes, if the goods are of a kind in respect of which there is a prescribed information standard and the standard has not been complied with in relation to those goods.

Penalty: 240 penalty units, in the case of a natural person.

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

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- (2) A person must not, in trade or commerce, supply services, if the services are of a kind in respect of which there is a prescribed information standard and the standard has not been complied with in relation to those services.

Penalty: 240 penalty units, in the case of a natural person.

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

47. Prescribed information standards

- (1) The regulations may, in respect of goods of a particular kind, prescribe an information standard consisting of requirements as to—

- (a) the disclosure of information relating to the identity, place of manufacture, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods and, if the goods are imported, the person who imported them; and
- (b) instructions as to the care, storage and use of those goods; and
- (c) the form and manner in which that information and those instructions are to be disclosed on or with the goods—

that are reasonably necessary to inform persons to whom the goods are to be supplied about the quantity, quality, nature or value of the goods and about the care, storage, use and origin of those goods.

- (2) The regulations may, in respect of services of a particular kind, prescribe an information standard consisting of the requirements for, and the form and nature of, the information which it is reasonably necessary to give to persons to whom
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the services are to be supplied about the nature, the characteristics and the suitability for the purpose of the services.

48. *Loss, injury or damage arising from a contravention of this Division*

If—

- (a) goods or services have been supplied in contravention of section 46 in that a prescribed information standard has not been complied with in relation to the goods or services; and
- (b) a person suffers loss, injury or damage by reason of not having particular information in relation to the goods or services; and
- (c) the person would not have suffered the loss, injury or damage if the supplier had complied with that standard in relation to the goods or services—

the person is deemed, for the purposes of this Act, to have suffered the loss, injury or damage as a result of the supplying of the goods or services.

Division 3—Recall of goods

49. *Notification of voluntary recall*

- (1) If a person voluntarily takes action to recall goods ordinarily used for personal, household or domestic purposes because the goods will or may cause death or injury to any person, the person must, within 2 days after taking that action, give a notice in writing to the Minister in accordance with section 163—

- (a) stating that the goods are subject to recall; and
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- (b) setting out the nature of the defect in or the dangerous characteristic of the goods.

Penalty: 240 penalty units, in the case of a natural person.

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

- (2) If a person (who would otherwise be required to give notice under this section) has given notice of the matter under section 65R of the Trade Practices Act 1974 of the Commonwealth, that person is not required to give notice under this section.

50. *Compulsory recall*

- (1) The Minister, on the recommendation of the Director, may issue a notice requiring the recall of goods that are intended to be used or are of a kind ordinarily used for personal, household or domestic purposes to any person or class of persons who supply goods of that kind, if—

(a) the goods—

- (i) appear to the Minister to be goods of a kind that will or may cause death or injury to any person; or
- (ii) do not comply with a prescribed safety standard or prescribed information standard for goods of that kind; or
- (iii) are of a kind in relation to which there is in force an interim ban order or a permanent ban order; and

- (b) it appears to the Minister that the person or class of persons to whom the notice is issued has not voluntarily taken satisfactory action under section 49 to recall the goods.
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- (2) A notice under sub-section (1) may require the person or class of persons to whom the notice is issued to do one or more of the following—
- (a) take action within the period specified in the notice to recall the goods identified in the notice;
 - (b) disclose to the public or a class of the persons specified in the notice all or any of the following—
 - (i) the nature of the defect in the goods or the dangerous characteristic of the goods;
 - (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
 - (iii) procedures for disposing of the goods specified in the notice—
in the manner and within the period specified in the notice;
 - (c) inform the public, or a class of persons specified in the notice, that the person to whom the notice is issued undertakes to do whichever of the following that person thinks appropriate—
 - (i) in the case of goods which the notice has not identified as having a dangerous characteristic, repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods—
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in the manner and within the period specified in the notice.

- (3) A notice under sub-section (1) may give directions as to the manner in which the person is to carry out a recall of goods required under the notice.
- (4) A notice issued under this section must be in writing and published in the Government Gazette.

51. *Repair and replacement of goods*

- (1) If goods are to be repaired under a compulsory recall notice, the goods must be repaired so that—
 - (a) any defect in the goods which is identified in the notice is remedied; and
 - (b) if there is a prescribed safety standard in respect of the goods, the goods comply with that standard.
- (2) If goods are to be replaced under a compulsory recall notice, the goods must be replaced with like goods which—
 - (a) if a defect in, or a dangerous characteristic of, the first mentioned goods was identified in the notice, do not contain that defect or have that characteristic; and
 - (b) if there is a prescribed safety standard in respect of goods of that kind, comply with that standard.
- (3) The cost of the repair or replacement under a compulsory recall notice, including any necessary transportation costs, must be borne by the person to whom the notice was issued.

52. *Circumstances in which a refund may be reduced*

If, under a compulsory recall notice, a person chooses to refund the price of goods and a period

Fair Trading Act 1999

Act No. 16/1999

of 12 months has elapsed since the goods were supplied, the amount of the refund may be reduced by an amount attributable to the use which any person has had of the goods, being an amount calculated in a manner specified in the notice.

53. *Compliance with compulsory recall notice*

A person to whom a compulsory recall notice is issued—

- (a) must comply with the requirements and directions in the notice; and
- (b) must not, in trade or commerce—
 - (i) if the notice identifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which contain that defect or have that characteristic; or
 - (ii) in any other case, supply goods of the kind to which the notice relates.

Penalty: 240 penalty units, in the case of a natural person.

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

54. *Loss, injury or damage arising from contravention of this Division*

If—

- (a) a person contravenes section 53 by—
 - (i) supplying goods of a kind in relation to which a compulsory recall notice is in force; or
 - (ii) failing to comply with the requirements of such a notice; and

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- (b) a person suffers loss, injury or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods—

the person who suffers the loss, injury or damage is deemed, for the purposes of this Act, to have suffered that loss, injury or damage as a result of the supplying of the goods, or by the failure to comply with the notice, as the case may be.

55. Requirement to notify persons outside Victoria

- (1) If goods are recalled under section 49 or 50, a person who has supplied any of the goods to another person outside Victoria must, as soon as practicable after the supply of those goods, give a notice in writing in accordance with section 163 to that other person—
- (a) stating that the goods are subject to recall; and
 - (b) if the goods contain a defect which will or may cause injury or have a dangerous characteristic, setting out the nature of that defect or characteristic; and
 - (c) if the goods do not comply with a prescribed safety or information standard in respect of the goods, setting out the nature of the failure to comply.

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

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

- (2) If a person is required to give a notice under subsection (1) to another person, the person who is required to give the notice must give the Minister

a copy of the notice, within 10 days after giving that notice to the other person.

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

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

- (3) If a person (who would otherwise be required to give a copy of a notice to the Minister under this section) has given notice of the matter under section 65R of the Trade Practices Act 1974 of the Commonwealth, that person is not required to give the copy of the notice to the Minister.

56. *Certain actions not to affect insurance contracts*

The liability—

- (a) of an insurer under a contract of insurance relating to the recall of goods supplied or proposed to be supplied by a person; or
- (b) of a person with respect to possible defects or dangerous characteristics in goods supplied or proposed to be supplied by that person—

is not affected because that person gives any information about any such goods—

- (c) to the Minister, or an employee employed under Part 3 of the **Public Sector Management and Employment Act 1998**; or
- (d) in accordance with a requirement to inform or notify persons under section 49, 50 or 55.

Division 4—Applications for review

57. Review of interim ban order, permanent ban order or compulsory recall notice

- (1) A person whose interests are affected by a decision to make an interim ban order or a permanent ban order or to issue a compulsory recall notice may apply to the Tribunal 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 order or notice is published in the Government Gazette; 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—Warning notices

58. Warning notice to public

- (1) The Minister or the Director may publish or cause to be published a notice containing statements or giving warnings or information about both or either of the following—
 - (a) that the goods or services or the kind of goods or services specified in the notice are under investigation to determine whether or not the goods or services will or may cause injury to any person;
 - (b) the possible risks involved in the use of the goods or services or the kind of goods or services specified in the notice.
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- (2) The Minister must, as soon as practicable after the completion of an investigation referred to in subsection (1)(a), announce the results of the investigation by notice and may announce in the notice whether, and if so what action is proposed to be taken in relation to the goods under this Act.
 - (3) A notice under this section must be published in the Government Gazette and in a newspaper circulating generally throughout the State.
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PART 4—OFF-BUSINESS-PREMISES SALES

Division 1—Introductory

59. Application

This Part does not apply to—

- (a) a major domestic building contract within the meaning of the **Domestic Building Contracts Act 1995**;
- (b) an agreement for the sale of a motor car within the meaning of the **Motor Car Traders Act 1986**;
- (c) an agreement for the sale of goods to a purchaser who is in the trade or business of buying, selling or hiring goods of the same nature or description as the goods to which the agreement relates;
- (d) an agreement for the sale of goods or services to a purchaser who is a body corporate;
- (e) a contract for the sale of land to which section 32 of the **Sale of Land Act 1962** applies;
- (f) an agreement which relates solely to the performance of work under a contract of employment or by virtue of which the contractor would be deemed to be a "worker" within the meaning of the **Accident Compensation Act 1985**;
- (g) an agreement for the supply of goods or services if the total consideration payable by the purchaser under the agreement is ascertainable at the time of making the agreement and is \$50 or less.

Division 2—Contact Sales Agreements**60. What is a contact sales agreement?**

- (1) An agreement is a contact sales agreement if—
- (a) it is an agreement for the supply in trade or commerce of goods or services of a kind ordinarily used for personal, household or domestic use; and
 - (b) the agreement is made or entered into in the presence of the purchaser (or a person acting on behalf of the purchaser) and the supplier (or a person acting on behalf of the supplier) at—
 - (i) a private residence other than a private residence which is the business premises of the supplier or the person acting on behalf of the supplier; or
 - (ii) the workplace of the purchaser; and
 - (c) the total consideration payable by the purchaser under the agreement—
 - (i) is not ascertainable at the time of making the agreement; or
 - (ii) is ascertainable at the time of making the agreement and exceeds \$50.
- (2) If—
- (a) 2 or more agreements relate substantially to the same transaction; and
 - (b) the transaction could have been effected by a single agreement which would have constituted a contact sales agreement—
- then—
- (c) each of the agreements that would not, if it stood alone, constitute a contact sales
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agreement becomes a contact sales agreement; and

(d) for the purpose of ascertaining the cooling-off period in relation to each of the agreements, each agreement is deemed to have been made when the last of the agreements was made.

(3) Despite sub-section (1), the following are not contact sales agreements—

- (a) an agreement solely for the provision of credit;
- (b) a contract of guarantee;
- (c) a mortgage.

61. Requirements for contact sales agreements

(1) The following requirements must be complied with in relation to a contact sales agreement—

- (a) the agreement must set out in full all the terms of the agreement, including—
 - (i) the total consideration to be paid or provided by the purchaser under the agreement or, if the total consideration is not ascertainable at the time the agreement is entered into, the manner in which it is to be calculated;
 - (ii) any postal or delivery charges to be paid by the purchaser;
- (b) the agreement must include on the front page of the agreement a notice which—
 - (i) must in accordance with Part 1 of Schedule 2 advise the purchaser of the right to cancel the agreement; and
 - (ii) must be signed by the purchaser;

- (c) the agreement must be accompanied by a notice in accordance with Part 2 of Schedule 2 which sets out the name and address of the supplier and the date and details of the agreement and which may be used by the purchaser to cancel the agreement;
 - (d) the agreement must set out in full the name and business address (not being a post office box) of the supplier;
 - (e) the agreement must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form which may be handwritten);
 - (f) the agreement must be signed by the purchaser;
 - (g) any amendments to the agreement must be signed by both parties to the agreement;
 - (h) if the agreement is signed by a person on behalf of the supplier, the agreement must—
 - (i) state that the person is acting on behalf of the supplier; and
 - (ii) set out in full the name of that person and the business address (not being a post office box) of that person, or, if that person does not have a business address, the residential address of that person;
 - (i) the purchaser must be given a copy of the agreement immediately after the purchaser signs the agreement.
- (2) The size of the print or type used in relation to the matters required to be included in or to accompany an agreement under sub-section (1)(a), (b), (c), (d) or (g) must be 10 point or greater.
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- (3) The Director may approve an agreement or class of agreements which do not comply with the requirements of sub-section (1) or (2) if the Director is satisfied that the agreements provide a level of disclosure substantially equivalent to the requirements of that sub-section.
 - (4) An agreement approved or in a class approved under sub-section (3) is not required to comply with sub-section (1) or (2).

62. *Supplier must comply with requirements*

- (1) If section 61 is not complied with in relation to a contact sales agreement, the supplier under the agreement and any person entering into the agreement on behalf of the supplier are each guilty of an offence and liable to a penalty of not more than—
 - (a) 120 penalty units, in the case of a natural person; or
 - (b) 240 penalty units, in the case of a body corporate.
- (2) The supplier under a contact sales agreement cannot enforce the agreement against the purchaser if the supplier or a person entering into the agreement on behalf of the supplier fails to comply with section 61.

63. *When can the purchaser cancel the agreement?*

- (1) The purchaser under a contact sales agreement may cancel the agreement by giving notice of cancellation to the supplier within 5 clear business days from the day on which the agreement was made or within such longer period as the agreement may provide.
 - (2) If a contact sales agreement (other than an agreement approved or in a class approved under section 61(3)) does not comply with section 61(b),
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(c) and (i), the purchaser under the agreement may cancel the agreement by giving notice of cancellation to the supplier within 30 clear days from the day on which the agreement was made.

- (3) A notice of cancellation must be in writing and may be given in the form of the notice in Part 2 of Schedule 2.
- (4) Sub-section (3) does not apply to an agreement approved or in a class approved under section 61(3) if the Director approves a different method of notice of cancellation in the case of that agreement or class of agreements.
- (5) A notice of cancellation under this section may be given—
- (a) by leaving it at or posting it to the business address of the supplier or other address of the supplier shown on the form of notice of cancellation accompanying the agreement; or
 - (b) by faxing it to the facsimile number of the supplier shown on that form; or
 - (c) if the form of notice of cancellation does not accompany the agreement, by leaving it at or posting it to the last known place of business of the supplier.

64. *What is the effect of cancellation?*

- (1) If a contact sales agreement is cancelled during the cooling-off period, the agreement is deemed to have been rescinded by mutual consent.
- (2) If a contact sales agreement is cancelled during the cooling-off period, any related contract or instrument is void.
- (3) Sub-section (2) does not affect the operation of the Consumer Credit (Victoria) Code in its
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application to a tied loan contract as defined in that Code.

65. *What must the supplier do on cancellation?*

- (1) If a contact sales agreement is cancelled within the cooling-off period, the supplier must immediately repay to the purchaser any money paid by the purchaser under the agreement or a related contract or instrument.
- (2) If a contact sales agreement is cancelled within the cooling-off period, the supplier must return to the purchaser any goods taken as a trade-in under or in respect of the agreement.
- (3) The goods must be returned within 10 days after the supplier receives the notice of cancellation of the agreement.
- (4) The goods must be returned in a condition substantially as good as when the goods were taken.
- (5) If the supplier has disposed of the goods taken as a trade-in under or in respect of the agreement before the cancellation of the agreement, the supplier must pay to the purchaser the reasonable cost of replacing the goods.

66. *What can the supplier charge on cancellation?*

- (1) The supplier under a contact sales agreement may make a reasonable charge for any goods which the purchaser is unable to return on cancellation of the agreement under this Division.
- (2) The supplier under a contact sales agreement may make a reasonable charge for services rendered under the agreement before it is cancelled under this Division.

- (3) Sub-section (2) does not apply if the supplier has contravened section 12(j) in relation to the supply of the services.
- (4) The supplier may deduct an amount payable by a purchaser under this section from any money required to be paid to the purchaser under section 65.

67. What must the purchaser do on cancellation?

- (1) If the purchaser under a contact sales agreement for the supply of goods cancels the agreement during the cooling-off period, the purchaser must immediately—
 - (a) return the goods to the supplier; or
 - (b) notify the supplier of the place where the supplier may collect the goods.
- (2) If a purchaser gives a notice to a supplier under sub-section (1) and the supplier does not collect the goods within 30 days after the cancellation of the agreement, the goods become the property of the purchaser free of any other right or interest.
- (3) If the purchaser under a contact sales agreement fails to take reasonable care of goods which are returned to a supplier or collected by a supplier under this section, the purchaser is liable to pay compensation to the supplier for any damage to or depreciation in the value of the goods.

Division 3—Non-Contact Sales Agreements

68. What is a non-contact sales agreement?

- (1) An agreement is a non-contact sales agreement if—
 - (a) it is an agreement for the supply in trade or commerce of goods or services of a kind
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ordinarily used for personal, household or domestic use; and

- (b) the agreement is made or entered into otherwise than in the presence of both the purchaser (or a person acting on behalf of the purchaser) and the supplier (or a person acting on behalf of the supplier); and
- (c) the agreement is made with a purchaser who has not attended the premises of the supplier in respect of the goods or services or the class of goods or services to which the agreement applies before making or entering into the agreement.

(2) Despite sub-section (1), the following are not non-contact sales agreements—

- (a) an agreement solely for the provision of credit;
- (b) a contract of guarantee;
- (c) a mortgage.

69. *Requirements for non-contact sales agreements*

(1) Before a non-contact sales agreement is entered into, the following information must be provided to the purchaser—

- (a) the total consideration to be paid or provided by the purchaser under the agreement;
- (b) any postal or delivery charges to be paid by the purchaser;
- (c) any rights the purchaser has under the agreement to cancel the agreement and how those rights may be exercised;
- (d) the full name of the supplier and either the full business address of the supplier or the telephone number of the supplier.

- (2) If a non-contact sales agreement is in writing, the information under sub-section (1) must appear in a prominent position in the agreement and must include the full business address of the supplier.
- (3) If a non-contact sales agreement is not in writing, the information under sub-section (1) must be given clearly.
- (4) If a non-contact sales agreement is not in writing, the information set out in sub-section (1) and the full business address of the supplier must be given to the purchaser in writing at or before the time that the goods are delivered or before the services are performed.

70. *Supplier must comply with requirements*

- (1) If any requirement of section 69 is not complied with in relation to a non-contact sales agreement, the supplier under the agreement and any person entering into the agreement on behalf of the supplier are each guilty of an offence and liable to a penalty of not more than—
 - (a) 120 penalty units, in the case of a natural person; or
 - (b) 240 penalty units, in the case of a body corporate.
- (2) The supplier under a non-contact sales agreement cannot enforce the agreement against the purchaser if the supplier or a person entering into the agreement on behalf of the supplier fails to comply with section 69.

71. *When can the purchaser cancel the agreement?*

- (1) A purchaser under a non-contact sales agreement may cancel the agreement within a period specified under the agreement if the agreement so permits.
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- (2) Despite anything to the contrary in a non-contact sales agreement to which sub-section (1) applies, the period for cancellation specified in the agreement is deemed to be 5 business days after the relevant day unless a longer period is specified in the agreement.
 - (3) In this section the "relevant day" is—
 - (a) in the case of an agreement for the supply of goods, the day the goods are received by the purchaser; and
 - (b) in the case of services, the day that the agreement is made or entered into.
 - (4) If the date of receipt of goods by the purchaser cannot be ascertained, that date is deemed to be the date 3 business days after the goods were dispatched by the supplier.

72. *What is the effect of cancellation?*

- (1) If a non-contact sales agreement is cancelled during the cooling-off period, the agreement is deemed to have been rescinded by mutual consent.
- (2) If a non-contact sales agreement is cancelled during the cooling-off period, any related contract or instrument is void.
- (3) Sub-section (2) does not affect the operation of the Consumer Credit (Victoria) Code in its application to a tied loan contract as defined in that Code.

73. *What must the supplier do on cancellation?*

- (1) If a non-contact sales agreement is cancelled within the cooling-off period, the supplier must immediately repay to the purchaser any money paid by the purchaser under the agreement or a related contract or instrument.

- (2) If a non-contact sales agreement is cancelled within the cooling-off period, the supplier must return to the purchaser any goods taken as a trade-in under or in respect of the agreement.
- (3) The goods must be returned within 10 days after the supplier receives the notice of cancellation of the agreement.
- (4) The goods must be returned in a condition substantially as good as when the goods were taken.
- (5) If the supplier has disposed of the goods taken as a trade-in under or in respect of the agreement before the cancellation of the agreement, the supplier must pay to the purchaser the reasonable cost of replacing the goods.

74. *What can the supplier charge on cancellation?*

- (1) The supplier under a non-contact sales agreement may make a reasonable charge for any goods which the purchaser is unable to return on cancellation of the agreement.
- (2) The supplier under a non-contact sales agreement may make a reasonable charge for services rendered under the agreement before it is cancelled.
- (3) Sub-section (2) does not apply if the supplier has contravened section 12(j) in relation to the supply of the services.
- (4) The supplier may deduct an amount payable by a purchaser under this section from any money required to be paid to the purchaser under section 73.

75. *What must the purchaser do on cancellation?*

- (1) If the purchaser under a non-contact sales agreement for the supply of goods cancels the
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agreement during the cooling-off period, the purchaser must immediately—

- (a) return the goods to the supplier; or
 - (b) arrange with the supplier for the return of the goods to the supplier.
- (2) The purchaser under a non-contact sales agreement must pay the cost of the return of the goods under sub-section (1) unless—
- (a) the agreement otherwise provides; or
 - (b) the goods supplied were not of merchantable quality.
- (3) If the purchaser under a non-contact sales agreement fails to take reasonable care of goods which are returned to a supplier under this section, the purchaser is liable to pay compensation to the supplier for any damage to or depreciation in the value of the goods.

Division 4—General

76. *Duty to leave premises*

A supplier or a person acting on behalf of a supplier who is carrying on negotiations at a premises which may lead to a contact sales agreement or for an incidental or related purpose must leave the premises immediately on the request of—

- (a) the occupier of the premises; or
- (b) any person acting with the actual or implied authority of the occupier.

Penalty: 120 penalty units, in the case of a natural person.

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

77. Duty to produce identification

- (1) A supplier or a person acting on behalf of a supplier who is carrying on negotiations which may lead to a contact sales agreement or for an incidental or related purpose, must produce evidence of his or her identity—
- (a) on his or her first entering into negotiations; and
 - (b) at any time after that, if so requested by the person with whom he or she is negotiating.

Penalty: 120 penalty units, in the case of a natural person.

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

- (2) Evidence of identification under sub-section (1) must show the full name of the person, the name of the business (if any) which the person is representing and the business or residential address of the person.

78. Duty to cease telephone marketing

A supplier or a person acting on behalf of a supplier who is carrying on negotiations on the telephone which may lead to a non-contact sales agreement or for an incidental or related purpose must—

- (a) cease those negotiations immediately on the request of the prospective purchaser; and
- (b) refrain from contacting the prospective purchaser for 30 days afterwards.

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

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

79. Trade-in not to be sold during cooling-off period

A supplier under a contact sales agreement or a non-contact sales agreement must not during the cooling-off period for that agreement sell or dispose of any goods taken as trade-in under or in respect of the agreement.

Penalty: 120 penalty units, in the case of a natural person.

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

80. Payment for services during cooling-off period

A purchaser under a contact sales agreement or a non-contact sales agreement is not required to pay during the cooling-off period for any services provided under the agreement during that period.

81. Certain provisions in agreements void

- (1) A provision, term, condition or covenant in a contact sales agreement or a non-contact sales agreement or a related contract or agreement is void if it excludes, limits, modifies or restricts or purports to exclude, limit, modify or restrict a right to cancel the agreement during a cooling-off period.
 - (2) A provision, term, condition or covenant in a contact sales agreement or a non-contact sales agreement is void to the extent that it excludes, limits, modifies or restricts the effect or operation of this Part if, but for the provision, term, condition or covenant, this Part would apply to the agreement.
 - (3) If a contact sales agreement or a non-contact sales agreement contains a provision, term, condition or covenant that is void under sub-section (1), the supplier is guilty of an offence and liable to a penalty of not more than—
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- (a) 120 penalty units, in the case of a natural person; or
- (b) 240 penalty units, in the case of a body corporate.

82. Recovery of money

- (1) The supplier or the purchaser under a contact sales agreement or a non-contact sales agreement may apply to any court of competent jurisdiction or to the Tribunal for the determination of any amount payable to the supplier or purchaser under this Part on the cancellation of the agreement.
 - (2) The supplier or the purchaser under a contact sales agreement or a non-contact sales agreement may take action in any court of competent jurisdiction to recover as a debt any amount payable to the supplier or purchaser under this Part on the cancellation of the agreement.
 - (3) The purchaser has a lien over any goods supplied under a contact sales agreement or non-contact sales agreement which are in the possession of the purchaser for any amount which the purchaser is entitled to recover from the supplier under this Part in respect of that agreement.
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PART 5—LAY-BY SALES

83. *Statement of lay-by terms*

- (1) The supplier under a lay-by must ensure that a written statement of the lay-by terms is completed which complies with the following—
- (a) the statement—
 - (i) must be in clear and legible handwriting or in print or type of a size not less than 10 point; and
 - (ii) must be written in the English language and be readily understandable; and
 - (iii) may also be written in a language understood by the purchaser; and
 - (b) the statement must set out—
 - (i) a description of the goods, including any brand name or model number; and
 - (ii) the purchase price of the goods; and
 - (iii) the first payment made on the goods and the balance outstanding; and
 - (iv) a method of determining when any payments to be made on the goods are due or the dates by which any such payments are due to be made; and
 - (v) if any charge is payable under the agreement for the cancellation of the lay-by, the amount of the cancellation charge or the method of calculating the cancellation charge, and this must appear on the statement in bold writing; and
 - (vi) any other terms of the lay-by; and
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(c) the statement must be signed by the purchaser; and

(d) the statement must be signed by the supplier or a person on behalf of the supplier.

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

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

(2) The supplier under a lay-by must ensure that the statement under sub-section (1) is given to the purchaser at the time the lay-by is entered into.

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

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

84. *Change of lay-by terms*

The supplier under a lay-by must not alter the terms of a lay-by after the lay-by statement has been given to the purchaser, unless the supplier has first obtained the agreement in writing of the purchaser to the changes.

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

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

85. *Cancellation of lay-by by purchaser*

(1) The purchaser under a lay-by may cancel a lay-by before the goods are delivered or on the delivery of the goods if the goods are damaged by so advising the supplier—

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- (a) in writing; or
 - (b) orally, if the supplier agrees.
- (2) If a purchaser cancels a lay-by, the supplier must, if so requested by the purchaser, give the purchaser a statement which complies with the following—
- (a) the statement must set out—
 - (i) the purchase price of the goods; and
 - (ii) any cancellation charge payable under the agreement; and
 - (iii) the total amount paid under the lay-by; and
 - (iv) any amount owing to either the purchaser or the supplier under the terms of the lay-by on the cancellation of the lay-by; and
 - (b) the statement must comply with section 83(1)(a); and
 - (c) the statement must be signed by the supplier or a person on behalf of the supplier.

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

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

86. *Cancellation of lay-by by supplier*

The supplier under a lay-by must not cancel it unless—

- (a) the purchaser breaches a term of the lay-by; or

- (b) the supplier stops trading; or
- (c) the goods are no longer available.

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

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

87. Cancellation on breach by purchaser

- (1) If a purchaser has breached a term of a lay-by and the supplier intends to cancel the lay-by, before doing so the supplier must—

- (a) give the purchaser notice of the supplier's intention to cancel the lay-by; and
- (b) allow the purchaser at least 14 days within which to rectify the breach.

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

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

- (2) A notice under sub-section (1)(a)—

- (a) may be given in writing, sent to the purchaser's last known address, or, if the purchaser so agrees, orally; and
 - (b) must specify the breach of the term of the lay-by for which the lay-by is being cancelled; and
 - (c) must state the time within which the purchaser must rectify the breach; and
 - (d) must state the matters listed in section 85(2)(a); and
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(e) if the notice is in writing, must be in accordance with section 83(1)(a).

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

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

- (4) A term of a lay-by that the purchaser agrees to accept notice of cancellation by the supplier given other than in writing is void.
- (5) The lay-by is cancelled at the end of the period specified in the notice unless the purchaser rectifies the breach before then or the supplier agrees not to cancel it.

88. *Cancellation where business closes*

If a supplier under a lay-by agreement proposes to stop trading before the agreement is completed, the supplier must give notice of the proposal to the purchaser and must either—

- (a) allow the purchaser 7 days within which to complete the agreement; or
- (b) cancel the lay-by.

89. *Effect of cancellation of lay-by*

- (1) When a lay-by is cancelled (whether by the supplier or the purchaser) the supplier, within 14 days, must refund to the purchaser—
- (a) if the terms of the lay-by provide for a cancellation charge and if sub-section (3) does not apply, all money paid by the purchaser under the lay-by other than the cancellation charge; or

(b) if the terms of the lay-by do not provide for a cancellation charge, all the money paid under the lay-by.

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

120 penalty units, in the case of a body corporate¹.

(2) The supplier is entitled to recover any unpaid cancellation charge from the purchaser as a debt if the amounts paid by the purchaser under the lay-by are not enough to cover the cancellation charge.

(3) If—

- (a) the supplier has breached any term of the lay-by; or
 - (b) the goods were not available for delivery to the purchaser when the terms of the lay-by indicated they would be available; or
 - (c) the supplier has refused to permit the purchaser to inspect the goods; or
 - (d) the goods under the lay-by were lost or damaged; or
 - (e) the purchaser has sought to obtain the goods at the premises at which the lay-by was entered into but cannot do so because the supplier no longer operates a business from those premises and no longer operates a business at a reasonable distance from the purchaser's place of residence or work; or
 - (f) a lay-by statement has not been given to the purchaser or the lay-by statement given to the purchaser does not comply with section 83, is misleading or deceptive or contains a
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material false representation as to the terms of the lay-by; or

- (g) the supplier stops trading (whether or not a notice under section 88 has been given)—

the supplier is not entitled to recover any amount by way of cancellation charge and must refund to the purchaser any amount kept by the supplier by way of cancellation charge.

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

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

90. *Cancellation charge must not exceed a reasonable amount*

- (1) If a supplier proposes to enter into a lay-by agreement in which there is to be provision for a cancellation charge, the supplier must not enter into the agreement unless the agreement provides for the cancellation charge to be an amount not more than the sum of—

- (a) an amount sufficient to reimburse the supplier for reasonable selling costs (including storage costs and administrative expenses) in respect of the lay-by; and
- (b) an amount that equates to any loss of value of the goods (whether due to deterioration or otherwise) between the time when the lay-by was entered into and the time when the lay-by was cancelled which could not have been avoided by reasonable diligence on the part of the supplier.

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

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

- (2) The supplier has the onus of establishing—
- (a) reasonable selling costs in respect of the lay-by; and
 - (b) any loss of value of the goods which could not have been avoided by reasonable diligence on the part of the supplier.

91. *Limits on supplier's remedies*

If a term of a lay-by is breached or a lay-by is cancelled by either party, the supplier—

- (a) is not entitled to keep or recover any money from the purchaser; and
- (b) is not otherwise entitled to damages or to enforce any other remedy—

in respect of the breach or cancellation, except the remedies specifically provided for by this Act.

92. *Demands for early payment*

Subject to section 88, if it is a term of a lay-by that payment in full, or that payment of an instalment must be made by a fixed or ascertainable date, the supplier must not demand payment before that date.

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

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

93. *Effect of contracting out*

A term of a lay-by is void to the extent that it would operate to exclude, limit, modify or restrict the operation of this Part.

Fair Trading Act 1999
Act No. 16/1999

PART 6—CODES OF PRACTICE**94. *Preparation of draft code of practice by the Director***

The Director may, with the approval of the Minister, and must, if the Minister so directs, 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.

95. *Consideration of draft code of practice prepared by other persons*

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.

96. *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 94; or
 - (ii) has been submitted to the Minister under section 95; 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.

97. *Offence to breach code of practice*

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

Penalty: 20 penalty units.

PART 7—ADMINISTRATION**98. *Director of Fair Trading***

There is to be a Director of Fair Trading employed under Part 3 of the **Public Sector Management and Employment Act 1998**.

99. *Staff*

There may be employed under Part 3 of the **Public Sector Management and Employment Act 1998** any other employees that are necessary for the administration of this Act.

100. *Functions and powers of the Director*

- (1) The functions of the Director include the following—
 - (a) to advise persons of their rights and obligations under this Act;
 - (b) to receive complaints from persons and to deal with them in accordance with this Act;
 - (c) to investigate breaches of this Act or the regulations;
 - (d) to prosecute breaches of this Act or the regulations;
 - (e) to institute and defend proceedings in accordance with this Act;
 - (f) to encourage the preparation and use of codes of practice for guidance in safeguarding and promoting the interests of suppliers and purchasers of goods or services and to prepare and submit to the Minister codes of practice for the purposes of the codes being prescribed in regulations;
 - (g) in respect of matters affecting the interests of purchasers and suppliers—
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- (i) to investigate those matters; and
 - (ii) to conduct research; and
 - (iii) to collect and collate information;
 - (h) 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;
 - (i) to educate and inform people on fair trading issues;
 - (j) any other function conferred on the Director by or under this Act or any other Act.
- (2) The Director has all the powers necessary to perform his or her functions.

101. Powers of delegation

The Director, by instrument, may delegate to any person or class of person employed under Part 3 of the **Public Sector Management and Employment Act 1998** in the administration of this Act, any of the Director's functions or powers under this Act, other than this power of delegation.

102. 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 sub-section (1) to be laid before each House of Parliament within 21 sitting days of that House after it is received.

PART 8—POWERS OF THE DIRECTOR TO DEAL WITH DISPUTES**103. 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 104.
- (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.

104. Conciliation

- (1) The Director may refer to a fair trading employee for conciliation any dispute (which is reasonably likely to be settled)—
 - (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 purchaser (who is not a natural person) or a possible purchaser (who is not a natural person) and a supplier about a supply or possible supply of goods or services in trade or commerce, which the Director believes involves a matter of significant public interest.
 - (2) 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
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the dispute, or that part of the dispute, to the person within whose jurisdiction it falls.

- (3) Sub-section (1) applies whether or not a person has made a complaint.
- (4) In this section—

"fair trading employee" means any person employed under Part 3 of the **Public Sector Management and Employment Act 1998** in the administration of this Act.

105. Powers of the Director to institute and defend proceedings

- (1) If a person is involved in a dispute which falls within section 104(1) the Director may, subject to this section, institute proceedings on behalf of, or defend proceedings brought against that person if the Director is satisfied—
- (a) that the person has a good cause of action or a good defence to an action relating to the dispute; and
 - (b) that the person is 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 or defend proceedings on behalf of the person.
- (2) The Director must not under sub-section (1) institute or defend proceedings on behalf of a person unless—
- (a) the Minister has given his or her consent in writing, subject to any conditions that the Minister determines; and

- (b) the person has given consent in writing, and has not revoked that consent before the proceedings or the defence is instituted.

106. *Proceedings and costs*

- (1) If the Director institutes or defends proceedings on behalf of a person under section 105—
 - (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) an amount (other than an amount in respect of costs) recovered 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) 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, in proceedings instituted or defended on behalf of a person under section 105—
 - (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
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to the court or the Tribunal hearing the proceedings for an order that the counterclaim not be heard in the course of those proceedings.

- (3) If the court or the Tribunal makes an order under sub-section (2), the court or the Tribunal may make those ancillary or consequential provisions (if any) that it thinks just.
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PART 9—FUNCTIONS OF TRIBUNAL**107. *What is a fair trading dispute?***

- (1) In this Part a "fair trading 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 sub-section (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 does not include a dispute or claim related to a personal injury.

108. *Settlement of fair trading disputes*

- (1) The Tribunal may hear and determine a fair trading dispute.
 - (2) The Tribunal may do one or more of the following in relation to a fair trading dispute—
 - (a) refer a dispute to a mediator appointed by the Tribunal;
 - (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;
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- (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.
- (3) In awarding damages in the nature of interest, the Tribunal 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.

109. *Additional powers of Tribunal*

- (1) In addition to its powers under section 108, the Tribunal, 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 sub-section (1), the Tribunal 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;
 - (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 the Tribunal thinks is relevant.
- (3) Despite anything to the contrary in this section, in determining whether a term of a contract is unjust, the Tribunal is not to 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.

110. *Who can ask the Tribunal to resolve a fair trading dispute?*

The Tribunal may only make an order to resolve a fair trading 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.

111. *Exclusion of other jurisdiction*

Fair Trading Act 1999

Act No. 16/1999

- (1) Once an application has been made to the Tribunal in accordance with the **Victorian Civil and Administrative Tribunal Act 1998** in respect of a fair trading dispute or in respect of any other matter in respect of which the Tribunal 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 the Tribunal was made and that proceeding is still pending; or
 - (b) the application to the Tribunal is withdrawn or struck out for want of jurisdiction.
- (2) Sub-section (1) applies to all the issues in dispute, whether as shown in the application or emerging in the course of the proceeding in the Tribunal.

112. *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 fair trading dispute or are other proceedings in respect of which the Tribunal has jurisdiction under this Act.
 - (2) The court must stay the proceedings if—
 - (a) the proceedings could be heard by the Tribunal under this Act; and
 - (b) the court is satisfied that the proceedings would be more appropriately dealt with by the Tribunal.
 - (3) In determining whether proceedings would be more appropriately dealt with by the Tribunal, the court must consider—
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- (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 the Tribunal; 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 the Tribunal.
- (4) If proceedings are stayed under this section, any party to the proceedings may apply to the Tribunal for an order with respect to the dispute or matter on which the proceedings were based.
- (5) If a person applies to the Tribunal under sub-section (4) the Tribunal must notify the court and on such notification the court must dismiss the proceedings.
- (6) Sub-section (5) does not apply if the Tribunal refers the matter to the court under section 77(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

113. *Tribunal may hear dispute regardless of related criminal proceedings*

If a fair trading 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), the Tribunal 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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PART 10—INSPECTION POWERS

114. *Appointment of inspectors*

The Director may, by instrument, appoint as inspectors any employees or class of employees employed under Part 3 of the **Public Sector Management and Employment Act 1998**.

115. *Inspector's identity card*

- (1) The Director must issue an identity card to each inspector.
- (2) An identity card must contain a photograph of the inspector to whom it is issued.

116. *Production of identity card*

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

Penalty: 10 penalty units.

- (2) This section does not apply to the exercise of a power under section 120.

117. *Inspector may seek Court order*

- (1) If an inspector believes, on reasonable grounds, that a person or persons may have contravened this Act or the regulations, the inspector, with the written approval of the Director, may apply to the Magistrates' Court for an order requiring any person at a time and place specified by an 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) If the Magistrates' Court is satisfied on the basis of evidence presented by the inspector that there are reasonable grounds to believe that a person or persons may have contravened this Act or the regulations, the Court may grant the order sought.
- (3) An order under this section must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.
- (4) If any documents are produced to an inspector under an order made under this section 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 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 OFTBA Act or the regulations under that Act;
 - (d) secure any seized documents against interference;
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- (e) retain possession of the documents in accordance with this Part.
- (5) An inspector who executes an order under this section must as soon as practicable after that execution notify the Magistrates' Court in writing of—
- (a) the time and place of execution; and
 - (b) the documents or classes of documents seized; and
 - (c) if documents were seized under sub-section (4)(c) in respect of a contravention other than a contravention for which the order was granted, the contravention in respect of which the documents were seized.
- (6) The Magistrates' Court may direct the inspector to bring before the Court a document to which sub-section (5)(c) applies so that the matter may be dealt with according to law.
- (7) The Magistrates' Court may direct that a document brought before it under sub-section (6) be returned to its owner, subject to any condition the Court thinks fit, if in the opinion of the Court it can be returned consistently with the interests of justice.

118. Requirement to publisher to produce information

- (1) For the purpose of monitoring compliance with this Act or the regulations, the Director or an inspector may require a person who is the publisher of a publication to produce to the Director or an inspector, in the form in which it is retained by the publisher, specified information which has been published by the publisher.
 - (2) An inspector can only require production of information under sub-section (1) with the written consent of the Director.
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119. *Entry or 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 the premises, may—
 - (a) enter and search any premises;
 - (b) seize anything found on the premises which the inspector believes on reasonable grounds, to be connected with the alleged contravention;
 - (c) examine and take and keep samples of any goods found on the premises which the inspector believes on reasonable grounds to be connected with the alleged contravention;
 - (d) inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
 - (a) produced his or her identity card 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 anything found during the search; and
 - (iii) that the occupier may refuse to 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 anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (3) If an occupier consents to an entry and search, the inspector who requested consent must before entering the premises ask the occupier to sign an acknowledgment in the prescribed form stating—
- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- (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 occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
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- (6) If, in any proceeding, an 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.

120. *Entry of premises open to the public*

An inspector may do either or both of the following—

- (a) enter and inspect any part of a premises which is, at the time of the entry and inspection, open to the public;
- (b) purchase goods or services at such a premises at such a time and at such a price at which it is available to the public to purchase.

121. *Emergency entry*

- (1) If an inspector believes, on reasonable grounds, that there is evidence on premises of goods being supplied from the premises which are dangerous if used or which are being supplied in contravention of an interim ban order or a permanent ban order, the inspector may (with the assistance, if necessary, of another inspector or a member of the police force) enter and search the premises at any time.
 - (2) If an inspector finds goods referred to in sub-section (1) on the premises during a search under that sub-section and the inspector is satisfied that the goods present a threat of imminent injury or death, the inspector may do all or any of the following—
 - (a) seize the goods;
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- (b) secure the seized goods against interference;
 - (c) require the occupier to remove the goods;
 - (d) examine and take and keep samples of the goods;
 - (e) inspect and make copies of, or take extracts from, any document found on the premises.
- (3) If an inspector finds any goods referred to in sub-section (1) on the premises during a search under that sub-section (not being goods to which sub-section (2) applies), the inspector may 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—
- prohibit the removal of the goods from the premises.
- (4) A notice under sub-section (3) ceases to have effect at the end of 72 hours after the notice is given or affixed under that sub-section, whichever is the earlier.
- (5) 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—
- (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of all 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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- (6) A person must not remove goods from premises in contravention of a notice under this section.

Penalty: 60 penalty units.

122. Search warrants

- (1) An inspector, with the written approval of the Director, 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 or persons may have contravened this Act or the regulations.
- (2) If a magistrate is satisfied, by the evidence, on oath or by affidavit, of the inspector that there are reasonable grounds to believe that there is a thing or things of a particular kind connected with a contravention of this Act or the regulations on any premises, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
- (a) to enter the premises specified in the warrant, if necessary by force; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine, inspect and take and keep samples of;
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- (v) inspect and make copies of, or take extracts from—
a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with the alleged contravention.
- (3) A search warrant issued under this section 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 stated 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 under this section.

123. *Announcement before entry*

- (1) On executing a search warrant, the inspector executing 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 need not comply with sub-section (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.

124. *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.

125. *Seizure of things not mentioned in the warrant*

A search warrant under section 122 authorises an inspector executing the search 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 OFTBA Act; and
 - (b) in the case of seizure, 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 OFTBA Act.

126. *Embargo notice*

- (1) An inspector executing a search warrant who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue an embargo notice in the prescribed form—
 - (a) by causing a copy of the notice to be served 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.
- (2) A person who knows that an embargo notice relates to a thing and who—
 - (a) sells; or
 - (b) leases; or
 - (c) without the written consent of the inspector who issued the embargo notice, moves; or
 - (d) transfers; or
 - (e) otherwise deals with—the thing or any part of the thing is guilty of an offence and liable to a penalty of 60 penalty units.

- (3) It is a defence to a prosecution for an offence against sub-section (2) to prove that the defendant moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (4) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

127. *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 of the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under sub-section (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

128. *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
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(b) the Magistrates' Court makes an order under section 129 extending the period during which the document or thing may be retained.

(3) This section does not apply to a sample taken by an inspector in the exercise of a power under this Part.

129. *Magistrates' Court may extend 3 month period*

(1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension of the period for which the inspector may retain the document or thing.

(2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—

(a) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or

(b) 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 may adjourn an application to enable notice of the application to be given to any person.

130. *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 OFTBA Act or the regulations under that Act.

131. 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 identity card 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.

132. 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.

133. 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 doing of that other thing would tend to incriminate the person.
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- (2) Despite sub-section (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.

134. *Offence to give false or misleading information*

A person must not—

- (a) give information to an inspector under this Part that the person believes to be false or misleading in any material particular; or
- (b) 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.

135. *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.

136. *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.

137. *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 particulars of—
- (a) the time and place of the entry; and
 - (b) the purpose of the entry; and
 - (c) the things done while on the premises, including details of things seized, samples taken, copies made and extracts taken; and
 - (d) the time of departure from the premises.

138. *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 137.

139. *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.

140. *Service of documents*

- (1) A written requirement by an inspector under this Part 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 an inspector under this Part may send that document or information
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to the Director at the Office of Fair Trading and Business Affairs by registered post.

141. Confidentiality

- (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Part, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.

Penalty: 60 penalty units.

- (2) Sub-section (1) does not apply to the giving of information—
- (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) 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
 - (d) to the Business Licensing Authority established under the **Business Licensing Authority Act 1998**; or
 - (e) with the written authority of the Director; or
 - (f) with the written authority of the person to whom the information relates.
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PART 11—ENFORCEMENT AND REMEDIES

Division 1—General enforcement provisions

142. *Prosecutions of offences*

Despite section 26 of the **Magistrates' Court Act 1989** a prosecution for an offence under this Act may be commenced not more than 3 years after the commission of the offence.

143. *Offences by bodies corporate*

- (1) If a body corporate contravenes any provision of this Act, each officer of the body corporate is deemed to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision in accordance with sub-section (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 an offence committed by the body corporate against this Act.

144. *Imputing state of mind to bodies corporate*

If, in any proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—

- (a) the conduct was engaged in by an officer or agent of a body corporate within the scope of his or her actual or apparent authority; and
- (b) the officer or agent had that state of mind.

145. *Liability of body corporate or employer for acts of others*

- (1) If an officer or agent of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual or apparent authority, the body corporate must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct, unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (2) If an employee or agent of a person other than a body corporate engages in conduct on behalf of the person within the scope of his or her actual or apparent authority, the person must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct, unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

Division 2—Remedies and legal proceedings

146. *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 OFTBA 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) 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 sub-section (4).

- (4) 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.
- (5) 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 sub-section (4) that the Magistrates' Court thinks appropriate.

147. Copy of undertaking

The Director must give a copy of an undertaking under section 146 to the person who made the undertaking.

148. 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.

149. Injunctions

- (1) The Minister, Director or any other person may apply to the 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
 - (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.
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- (2) The Magistrates' 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*.

150. Interim injunctions

- (1) The Magistrates' Court may grant an interim injunction pending determination of an application under section 149, 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 149(1); or
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(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) An application for an injunction under this section may be made *ex parte*.

151. Power to rescind or vary injunctions

The Magistrates' Court may rescind or vary an injunction granted by it under section 149 or an interim injunction granted by it under section 150.

152. Undertakings as to damages and costs

(1) In any application under section 149 or 150, subject to sub-section (2), if—

(a) the Magistrates' Court would, but for this sub-section, require a person to give an undertaking as to damages or costs; and

(b) the Minister or the Director gives the undertaking—

the Magistrates' 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 149, if the application has been made by the Minister or the Director and if the Magistrates' 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.

153. Power of the courts to require corrective advertising

Fair Trading Act 1999

Act No. 16/1999

If, on the application of the Minister or Director, a court is satisfied that there has been a contravention of any provision of Part 2, 3, 4, 5 or 6, the court may make either or both of the following orders—

- (a) an order requiring any person involved in the contravention to disclose any information which is in the person's possession or to which the person has access, which is information or of a class of information specified in the order—
 - (i) to the public or any person or class of persons specified in the order; and
 - (ii) in the manner specified in the order;
- (b) an order requiring any person involved in the contravention to publish an advertisement in the terms specified or determined in accordance with the order—
 - (i) at the expense of the person; and
 - (ii) in the manner and at the times specified in the order.

154. *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, a person who is
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- 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 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;
- (c) 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;
 - (d) 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;
 - (e) 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 sub-section (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 Part 2, 3, 4, 5 or 6; or

(b) proceedings on an application for an injunction under section 149 or 150 against a person alleged to have contravened Part 2, 3, 4, 5 or 6; or

(c) proceedings on an application for an order under section 158; or

(d) proceedings for damages under section 159.

155. Defences

- (1) Subject to sub-section (2), in a prosecution under this Act in relation to a contravention of a provision of Part 2, it is a defence if the defendant establishes—
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- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake of fact; or
- (b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or
- (c) that—
- (i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In sub-section (1)(b) and (c), "another person" does not include a person who was—
- (a) an employee or an agent of the defendant; or
 - (b) in the case of a defendant being a body corporate, an officer or an agent of the defendant—
- at the time when the contravention occurred.
- (3) If a defence provided by sub-section (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the defendant has, not later than 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
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assist in the identification of the other person as was then in the defendant's possession.

- (4) In a proceeding under this Act in relation to a contravention of a provision of Part 2 (other than section 27) committed by the publication of an advertisement, it is a defence if the defendant establishes that—
- (a) the defendant is a person whose business is to publish or arrange for the publication of advertisements; and
 - (b) that the defendant received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of Part 2.

156. 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.
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- (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.

157. Findings in proceedings to be evidence

In a proceeding under section 158 or 159, a finding of fact by a court made in proceedings under section 149, 150 or 153 in which that person has been found to have contravened, or to have been involved in a contravention of a provision of this Act is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

158. Orders against persons found to have contravened this Act

- (1) In any proceedings for an offence against this Act, the court may make one or more of the orders set out in sub-section (2) if the court believes, on reasonable grounds, that—
- (a) that the defendant has contravened a provision of this Act; and
 - (b) that another person ("**the injured person**") has suffered or is likely to suffer loss or damage as a result of the contravention of this Act.
- (2) The orders that can be made by the court are—
- (a) an order that the whole or any part of a contract between the defendant 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
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- 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 defendant—
 - (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 defendant 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 defendant repair or provide parts for goods provided under the contract or agreement to the injured person; or
 - (g) an order that the defendant supply services required to be supplied under the contract or agreement to the injured person; or
 - (h) any order that the court thinks fit if the court considers that the order will compensate the injured person in whole or in part for the loss or damage or will prevent or reduce the loss or damage suffered or likely to be suffered by the injured person.
- (3) In any proceedings under section 149, 150 or 159, if the court or the Tribunal finds that—
- (a) a party to the proceedings has contravened the provisions of this Act; and
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(b) that another person has suffered or is likely to suffer loss or damage as a result of that contravention—

the court or the Tribunal may make any order against the party to the proceedings that might be made against a defendant under sub-section (1).

159. *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 involved in the contravention.
- (2) A proceeding under this section may be brought before the Tribunal or in any court of competent jurisdiction.
- (3) A proceeding under sub-section (1) must not be commenced more than 6 years after the date on which the cause of action accrued.

160. *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) \$1000; 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.

PART 12—MISCELLANEOUS**161. *Supplier to give documents***

If a purchaser or a prospective purchaser of goods or services asks the supplier for a document containing particulars of the goods or services, the supplier must give the purchaser or prospective purchaser a document which complies with section 163 and which contains—

- (a) any particulars of the goods or services which are sufficient to identify them; and
- (b) any particulars of the standards of the goods or services or of parts of the goods or services which ought reasonably to be made known to the purchaser or prospective purchaser; and
- (c) any particulars or information in relation to the goods or services which have been asked for by the purchaser or prospective purchaser; and
- (d) if particulars have been prescribed for the purposes of this section in relation to the goods or services, the prescribed particulars.

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

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

162. *Return of replaced parts to purchaser*

- (1) A person who permanently removes a part from goods which he or she is repairing or maintaining in trade or commerce (whether or not he or she also replaces the part)—
 - (a) must offer to return the removed part at or before the return of the goods; and
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- (b) must return the removed part, if the owner asks for the part to be returned, within a reasonable time of the return of the goods to the owner.

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

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

- (2) Sub-section (1) does not apply if no charge is made for the removal of the part and, if the part is replaced, no charge is made for the replacement and fitting of the part.

163. Documents to be clear

Any statement, notice or other document required by this Act to comply with this section—

- (a) must—
- (i) be in clear and legible handwriting; or
 - (ii) be in print or type of a size not less than 10 points; and
- (b) must be written in the English language and be readily understandable.

164. Supreme Court—limitation of jurisdiction

It is the intention of sections 111 and 112 to alter or vary section 85 of the **Constitution Act 1975**.

165. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing safety and information standards under Part 3;
 - (b) prescribing terms to which lay-bys are subject under Part 5;

- (c) prescribing codes of practice in accordance with Part 6;
 - (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.
- (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;
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- (f) may impose a penalty, not exceeding 20 penalty units, for a contravention of the regulations.
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PART 13—REPEALS, SAVINGS AND TRANSITIONAL

166. *Repeal of Fair Trading Act 1985*

The **Fair Trading Act 1985** is repealed.

167. *Repeal of Consumer Affairs Act 1972*

The **Consumer Affairs Act 1972** is repealed.

168. *Repeal of Ministry of Consumer Affairs Act 1973*

The **Ministry of Consumer Affairs Act 1973** is repealed.

169. *Repeal of Market Court Act 1978*

The **Market Court Act 1978** is repealed.

170. *Savings and transitional provisions*

Schedule 3 has effect.

SCHEDULES

SCHEDULE 1

OFTBA ACTS

Associations Incorporation Act 1981

Business Names Act 1962

Co-operatives Act 1996

Domestic Building Contracts Act 1995

Estate Agents Act 1980

Fair Trading Act 1999

Finance Brokers Act 1969

Fundraising Appeals Act 1998

Funerals (Pre-Paid Money) Act 1993

Goods Act 1958

Introduction Agents Act 1997

Motor Car Traders Act 1986

Patriotic Funds Act 1958

Prostitution Control Act 1994

Residential Tenancies Act 1997

Retirement Villages Act 1986

Sale of Land Act 1962

Second-Hand Dealers and Pawnbrokers Act 1989

Travel Agents Act 1986

SCHEDULE 2

CONTACT SALES AGREEMENTS

PART 1—NOTICE TO PURCHASER

The following notice is to appear on the front page of a Contact Sales agreement and must be signed by the purchaser:

"IMPORTANT NOTICE TO THE PURCHASER

YOU HAVE A RIGHT TO CANCEL THIS AGREEMENT WITHIN 5 CLEAR BUSINESS DAYS.

IMPORTANT DETAILS ABOUT YOUR RIGHTS ARE SET OUT IN THE CANCELLATION NOTICE PROVIDED WITH THIS AGREEMENT.

Signed by the Purchaser :-----"

PART 2—CANCELLATION NOTICE

A Cancellation Notice in the following form must accompany a Contact Sales agreement:

'CANCELLATION NOTICE

(supplier details and date and details of agreement must be completed by supplier)

TO THE SUPPLIER:

Supplier's name:

Supplier's address:

Supplier's facsimile number (if any):

Date of Agreement:

Details of goods or services to be supplied under Agreement:

I WISH TO CANCEL THIS AGREEMENT.

If this is an agreement for the supply of goods:

*I RETURN THE GOODS WITH THIS NOTICE *or*

*THE GOODS CAN BE COLLECTED FROM THE FOLLOWING ADDRESS :

*(*Cross out whichever does not apply)*

Signed by the Purchaser :

Date :

(The wording below must appear in bold capital print or type, of a size at least as large as the largest print or type appearing on any other part of the notice)

"NOTICE TO THE PURCHASER WANTING TO CANCEL THIS AGREEMENT

IF YOU WISH TO CANCEL THIS AGREEMENT PLEASE SIGN AND DATE THIS NOTICE OF CANCELLATION AND LEAVE THE NOTICE AT THE SUPPLIER'S ADDRESS OR POST IT TO THE

Fair Trading Act 1999

Act No. 16/1999

SUPPLIER AT THE SUPPLIER'S ADDRESS OR FAX IT TO THE FAX NUMBER SET OUT IN THIS NOTICE.

THIS MUST BE DONE WITHIN FIVE (5) CLEAR BUSINESS DAYS FROM THE DAY THAT YOU ENTERED INTO THE AGREEMENT. ("BUSINESS DAYS" DO NOT INCLUDE SATURDAYS, SUNDAYS OR DAYS WHICH ARE WHOLLY OR PARTLY OBSERVED AS PUBLIC HOLIDAYS THROUGHOUT VICTORIA).

YOU MAY STILL BE REQUIRED TO PAY A FAIR PRICE FOR GOODS WHICH CANNOT BE RETURNED TO THE SUPPLIER, OR FOR SERVICES PROVIDED UNDER THE AGREEMENT BEFORE IT IS CANCELLED UNLESS YOU ENTERED INTO THE AGREEMENT BECAUSE THE SUPPLIER MADE A FALSE OR MISLEADING REPRESENTATION ABOUT YOUR NEED FOR THE GOODS OR SERVICES." '

SCHEDULE 3

SAVINGS AND TRANSITIONAL

1. *Superseded references*

On the commencement of this clause, in any Act (other than this Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to the **Fair Trading Act 1985** is deemed to be a reference to this Act;
- (b) a reference to the **Consumer Affairs Act 1972** is deemed to be a reference to this Act;
- (c) a reference to the Director of Consumer Affairs is deemed to be a reference to the Director of Fair Trading;
- (d) a reference to the Director appointed under the **Ministry of Consumer Affairs Act 1973** is deemed to be a reference to the Director of Fair Trading.

2. *Actions commenced by Director or Secretary*

- (1) Any act, matter or thing of a continuing nature commenced under any Act or regulation by or against or in relation to the Director of Consumer Affairs and existing immediately before the commencement of this clause may be continued and completed on and after that commencement by or against or in relation to the Director of Fair Trading.
- (2) If, immediately before the commencement of this clause, proceedings to which the Director of Consumer Affairs was a party were pending or existing in any court or tribunal, then, on and after that commencement, the Director of Fair Trading is substituted for the Director of Consumer Affairs as a party to the proceedings and has the same rights and obligations in the proceedings as the Director of Consumer Affairs had.
- (3) In this clause "**Director of Consumer Affairs**" means—
 - (a) the Director of Consumer Affairs appointed for the purposes of the **Ministry of Consumer Affairs Act 1973**; or
 - (b) the Secretary of the Department of Justice exercising the powers of the Director of Consumer Affairs

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pursuant to an Order made under the **Administrative Arrangements Act 1983**.

- (4) This section does not apply to any act, matter or thing done under the **Weights and Measures Act 1958** (as in force immediately before its repeal) or the **Liquor Control Act 1987** (as in force immediately before its repeal).

3. Inspectors

- (1) On and after the commencement of this clause—
- (a) each former inspector holding office immediately before that commencement is deemed to be an inspector appointed by the Director under section 114 of this Act; and
 - (b) a certificate of appointment furnished under section 63 of the **Consumer Affairs Act 1972** in respect of the appointment of a former inspector is deemed to be an identity card issued by the Director under section 115 of this Act.
- (2) On and after the commencement of this clause, an inspector appointed by the Director under section 114 of this Act may continue and complete any proceedings under any Act or regulation commenced or made by or against or in relation to a former inspector and existing immediately before that commencement.
- (3) In this clause "**former inspector**" means an inspector appointed or authorised under section 62 of the **Consumer Affairs Act 1972**.

4. Regulations

Despite the repeal of the **Consumer Affairs Act 1972** the following regulations continue in operation and may be amended or revoked as if they were made under this Act—

- (a) Consumer Affairs (Product Safety) (Airpots) Regulations 1992;
 - (b) Consumer Affairs (Product Safety) (Spirit Stoves) Regulations 1992;
 - (c) Consumer Affairs (Product Safety) (Children's Toys) Regulations 1998;
 - (d) Consumer Affairs (Product Safety) (Lighters) Regulations 1998.
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5. Orders

On the commencement of this clause all orders made under section 57D of the **Consumer Affairs Act 1972** and existing immediately before that commencement are deemed to be permanent ban orders under this Act.

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NOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 25 March 1999

Legislative Council: 5 May 1999

The long title for the Bill for this Act was "to re-enact with amendments laws relating to trading practices, to make further provision about trading practices, to repeal the **Consumer Affairs Act 1972**, the **Ministry of Consumer Affairs Act 1973**, the **Fair Trading Act 1985** and the **Market Court Act 1978** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 25 March 1999

Legislative Council: 5 May 1999

Absolute majorities:

Legislative Assembly: 22 April 1999

Legislative Council: 12 May 1999

¹ S. 89(1): The obligation of the supplier under section 89(1) is subject to the provisions of the Bankruptcy Act 1966 of the Commonwealth and the Corporations Law.