

Authorised Version No. 055

Fair Trading Act 1999

No. 16 of 1999

Authorised Version incorporating amendments as at
1 January 2012

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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;

(aa) to protect consumers;

S. 1(aa)
inserted by
No. 30/2003
s. 3(1).

(b) to regulate trade practices;

* * * * *

S. 1(ba)
inserted by
No. 30/2003
s. 3(2),
repealed by
No. 72/2010
s. 4.

* * * * *

S. 1(bb)
inserted by
No. 30/2003
s. 3(2),
substituted by
No. 21/2010
s. 4,
repealed by
No. 72/2010
s. 4.

* * * * *

S. 1(c)(d)
repealed by
No. 72/2010
s. 4.

S. 1(f)
amended by
Nos 35/2000
s. 40(1),
30/2003
s. 3(3).

- (e) to provide for codes of practice;
- (f) to provide for the powers and functions of the Director of Consumer Affairs Victoria including powers to conciliate disputes under this Act and powers to carry out investigations into alleged breaches of this Act;
- (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 subsection (2) does not come into operation before 1 February 2000, it comes into operation on that day.

S. 3
amended by
No. 72/2010
s. 5(2) (ILA
s. 39B(1)).

3 Definitions

- (1) In this Act—

S. 3 def. of
auction
repealed by
No. 72/2010
s. 5(1).

* * * * *

S. 3(1) def. of
Authority
inserted by
No. 1/2010
s. 17.

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

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*	*	*	*	*	<p>S. 3 def. of <i>business day</i> amended by No. 30/2003 s. 4(2), repealed by No. 72/2010 s. 5(1).</p>
<p><i>business licensing Act</i> has the same meaning as in the Business Licensing Authority Act 1998;</p>					<p>S. 3 def. of <i>business licensing Act</i> inserted by No. 30/2003 s. 4(1).</p>
*	*	*	*	*	<p>S. 3 def. of <i>cancellation charge</i> repealed by No. 72/2010 s. 5(1).</p>
*	*	*	*	*	<p>S. 3 def. of <i>compulsory recall notice</i> repealed by No. 72/2010 s. 5(1).</p>
<p><i>Consumer Act</i> means—</p> <p>(a) an Act listed in Schedule 1; or</p>					<p>S. 3 def. of <i>Consumer Act</i> inserted by No. 35/2000 s. 40(2)(b), substituted by No. 103/2004 s. 3(1), amended by Nos 98/2005 s. 88, 69/2006 s. 224(Sch. 3 item 6.1).</p>
*	*	*	*	*	<p>(c) Part 4 of the Veterans Act 2005;</p>
*	*	*	*	*	<p>S. 3 def. of <i>consumer contract</i> inserted by No. 30/2003 s. 4(1), repealed by No. 72/2010 s. 5(1).</p>

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S. 3 def. of *contact sales agreement* repealed by No. 72/2010 s. 5(1).

* * * * *

S. 3 def. of *cooling-off period* amended by No. 106/2003 s. 3(2)(a), repealed by No. 72/2010 s. 5(1).

* * * * *

S. 3 def. of *dangerous* repealed by No. 72/2010 s. 5(1).

* * * * *

S. 3 def. of *Director* amended by Nos 35/2000 s. 40(2)(a), 30/2003 s. 4(3), 108/2004 s. 117(1) (Sch. 3 item 74.1).

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

S. 3 def. of *engaging in conduct* repealed by No. 72/2010 s. 5(1).

* * * * *

S. 3 def. of *fixed term ban order* inserted by No. 30/2003 s. 4(1), repealed by No. 72/2010 s. 5(1).

* * * * *

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S. 3 def. of
goods
substituted by
No. 2/2009
s. 26,
repealed by
No. 72/2010
s. 5(1).

hire-purchase agreement includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether that agreement describes the instalments as rent or hire or otherwise) but does not include any agreement—

S. 3 def. of
hire-purchase agreement
substituted by
No. 2/2008
s. 3,
amended by
No. 11/2010
s. 43(b).

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

* * * * *

S. 3 def. of
interim ban order
repealed by
No. 72/2010
s. 5(1).

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

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S. 3 def. of
lay-by
 repealed by
 No. 72/2010
 s. 5(1).

* * * * *

S. 3 def. of
lay-by
statement
 repealed by
 No. 72/2010
 s. 5(1).

* * * * *

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

S. 3 def. of
*National
 Credit Code*
 inserted by
 No. 11/2010
 s. 43(a).

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

S. 3 def. of
*non-contact
 sales
 agreement*
 repealed by
 No. 72/2010
 s. 5(1).

* * * * *

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

S. 3 def. of
officer
 amended by
 Nos 44/2001
 s. 3(Sch.
 item 42.1),
 103/2004
 s. 3(2),
 19/2009
 s. 3(1).

officer—

- (a) in relation to a body corporate which is
 a corporation within the meaning of the
 Corporations Act, has the same
 meaning as officer of a corporation has
 in section 9 of that Act; and
- (b) in relation to a body corporate which is
 not a corporation within the meaning of
 that Act, means any person (by
 whatever name called) who is
 concerned in or takes part in the

management of the body corporate or
an employee of the body corporate;

* * * * *

S. 3 def. of
OFTBA Act
repealed by
No. 35/2000
s. 40(2)(c).

* * * * *

S. 3 def. of
*permanent
ban order*
repealed by
No. 72/2010
s. 5(1).

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

S. 3 def. of
post box
inserted by
No. 30/2003
s. 4(1).

* * * * *

S. 3 def. of
*prescribed
information
standard*
repealed by
No. 72/2010
s. 5(1).

* * * * *

S. 3 def. of
*prescribed
safety
standard*
repealed by
No. 72/2010
s. 5(1).

* * * * *

S. 3 def. of
price
repealed by
No. 72/2010
s. 5(1).

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

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S. 3 def. of
public holiday
inserted by
No. 30/2003
s. 4(1).

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

S. 3 def. of
publisher
inserted by
No. 30/2003
s. 4(1),
repealed by
No. 72/2010
s. 5(1).

* * * * *

S. 3 def. of
purchaser
repealed by
No. 72/2010
s. 5(1).

* * * * *

S. 3 def. of
*related body
corporate*
substituted by
No. 44/2001
s. 3(Sch.
item 42.2).

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

S. 3 def of
*related
contract or
instrument*
amended by
No. 106/2003
s. 3(2)(b),
repealed by
No. 72/2010
s. 5(1).

* * * * *

S. 3 def. of
Secretary
inserted by
No. 30/2003
s. 4(1).

Secretary means the Secretary to the Department
of Justice;

S. 3 def. of
services
repealed by
No. 72/2010
s. 5(1).

* * * * *

S. 3 def. of
supplier
repealed by
No. 72/2010
s. 5(1).

* * * * *

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*	*	*	*	*	S. 3 def. of <i>supply</i> repealed by No. 72/2010 s. 5(1).
*	*	*	*	*	S. 3 def. of <i>telephone marketing agreement</i> inserted by No. 106/2003 s. 3(1), repealed by No. 72/2010 s. 5(1).
*	*	*	*	*	S. 3 def. of <i>trade-in</i> repealed by No. 72/2010 s. 5(1).
*	*	*	*	*	S. 3 def. of <i>trade or commerce</i> amended by No. 19/2009 s. 3(2), repealed by No. 72/2010 s. 5(1).

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

*	*	*	*	*	S. 3 def. of <i>unsolicited goods</i> substituted by No. 30/2003 s. 4(4), repealed by No. 72/2010 s. 5(1).
*	*	*	*	*	S. 3 def. of <i>unsolicited services</i> repealed by No. 72/2010 s. 5(1).

s. 5

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

S. 3(2)
inserted by
No. 72/2010
s. 5(2).

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

S. 4
amended by
No. 45/2009
s. 7,
repealed by
No. 72/2010
s. 6.

* * * * *

S. 5
amended by
No. 72/2010
s. 7.

5 Crown bound

Subject to section 20, 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.

S. 6
substituted by
No. 30/2003
s. 5.

6 Extra-territorial application of this Act

- (1) This Act applies within and outside Victoria.
- (2) This Act applies outside Victoria to the full extent of the extra-territorial legislative power of the Parliament.
- (3) Without limiting subsection (1) or (2), this Act applies to—
- (a) the engaging in conduct in Victoria by persons outside Victoria;
 - (b) the engaging in conduct outside Victoria by persons in Victoria;
 - (c) a supply of goods or services in Victoria where the contract for the supply of goods or services is made in Victoria;

S. 6(3)
inserted by
No. 72/2010
s. 8.

-
- (d) in a case where a contract for the supply of goods or services is made outside Victoria, to the supply of those goods or services to—
- (i) a person normally resident in Victoria;
or
 - (ii) a body corporate whose principal place of business is in Victoria.
-

Pt 2 (Heading and ss 7–32) amended by Nos 44/2001 s. 3(Sch. item 42.3), 86/2001 s. 3, 4, 30/2003 ss 6–10, 106/2003 s. 4, 103/2004 ss 4, 5, 17/2007 s. 3, 45/2009 s. 8, 68/2009 s. 97(Sch. items 56.1–56.3), 63/2010 s. 81(Sch. item 6.1), substituted as Pt 2 (Heading and ss 7–22) by No. 72/2010 s. 9.

S. 7 substituted by No. 72/2010 s. 9.

PART 2—THE AUSTRALIAN CONSUMER LAW

Division 1—Definitions

7 Definitions

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

application law means—

- (a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications;

Australian Consumer Law means (according to the context)—

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

Australian Consumer Law text means the text described in section 8;

instrument means any document whatever, including the following—

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

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

jurisdiction means a State or the Commonwealth;

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

modifications includes additions, omissions and substitutions;

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

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

State includes a Territory;

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

this jurisdiction means Victoria.

- (2) Terms used in this Part and also in the Australian Consumer Law (Victoria) have the same meanings in this Part as they have in that Law.

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

Division 2—Application of Australian Consumer Law

8 The Australian Consumer Law text

The Australian Consumer Law text consists of—

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

S. 8
substituted by
No. 72/2010
s. 9.

9 Application of Australian Consumer Law

- (1) The Australian Consumer Law text, as in force from time to time—
 - (a) applies as a law of this jurisdiction; and
 - (b) as so applying may be referred to as the Australian Consumer Law (Victoria); and
 - (c) as so applying is a part of this Act.
- (2) This section has effect subject to sections 10, 11 and 12.

S. 9
substituted by
No. 72/2010
s. 9.

s. 10

S. 10
substituted by
No. 72/2010
s. 9.

10 Future modifications of Australian Consumer Law text

- (1) A modification made by a Commonwealth law to the Australian Consumer Law text after the commencement of this section does not apply under section 9, if the modification is declared by Order of the Governor in Council published in the Government Gazette to be excluded from the operation of that section.
- (2) An Order under subsection (1) has effect only if published before the end of 2 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further Order so provides.
- (4) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is registered under the Legislative Instruments Act 2003 of the Commonwealth.

S. 11
substituted by
No. 72/2010
s. 9.

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

- (1) In the Australian Consumer Law (Victoria), *regulator* means the Director.
- (2) For the purposes of the application of the Australian Consumer Law (Victoria), *court* has the meaning given in section 160E of this Act.

S. 12
substituted by
No. 72/2010
s. 9.

12 Interpretation of Australian Consumer Law

- (1) The Acts Interpretation Act 1901 of the Commonwealth applies as a law of this jurisdiction to the Australian Consumer Law (Victoria).

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

13 Application of Australian Consumer Law

S. 13
substituted by
No. 72/2010
s. 9.

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

Division 3—References to Australian Consumer Law

14 References to Australian Consumer Law

S. 14
substituted by
No. 72/2010
s. 9.

- (1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.
- (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

15 References to Australian Consumer Law of other jurisdictions

S. 15
substituted by
No. 72/2010
s. 9.

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
- (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.

Division 4—Application of Australian Consumer Law to Crown

16 Division does not apply to Commonwealth

S. 16
substituted by
No. 72/2010
s. 9.

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

17 Application law of this jurisdiction

S. 17
substituted by
No. 72/2010
s. 9.

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

18 Application law of other jurisdictions

S. 18
substituted by
No. 72/2010
s. 9.

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

19 Activities that are not business

S. 19
substituted by
No. 72/2010
s. 9.

- (1) For the purposes of sections 17 and 18, the following do not amount to carrying on a business—
 - (a) imposing or collecting—
 - (i) taxes; or
 - (ii) levies; or
 - (iii) fees for authorisations;
 - (b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions);
 - (c) a transaction involving—
 - (i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of a State); or
 - (ii) only persons who are all acting for the same authority of a State; or
 - (iii) only the Crown in right of a State and one or more non-commercial authorities of that State; or

- (iv) only non-commercial authorities of the same State;
- (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because—
 - (i) the body chooses to acquire the products; or
 - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 17 and 18.
- (3) In this section—

acquisition of primary products by a government body under legislation includes vesting of ownership of primary products in a government body by legislation;

authorisation means a licence, permit, certificate or other authorisation that allows the holder of the authorisation to supply goods or services;

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

primary products means—

- (a) agricultural or horticultural produce; or
- (b) crops, whether on or attached to the land or not; or
- (c) animals (whether dead or alive); or
- (d) the bodily produce (including natural increase) of animals.

- (4) For the purposes of this section, an authority of a State is *non-commercial* if—
- (a) it is constituted by only one person; and
 - (b) it is neither a trading corporation nor a financial corporation.

20 Crown not liable to pecuniary penalty or prosecution

S. 20
substituted by
No. 72/2010
s. 9.

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

Division 5—Miscellaneous

21 Conferral of functions and powers on certain bodies

S. 21
substituted by
No. 72/2010
s. 9.

- (1) The authorities and officers of the Commonwealth referred to in the Australian Consumer Law (Victoria) have the functions and powers conferred or expressed to be conferred on them under the Australian Consumer Law (Victoria).
- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.

S. 22
substituted by
No. 72/2010
s. 9.

22 No doubling-up of liabilities

(1) If—

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

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

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

**PART 2A—IMPLIED CONDITIONS AND WARRANTIES IN
CERTAIN CONTRACTS OF SUPPLY**

Pt 2A
(Heading and
ss 32A–32TA)
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

Division 1—Interpretation

32A Definitions

In this Part—

contract of supply includes an agreement to supply;

court in relation to any legal proceeding, includes the Tribunal and a person acting judicially;

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

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

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

lease includes hire;

rescission in relation to a contract of supply of goods or services means avoidance of the contract as from its beginning.

S. 32A
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

Fair Trading Act 1999
No. 16 of 1999

Part 2A—Implied Conditions and Warranties in Certain Contracts of Supply

s. 32FA

Ss 32B–32C
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25),
repealed by
No. 72/2010
s. 10.

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Division 2—Application of Part

Ss 32CA–32F
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25),
repealed by
No. 72/2010
s. 10.

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S. 32FA
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25),
substituted by
No. 72/2010
s. 11.

32FA Application of Goods Act 1958 to contracts of supply

- (1) Sections 17, 18, 19(a) and (b) and 20 of the **Goods Act 1958** do not apply to contracts of supply to which Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) applies.
- (2) Section 4(2) of the **Goods Act 1958** is taken to apply in relation to this Part and Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) as if—
 - (a) the reference to Part were a reference to Part 3-2 of the Australian Consumer Law (Victoria); and
 - (b) the reference to contracts for the sale of goods included a reference to contracts of supply of goods.

- (3) A reference in Part I of the **Goods Act 1958** to a condition includes a reference to a guarantee within the meaning of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria).
- (4) Except as otherwise expressly provided by Division 1 of Part 3-2 of the Australian Consumer Law (Victoria), nothing in that Division affects the application to a contract of supply of goods or services of the **Goods Act 1958** or any other Act or law.

Division 3—Supply of goods or services

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Ss 32G–32MA inserted by No. 30/2003 s. 11 (as amended by No. 106/2003 ss 24(2)–(5), 25), repealed by No. 72/2010 s. 12.

32N Limitation of liability in relation to supply of recreational services

S. 32N inserted by No. 30/2003 s. 11 (as amended by No. 106/2003 ss 24(2)–(5), 25).

- (1) Subject to subsection (2), a term of a contract of supply of recreational services is not void under section 64 of the Australian Consumer Law (Victoria) by reason only that the term excludes, restricts or modifies, or has the effect of excluding, restricting or modifying—
- (a) the application of any or all of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) to

S. 32N(1) substituted by No. 72/2010 s. 13(1).

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- the supply of the recreational services under the contract; or
- (b) the exercise of a right conferred by such a provision in relation to the supply of the recreational services under the contract; or
 - (c) any liability of the supplier for a failure to comply with a guarantee under that Subdivision in relation to the supply of the recreational services under the contract.
- (2) Subsection (1) only applies if—
- (a) the contract of supply of recreational services was entered into on or after the commencement of section 11 of the **Fair Trading (Amendment) Act 2003**; and
 - (b) the exclusion, restriction or modification contained in the term is limited to liability for death or personal injury; and
 - (c) the term—
 - (i) contains the prescribed particulars (if any) and is in the prescribed form (if any); or
 - (ii) is specified, or is of a class of term specified, in an Order made under section 32NA; and
 - (d) if there is a prescribed form for the term, the supplier has not made a false or misleading statement as to a material particular in or in relation to the term; and
 - (e) the term was brought to the attention of the purchaser prior to the supply of the recreational services.

(3) Despite subsection (1), a person is not entitled to rely on a term of a contract in relation to the supply of recreational services which complies with subsection (2) if—

(a) the person has done or omitted to do something in relation to the supply of those recreational services that but for subsection (1) would—

(i) be an act or omission to which all or any of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria) would apply; or

S. 32N(3)(a)(i)
amended by
No. 72/2010
s. 13(2)(a).

(ii) give rise to the exercise of a right conferred by all or any of the provisions of Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria); or

S. 32N(3)(a)(ii)
amended by
No. 72/2010
s. 13(2)(a).

(iii) constitute a failure to comply with a guarantee that applies under Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law (Victoria); and

S. 32N(3)(a)(iii)
substituted by
No. 72/2010
s. 13(2)(b).

(b) the act or omission was done or omitted to be done with reckless disregard, with or without consciousness, for the consequences of the act or omission.

(4) In this section—

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

injury means any physical or mental injury;

personal injury means—

- (a) an injury of a natural person (including the aggravation, acceleration or recurrence of an injury of the individual); or
- (b) the contraction, aggravation, acceleration or recurrence of a disease of a natural person; or
- (c) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to a natural person that is or may be harmful or disadvantageous to, or result in harm or disadvantage to—
 - (i) the person; or
 - (ii) the community;

recreational services means services that consist of participation in—

- (a) a sporting activity or a similar leisure-time pursuit; or
 - (b) any other activity that—
 - (i) involves a significant degree of physical exertion or physical risk; and
 - (ii) is undertaken for the purposes of recreation, enjoyment or leisure.
- (5) The definition of *injury* in subsection (4) does not, by implication, affect the meaning of the expression *injury* when used in a provision of this Act other than this section.

32NA Exemption from waiver form requirement

S. 32NA
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

- (1) The Governor in Council, on the recommendation of the Minister, may, by order published in the Government Gazette, provide that a specified term of a contract of supply of recreational services, or a class of such term, does not need to comply with the requirements of section 32N(2)(c)(i).
- (2) The Governor in Council may make an Order under this section subject to any conditions the Governor in Council thinks fit and specifies in the Order.
- (3) An Order under this section has effect according to its terms.
- (4) The Governor in Council, on the recommendation of the Minister, may, by Order published in the Government Gazette, vary or revoke an Order made under this section.
- (5) An Order made under this section ceases to have effect on—
 - (a) the expiry of the anniversary of the date the Order was published in the Government Gazette; or
 - (b) if an earlier expiry date is specified in the Order, that earlier date.
- (6) On or before the 6th sitting day after an Order under this section is published in the Government Gazette, the Minister must ensure that a copy of the Order is laid before each House of the Parliament.
- (7) A failure to comply with subsection (6) does not affect the operation or effect of the Order but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of Parliament.

s. 32OA

- (8) An Order may be disallowed in whole or in part by either House of Parliament.
- (9) Part 5 of the **Subordinate Legislation Act 1994** applies to an Order as if—
- (a) a reference in that Part to a "statutory rule" were a reference to the Order; and
 - (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to subsection (6) of this section.

S. 32NB
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25),
repealed by
No. 72/2010
s. 14.

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S. 32O
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25),
amended by
No. 19/2009
s. 17(1),
repealed by
No. 72/2010
s. 14.

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S. 32OA
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

32OA Rescission for innocent misrepresentation

- (1) If a purchaser enters into a contract of supply of goods after an innocent misrepresentation is made to the purchaser and, if the misrepresentation had been fraudulent, the purchaser would have been entitled to rescind the contract by reason of the misrepresentation, the purchaser may rescind the contract by notice given to the supplier before, or within a reasonable period after—

- (a) in the case of a contract of supply by way of lease, delivery of the goods; and
 - (b) in any other case, acceptance of the goods.
- (2) Subsection (1) applies whether or not the misrepresentation has become a term of the contract.

32P Discharge or rescission of contract of supply of goods

S. 32P
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

- (1) This section applies if a purchaser—
- (a) discharges a contract of supply of goods by reason of repudiation or breach of condition by the supplier; or
 - (b) in accordance with section 32OA(1) rescinds a contract of supply of goods after an innocent misrepresentation is made.
- (2) If the goods have been delivered to the purchaser and have not been returned to the supplier, the purchaser must return the goods to the supplier or permit the supplier to take possession of the goods.
- (3) The purchaser is liable to the supplier for loss or damage caused to the goods—
- (a) by the purchaser wilfully or by the purchaser's negligence while the goods are in the purchaser's possession during a period of 21 days after discharging or rescinding the contract; and
 - (b) by the purchaser wilfully while the goods are in the purchaser's possession after the expiration of a period of 21 days after discharging or rescinding the contract.
- (4) If the property in the goods passed to the purchaser before the discharge or the rescission, the property re-vests in the supplier.

- (5) The supplier is liable to the purchaser for money paid and for the value of any other consideration paid or provided under the contract by the purchaser to the supplier.
- (6) If—
- (a) the purchaser used the goods before the discharge or rescission; and
 - (b) the supplier acted honestly and reasonably in supplying the goods—

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

S. 32PA
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25),
amended by
No. 72/2010
s. 15 (ILA
s. 39B(1)).

32PA When does a discharge or rescission have effect?

- (1) If a purchaser purports to discharge or rescind a contract of supply of goods, the purported discharge or rescission has effect only if—
- (a) the supplier is aware that the purchaser treats the contract as at an end, whether by reason of the return of the goods to the supplier or by reason of any other information which comes to the knowledge of the supplier; or
 - (b) if the purchaser is unable, due to the conduct or omission of the supplier, after taking reasonable steps, to inform the supplier or to cause the supplier to become aware that the purchaser treats the contract as at an end—
 - (i) the purchaser treats the contract as at an end; and
 - (ii) by the purchaser's conduct, shows unequivocally that the purchaser treats the contract as at an end.

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

S. 32PA(2)
inserted by
No. 72/2010
s. 15.

32Q Liability of supplier and person conducting antecedent negotiations

S. 32Q
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

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

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

32QA Indemnity for supplier or dealer

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

against any damage suffered by the supplier by reason of the operation of section 32Q.

- (2) Without prejudice to any other rights or remedies to which a dealer may be entitled, a dealer is entitled to be indemnified by a person who conducted any antecedent negotiations on behalf of the dealer and made a representation or gave a warranty against any damage suffered by the dealer by reason of the operation of section 32Q.

32R Certain contracts or provisions void

A contract of supply of goods or services or a provision in or that relates to a contract of supply of goods or services that purports to have the effect of excluding, restricting or modifying the provisions of section 32Q or 32QA or purports to have the effect of precluding a right of action or a defence based on or arising out of a representation or a warranty referred to in section 32Q(1) or (2), is void.

S. 32QA
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

S. 32R
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

s. 32RA

S. 32RA
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

32RA Penalty for including void provision relating to antecedent negotiations

A supplier or a person by whom or on whose behalf any antecedent negotiations are conducted must not include or permit to be included in a contract of supply of goods or services a provision that by reason of section 32R is void.

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

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

Division 4—General

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S. 32S
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25),
repealed by
No. 72/2010
s. 16.

32SA Limit of liability of guarantors

S. 32SA
inserted by
No. 30/2003
s. 11 (as
amended by
No. 106/2003
ss 24(2)–(5),
25).

(1) If there is a contract of guarantee in relation to the performance of the obligations of a purchaser under a contract of supply of goods or services, the liability of the guarantor in relation to the performance of those obligations does not include liability in respect of an amount exceeding the sum of—

- (a) the amount for which the purchaser is liable by reason of the breach of the contract of supply; and
- (b) the reasonable costs of and incidental to enforcing the contract of guarantee.

- (2) Subject to subsection (3), a guarantor of the obligations of a purchaser under a contract of supply of goods or services where the purchaser is a minor is liable under the contract of guarantee to the same extent as the guarantor would be liable if the purchaser had not been a minor when the contract of supply was made.
- (3) Subsection (2) does not apply with respect to a contract of guarantee unless, when it was made, it included a prominent statement immediately above or below the place where the guarantor signed the contract to the effect that a person who enters into a guarantee in respect of the obligations of a purchaser who is a minor may not have a right to recover from the purchaser amounts that the guarantor is liable to pay under the contract of supply.

- (4) In this section—

domestic partner of a person means—

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

S. 32SA
def. of
*domestic
partner*
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 22.1).

- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

guarantee includes indemnity;

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

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

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

(5) For the purposes of the definition of *domestic partner* in subsection (4)—

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

S. 32SA(5) substituted by No. 12/2008 s. 73(1)(Sch. 1 item 22.2).

32T Limit of liability under security

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

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

S. 32T inserted by No. 30/2003 s. 11 (as amended by No. 106/2003 ss 24(2)–(5), 25).

32TA Contract of supply not illegal etc.

- (1) A contract of supply of goods or services is not illegal, void or unenforceable by reason only that the supplier is guilty of an offence under this Part.

S. 32TA inserted by No. 30/2003 s. 11 (as amended by No. 106/2003 ss 24(2)–(5), 25).

Fair Trading Act 1999
No. 16 of 1999

Part 2A—Implied Conditions and Warranties in Certain Contracts of Supply

s. 32TA

- (2) If a supplier commits an offence referred to in subsection (1), the purchaser does not, by reason only of having been a party to the contract, aid, abet, counsel or procure the commission of the offence.

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Pt 2B
(Heading and
ss 32U–32ZD)
inserted by
No. 30/2003
s. 12,
amended by
Nos 106/2003
ss 5, 6,
42/2004 s. 3,
19/2009 ss 4–
10, 21/2010
ss 5–14,
repealed by
No. 72/2010
s. 17.

PART 2C—FRUSTRATED CONTRACTS

Division 1—Introductory

Pt 2C
(Headings
and ss 32ZE–
32ZO)
inserted by
No. 2/2008
s. 4.

32ZE Definitions

S 32ZE
inserted by
No. 2/2008
s. 4.

In this Part—

court, in relation to any matter, means the court or arbitrator by or before whom the matter falls to be determined;

discharged contract means a contract to which this Part applies;

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

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

32ZF Contracts to which this Part applies

S 32ZF
inserted by
No. 2/2008
s. 4.

- (1) This Part applies to a contract if the parties to the contract are discharged from the further performance of the contract because—
 - (a) performance of the contract becomes impossible; or
 - (b) the contract is otherwise frustrated; or
 - (c) the contract is avoided by the operation of section 12 of the **Goods Act 1958**.

s. 32ZG

-
- (2) This Part applies to contracts made before or after the commencement of section 4 of the **Fair Trading and Consumer Acts Further Amendment Act 2008** if the time of discharge of the contract is after 29 September 1959.
- (3) This Part does not apply to—
- (a) any charter-party, except a time charter-party or a charter-party by way of demise; or
 - (b) any contract (other than a charter-party) for the carriage of goods by sea; or
 - (c) any contract of insurance except as provided for in section 32ZK.

Division 2—Consequences of frustration of contract

S 32ZG
inserted by
No. 2/2008
s. 4.

32ZG Adjustment of amounts paid or payable to parties to discharged contracts

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

S 32ZH
inserted by
No. 2/2008
s. 4.

32ZH Court may allow amounts paid or payable to be recovered or paid

Despite section 32ZG, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow a party to a discharged contract—

- (a) to whom amounts were paid or are payable under that contract before the time of discharge; and

(b) who has incurred expenses before the time of discharge in or for the purpose of the performance of that contract—

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

32ZI Parties to pay an amount for valuable benefits obtained

S 32ZI
inserted by
No. 2/2008
s. 4.

- (1) This section applies if a party to a discharged contract obtained a valuable benefit (other than a payment of money to which section 32ZG or 32ZH applies) before the time of discharge because of anything done by another party in or for the purpose of the performance of the contract.
- (2) Despite section 32ZG, the benefited party is liable to pay to that other party any amount (not exceeding the value of the benefit obtained) that the court considers just having regard to all the circumstances of the case.
- (3) For the purpose of subsection (2), the Court may have regard in particular to—
 - (a) the amount of any expenses the benefited party incurred before the time of discharge in or for the purpose of the performance of the contract, including any amount paid or payable by the benefited party to any other party under the contract and retained or recoverable by that party under section 32ZG or 32ZH; or
 - (b) the effect, in relation to the benefit obtained, of the circumstances giving rise to the frustration or avoidance of the contract.

- (4) For the purpose of this section, if a party to the contract has assumed obligations under the contract in consideration of the conferral of a benefit by another party to the contract on any other person (whether or not that person is a party to the contract), the court may, if in all the circumstances of the case it considers it just to do so, treat any benefit conferred on that other person as a benefit obtained by the party who has assumed those obligations.

S 32ZJ
inserted by
No. 2/2008
s. 4.

32ZJ Calculation of expenses incurred

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

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

S 32ZK
inserted by
No. 2/2008
s. 4.

32ZK Circumstances in which amounts payable under contract of insurance excluded

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

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

Division 3—General

**32ZL Circumstances in which contract provisions
continue to have effect despite frustration**

S 32ZL
inserted by
No. 2/2008
s. 4.

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

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

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

32ZM Performed part of contract not frustrated

S 32ZM
inserted by
No. 2/2008
s. 4.

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

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

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

s. 32ZN

S 32ZN
inserted by
No. 2/2008
s. 4.

32ZN Nature of action

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

S 32ZO
inserted by
No. 2/2008
s. 4.

32ZO Limitation period

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

Pt 3 (Heading and ss 33–58)
amended by
Nos 30/2003
ss 13–22,
108/2004
s. 117(1)
(Sch. 3
item 74.2),
repealed by
No. 72/2010
s. 18.

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Pt 4 (Heading and ss 59–82)
amended by
Nos 30/2003
ss 23–33,
106/2003
ss 7–14, 18,
42/2004 ss 4,
5, 103/2004
ss 6, 7,
17/2007 s. 4,
11/2010 s. 44,
repealed by
No. 72/2010
s. 18.

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Pt 5 (Heading and ss 83–93)
amended by
No. 30/2003
ss 34–38,
repealed by
No. 72/2010
s. 18.

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PART 5AA—INTRODUCTION AGENTS

Division 1—Interpretation

Pt 5AA
(Heading and
ss 93AA–
93AT)
inserted by
No. 63/2010
s. 7 (as
amended by
No. 72/2010
s. 48(Sch.
item 5(1)).

93AA Definitions

In this Part—

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

introduction agent has the meaning given by
section 93AB;

introduction agreement means an agreement to
provide an introduction service;

introduction service has the meaning given by
section 93AC.

S. 93AA
inserted by
No. 63/2010
s. 7.

93AB Meaning of introduction agent

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

S. 93AB
inserted by
No. 63/2010
s. 7.

93AC Meaning of introduction service

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

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

Note

Document is defined in section 38 of the
Interpretation of Legislation Act 1984.

S. 93AC
inserted by
No. 63/2010
s. 7.

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

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

- (2) For the purposes of subsection (1), it is irrelevant—
 - (a) whether the intended introduction is direct or indirect; or
 - (b) whether the personal relationship is intended to be for a long or short time.

S. 93AD
inserted by
No. 63/2010
s. 7.

93AD Who carries on a business?

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

93AE Introduction agency not to use sex work service premises

S. 93AE
inserted by
No. 63/2010
s. 7.

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

Penalty: 240 penalty units.

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

Division 2—Persons who are not introduction agents

93AF Effect of this Division

S. 93AF
inserted by
No. 63/2010
s. 7.

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

93AG Exemption for activities with a community purpose

S. 93AG
inserted by
No. 63/2010
s. 7.

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

s. 93AH

S. 93AH
inserted by
No. 63/2010
s. 7.

93AH Exemption for non-profit activities

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

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

S. 93AI
inserted by
No. 63/2010
s. 7.

93AI Exemption for publishers of advertisements etc.

(1) A person does not act as an introduction agent by—

- (a) publishing or making available, details of persons who are seeking a personal or social relationship with one or more other persons—
 - (i) in a newspaper, magazine or similar document that is readily available to members of the public; or
 - (ii) in a television, radio or similar broadcast that is readily accessible to members of the public who possess the necessary equipment; and
- (b) providing a means of enabling persons seeing or hearing the details to make contact with the persons supplying the details.

(2) Subsection (1) applies even if—

- (a) it is necessary for members of the public to pay to obtain the newspaper, magazine, document or broadcast; and
- (b) a charge is imposed on persons making use of the means referred to in subsection (1)(b).

93AJ Exemption for information service providers

S. 93AJ
inserted by
No. 63/2010
s. 7.

(1) In this section—

information provider means a person who operates an information service;

information service means the provision of details of persons seeking a personal or social relationship with one or more other persons.

(2) An information provider does not act as an introduction agent in operating an information service if—

(a) a person can obtain details of persons seeking a personal or social relationship with one or more other persons from the information service without the need to speak to, or to otherwise communicate with, the information provider (or any person employed by the information provider); and

(b) a person who provides information to the information provider (or any person employed by the information provider) for the purpose of having that information provided to other persons is not, by providing that information, placed under any obligation—

(i) to use the service again; or

(ii) to pay a fee of more than \$250 (or any other amount fixed by the regulations for the purposes of this paragraph); and

(c) a person to whom the information is provided is not, by using the information service, placed under any obligation—

(i) to use the service again; or

- (ii) to pay a fee of more than \$250 (or any other amount fixed by the regulations for the purposes of this paragraph).
- (3) If the fees for providing information to, or obtaining information from, an information service are based on the length of time a person has electronic or mechanical access to the information service and the length of that time is automatically recorded by electronic or mechanical means, subsections (2)(b)(ii) and (2)(c)(ii) do not apply in determining whether an information provider falls within the exemption provided by subsection (2).

S. 93AK
inserted by
No. 63/2010
s. 7.

93AK Exemption for organisers of dances etc.

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

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- (3) The condition specified by subsection (1)(b) is met even if food or drink is sold by the organiser in relation to the activity.
 - (4) A reference in this section to the organiser of an activity includes a reference to any agent or person associated with the organiser.

93AL Other exemptions

S. 93AL
inserted by
No. 63/2010
s. 7.

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

Division 3—Persons who must not act as introduction agents

93AM Certain persons not to act as introduction agents

S. 93AM
inserted by
No. 63/2010
s. 7 (as
amended by
No. 72/2010
s. 48(Sch.
item 5(1)).

- (1) Subject to section 93AO, a natural person must not act as an introduction agent if he or she—
 - (a) is under 18 years of age; or
 - (b) is an insolvent under administration; or
 - (c) has been found guilty of a serious offence within the last 5 years; or
 - (d) has been found guilty of an offence under the **Introduction Agents Act 1997** or an equivalent offence in another jurisdiction within the last 5 years; or
 - (e) in offering to provide, or in the provision of, an introduction service, has been found guilty of an offence under this Part or an equivalent offence in another jurisdiction within the last 5 years; or

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- (f) in offering to provide, or in the provision of, an introduction service, has been found guilty of an offence under Part 2 of this Act (as in force immediately before the commencement of the **Fair Trading Amendment (Australian Consumer Law) Act 2010**) or under Part 3-2 of the Australian Consumer Law (Victoria) or an equivalent offence in another jurisdiction within the last 5 years; or
 - (g) is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (h) is a licensee or an approved manager under the **Sex Work Act 1994**.

Penalty: 120 penalty units or imprisonment for 12 months.

- (2) A body corporate must not act as an introduction agent if—
 - (a) one or more of its directors is disqualified from acting as an introduction agent by subsection (1); or
 - (b) it has been found guilty of a serious offence within the last 5 years; or
 - (c) has been found guilty of an offence under the **Introduction Agents Act 1997** or an equivalent offence in another jurisdiction within the last 5 years; or
 - (d) in offering to provide, or in the provision of, an introduction service, it has been found guilty of an offence under this Part or an equivalent offence in another jurisdiction within the last 5 years; or

- (e) in offering to provide, or in the provision of, an introduction service, it has been found guilty of an offence under Part 2 of this Act (as in force immediately before the commencement of the **Fair Trading Amendment (Australian Consumer Law) Act 2010**) or under Part 3-2 of the Australian Consumer Law (Victoria) or an equivalent offence in another jurisdiction within the last 5 years; or
- (f) it is an externally-administered body corporate.

Penalty: 600 penalty units.

(3) In this section—

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

serious offence means an offence involving—

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

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

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

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

S. 93AN
inserted by
No. 63/2010
s. 7.

- (1) A person who is disqualified from acting as an introduction agent by section 93AM (other than a person referred to in section 93AM(1)(a), (g) or (h)) may apply to the Authority at any time for permission to act as an introduction agent.

- (2) An application must—
 - (a) be in a form approved by the Authority; and
 - (b) contain the information required by the Authority; and
 - (c) be accompanied by any documents required by the Authority; and
 - (d) be accompanied by the prescribed fee (if any).
- (3) An application may be withdrawn at any time before the Authority determines it.

S. 93AO
inserted by
No. 63/2010
s. 7.

93AO Permission to act as an introduction agent

- (1) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.
- (2) Without limiting its discretion to do so, the Authority may refuse to give its permission if the applicant—
 - (a) refuses to provide any further information required by the Authority under subsection (3)(b); or
 - (b) fails to provide any further information required by the Authority under subsection (3)(b) within a reasonable time after the requirement is made.
- (3) In determining whether to give its permission, the Authority—
 - (a) is not required to conduct a hearing; and
 - (b) may require the applicant to provide such further information as the Authority considers necessary in the manner required by the Authority; and

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- (c) may seek advice and information on the application from any other person or body as the Authority thinks fit.
- (4) The Authority may revoke a permission granted under this section by notice in writing issued to the person in respect of whom the permission was granted if the Authority is satisfied that it is in the public interest for it to do so.
- (5) The Authority must not revoke a permission without giving the person an opportunity to be heard.

93AP Authority may impose conditions on permission

S. 93AP
inserted by
No. 63/2010
s. 7.

- (1) In giving its permission under section 93AO(1), the Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.
- (2) The person given the permission, or the Director, may apply to the Authority for a variation or revocation of any conditions the Authority has imposed in respect of the permission.
- (3) A person given permission under section 93AO(1) must comply with any conditions imposed in respect of that permission.

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

- (4) If the Authority is satisfied that any condition imposed in respect of a permission has been contravened or not complied with, it may revoke the permission by notice in writing issued to the person in respect of whom the permission was granted.

s. 93AQ

- (5) Before taking any action under this section, the Authority may seek and use information and advice from any person or body or other source as it thinks fit.

S. 93AQ
inserted by
No. 63/2010
s. 7.

93AQ Application for review

- (1) A person whose interests are affected by a decision of the Authority under section 93AO or 93AP may apply to the Tribunal for review of the decision.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 5—Introduction agreements

S. 93AR
inserted by
No. 63/2010
s. 7.

93AR What must an introduction agreement contain?

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

- (a) is in writing and is readily legible; and
- (b) starts with the words "Important Notice" printed in at least 14 point bold type followed by the statement set out in Schedule 1A which (apart from any insertions made by hand) must be printed in at least 12 point type; and
- (c) states the names, addresses and telephone numbers of the parties to the agreement; and

- (d) sets out a full description of the service to be provided by the agent under the agreement and the terms on which the service is offered; and
- (e) states the price of the service and the method of payment; and
- (f) contains a statement in bold type that is in at least 12 point type that this Act forbids the payment of more than 30% of the price of the service before any part of the service is provided; and
- (g) sets out the period of the agreement; and
- (h) states the conditions under which refunds will be made; and
- (i) is in English and is expressed clearly; and
- (j) sets out in full all other terms of the agreement; and
- (k) is signed by the introduction agent (or the introduction agent's authorised agent) and the person who is to be provided with the introduction service under the agreement; and
- (l) complies with any other requirements set out in the regulations.

Penalty: 240 penalty units.

93AS Restriction on prepayments

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

Penalty: 240 penalty units.

S. 93AS
inserted by
No. 63/2010
s. 7.

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

S. 93AT
inserted by
No. 63/2010
s. 7.

93AT Person may withdraw from agreement within 3 days without penalty

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

a written notice signed by the person that states that he or she withdraws from the agreement.

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- (3) If a person withdraws from an agreement under this section—
- (a) the introduction agent is entitled to \$250 (or any other amount fixed by the regulations) or 10% of the total amount that is to be paid to the agent under the agreement (whichever is the lower amount); and
 - (b) the agent must refund all money paid to the agent under the agreement by (or on behalf of) the person (other than any amount the agent is entitled to under paragraph (a)); and
 - (c) the person is not liable to the agent in any way for withdrawing from the agreement (regardless of anything to the contrary in the agreement).
- (4) An introduction agent who must refund money to a person under subsection (3)(b) must do so within 7 days after receiving the notice of withdrawal.

Penalty: 240 penalty units.

Pt 5A
(Heading and
ss 93A–93D)
inserted by
No. 6/2008
s. 27.

PART 5A—FAIR REPORTING

S. 93A
inserted by
No. 6/2008
s. 27.

93A Definitions

In this Part—

consumer means any person with respect to whom—

- (a) a credit report is made; or
- (b) any information is held by a credit reporting agent;

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

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

S. 93B
inserted by
No. 6/2008
s. 27.

93B Correction of errors

- (1) A consumer who disputes the accuracy or completeness in relation to the consumer of any information compiled by a credit reporting agent may request the agent to correct the information.

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

93C Consumer may apply to court where agent fails to correct information etc.

S. 93C
inserted by
No. 6/2008
s. 27.

- (1) This section applies if a consumer makes a request under section 93B and—
- (a) does not receive any of the information referred to in section 93B(3) within 30 days after making the request; or

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

S. 93D
inserted by
No. 6/2008
s. 27.

93D Powers of Court on application

- (1) On an application under section 93C, the Court may—
- (a) order that all or any persons or any class or description of persons be excluded from the court during all or any of the proceedings and, in case of disobedience, order the removal from the court of those persons; or
 - (b) by order prohibit the publication of a report of the proceedings; or
 - (c) make orders under both paragraphs (a) and (b).
- (2) On hearing an application under section 93C, the Court may order a credit reporting agent—
- (a) to amend, supplement, or delete any item of information concerning the consumer that is in the agent's possession or under the agent's control—

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- (i) which the Court is satisfied is inaccurate, misleading, or irrelevant to the purpose for which the information is kept; or
- (ii) which the Court is of the opinion should be amended, supplemented, or deleted by reason of the effluxion of time; and
- (b) to give full details of that amendment, supplement, or deletion to any person to whom the credit reporting agent has provided information with respect to the consumer and who is specified in the order.
- (3) A credit reporting agent must comply with an order under this section.

Penalty: 60 penalty units or imprisonment for 6 months.

Pt 5B
(Heading and
ss 93E–93N)
inserted by
No. 1/2010
s. 18 (as
amended by
No. 63/2010
s. 23).

PART 5B—DEBT COLLECTION

Division 1—Preliminary

S. 93E
inserted by
No. 1/2010
s. 18 (as
amended by
No. 63/2010
s. 23(1)).

93E Definitions

In this Part—

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

debt includes an alleged debt;

debt collector means a person who engages in debt collection—

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

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

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

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

prohibited person means a person who is prohibited from engaging in debt collection under section 93F(1) and who does not hold a current permission given by the Authority under section 93H.

Division 2—Offences

93F Certain persons prohibited from engaging in debt collection

S. 93F
inserted by
No. 1/2010
s. 18 (as
amended by
No. 63/2010
s. 23(2)–(4)).

- (1) A person is prohibited from engaging in debt collection if that person—
- (a) in the case of a natural person—
 - (i) is under 18 years of age; or
 - (ii) is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (iii) is an insolvent under administration; or
 - (iv) who, in the preceding 5 years, held a private security licence under the **Private Security Act 2004** that was cancelled or suspended under section 56 or 61 of that Act; or
 - (v) who, in the preceding 5 years, held a private security registration under the **Private Security Act 2004** that has been cancelled or suspended under section 111 or 116 of that Act; or
 - (vi) who, in the preceding 5 years, has been found guilty in Victoria or elsewhere, of an offence involving fraud, dishonesty, drug trafficking or violence punishable by imprisonment of 3 months or more; or

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- (vii) who, in the preceding 5 years, has been found to have been involved in the use of physical force, undue harassment or coercion in contravention of—
- (A) section 12DJ of the Australian Securities and Investments Commission Act 2001 of the Commonwealth; or
 - (B) an equivalent provision in an Act of the Commonwealth or Act of another State or Territory; or
 - (C) this Act or the regulations (except if damages have been awarded under section 93N or 162AB);
- (viii) who, in the preceding 5 years, has been found guilty of an offence against section 93M;
- (b) in the case of a corporation—
- (i) is an externally administered body corporate; or
 - (ii) is a corporation—
 - (A) one or more of the directors of which is a person referred to in paragraph (a); or
 - (B) managed or effectively controlled by a natural person who is a person referred to in paragraph (a); or
 - (ia) has, in the preceding 5 years, been found guilty of an offence against section 93M; or

(iii) has, in the preceding 5 years, been found to have contravened section 53A(2) or 60 of the Trade Practices Act 1974 of the Commonwealth while engaging in debt collection.

(2) A prohibited person must not engage in debt collection.

Penalty: In the case of a body corporate,
1200 penalty units;

In any other case, 240 penalty units or
2 years imprisonment.

93G Applications by prohibited persons for permission to engage in debt collection

S. 93G
inserted by
No. 1/2010
s. 18.

(1) Subject to subsection (4), a prohibited person may apply to the Authority at any time for permission to—

- (a) engage in debt collection;
- (b) be a director of a corporation that engages in debt collection;
- (c) manage or effectively control a corporation that engages in debt collection.

(2) An application under this section must—

- (a) be in the form approved by the Authority;
and
- (b) contain the information required by the Authority; and
- (c) be accompanied by the documents required by the Authority; and
- (d) be accompanied by the prescribed fee (if any).

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

S. 93H
inserted by
No. 1/2010
s. 18.

93H Permission from the Authority

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

S. 93I
inserted by
No. 1/2010
s. 18.

93I Authority may impose conditions

- (1) In giving its permission under this Division, the Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.

(2) The Authority may vary any of the conditions it has imposed—

- (a) on the application of the person given the permission, upon the payment of the prescribed fee (if any);
- (b) on the application of the Director;
- (c) of its own motion.

(3) The person given the permission must comply with any conditions imposed in respect of that permission.

Penalty: In the case of a body corporate,
1200 penalty units;

In any other case, 240 penalty units or
2 years imprisonment.

(4) If the Authority is satisfied that any condition imposed in respect of a permission has been contravened or not complied with, it may revoke the permission.

(5) Before taking any action under this section the Authority may seek and use information and advice from any person or body or other source as it thinks fit.

93J Application for review

(1) A person whose interests are affected by a decision of the Authority under sections 93H and 93I may apply to the Tribunal for review of the decision.

(2) An application for review must be made within 28 days after the later of—

- (a) the day on which the decision is made; or
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the

**S. 93J
inserted by
No. 1/2010
s. 18.**

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.

S. 93K
inserted by
No. 1/2010
s. 18 (as
amended by
No. 63/2010
s. 23(5)–(7)).

93K Offence to charge debtor for cost of debt collection

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

Penalty: 120 penalty units.

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

Note

See section 107 of the National Credit Code.

- (b) in the case of a debt that was not wholly or predominately accrued in connection with personal, domestic or household purposes, if a term of an agreement between the creditor and the debtor permits the recovery of those expenses.

(2A) It is a defence for an offence against subsection (1) that the debt collector had an honest and reasonable belief that the enforcement expenses that he or she was recovering or attempting to recover did not exceed those reasonably incurred by the creditor.

(3) Any costs or expenses recovered in contravention of subsection (1)—

(a) may be recovered by the debtor as a debt;
and

(b) if the debt collector is the creditor—

(i) may be set off against the debt; or

(ii) may be recovered by the debtor from the debt collector or the creditor.

(4) In this section—

costs do not include—

(a) stamp duty; or

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

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

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

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

s. 93L

S. 93L
inserted by
No. 1/2010
s. 18 (as
amended by
No. 63/2010
s. 23(8)).

93L Offence to purchase debt for the purpose of collection

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

Penalty: In the case of a body corporate,
1200 penalty units;

In any other case, 240 penalty units or
2 years imprisonment.

S. 93M
inserted by
No. 1/2010
s. 18 (as
amended by
No. 63/2010
s. 23(8)).

93M Prohibited debt collection practices

(1) A person must not in trade or commerce engage in a prohibited debt collection practice while—

- (a) collecting or attempting to collect a debt; or
- (b) repossessing or attempting to repossess goods.

Penalty: In the case of a body corporate,
1200 penalty units;

In any other case, 240 penalty units.

(2) In subsection (1), *prohibited debt collection practice* means—

- (a) using physical force or undue harassment or coercion;
- (b) entering or threatening to enter a private residence without lawful authority;
- (c) using any threat, deception or misrepresentation to obtain consent to enter a private residence;
- (d) refusing to leave a private residence or workplace when requested to do so;

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

Example

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

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

Example

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

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

Examples

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

Serving a summons that has not been issued.

- (h) impersonating an employee or agent of the State, another state, a Territory or the Commonwealth;

- (i) attempting to take possession of or threatening to take possession of any property to which the person, or the person's principal, is not entitled to possession;

Example

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

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

Example

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

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

Examples

Falsely representing that a debt is a fine or other pecuniary penalty, or that a person has committed an offence.

Using a letterhead which is liable to mislead the person to whom the letter is sent as to the identity, status or role of the person who used the letterhead.

Falsely representing to a person who is not a debtor that, in relation to a debt, the person must prove or make a statutory declaration that he or she does not owe the debt.

Threatening to give a credit reporting agency information that could affect a person's creditworthiness that could not be given or that would, if given, be false or misleading.

- (l) contacting a person by a method that the person has asked not to be used, unless there is no other method available;

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- (m) contacting a person about a debt after the person advises in writing that no further communication should be made about that debt, unless the contact is by way of—
- (i) an action issued through a court or the Tribunal; or
 - (ii) the threat of an action that the person to whom the debt is owed is entitled to issue through a court or the Tribunal and which the person intends to take;
- (n) communicating with a person under 18 years of age in relation to a debt, if the person is not the debtor;
- (o) demanding the payment of a debt from a person without having a belief on reasonable grounds that the person is—
- (i) the debtor or the debtor's agent or representative; and
 - (ii) liable for the debt;
- (p) communicating with a person in a manner that is unreasonable in its frequency, nature or content.
- (3) In subsection (2), *debtor* includes a mortgagor or guarantor of a debtor.
- (4) For the purposes of subsection (2)(g), *official document* includes a summons, a court document, a Tribunal document, a notice issued under the **Infringements Act 2006** and any other communication that is authorised, issued or approved by a court, the Tribunal, a government or a government agency.

Note

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

- (5) This section does not apply to any of the following acting in an official capacity—
- (a) the sheriff or a sheriff's officer;
 - (b) a member of the police force;
 - (c) a bailiff;
 - (d) any other employee or agent of the State, another state, a Territory or the Commonwealth.

S. 93N
inserted by
No. 1/2010
s. 18 (as
amended by
No. 63/2010
s. 23(8)).

93N Additional remedy for contraventions of section 93M

- (1) A natural person who has experienced humiliation or distress due to a course of conduct of another person in contravention of section 93M with respect to a consumer debt may apply to a court or the Tribunal for an order that the person engaging in that conduct, or a person involved in that conduct, pay damages of up to \$10 000 (or another prescribed amount).
- (2) In subsection (1)—
- course of conduct* means conduct that occurs on at least 2 occasions;
- person involved* has the meaning given by section 145.
- (3) Subsection (1)—
- (a) applies in addition to any other available remedy;
 - (b) is not intended to affect any other available remedy.
- (4) Clauses 28BB and 28GG of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** do not apply in a proceeding where damages are sought under this section.

(5) Part VBA of the **Wrongs Act 1958** does not apply to a claim under this section.

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

Division 1—General

Pt 7 Div. 1
(Heading)
inserted by
No. 72/2010
s. 19.

98 Director of Consumer Affairs Victoria

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

S. 98
(Heading)
inserted by
No. 30/2003
s. 39(1).
S. 98
substituted by
No. 35/2000
s. 39,
amended by
Nos 30/2003
s. 39(2),
108/2004
s. 117(1)
(Sch. 3
item 74.2).

99 Staff

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

S. 99
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 74.2).

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 or a Consumer Act;
- (b) to receive complaints from persons and to deal with them in accordance with this Act or a Consumer Act;

S. 100(1)(a)
amended by
No. 30/2003
s. 40(1)(a).

S. 100(1)(b)
amended by
No. 30/2003
s. 40(1)(b).

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| (ba) to monitor compliance with this Act and the regulations and the Consumer Acts and the regulations under the Consumer Acts; | S. 100(1)(ba) inserted by No. 103/2004 s. 8(1). |
| (bb) to prepare and publish guidelines in relation to the operation and enforcement of this Act or the regulations or a Consumer Act or the regulations under a Consumer Act; | S. 100(1)(bb) inserted by No. 103/2004 s. 8(1). |
| (c) to investigate breaches of this Act or the regulations or of a Consumer Act or the regulations under a Consumer Act; | S. 100(1)(c) amended by No. 30/2003 s. 40(1)(c). |
| (d) to prosecute breaches of this Act or the regulations or of a Consumer Act or the regulations under a Consumer Act; | S. 100(1)(d) amended by No. 30/2003 s. 40(1)(d). |
| (e) to institute and defend proceedings to achieve the purposes of this Act or the purposes of a Consumer Act; | S. 100(1)(e) amended by Nos 30/2003 s. 40(1)(e), 2/2008 s. 5. |
| (f) to encourage the preparation and use of codes of practice for guidance in safeguarding and promoting the interests of purchasers of goods and services; | S. 100(1)(f) substituted by No. 103/2004 s. 8(2). |
| (fa) to prepare codes of practice safeguarding and promoting the interests of purchasers of goods and services and submit those codes of practice to the Minister for inclusion in the regulations under this Act; | S. 100(1)(fa) inserted by No. 103/2004 s. 8(2). |
| (g) in respect of matters affecting the interests of purchasers and suppliers— | |
| (i) to investigate those matters; and | |
| (ii) to conduct research; and | |
| (iii) to collect and collate information; | |

S. 100(1)(ia)
inserted by
No. 36/2011
s. 15.

- (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;
 - (ia) any power that, before the repeal of the **Companies (Administration) Act 1981**, could be exercised by the Commissioner for Corporate Affairs under that or any other Act, including the power to commence proceedings under section 10 of that Act;
 - (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.

S. 101
amended by
Nos 30/2003
s. 40(2),
108/2004
s. 117(1)
(Sch. 3
item 74.2).

101 Powers of delegation

The Director, by instrument, may delegate to any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act, any of the Director's functions or powers under this Act, other than this power of delegation or a power of the Director under section 106I.

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

Division 2—Victorian Consumer Law Fund

Pt 7 Div. 2
(Heading and
ss 102A–
102E)
inserted by
No. 72/2010
s. 20.

102A Definition

In this Part—

the Fund means the Victorian Consumer Law
Fund referred to in section 102B(1);

non-party order means an order referred to in
section 102C(1).

S. 102A
inserted by
No. 72/2010
s. 20.

102B Victorian Consumer Law Fund

- (1) There is to be kept in the Trust Fund established under the **Financial Management Act 1994**, a trust account to be known as the Victorian Consumer Law Fund.
- (2) The following must be paid into the Fund—
 - (a) any pecuniary penalty ordered by a court under section 224 of the Australian Consumer Law (Victoria) to be paid to the State;
 - (b) any amount ordered by a court under section 239(1) of the Australian Consumer Law (Victoria) to be paid into the Fund;
 - (c) money appropriated by the Parliament for the purposes of the Fund;
 - (d) interest received on money invested in the Fund.
- (3) Money must not be paid out of the Fund except in accordance with this Part.
- (4) The Treasurer may invest money in the Fund in such manner as the Treasurer determines.

S. 102B
inserted by
No. 72/2010
s. 20.

S. 102C
inserted by
No. 72/2010
s. 20.

102C Order for payment to non-party consumers

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

- (ii) making some or all of the remaining money available for the purposes of sections 102D and 102E;
 - (iii) any other treatment that the court considers appropriate.
- (3) The court may specify in the order that any amount paid into the Fund pursuant to the order may be applied to the costs of disbursing payments to non-party consumers made pursuant to the order.
 - (4) The Director is responsible for the distribution of money from the Fund to non-party consumers pursuant to a non-party order.
 - (5) The distribution of money from the Fund to non-party consumers must be made in accordance with the non-party order and may only be made from the amount or amounts paid into the Fund pursuant to the order.

102D Special purpose grants

S. 102D
inserted by
No. 72/2010
s. 20.

- (1) The Minister may, on the recommendation of the Director, make payments out of the Fund for—
 - (a) the purposes of improving consumer wellbeing, consumer protection or fair trading; or
 - (b) any other purpose consistent with the objects of the Australian Consumer Law (Victoria).
- (2) A payment under subsection (1) may be made to the Director or to a non-profit organisation.
- (3) A payment under subsection (1) may only be made from the following money—
 - (a) any pecuniary penalty paid into the Fund under section 102B(2)(a) and the interest earned on that payment;

s. 102E

- (b) money appropriated by the Parliament for the Fund and the interest earned on that money;
- (c) any money paid into the Fund pursuant to a non-party order remaining on the final payment day that the order has specified may be applied for the purposes of this section.

S. 102E
inserted by
No. 72/2010
s. 20.

102E Administration expenses

- (1) The Director may approve payment from the Fund for any reasonable expenses incurred in administering the Fund.
- (2) A payment under subsection (1) may only be made from the following money—
 - (a) any pecuniary penalty paid into the Fund under section 102B(2)(a) and the interest earned on that payment;
 - (b) money appropriated by the Parliament for the Fund and the interest earned on that money;
 - (c) any money paid into the Fund pursuant to a non-party order—
 - (i) that the order specifies may be applied to the cost of disbursing payments to non-party consumers; or
 - (ii) remaining on the final payment day and that the order has specified may be applied for the purposes of this section.

PART 8—POWERS OF DIRECTOR

Pt 8 (Heading)
substituted by
No. 30/2003
s. 41(1).

Division 1—Disputes

Pt 8 Div. 1
(Heading)
inserted by
No. 30/2003
s. 41(2).

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 and mediation

S. 104
(Heading)
inserted by
No. 103/2004
s. 9(1).

- (1) The Director may refer to a consumer affairs employee for conciliation or mediation 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;

S. 104(1)
amended by
Nos 30/2003
s. 42(a),
103/2004
s. 9(2).

(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 the dispute, or that part of the dispute, to the person within whose jurisdiction it falls.
- (3) Subsection (1) applies whether or not a person has made a complaint.
- (4) In this section—

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

S. 104(4)
def. of
*fair trading
employee*
re-named as
*consumer
affairs
employee* by
No. 30/2003
s. 42(b),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 74.2).

S. 105
amended by
No. 30/2003
s. 43,
substituted by
No. 103/2004
s. 10.

105 Powers of the Director in relation to proceedings on behalf of consumers

- (1) The Director may, subject to this section, institute or continue proceedings on behalf of, or defend proceedings brought against, a person or persons in respect of a consumer dispute.
- (2) The Director must not, under subsection (1), institute or continue or defend proceedings unless the Director is satisfied—

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

S. 105(3)(b)
amended by
No. 67/2010
s. 172(1)(a).

S. 105(3)(c)
inserted by
No. 67/2010
s. 172(1)(b).

Note

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

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

S. 105(4)
amended by
No. 67/2010
s. 172(2).

(5) In this section—

S. 105(5)
def. of
*consumer
dispute*
amended by
No. 11/2010
s. 45.

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

proceeding includes group proceeding and representative proceeding.

Note to s. 105
inserted by
No. 72/2010
s. 21.

Note

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

106 Proceedings and costs

S. 106(1)
amended by
No. 103/2004
s. 11(1)(a).

(1) If the Director institutes, continues 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) subject to subsections (1A) and (1B), an amount (other than an amount in respect of costs) recovered by the Director in respect of the person in the proceedings is payable to the person; and

(d) an amount in respect of costs recovered in the proceedings is payable to the Director; and

S. 106(1)(c)
amended by
Nos 30/2003
s. 44(1)(a),
103/2004
s. 11(1)(b).

- (e) subject to subsection (1A), 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.
- (1A) If the Director institutes, defends or continues proceedings on behalf of a person without that person's consent or after the person revokes the consent to the institution, defence or continuation of the proceedings—
- (a) the Director must compensate the person for—
- (i) any loss suffered as the result of the loss of any settlement offer made to the person; and
- (ii) out-of-pocket expenses incurred by the person during the proceedings after the revocation of consent; and
- (b) the Director is liable to pay any amount awarded against the person in the proceedings.
- (1B) If the Director institutes, defends or continues proceedings on behalf of a person without that person's consent or after the person revokes the consent to the institution, defence or continuation of the proceedings, any amount recovered by the Director in respect of the person in the proceedings (including any amount for costs) that exceeds the amount payable to the person under subsection (1A) may be applied to the payment of the costs of, and incidental to, the proceedings for which the Director is liable or that are incurred by the Director in relation to the proceedings.

S. 106(1)(e)
amended by
No. 30/2003
s. 44(1)(b).

S. 106(1A)
inserted by
No. 30/2003
s. 44(2),
amended by
Nos 103/2004
s. 11(2),
67/2010 s. 173.

S. 106(1B)
inserted by
No. 30/2003
s. 44(2),
amended by
Nos 103/2004
s. 11(3)(a)(b),
67/2010 s. 173.

s. 106AA

S. 106(2)
amended by
No. 103/2004
s. 11(4).

- (2) If, in proceedings instituted, continued 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 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 subsection (2), the court or the Tribunal may make those ancillary or consequential provisions (if any) that it thinks just.

S. 106AA
inserted by
No. 72/2010
s. 22.

106AA Grants of legal assistance

- (1) The Director may grant legal assistance to a person who claims to be involved in a consumer dispute if the person—
- (a) wishes to bring legal proceedings (other than criminal proceedings) arising out of the supply or the failure to supply to the person of goods or services or the disposal to the person of an interest in land; or
 - (b) wishes to make an appeal or seek judicial review in relation to legal proceedings of a kind referred to in paragraph (a); or
 - (c) is a party to legal proceedings or proceedings relating to an appeal or review referred to in paragraph (a) or (b).

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- (2) For the purposes of subsection (1), the Director—
- (a) must be satisfied that the person has reasonable grounds for bringing, or being a party to, the proceedings; and
 - (b) must be of the opinion that it is desirable, in the general interests of consumers or of any class of consumers, that assistance should be granted; and
 - (c) must obtain the written approval of the Minister to grant the assistance.
- (3) Despite subsections (1) and (2), the Director may decide not to grant assistance if the Director is of the opinion that it should not be granted because of the person's financial position.
- (4) If the Director decides to grant assistance under subsection (1)—
- (a) the Director must notify the person to whom the assistance is being granted; and
 - (b) the person must not, without the consent of the Director, withdraw from the proceedings or discharge any Australian legal practitioner acting in the proceedings.
- (5) Assistance granted under this section does not extend to expenses other than—
- (a) the costs of legal representation; and
 - (b) prescribed expenses.
- (6) Expenses incurred in the provision of assistance under this section and court fees must be met out of money from the Consolidated Fund, which is, to the necessary extent, appropriated accordingly.
- (7) In this section, *consumer dispute* has the same meaning as it has in section 105.

s. 106AB

S. 106AB
inserted by
No. 72/2010
s. 22.

106AB Costs and expenses relating to proceedings to which assisted person is a party

- (1) If a person is granted assistance under section 106AA, the court must, in making an order for costs—
 - (a) in favour of the assisted person—make the same order (except against another assisted person) as the court would have made in favour of the assisted person if the person had not been an assisted person; or
 - (b) against the assisted person—make the same order (except in favour of another assisted person) as the court would have made against the assisted person if the person had not been an assisted person.
- (2) If an order for costs is made under subsection (1)(a)—
 - (a) the costs are payable to the Director instead of the person in whose favour the order is made;
 - (b) the costs may be recovered by the Director as a debt due to the Crown;
 - (c) the costs, upon being paid to or recovered by the Director, must be paid into the Consolidated Fund.
- (3) If an order for costs is made under subsection (1)(b), the costs must be paid by the Director.
- (4) Except in the case of costs payable to the Director, money awarded by a court in favour of an assisted person is payable to the person without deduction.

Division 2—Suppliers

Pt 8 Div. 2
(Heading and
ss 106A,
106B)
inserted by
No. 30/2003
s. 45.

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S. 106A
inserted by
No. 30/2003
s. 45,
repealed by
No. 72/2010
s. 23.

106B *Show cause notice*

S. 106B
inserted by
No. 30/2003
s. 45.

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

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

to which the notice relates or any business of a like kind.

Penalty: 600 penalty units, in the case of a natural person.

1200 penalty units, in the case of a body corporate.

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

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

Penalty: 600 penalty units, in the case of a natural person.

1200 penalty units, in the case of a body corporate.

Division 3—Licence suspension

106C Definitions

In this Division—

licence means—

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

Pt 8 Div. 3
(Heading and
ss 106C–
106H)
inserted by
No. 30/2003
s. 45.

S. 106C
inserted by
No. 30/2003
s. 45.

S. 106C def. of
licence
amended by
Nos 75/2006
s. 192(Sch. 2
item 3.1),
11/2010 s. 46,
63/2010
s. 81(Sch.
item 6.2),
63/2010
s. 9(1).

s. 106D

- (b) a right to act as an agent's representative within the meaning of the **Estate Agents Act 1980**; or
 - (c) a right to participate in a customer service capacity in the business of a motor car trader within the meaning of the **Motor Car Traders Act 1986**; or
 - (d) an approval under Division 5 of Part 3 of the **Sex Work Act 1994**; or
- * * * * *
- * * * * *
- * * * * *

(h) a registration or endorsement of registration under the **Second-Hand Dealers and Pawnbrokers Act 1989**;
licence suspension period in relation to a licence, means the period—

- (a) commencing on the date of service of the notice in relation to the licence under section 106D; and
- (b) ending on—
 - (i) the lapsing of the suspension of the licence under section 106F; or
 - (ii) the date of an order referred to in section 106F(2) relating to the suspension of the licence;

licensee, in relation to a licence, means the person who is the holder of the licence.

S. 106D
inserted by
No. 30/2003
s. 45.

106D Director may suspend licence

- (1) Despite anything to the contrary in a business licensing Act or any other Act or law other than this Division, the Director may suspend a licence by notice in writing issued to the licensee.

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- (2) The Director may only suspend a licence under this section if the Director has reasonable grounds to believe that—
- (a) the licensee has engaged in conduct that under the relevant business licensing Act would constitute grounds for the initiation of disciplinary action against the licensee or the bringing of proceedings for an offence or for an injunction; and
 - (b) it is likely that the licensee will continue to engage in that conduct; and
 - (c) there is a danger that a person may suffer substantial harm, loss or damage as a result of that conduct unless action is taken urgently.
- (3) A notice under subsection (1)—
- (a) must be served—
 - (i) personally on a licensee who is a natural person; or
 - (ii) at the registered office and the last known business address of a licensee that is a corporation; or
 - (iii) at the last known business address of a licensee that is a body corporate, other than a corporation;
 - (b) must specify the conduct which the licensee is believed to have engaged in;
 - (c) must state the rights of review open to the licensee;
 - (d) has effect, whether or not the licensee has been afforded an opportunity to be heard on the matter.

- (4) Despite subsection (3)(a)(i), if, on the application of the Director, it appears to the Tribunal that service cannot be promptly effected on a licensee who is a natural person, the Tribunal may order that the notice be served—
- (a) by sending it by post, facsimile or other electronic transmission to the person at his or her usual or last known residential or business address; or
 - (b) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there.
- (5) The suspension takes effect on the service of the notice.

106E Effect of suspension

- (1) This section applies despite anything to the contrary in a business licensing Act or any other Act or law other than this Division.
- (2) If a notice is issued under this Division suspending—
- (a) an estate agent's licence under the **Estate Agents Act 1980**; or
 - (b) a motor car trader's licence under the **Motor Car Traders Act 1986**; or
 - (c) a licence within the meaning of the **Sex Work Act 1994**; or
 - (d) a travel agent's licence under the **Travel Agents Act 1986**—

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

S. 106E
inserted by
No. 30/2003
s. 45.

S. 106E(2)(c)
amended by
No. 63/2010
s. 81(Sch.
item 6.3).

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

(4) If a notice is issued under this Division suspending a licensee's right to participate in a customer service capacity in the business of a motor car trader within the meaning of the **Motor Car Traders Act 1986**, the licensee is deemed, for the purposes of that Act, not to be permitted to be employed in a customer service capacity by a motor car trader for the licence suspension period.

(5) If a notice is issued under this Division suspending an approval under Division 5 of Part 3 of the **Sex Work Act 1994**, the approval is deemed to be suspended for the purposes of that Act for the licence suspension period.

S. 106E(5) amended by No. 63/2010 s. 81(Sch. item 6.3).

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S. 106E(6)(7) repealed by No. 11/2010 s. 47.

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S. 106E(8) repealed by No. 63/2010 s. 9(2).

(9) If a notice is issued under this Division suspending the registration or endorsement of registration of a licensee under the **Second-Hand Dealers and Pawnbrokers Act 1989**, the registration or endorsement is deemed to be suspended for the purposes of that Act for the licence suspension period.

s. 106F

S. 106E(10)
inserted by
No. 75/2006
s. 192(Sch. 2
item 3.2).

- (10) If a notice is issued under this Division suspending a licensee's licence under the **Conveyancers Act 2006**, the licensee is deemed for the purposes of that Act to be prohibited from doing either or both of the following during the licence suspension period—
- (a) carrying on a conveyancing business;
 - (b) undertaking conveyancing work as an employee of a conveyancing business.

S. 106F
inserted by
No. 30/2003
s. 45.

106F Lapsing or continuation of suspension

- (1) A suspension under this Division lapses if within the required period after the service of the notice—
- (a) an application is not made to the Tribunal under a business licensing Act to inquire into the conduct of the licensee that is the subject of the notice; or
 - (b) proceedings have not commenced in a court in relation to the conduct of the licensee that is the subject of the notice.
- (2) If within the required period after the service of the notice—
- (a) an application is made to the Tribunal under a business licensing Act to inquire into the conduct of the licensee that is the subject of the notice; or
 - (b) proceedings are commenced in a court in relation to the conduct of the licensee that is the subject of the notice—

the suspension continues until a further order is made by the Tribunal or the court.

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- (3) If a suspension lapses under this section after service of a notice, the Director must not serve another notice on the licensee under this Division for a period of 6 months from the date of service of the first notice.
 - (4) The power conferred by this Division is in addition to and does not limit or displace a power conferred on the Director or any other person or body by or under a business licensing Act to suspend or cancel a licence or to take action against a licensee in respect of the conduct concerned.
 - (5) In this section *required period* means—
 - (a) 14 days; or
 - (b) if the Tribunal or a court makes an order under section 106G extending that period, that extended period.

106G Extension of period

- (1) The Director may apply to the Tribunal or the court within 14 days after the service of a notice under section 106D or, if an extension of that period has been granted under this section, before the end of the period of the extension, to extend the period within which an application must be made or proceedings commenced for the purposes of section 106F(1) and (2).
- (2) On an application under subsection (1), the Tribunal or court—
 - (a) must consider the likelihood that an application or proceedings referred to in section 106F(1) and (2) will be made or commenced; and
 - (b) may make an order extending the period if in all the circumstances it considers it just and convenient to do so.

S. 106G
inserted by
No. 30/2003
s. 45.

s. 106H

- (3) An extension may be for a period not exceeding 14 days.
- (4) The Tribunal or court may adjourn any application under this section to enable notice of the application to be given to any person.

S. 106H
inserted by
No. 30/2003
s. 45.

106H Right of review

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

Pt 8 Div. 4
(Heading and
ss 106I–106P)
inserted by
No. 30/2003
s. 45.

Division 4—Obtaining information, documents and evidence

S. 106HA
inserted by
No. 103/2004
s. 12.

106HA Power to obtain information and documents to monitor compliance

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

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- (2) A person must not—
- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with a notice under this section, knowingly provide information or give evidence that is false or misleading; or
 - (c) obstruct or hinder the Director in exercising a power under this section.

Penalty: 20 penalty units.

- (3) Subject to subsection (4), a person is not excused from answering a question, providing information or producing or permitting the inspection of a document on the ground that the answer, information or document may tend to incriminate the person.
- (4) Despite subsection (3), the answer by a person to any question asked in a notice under this section or the provision by a person of any information or the production by any person of a document in compliance with a notice under this section, is not admissible in evidence against the person in any proceedings other than proceedings under this section.
- (5) If any documents are produced to the Director under this section, the Director may make copies of or take extracts from the documents and retain possession of those copies and extracts.
- (6) Section 106J does not apply to documents produced under this section.

s. 106I

S. 106I
inserted by
No. 30/2003
s. 45.

106I Power to obtain information, documents and evidence

- (1) If the Director believes that a person is capable of providing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of this Act, the Director may, by notice in writing, require that person—
 - (a) to provide to the Director, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, that information; or
 - (b) to produce to the Director, or to a person specified in the notice acting on the Director's behalf, in accordance with the notice, those documents; or
 - (c) to appear before the Director, or a person specified in the notice acting on the Director's behalf, at a time and place specified in the notice to give that evidence, either orally or in writing, and produce those documents.
- (2) The Director or the person specified in the notice acting on the Director's behalf may require the evidence referred to in subsection (1)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.
- (3) A person must not—
 - (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with a notice under this section, knowingly provide information or give evidence that is false or misleading; or

S. 106I(1)(c)
amended by
No. 17/2007
s. 5(1).

S. 106I(2)
amended by
No. 17/2007
s. 5(2).

- (c) obstruct or hinder the Director in exercising a power under this section.

Penalty: 60 penalty units.

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

106J Powers in relation to documents

S. 106J
inserted by
No. 30/2003
s. 45.

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

- (a) inspect the documents or authorise a person to inspect the documents;
- (b) make copies of or take extracts of the documents;
- (c) seize the documents if the Director—
- (i) considers the documents necessary for obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations; or

s. 106K

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

S. 106K
inserted by
No. 30/2003
s. 45.

106K Copies of seized documents

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

S. 106L
inserted by
No. 30/2003
s. 45.

106L Retention and return of seized documents

- (1) If the Director seizes a document under this Division, the Director must take reasonable steps to return the document to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document seized has not been returned within 3 months after it was seized, the Director must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document was retained have commenced within that 3 month period and those

proceedings (including any appeal) have not been completed; or

- (b) the Magistrates' Court makes an order under section 106M extending the period during which the document may be retained.

106M Magistrates' Court may extend 3 month period

S. 106M
inserted by
No. 30/2003
s. 45.

- (1) The Director may apply to the Magistrates' Court—

- (a) within 3 months after seizing a document under this Division; or
- (b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the Director may retain the document but so that the total period of retention does not exceed 12 months.

- (2) The Magistrates' Court may order such an extension if it is satisfied that—

- (a) it is in the interests of justice; and
- (b) the total period of retention does not exceed 12 months; and
- (c) retention of the document is necessary—
 - (i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.

s. 106N

- (3) The Magistrates' Court must consider the interests of the owner of the document or thing and may adjourn an application to enable notice of the application to be given to any person.

S. 106N
inserted by
No. 30/2003
s. 45.

106N Complaints

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

S. 106O
inserted by
No. 30/2003
s. 45.

106O Service of documents

- (1) A written requirement by the Director under this Division may be given personally or by registered post to a person—
- (a) at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of the Director under this Division may send that document or information to the Director by registered post.

S. 106P
inserted by
No. 30/2003
s. 45,
amended by
No. 11/2010
s. 48,
substituted by
No. 72/2010
s. 24.

106P Information sharing

- (1) The Director may enter into, or approve of, an arrangement (an *information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information held by the Director and the relevant agency.

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- (2) The information to which an information sharing arrangement may relate is limited to the following—
- (a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters;
 - (b) probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers;
 - (c) any other information affecting the interests of consumers;
 - (d) any other information of a prescribed kind.
- (3) Under an information sharing arrangement, the Director and the relevant agency are authorised—
- (a) to request and receive information held by the other party to the arrangement; and
 - (b) to disclose information to the other party—
- but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or a Consumer Act or the functions of the relevant agency concerned.
- (4) Without limiting subsection (3), the Director may also (whether as part of an information sharing arrangement or otherwise)—
- (a) refer any matter (including any complaint) with respect to fair trading, or that affects the interests of consumers, to a fair trading agency or law enforcement agency;
 - (b) receive any matter of a type described in paragraph (a) from a fair trading agency or law enforcement agency;
 - (c) conduct a joint investigation into any such matter with a fair trading agency or law enforcement agency.

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- (5) Any fair trading agency or law enforcement agency referred to in subsection (4) is, despite any other Act or law of the State, authorised to refer a matter referred to in subsection (4) to the Director or to conduct an investigation into the matter jointly with the Director.
- (6) This section does not limit—
- (a) the powers of the Director under this Part; or
 - (b) the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body; or
 - (c) the giving of information—
 - (i) to a court or tribunal in the course of legal proceedings; or
 - (ii) pursuant to an order of a court or tribunal; or
 - (iii) to the extent reasonably required to enable the investigation or the enforcement of a law of the State or of any other State or Territory or of the Commonwealth; or
 - (iv) to the Business Licensing Authority established under the **Business Licensing Authority Act 1998**; or
 - (v) with the written authority of the Secretary; or
 - (vi) with the written authority of the person to whom the information relates.

- (7) In this section—

fair trading agency means an agency of the State, or of the Commonwealth, or of another State or Territory or of an overseas jurisdiction,

that exercises functions under an enactment
with respect to fair trading;

law enforcement agency means—

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

relevant agency means—

- (a) a fair trading agency; or
 - (b) a law enforcement agency; or
 - (c) any other agency of the State or of the
Commonwealth, another State or
Territory or an overseas jurisdiction; or
 - (d) any other person or body that exercises
functions, in the public interest, that
involve protecting the interests of
consumers.
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PART 9—FUNCTIONS OF TRIBUNAL

107 What is a consumer and trader dispute?

S. 107
(Heading)
inserted by
No. 30/2003
s. 47(1).

(1) In this Part a *consumer and trader dispute* is a dispute or claim arising between a purchaser or possible purchaser of goods or services and a supplier or possible supplier of goods or services in relation to a supply or possible supply of goods or services.

S. 107(1)
amended by
No. 30/2003
s. 46.

(2) For the purposes of subsection (1), a dispute or claim includes any dispute or claim in negligence, nuisance or trespass that relates to the supply or possible supply of goods or services but (except as provided in subsection (3)) does not include a dispute or claim related to a personal injury.

S. 107(2)
amended by
No. 30/2003
s. 47(2).

(3) For the purposes of subsection (1), a dispute or claim includes a claim related to personal injury if—

S. 107(3)
inserted by
No. 30/2003
s. 47(3).

(a) the claim is for an amount not exceeding \$10 000; and

(b) the claim relates to a supply or possible supply of goods or services; and

(c) the supply or possible supply of goods or services is the subject of a related consumer and trader dispute.

107A What is a small claim?

S. 107A
inserted by
No. 30/2003
s. 48.

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

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

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

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

108 Settlement of consumer and trader disputes or small claims

S. 108
(Heading)
inserted by
No. 30/2003
s. 49(1).

(1) The Tribunal may hear and determine a consumer and trader dispute.

S. 108(1)
amended by
No. 30/2003
s. 46.

(2) The Tribunal may do one or more of the following in relation to a consumer and trader dispute—

S. 108(2)
amended by
No. 30/2003
s. 46.

(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;

(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;

s. 109

S. 108(2)(h)
amended by
No. 30/2003
s. 49(2).

(h) order rectification of a contract;

S. 108(2)(i)
inserted by
No. 30/2003
s. 49(3).

(i) declare that a debt is, or is not, owing;

S. 108(2)(j)
inserted by
No. 30/2003
s. 49(3).

(j) order a party to do or refrain from doing something.

Example to
s. 108(2)
inserted by
No. 30/2003
s. 49(3).

Example

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

- (3) 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 subsection (1), the Tribunal may have regard to—
- (a) the intelligibility of the contract generally, and of the term in particular;

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- (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 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 consumer and trader dispute?

S. 110
amended by
No. 30/2003
s. 46.

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

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

111 Exclusion of other jurisdiction

- (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 consumer and trader 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—

S. 111(1)
amended by
No. 30/2003
s. 46.

- (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; or
- (c) the Tribunal refers the proceeding to that court under section 77 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 111(1)(b)
amended by
No. 30/2003
s. 50(1).

S. 111(1)(c)
inserted by
No. 30/2003
s. 50(2).

- (2) Subsection (1) applies to all the issues in dispute, whether as shown in the application or emerging in the course of the proceeding in the Tribunal.

S. 112(1)(b)
amended by
No. 30/2003
s. 46.

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 consumer and trader 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—
 - (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 subsection (4) the Tribunal must notify the court and on such notification the court must dismiss the proceedings.
- (6) Subsection (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**.

112A Small claim commenced in a court

S. 112A
inserted by
No. 30/2003
s. 51.

- (1) This section applies if a supplier, or person acting on behalf of the supplier—
 - (a) commences proceedings in a court; and
 - (b) the proceedings arise wholly or predominantly from a small claim.
- (2) The court must dismiss the proceedings if—
 - (a) the court has not yet commenced to hear the matter; and
 - (b) the purchaser has applied to the Tribunal to have the matter heard and determined by the Tribunal; and
 - (c) the purchaser has lodged with the Tribunal—
 - (i) the whole of the amount sought by the supplier; or
 - (ii) if any payment has been made to the supplier (including any deposit), the outstanding amount sought; and
 - (d) the Tribunal has notified the court of that application to the Tribunal and lodgement.
- (3) If the court dismisses the proceedings under subsection (2), the court must not make an order as to costs in respect of those proceedings.

S. 112A(3)
inserted by
No. 63/2010
s. 67.

s. 112B

S. 112B
inserted by
No. 30/2003
s. 51.

112B Small Claims Suspense Account

- (1) The principal registrar of the Tribunal must keep an account called the Small Claims Suspense Account and pay into that account all money lodged with the Tribunal under section 112A(2).
- (2) The principal registrar must deal with money lodged with the Tribunal under section 112A(2) as follows—
 - (a) if the Tribunal makes an order with respect to the money, the principal registrar must comply with the order;
 - (b) if the proceeding is struck out for want of jurisdiction or otherwise withdrawn, the principal registrar must—
 - (i) return the money to the person who paid the money or that person's personal or legal representative; or
 - (ii) pay it in accordance with the directions of the person who paid the money or that person's personal or legal representative;
 - (c) if the person who paid the money dies before a final order is made with respect to the matter, the principal registrar must pay the money to the personal or legal representative of the deceased person.

S. 113
amended by
No. 30/2003
s. 46.

113 Tribunal may hear dispute regardless of related criminal proceedings

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

- (a) has not been charged with the offence; or

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- (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.

113A Tribunal may order the provision of information

S. 113A
inserted by
No. 30/2003
s. 52.

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

PART 10—INSPECTION POWERS

114 Appointment of inspectors

S. 114
substituted by
No. 103/2004
s. 13.

(1) The Director may, by instrument, appoint as an inspector—

S. 114(1)(a)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 74.2).

(a) any employee under Part 3 of the **Public Administration Act 2004**;

(b) any person who is appointed as an inspector, enforcement officer or authorised officer by or under any other Act;

(c) any person who is appointed or authorised as an inspector, investigator, authorised officer or authorised person under an interstate Act.

(2) An inspector appointed under subsection (1)(a) or (1)(b) may also be appointed or authorised under an interstate Act as an inspector, investigator, authorised officer or authorised person under that Act.

(3) The Director must not appoint a person as an inspector under this section unless the Director is satisfied that the person is appropriately qualified or has successfully completed appropriate training.

S. 114(4)
substituted by
No. 72/2010
s. 25.

(4) In this section, *interstate Act* means an Act of another State or Territory that is prescribed for the purposes of this subsection.

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.

S. 117(4)(c)
amended by
No. 35/2000
s. 40(3).

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- (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 Consumer Act or the regulations under that Act;
 - (d) secure any seized documents against interference;
 - (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 subsection (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 subsection (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 subsection (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 produce information

S. 118
(Heading)
inserted by
No. 106/2003
s. 15(1).

- (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—

S. 118(1)
amended by
No. 30/2003
s. 53.

- (a) is required by this Act or the regulations to be kept by the publisher; or

S. 118(1)(a)
inserted by
No. 30/2003
s. 53.

- (b) has been published by the publisher.

S. 118(1)(b)
inserted by
No. 30/2003
s. 53.

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S. 118(1A)
inserted by
No. 106/2003
s. 15(2),
repealed by
No. 72/2010
s. 26.

- (2) An inspector can only require production of information under this section with the written consent of the Director.

S. 118(2)
amended by
No. 106/2003
s. 15(3).

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) in the case of any document on the premises, if the inspector believes, on reasonable grounds, that it is connected with the alleged contravention, the inspector may do all or any of the following—
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
 - (e) make any still or moving image or audio-visual recording that the inspector believes, on reasonable grounds, is necessary for the purpose of establishing the alleged contravention.

S. 119(1)(d)
substituted by
No. 79/2006
s. 64.

S. 119(1)(e)
inserted by
No. 79/2006
s. 64.

- (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 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 or to the seizure of anything or to the taking of any sample, copy or extract; and

S. 119(3)
amended by
No. 106/2003
s. 16(1).

S. 119(3)(b)
amended by
No. 106/2003
s. 16(2).

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- (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.
- (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 or a permanent ban, 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 subsection (1) on the premises during a search under that subsection 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;
 - (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) in the case of any document on the premises, if the inspector believes on reasonable grounds that it is necessary to do so, the inspector may do all or any of the following—
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;

S. 121(1)
amended by
Nos 30/2003
s. 54, 72/2010
s. 27.

S. 121(2)(e)
substituted by
No. 79/2006
s. 65.

s. 121

S. 121(2)(f)
inserted by
No. 79/2006
s. 65.

(f) make any still or moving image or audio-visual recording if the inspector believes, on reasonable grounds, that it is necessary to do so.

(3) If an inspector finds any goods referred to in subsection (1) on the premises during a search under that subsection (not being goods to which subsection (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.

S. 121(3A)
inserted by
No. 17/2007
s. 6.

(3A) Section 126B extends and applies to a notice given under subsection (3) (with any necessary modifications) as if—

(a) a reference to an embargo notice were a reference to a notice under subsection (3); and

(b) a reference to section 126(2) were a reference to subsection (6).

(4) A notice under subsection (3) ceases to have effect at the end of 72 hours after the notice is given or affixed under that subsection, whichever is the earlier.

(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.
- (6) A person must not remove goods from premises in contravention of a notice under this section.

Penalty: 60 penalty units.

121A Entry without consent or warrant

S. 121A
inserted by
No. 79/2006
s. 66.

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

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- (e) examine and test any equipment found on the premises that is of a kind used in connection with the supply of goods or services;
 - (f) in the case of any document on the premises, do all or any of the following—
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
 - (g) make any still or moving image or audio-visual recording;
 - (h) bring any equipment onto the premises that the inspector believes, on reasonable grounds, is necessary for the examination or processing of things (including documents) found at the premises in order to determine whether they are things that may be seized under this section.
- (2) An inspector—
- (a) must not exercise a power under subsection (1) in any part of the premises that is used for residential purposes; and
 - (b) must not exercise a power under subsection (1), except between the hours of 9 a.m. to 5 p.m., or when the premises are open for business.

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- (3) 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 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.

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

Fair Trading Act 1999
No. 16 of 1999
Part 10—Inspection Powers

s. 122

S. 122(2)(b)
amended by
No. 79/2006
s. 67(a)(iii).

(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—

S. 122(2)(b)(iv)
amended by
No. 79/2006
s. 67(a)(i).

S. 122(2)(b)(v)
repealed by
No. 79/2006
s. 67(a)(ii).

* * * * *

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; and

S. 122(2)(c)
inserted by
No. 79/2006
s. 67(b).

(c) in the case of any document of a particular kind, named or described in the warrant, if the inspector believes, on reasonable grounds, that it is connected with the alleged contravention, the inspector may do all or any of the following—

- (i) require the document to be produced for inspection;
- (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
- (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document; and

- (d) make any still or moving image or audio-visual recording of anything of a particular kind, named or described in the warrant, that 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.

S. 122(2)(d)
inserted by
No. 79/2006
s. 67(b).

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 subsection (1) if he or she believes, on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

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

- (ii) will afford evidence about the contravention of any Consumer 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 Consumer Act.

S. 125(a)(ii)
amended by
No. 35/2000
s. 40(3).

S. 125(b)
amended by
No. 35/2000
s. 40(3).

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—

S. 126(2)
amended by
No. 17/2007
s. 7.

the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

s. 126A

S. 126(3)
amended by
No. 68/2009
s. 97(Sch.
item 56.4).

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the accused 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.

S. 126A
inserted by
No. 79/2006
s. 68.

126A Use or seizure of electronic equipment at premises

- (1) If—
 - (a) while acting under section 121A, an inspector finds a thing at the premises that is or includes a disk, tape or other device for the storage of information; and
 - (b) there is at the premises equipment that may be used with the disk, tape or other storage device; and
 - (c) the inspector believes, on reasonable grounds, that information stored in the disk, tape or other storage device may be relevant to determine whether this Act or the regulations have been complied with—

the inspector may operate, or may require the occupier of the premises or an employee of the occupier to operate, the equipment to access the information.
- (2) If the inspector finds that a disk, tape or other storage device at the premises contains information that the inspector believes, on reasonable grounds, stores information that is relevant to determine whether this Act or the regulations have been complied with, the inspector may—
 - (a) put the information in a documentary form and seize the documents so produced; or

- (b) copy the information to another disk, tape or other storage device and remove that disk, tape or storage device from the premises; or
 - (c) if it is not practicable to put the information in a documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An inspector must not operate or seize equipment for a purpose set out in this section unless the inspector believes, on reasonable grounds, that the operation can be carried out without damage to the equipment.

126B Monitoring compliance with embargo notices

S. 126B
inserted by
No. 17/2007
s. 8.

- (1) For the purpose of monitoring compliance with section 126(2), an inspector, with the written approval of the Director, may apply to the Magistrates' Court for—
- (a) an order requiring the owner of the thing to which an embargo notice under section 126 relates, or the occupier of the premises where the thing is kept or required under the notice to be kept, to answer questions or produce documents at a time and place specified by the inspector; and
 - (b) any other order incidental to or necessary for monitoring compliance with section 126(2).
- (2) The Magistrates' Court may make the order sought under subsection (1).
- (3) If a thing is subject to an embargo notice under section 126, for the purpose of monitoring compliance with any one or more of the following—

Fair Trading Act 1999
No. 16 of 1999
Part 10—Inspection Powers

s. 126B

S. 126B(3)(b)
amended by
No. 72/2010
s. 28(a)(i).

- (a) section 126(2);
- (b) a safety standard;

S. 126B(3)(c)
amended by
No. 72/2010
s. 28(a)(ii).

- (c) an interim ban;

S. 126B(3)(d)
amended by
No. 72/2010
s. 28(a)(iii).

- (d) a permanent ban—

S. 126B(3)(e)
repealed by
No. 72/2010
s. 28(a)(iv).

* * * * *

in relation to the thing, an inspector, with the written approval of the Director, may apply to a magistrate for the issue of a search warrant permitting entry to the premises where the thing is kept or required to be kept.

- (4) If the magistrate is satisfied by evidence, on oath or by affidavit, of the inspector that it is necessary to do so for the effective monitoring of compliance with any one or more of the following—

S. 126B(4)(b)
amended by
No. 72/2010
s. 28(a)(i).

- (a) section 126(2);
- (b) a safety standard;

S. 126B(4)(c)
amended by
No. 72/2010
s. 28(a)(ii).

- (c) an interim ban;

Fair Trading Act 1999
No. 16 of 1999
Part 10—Inspection Powers

s. 126B

(d) a permanent ban—

S. 126B(4)(d)
amended by
No. 72/2010
s. 28(a)(iii).

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S. 126B(4)(e)
repealed by
No. 72/2010
s. 28(a)(iv).

the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**.

(5) The warrant may authorise the inspector, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment, to enter the premises specified in the warrant, if necessary by force, and—

(a) to search for, seize and secure against interference the thing named in the warrant;
or

(b) to test the thing named in the warrant to determine whether it complies with a safety standard; or

S. 126B(5)(b)
amended by
No. 72/2010
s. 28(b)(i).

(c) to test the thing named in the warrant to determine whether any of the following is being complied with—

(i) an interim ban;

S. 126B(5)(c)(i)
amended by
No. 72/2010
s. 28(b)(ii).

(ii) a permanent ban; or

S. 126B
(5)(c)(ii)
amended by
No. 72/2010
s. 28(b)(iii).

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S. 126B
(5)(c)(iii)
repealed by
No. 72/2010
s. 28(b)(iv).

- (d) to do any combination of the activities referred to in paragraphs (a), (b) and (c).
- (6) Sections 123 and 124 extend and apply to a search warrant issued under subsection (4).

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 subsection (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
- (b) the Magistrates' Court makes an order under section 129 extending the period during which the document or thing may be retained; or
- (c) a court makes an order under section 129A permitting the destruction of the thing.

S. 128(2)(b)
amended by
No. 103/2004
s. 14.

S. 128(2)(c)
inserted by
No. 103/2004
s. 14.

- (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

S. 129
substituted by
No. 30/2003
s. 55.

- (1) An inspector may apply to the Magistrates' Court—
- (a) within 3 months after seizing a document or other thing under this Part; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the inspector may retain the document or thing but so that the total period of retention does not exceed 12 months.

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

s. 129A

129A Court may order destruction of dangerous goods

S. 129A
inserted by
No. 103/2004
s. 15.

S. 129A(1)
amended by
No. 17/2007
s. 9(1),
substituted by
No. 72/2010
s. 29.

S. 129A(2)
substituted by
No. 17/2007
s. 9(2).

S. 129A(2A)
inserted by
No. 17/2007
s. 9(2).

S. 129A(3)
inserted by
No. 17/2007
s. 9(3).

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

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 Consumer Act or the regulations under that Act.

S. 130(3)
amended by
No. 35/2000
s. 40(3).

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

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 to the Director by registered post.

S. 140(2)
amended by
No. 35/2000
s. 40(4).

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) Subsection (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

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- (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

S. 142
amended by
No. 68/2009
s. 97(Sch.
item 56.5).

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

142A Who can bring proceedings for offences?

S. 142A
inserted by
No. 103/2004
s. 16.

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

143 Contraventions by bodies corporate

S. 143
(Heading)
inserted by
No. 63/2010
s. 68(1).

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

S. 143(1)
amended by
No. 63/2010
s. 68(2)(a).

(2) A person may be proceeded against and, in the case of an offence, convicted under a provision in accordance with subsection (1) whether or not the body corporate has been proceeded against under that provision.

S. 143(2)
amended by
No. 63/2010
s. 68(2)(b).

(3) Nothing in this section affects any liability imposed on a body corporate for a contravention of this Act by the body corporate.

S. 143(3)
amended by
No. 63/2010
s. 68(2)(c).

144 Conduct by officers, employees or agents

S. 144
substituted by
No. 30/2003
s. 56.

(1) If, in a proceeding under this Act in respect of conduct that is engaged in by a body corporate and to which this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show—

S. 144(1)
substituted by
No. 36/2011
s. 16.

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

s. 144

S. 144(2)
substituted by
No. 36/2011
s. 16.

- (2) The following conduct engaged in on behalf of a body corporate is also taken, for the purposes of this Act, to have been engaged in by the body corporate—
- (a) conduct by an officer, employee or agent of the body corporate within the scope of the actual or apparent authority of the officer, employee or agent; or
 - (b) conduct by any other person—
 - (i) at the direction of an officer, employee or agent of the body corporate; or
 - (ii) with the consent or agreement (whether express or implied) of such an officer, employee or agent—if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee or agent.

S. 144(3)
substituted by
No. 36/2011
s. 16.

- (3) If, in a proceeding under this Act in respect of conduct that is engaged in by a person (the *principal*) other than a body corporate and to which this Act applies, it is necessary to establish the state of mind of the principal, it is sufficient to show—
- (a) that an employee or agent of the principal engaged in that conduct within the scope of the actual or apparent authority or the employee or agent; and
 - (b) that the employee or agent had that state of mind.

S. 144(4)
substituted by
No. 36/2011
s. 16.

- (4) The following conduct engaged in on behalf of a person (the *principal*) other than a body corporate is also taken, for the purposes of this Act, to have been engaged in by the principal—

- (a) conduct by an employee or agent of the principal within the scope of the actual or apparent authority of the employee or agent; or
- (b) conduct by any other person—
 - (i) at the direction of an employee or agent of the principal; or
 - (ii) with the consent or agreement (whether express or implied) of such an employee or agent—
if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent.

(4A) If—

- (a) a person other than a body corporate is convicted of an offence; and
- (b) subsection (3) or (4) applied in relation to the conviction on the basis that the person was the principal mentioned in that subsection; and
- (c) the person would not have been convicted of the offence if that subsection had not been enacted—

the person is not liable to be punished by imprisonment for that offence.

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

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S. 144(4A)
inserted by
No. 36/2011
s. 16.

S. 145
repealed by
No. 30/2003
s. 57.

Division 2—Remedies and legal proceedings

145 Interpretation

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

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

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 Consumer Act.

- (2) The person may withdraw or vary an undertaking at any time, if the person has first obtained the consent of the Director.

- (2A) The Director, with the consent of the person who gave an undertaking, may apply, at any time, to the Magistrates' Court for an order directing the person to comply with the undertaking.

- (2B) On an application under subsection (2A), the Magistrates' Court may by order direct the person who gave the undertaking to comply with the undertaking.

New s. 145
inserted by
No. 30/2003
s. 58.

S. 146(1)(b)
amended by
No. 35/2000
s. 40(3).

S. 146(2A)
inserted by
No. 103/2004
s. 17.

S. 146(2B)
inserted by
No. 103/2004
s. 17.

- (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 subsection (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 subsection (4) that the Magistrates' Court thinks appropriate.

147 Copy of undertaking

The Director must give a copy of an undertaking under section 146 of this Act or under section 218 of the Australian Consumer Law (Victoria) to the person who made the undertaking.

S. 147
amended by
No. 72/2010
s. 30.

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.
- (4) In this section, *undertaking* includes an undertaking made under section 218 of the Australian Consumer Law (Victoria).

S. 148(4)
inserted by
No. 72/2010
s. 31.

S. 149
(Heading)
inserted by
No. 103/2004
s. 18(1).

149 Injunctions to restrain conduct

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

S. 149(1)
amended by
No. 103/2004
s. 18(2).

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- (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
- (d) inducing or attempting to induce a person, whether by threats, promises or otherwise, to contravene such a provision; or
- (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.
- (2) The 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*.

S. 149(2)
amended by
No. 103/2004
s. 18(3).

S. 149A
inserted by
No. 103/2004
s. 19.

149A Injunctions to do an act or thing

- (1) The Supreme Court or the County Court, on the application of the Minister, the Director or any other person, may grant an injunction requiring a person to do any act or thing if the Court is satisfied that the person is engaging in or has been engaging in conduct that constitutes—
 - (a) a contravention of any provision of this Act; or
 - (b) attempting or conspiring to contravene such a provision; or
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - (d) inducing or attempting to induce a person, whether by threats, promises or otherwise, to contravene such a provision; or
 - (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.
- (2) The power of the Court under this section to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first person refuses or fails to do that act or thing.

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- (3) Without limiting subsection (1), an injunction under this section may require a person—
- (a) to institute a training program for the person's employees in relation to compliance with this Act;
 - (b) to refund money to purchasers;
 - (c) to transfer property to purchasers;
 - (d) to disclose information about the person's business activities or business associates;
 - (e) to honour any promise made in the course of misleading or deceptive conduct or in a false representation;
 - (f) to destroy or dispose of goods used for the purpose of a contravention of this Act.
- (4) Despite subsections (1) and (3), only the Supreme Court may grant an injunction under this section requiring a person to transfer an interest in land.
- (5) An application for an injunction under this section may be made ex parte.

150 Interim injunctions

- (1) The Supreme Court, County Court or 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
 - (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

S. 150(1)
amended by
No. 103/2004
s. 20(1).

s. 151

first-mentioned person engages in conduct of that kind.

S. 150(1A)
inserted by
No. 103/2004
s. 20(2).

- (1A) The Supreme Court or County Court may grant an interim injunction pending determination of an application under section 149A in relation to an act or thing, 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 refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first person refuses or fails to do that act or thing.
- (2) An application for an injunction under this section may be made *ex parte*.

S. 151
amended by
No. 103/2004
s. 21(a)(b).

151 Power to rescind or vary injunctions

A court may rescind or vary an injunction granted by it under section 149 or 149A or an interim injunction granted by it under section 150.

S. 151A
inserted by
No. 30/2003
s. 59.

151A Cease trading injunctions

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

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

s. 151B

S. 151B
inserted by
No. 30/2003
s. 59.

151B Interim cease trading injunctions

The Supreme Court may grant an interim injunction pending determination of an application under section 151A, if, in the opinion of the Court it is desirable to do so and it appears to the Court that—

- (a) the person intends to engage in or continue to engage in conduct of a kind referred to in paragraphs (a) to (e) of section 151A(1); and
- (b) there is an imminent danger of substantial damage to any person if the person referred to in paragraph (a) engages in conduct of that kind.

S. 151C
inserted by
No. 30/2003
s. 59.

151C Power to rescind or vary cease trading injunctions

The Supreme Court may rescind or vary an injunction granted by it under section 151A or an interim injunction granted by it under section 151B.

152 Undertakings as to damages and costs

S. 152(1)
amended by
Nos 103/2004
s. 22(1)(a)(b),
72/2010
s. 32(1).

- (1) In any application under section 149, 149A or 150 of this Act or under section 232 of the Australian Consumer Law (Victoria), subject to subsection (2), if—

S. 152(1)(a)
amended by
No. 103/2004
s. 22(1)(b).

- (a) the court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
- (b) the Minister or the Director gives the undertaking—

the court must accept the undertaking by the Minister or the Director and must not require a further undertaking from any other person.

- (2) In an application for an injunction under section 149 or 149A of this Act or under section 232 of the Australian Consumer Law (Victoria), if the application has been made by the Minister or the Director and if the court has determined to grant an interim injunction, the Court must not, as a condition of granting the interim injunction, require the applicant or any other person to give any undertaking as to damages or costs.

S. 152(2)
amended by
Nos 103/2004
s. 22(2)(a)(b),
72/2010
s. 32(2).

152A Powers of court if requirement of Director or inspector not complied with

S. 152A
inserted by
No. 2/2008
s. 6.

- (1) Subject to subsection (3), if the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 106HA, 106I or 118, the Director may certify that failure to a court.
- (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 118 or 131, the inspector may certify that failure to a court.
- (3) The Director or an inspector cannot certify a failure to a court under subsection (1) or (2) if the person to whom the failure relates has been charged with an offence against section 106HA(2), 106I(3) or 132 (as applicable).
- (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.

s. 153

- (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence under section 106HA(2), 106I(3) or 132 (as applicable) in respect of that failure.

153 Non-punitive orders—Corrective advertising orders

S. 153
(Heading)
substituted by
No. 19/2009
s. 11(1).
S. 153
substituted by
No. 103/2004
s. 23.

- (1) A court may, on the application of the Director, make a corrective advertising order in relation to a person if the court is satisfied that the person has contravened or has been involved in a contravention of Part 2A, 5B or 6.

S. 153(1)
amended by
Nos 19/2009
s. 11(2),
72/2010 s. 33,
1/2010
s. 18A (as
amended by
No. 63/2010
s. 24).

* * * * *

S. 153(2)
repealed by
No. 19/2009
s. 11(3).

- (3) In this section, a *corrective advertising order*, in relation to a person, means an order that—
- (a) requires the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or
- (b) requires the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

S. 153(3)
amended by
No. 19/2009
s. 11(4).

- (4) This section does not limit a court's powers under any other provision of this Act.

153A Punitive orders—Adverse publicity orders

S. 153A
inserted by
No. 19/2009
s. 12.

- (1) If in any proceedings for an offence against this Act, a person is found guilty of an offence against this Act, the court, in addition to any other penalty it may fix or order it may make, may, on the application of the Director, make an adverse publicity order in relation to the person.
- (2) In this section, an *adverse publicity order*, in relation to a person, means an order that—
- (a) requires the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or
- (b) requires the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.
- (3) This section does not limit a court's powers under any other provision of this Act.

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;

s. 154

S. 154(1)(ab)
inserted by
No. 19/2009
s. 13(1).

(ab) an order prohibiting, either absolutely or subject to conditions, the relevant person from parting with possession of, or transferring or encumbering, any of that person's money or property;

S. 154(1)(b)
amended by
No. 19/2009
s. 13(2).

(b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or an associate of the relevant person from paying all or any of the money or parting with possession of, or transferring or encumbering, all or any of the property to the person on whose behalf the money is held or another person at the request of that person;

S. 154(1)(ba)
inserted by
No. 17/2007
s. 10.

- (ba) an order prohibiting, either absolutely or subject to conditions, an ADI at which the relevant person holds an account from transferring, or allowing any person to withdraw, money standing to the credit of the account;
- (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;

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- (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 subsection (4), an order under this section may be expressed to operate—
- (a) for a period specified in the order; or
 - (b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.
- (4) An order under this section made on an *ex parte* application must not operate for a period of more than 30 days.
- (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.

s. 154

S. 154(8)
amended by
No. 103/2004
s. 24,
substituted by
No. 72/2010
s. 34.

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

(a) proceedings for an offence against—

(i) Part 2A, 5B or 6; or

(ii) Chapter 4 of the Australian Consumer Law (Victoria);

(b) proceedings on an application for an injunction under—

(i) section 149, 149A, 150, 151A or 151B against a person alleged to have contravened Part 2A, 5B or 6; or

(ii) section 232 of the Australian Consumer Law (Victoria) in relation to—

(A) an alleged contravention of Chapter 2, 3 or 4 of that Law; or

(B) a term of a consumer contract in relation to which a declaration under section 250 of that Law has been made; or

(c) proceedings on an application for an order under—

(i) section 158; or

(ii) section 237, 238 or 239 of the Australian Consumer Law (Victoria) in relation to—

S. 154(8)(b)(i)
amended by
No. 1/2010
s. 18A (as
amended by
No. 63/2010
s. 24).

- (A) a contravention of Chapter 2, 3 or 4 of that Law; or
- (B) a term of a consumer contract in relation to which a declaration under section 250 of that Law has been made; or
- (d) proceedings for damages under—
 - (i) section 159; or
 - (ii) section 236 of the Australian Consumer Law (Victoria).

155 Defences

- (1) Subject to subsection (2), in a prosecution under this Act in relation to a contravention of a prescribed provision, it is a defence if the accused establishes—

S. 155(1) amended by Nos 103/2004 s. 25(1), 68/2009 s. 97(Sch. item 56.6(a)).

- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake of fact, including a mistake of fact caused by a reasonable reliance on information supplied by another person; or

S. 155(1)(a) substituted by No. 30/2003 s. 60(a).

* * * * *

S. 155(1)(b) repealed by No. 30/2003 s. 60(b).

- (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 control of the accused; and

S. 155(1)(c)(i) amended by No. 68/2009 s. 97(Sch. item 56.6(b)).

Fair Trading Act 1999
No. 16 of 1999
Part 11—Enforcement and Remedies

s. 155

- S. 155(1)(c)(ii)
amended by
No. 68/2009
s. 97(Sch.
item 56.6(a)).
- (ii) the accused took reasonable precautions and exercised due diligence to avoid the contravention.
- S. 155(2)
amended by
No. 63/2010
s. 69.
- (2) In subsection (1)(a) and (c), *another person* does not include a person who was—
- S. 155(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 56.7(a)).
- (a) an employee or an agent of the accused; or
- S. 155(2)(b)
amended by
Nos 68/2009
s. 97(Sch.
item 56.7),
36/2011 s. 17.
- (b) in the case of an accused being a body corporate, an officer, employee or agent of the accused—
- at the time when the contravention occurred.
- S. 155(3)
amended by
No. 68/2009
s. 97(Sch.
item 56.8).
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the accused is not, without leave of the court, entitled to rely on that defence unless the accused has, not later than 14 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted, a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the possession of the accused.
- S. 155(4)
amended by
Nos 103/2004
s. 25(2)(a),
68/2009
s. 97(Sch.
item 56.9),
72/2010
s. 35(a).
- (4) In a proceeding under this Act in relation to a contravention of a prescribed provision committed by the publication of an advertisement, it is a defence if the accused establishes that—

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- (a) the accused is a person whose business is to publish or arrange for the publication of advertisements; and
- (b) that the accused received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a prescribed provision.
- (5) In this section *prescribed provision* means a provision of this Act other than section 97, Part 8 or Part 10.
- S. 155(4)(a) amended by No. 68/2009 s. 97(Sch. item 56.9).
- S. 155(4)(b) amended by Nos 103/2004 s. 25(2)(b), 68/2009 s. 97(Sch. item 56.9).
- S. 155(5) inserted by No. 103/2004 s. 25(3), amended by Nos 2/2008 s. 7, 72/2010 s. 35(b).

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.

- (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.

S. 157
amended by
Nos 17/2007
s. 11, 19/2009
s. 14,
substituted by
No. 72/2010
s. 36.

157 Findings in proceedings to be evidence

- (1) In a proceeding against a person under section 158 or 159 of this Act, a finding of fact by a court made in proceedings under section 149, 149A, 150, 151A, 151B, 151C, 153 or 153A in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of this Act (other than the Australian Consumer Law (Victoria)) is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.
- (2) In a proceeding against a person under section 236, 237, 238 or 239 of the Australian Consumer Law (Victoria), a finding of fact by a court made in proceedings under section 228, 232, 233, 234, 237, 246, 247 or 248 or any provision of Chapter 4 of that Law in which that person has been found to have contravened, or to have been involved in a contravention of, the Australian Consumer Law (Victoria) is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

158 Orders against persons found to have contravened this Act

S. 158(1)
substituted by
No. 30/2003
s. 61(1),
amended by
No. 91/2005
s. 7(a).

- (1) In any proceedings for an offence against, or a contravention of, this Act, the court may make any order it considers fair if the court finds that—

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- (a) the person against whom the proceedings were brought (*the accused*) has contravened a provision of this Act; and
- (b) another person (*the injured person*) has suffered or may suffer loss or damage as a result of the contravention of this Act.
- (2) Without limiting subsection (1), the orders that may be made under this section include—
- (a) an order that the whole or any part of a contract between the accused and the injured person which is affected by the contravention or any agreement collateral to such a contract is void on and from the time specified in the order; or
- (b) an order that the contract or agreement is varied in the manner specified in the order and may specify in the order that the variation takes effect from the time specified in the order; or
- (c) an order that all or any of the provisions in the contract are not to be enforced; or
- (d) an order that the accused—
- (i) refund to the injured person money paid by that person under the contract or agreement; or
- (ii) return to the injured person property transferred by the injured person under the contract or agreement; or
- (e) an order that the accused pay the amount of any loss or damage suffered by the injured person as a result of the breach to the injured person; or

S. 158(1)(a)
amended by
Nos 68/2009
s. 97(Sch.
item 56.10),
72/2010 s. 37.

S. 158(2)
amended by
No. 91/2005
s. 7(b).

S. 158(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 56.11).

S. 158(2)(d)
amended by
No. 68/2009
s. 97(Sch.
item 56.11).

S. 158(2)(e)
amended by
No. 68/2009
s. 97(Sch.
item 56.11).

Fair Trading Act 1999
No. 16 of 1999
Part 11—Enforcement and Remedies

s. 158

S. 158(2)(f)
amended by
No. 68/2009
s. 97(Sch.
item 56.11).

- (f) an order that the accused repair or provide parts for goods provided under the contract or agreement to the injured person; or

S. 158(2)(g)
amended by
Nos 30/2003
s. 61(2)(a),
17/2007
s. 12(a),
68/2009
s. 97(Sch.
item 56.11).

- (g) an order that the accused supply services required to be supplied under the contract or agreement to the injured person; or

S. 158(2)(h)
repealed by
No. 30/2003
s. 61(2)(b),
new
s. 158(2)(h)
inserted by
No. 17/2007
s. 12(b),
amended by
No. 68/2009
s. 97(Sch.
item 56.11).

- (h) an order declaring that the accused has contravened a provision of this Act or the regulations.

S. 158(3)
amended by
No. 68/2009
s. 97(Sch.
item 56.12).

- (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
- (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 an accused under subsection (1).

S. 158(4)
inserted by
No. 30/2003
s. 61(3).

- (4) The court may also make an order under this section against a person involved in a contravention of a provision of this Act.

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 who contravened the provision or was involved in the contravention.

S. 159(1)
amended by
No. 103/2004
s. 26.

(1A) Except in accordance with section 107(3), a person may not recover in the Tribunal an amount for any personal injury suffered.

S. 159(1A)
inserted by
No. 30/2003
s. 62.

(2) A proceeding under this section may be brought before the Tribunal or in any court of competent jurisdiction.

(3) A proceeding under subsection (1) must not be commenced more than 6 years after the date on which the cause of action accrued.

Note

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

Note to
s. 159(3)
inserted by
No. 60/2003
s. 20.

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) \$10 000; or

S. 160(1)(a)
amended by
No. 19/2009
s. 15.

(b) if a greater amount is prescribed, that prescribed amount.

s. 160A

- (2) An order under this section may be enforced as if it were an order made by the court in its civil jurisdiction.

Pt 11 Div. 3
(Heading and
ss 160A–
160H)
inserted by
No. 30/2003
s. 63.

Division 3—Infringement notices

S. 160A
inserted by
No. 30/2003
s. 63.

160A Power to serve a notice

S. 160A(1)
amended by
No. 72/2010
s. 38.

- (1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed a prescribed offence against this Act (including an offence against a provision of the Australian Consumer Law (Victoria)) or the regulations.

S. 160A(1A)
inserted by
No. 32/2006
s. 94(Sch.
item 19(1)).

- (1A) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that offence is the prescribed infringement penalty in respect of that offence.

- (2) In this Division *authorised officer* means—
- (a) an inspector;
 - (b) a member of the police force;
 - (c) a person authorised in writing by the Director.

S. 160A(3)
repealed by
No. 32/2006
s. 94(Sch.
item 19(3)).

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S. 160B
inserted by
No. 30/2003
s. 63,
substituted by
No. 32/2006
s. 94(Sch.
item 19(2)),
repealed by
No. 72/2010
s. 39.

* * * * *

Ss 160C–
160H
inserted by
No. 30/2003
s. 63,
repealed by
No. 32/2006
s. 94(Sch.
item 19(3)).

Division 4—Safety and information requirements

Pt 11 Div. 4
(Heading and
new ss 160B–
160D)
inserted by
No. 72/2010
s. 40.

160B Interim bans, recall notices and safety warning notices

New s. 160B
inserted by
No. 72/2010
s. 40.

- (1) The Director may, in respect of goods or services of a particular kind, recommend to the Minister that—
- (a) an interim ban be made under section 109 of the Australian Consumer Law (Victoria);
 - (b) a recall notice be issued under section 122 of the Australian Consumer Law (Victoria);
 - (c) a safety warning notice be issued under section 129 of the Australian Consumer Law (Victoria).

s. 160C

- (2) The Minister must publish in the Government Gazette a copy of any notice that the Minister publishes on the internet under section 109, 111(2), 113, 122, 129 or 130 of the Australian Consumer Law (Victoria).

New s. 160C
inserted by
No. 72/2010
s. 40.

160C Notice of ban or notice

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

New s. 160D
inserted by
No. 72/2010
s. 40.

160D Review of ban order or compulsory recall notice

- (1) A person whose interests are affected by a decision to make an interim ban or a recall notice may apply to 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 interim ban is imposed or the recall notice is issued under the Australian Consumer Law (Victoria); or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is

informed under section 46(5) of that Act that a statement of reasons will not be given.

**Division 5—Enforcement of Australian Consumer Law
(Victoria)**

Pt 11 Div. 5
(Heading and
new ss 160E–
160H)
inserted by
No. 72/2010
s. 40.

160E References to courts and the Tribunal

New s. 160E
inserted by
No. 72/2010
s. 40.

- (1) Subject to subsections (2), (3) and (4) and section 160F and 160G, in the Australian Consumer Law (Victoria), *court* means—
 - (a) the Supreme Court;
 - (b) the County Court;
 - (c) the Magistrates' Court;
 - (d) the Tribunal.
- (2) In sections 218, 224, 246 and 247 of the Australian Consumer Law (Victoria), *court* does not include the Tribunal.
- (3) In respect of section 232 of the Australian Consumer Law (Victoria)—
 - (a) the Tribunal may not issue an order under that section, except for the purposes of subsection (3);
 - (b) only the Supreme Court may issue an order of the kind described in subsection (5).
- (4) In section 250 of the Australian Consumer Law (Victoria), *court* does not include the Magistrates' Court.

160F Jurisdiction of courts and the Tribunal

Subject to section 160E, the Tribunal or any court of competent jurisdiction may hear and determine a cause of action arising under any provision of the Australian Consumer Law (Victoria).

New s. 160F
inserted by
No. 72/2010
s. 40,
substituted by
No. 36/2011
s. 18.

s. 160G

S. 160G
(Heading)
amended by
No. 29/2011
s. 3(Sch. 1
item 36).
New s. 160G
inserted by
No. 72/2010
s. 40.

160G Jurisdictional limit of Magistrates' Court not to apply to pecuniary penalties under Australian Consumer Law (Victoria)

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

New s. 160H
inserted by
No. 72/2010
s. 40.

160H Orders against persons found to have contravened Australian Consumer Law (Victoria)

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

PART 12—MISCELLANEOUS

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S. 161
repealed by
No. 72/2010
s. 41.

**161A Application of Australian Consumer Law (Victoria)
in respect of bills and receipts under Legal
Profession Act 2004**

S. 161A
inserted by
No. 30/2003
s. 64,
amended by
No. 18/2005
s. 18(Sch. 1
item 42),
substituted by
No. 72/2010
s. 42.

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

* * * * *

Ss 162AA,
162AB
inserted by
No. 63/2010
s. 70,
repealed by
No. 63/2010
s. 71.

* * * * *

S. 162
repealed by
No. 72/2010
s. 43.

162A Public warning statements

S. 162A
inserted by
No. 30/2003
s. 65.

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

- (a) goods that are unsatisfactory and the persons
who supply those goods;
- (b) services supplied in an unsatisfactory manner
and persons who supply those services;
- (c) unfair business practices and persons who
engage in those practices;

s. 163A

- (d) any other matter that adversely affects or may adversely affect the interests of persons in connection with the acquisition by them of goods or services from suppliers.

S. 163 substituted by No. 30/2003 s. 66, amended by Nos 17/2007 s. 13, 2/2008 s. 8, 11/2010 s. 49, repealed by No. 72/2010 s. 43.

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S. 163A inserted by No. 2/2008 s. 9.

163A Complaints etc. are privileged

If a person in good faith—

- (a) makes a complaint to the Director under section 103; or
- (b) produces or gives a document or any information or evidence to the Director, an inspector or the Tribunal in relation to a matter that constitutes or may constitute a contravention of this Act or another Consumer Act—

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

S. 163B inserted by No. 72/2010 s. 44.

163B Disapplication of certain provisions to Australian Consumer Law (Victoria)

Sections 145, 146, 149, 149A, 151A, 153, 153A, 155, 156, 158 and 159 do not apply in respect of the Australian Consumer Law (Victoria).

164 Supreme Court—limitation of jurisdiction

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

S. 164 amended by No. 30/2003 s. 67 (ILA s. 39B(1)).

(2) It is the intention of section 112A to alter or vary section 85 of the **Constitution Act 1975**.

S. 164(2) inserted by No. 30/2003 s. 67.

165 Regulations

(1) The Governor in Council may make regulations for or with respect to—

(aa) prescribing for the purposes of section 32N the form of and the particulars to be included in a contractual term or a class of contractual term referred to in that section;

S. 165(1)(aa) inserted by No. 30/2003 s. 68, amended by No. 106/2003 s. 17(1).

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S. 165(1)(ab) inserted by No. 30/2003 s. 68, repealed by No. 21/2010 s. 16.

(a) prescribing calling hours with respect to unsolicited consumer agreements under section 73 of the Australian Consumer Law (Victoria);

S. 165(1)(a) substituted by No. 72/2010 s. 45(1)(a).

* * * * *

S. 165(1)(b) repealed by No. 72/2010 s. 45(1)(b).

(c) prescribing codes of practice in accordance with Part 6;

s. 165

S. 165(1)(ca)
inserted by
No. 106/2003
s. 17(2),
repealed by
No. 72/2010
s. 45(1)(b).

* * * * *

(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;

- (f) may impose a penalty, not exceeding 20 penalty units, for a contravention of the regulations.
- (3) Regulations made under section 165(1)(a) may alter the operation of section 73 of the Australian Consumer Law (Victoria).

S. 165(3)
inserted by
No. 72/2010
s. 45(2).

Fair Trading Act 1999
No. 16 of 1999
Part 13—Savings and Transitional

s. 170

PART 13—SAVINGS AND TRANSITIONAL

Pt 13
(Heading)
amended by
No. 1/2010
s. 105(1).

Ss 166–169
repealed by
No. 1/2010
s. 95.

* * * * *

170 Savings and transitional provisions

Schedule 3 has effect.

SCHEDULES

SCHEDULE 1

CONSUMER ACTS

Associations Incorporation Act 1981

Business Names Act 1962

Consumer Credit (Victoria) Act 1995

Conveyancers Act 2006

Co-operatives Act 1996

Credit Act 1984

Credit (Administration) Act 1984

Domestic Building Contracts Act 1995

Estate Agents Act 1980

Fair Trading Act 1999

Fundraising Act 1998

Funerals Act 2006

Goods Act 1958

Motor Car Traders Act 1986

Owners Corporations Act 2006

Partnership Act 1958

Residential Tenancies Act 1997

Retirement Villages Act 1986

Sale of Land Act 1962

Second-Hand Dealers and Pawnbrokers Act 1989

Sex Work Act 1994

Travel Agents Act 1986

Sch. 1
amended by
No. 35/2000
s. 40(5)(a)(b),
substituted by
No. 103/2004
s. 27,
amended by
Nos 77/2006
s. 90, 69/2006
s. 224(Sch. 3
item 6.2),
75/2006
s. 192(Sch. 2
item 3.3),
2/2009 s. 22,
19/2009
s. 17(2),
1/2010
s. 105(2)-(4),
63/2010
s. 81(Sch.
items 6.4, 6.5),
63/2010
s. 9(3).

Sch. 1A

Sch. 1A
inserted by
No. 63/2010
s. 8.

SCHEDULE 1A

Section 93AR

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

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

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

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

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

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

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

* * * * *

Sch. 2
substituted by
Nos 30/2003
s. 69, 106/2003
s. 19,
amended by
No. 103/2004
s. 28,
repealed by
No. 72/2010
s. 46.

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 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.

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.

6 Superseded references to Director of Fair Trading and Office of Fair Trading and Business Affairs

On the commencement of section 39 of the Business Registration Acts (Amendment) **Act 2000**, 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 Director of Fair Trading is deemed to be a reference to the Director of Consumer and Business Affairs; and

Sch. 3 cl. 6
inserted by
No. 35/2000
s. 41.

Sch. 3

- (b) a reference to the Office of Fair Trading or the Office of Fair Trading and Business Affairs is deemed to be a reference to Consumer and Business Affairs Victoria in the Department of Justice.

Sch. 3 cl. 7
inserted by
No. 35/2000
s. 41.

7 Actions commenced by Director

- (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 Fair Trading and existing immediately before the commencement of section 39 of the **Business Registration Acts (Amendment) Act 2000** may be continued and completed on and after that commencement by or against or in relation to the Director of Consumer and Business Affairs.
- (2) If, immediately before the commencement of section 39 of the **Business Registration Acts (Amendment) Act 2000**, proceedings to which the Director of Fair Trading was a party were pending or existing in any court or tribunal, then, on and after that commencement, the Director of Consumer and Business Affairs is substituted for the Director of Fair Trading as a party to the proceedings and has the same rights and obligations in the proceedings as the Director of Fair Trading had.

Sch. 3 cl. 8
inserted by
No. 30/2003
s. 70.

8 Superseded references

On the commencement of section 70 of the **Fair Trading (Amendment) Act 2003**, 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 Director of Fair Trading or the Director of Consumer and Business Affairs is deemed to be a reference to the Director of Consumer Affairs Victoria; and

(b) a reference to the Office of Fair Trading, the Office of Fair Trading and Business Affairs or Consumer and Business Affairs Victoria is deemed to be a reference to Consumer Affairs Victoria in the Department of Justice.

9 Actions commenced by Director

Sch. 3 cl. 9
inserted by
No. 30/2003
s. 70.

- (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 and Business Affairs or the Director of Fair Trading and existing immediately before the commencement of section 70 of the **Fair Trading (Amendment) Act 2003**, may be continued and completed on and after that commencement by or against or in relation to the Director of Consumer Affairs Victoria.
- (2) If, immediately before the commencement of section 70 of the **Fair Trading (Amendment) Act 2003**, proceedings to which the Director of Consumer and Business Affairs was a party were pending or existing in any court or tribunal, then, on and after that commencement, the Director of Consumer Affairs Victoria is substituted for the Director of Consumer and Business Affairs as a party to the proceedings and has the same rights and obligations in the proceedings as had the Director of Consumer and Business Affairs.

10 Validation of ban orders

Sch. 3 cl. 10
inserted by
No. 30/2003
s. 70.

- (1) An interim ban order or a permanent ban order that was made before the commencement of section 70 of the **Fair Trading (Amendment) Act 2003** is valid and effective, and is deemed always to have been valid and effective, despite any failure to comply with the requirements of section 32 of the **Interpretation of Legislation Act 1984** or section 40(2)(b) of the **Fair Trading Act 1999**.

-
- (2) An interim order under section 57C of the **Consumer Affairs Act 1972** (as in force before its repeal) is deemed to have been and always to have been valid and effective, despite any failure to comply with the requirements of section 32 of the **Interpretation of Legislation Act 1984** or section 57C(1)(b) of the **Consumer Affairs Act 1972**.
- (3) An order under section 57D of the **Consumer Affairs Act 1972** (as in force before its repeal) is deemed to have been and always to have been valid and effective, despite any failure to comply with the requirements of section 32 of the **Interpretation of Legislation Act 1984** or section 57D(1)(b) of the **Consumer Affairs Act 1972**.

Sch. 3 cl. 11
inserted by
No. 30/2003
s. 71.

11 Continuation of existing small claims

- (1) Despite the repeal of the **Small Claims Act 1973** by section 72 of the **Fair Trading (Amendment) Act 2003**, the **Small Claims Act 1973** as in force immediately before its repeal continues to apply to any proceeding under that Act existing immediately before the commencement of that section in respect of a small claim.
- (2) Until 31 July 2004, any application made to the Tribunal using an application form that refers to the **Small Claims Act 1973** is deemed to be made on an application form that meets the requirements for an application to the Tribunal in respect of a small claim under Part 9 of the **Fair Trading Act 1999**.

12 Continuation of existing hire-purchase agreements

- (1) Despite the repeal of the **Hire-Purchase Act 1959**, that Act continues to apply to any hire-purchase agreement and any agreement made in connection with a hire-purchase agreement entered into and in operation immediately before 1 April 1998 and existing before the commencement day.
- (2) Despite the repeal of the **Hire-Purchase Act 1959**, sections 1(4B), 1(4C) and 1(6) of that Act continue to apply in respect of agreements to which they applied immediately before the commencement day as if that Act had not been repealed.
- (3) In this clause *commencement day* means the date of commencement of section 54 of the **Fair Trading and Consumer Acts Further Amendment Act 2008**.

Sch. 3 cl. 12
inserted by
No. 2/2008
s. 10.

13 Transitional—references to the Frustrated Contracts Act 1959

On and from the commencement of section 53 of the **Fair Trading and Consumer Acts Further Amendment Act 2008**, in any Act (other than this Act) or in any instrument made under any Act or in any other document of any kind a reference to the **Frustrated Contracts Act 1959** is deemed to be a reference to Part 2C so far as it relates to any period after that commencement, unless the context otherwise requires.

Sch. 3 cl. 13
inserted by
No. 2/2008
s. 11.

14 Transitional provisions—Fair Trading and Other Acts Amendment Act 2009

- (1) Despite the amendment of this Act by section 4 of the **Fair Trading and Other Acts Amendment Act 2009**, Part 2B does not apply to contractual terms contained in a contract to which the **Consumer Credit (Victoria) Act 1995** applies

Sch. 3 cl. 14
inserted by
No. 19/2009
s. 16.

(other than a contract in a prescribed class of contract) if the contract was entered into before the commencement of that section 4 unless a term of that contract is varied on or after that commencement, in which case Part 2B applies to that term on and from the time the variation takes effect.

- (2) Section 32ZDA applies only to a proceeding that commences on or after the commencement of section 10 of the **Fair Trading and Other Acts Amendment Act 2009**.
- (3) The Act as in force immediately before the commencement of sections 11 and 12 of the **Fair Trading and Other Acts Amendment Act 2009** continues to apply to any order made under section 153 before that commencement.
- (4) The amendments made to section 154 by section 13 of the **Fair Trading and Other Acts Amendment Act 2009** apply only to prescribed proceedings against a person that commence on or after the commencement of that section 13.
- (5) The amendment to section 160(1)(a) made by section 15 of the **Fair Trading and Other Acts Amendment Act 2009** applies only in relation to an offence committed on or after the commencement of that section 15.
- (6) For the purposes of subsection (5), if an offence is alleged to have been committed between 2 dates and section 15 of the **Fair Trading and Other Acts Amendment Act 2009** commences on a date between those 2 dates, the offence is taken to have been committed before the commencement of that section.

15 Transitional—Statute Law Amendment (Charter of Human Rights and Responsibilities) Act 2009

Sch. 3 cl. 15
inserted by
No. 45/2009
s. 9.

- (1) Despite the commencement of section 7 of the **Statute Law Amendment (Charter of Human Rights and Responsibilities) Act 2009**, section 4(2) as in force immediately before that commencement continues to apply to proceedings for an offence that were commenced under section 4 but not completed before that commencement.
- (2) Despite the commencement of section 8 of the **Statute Law Amendment (Charter of Human Rights and Responsibilities) Act 2009**, section 14(2) as in force immediately before that commencement continues to apply to proceedings commenced under section 14 but not completed before that commencement.

16 Transitional—Consumer Affairs Legislation Amendment Act 2010

Sch. 3 cl. 16
inserted by
No. 1/2010
s. 19.

- (1) As soon as practicable after section 18 of the **Consumer Affairs Legislation Amendment Act 2010** comes into operation, the Director must take possession, and have custody, control and use of the register within the meaning of section 7 of the **Private Agents Act 1966**.
- (2) As soon as practicable after section 18 of the **Consumer Affairs Legislation Amendment Act 2010** comes into operation, the Director must send a notice to every person who, immediately before that date, held a licence in respect of any category of private agent under the **Private Agents Act 1966**, requiring that person to give or send their licence to the Director.

Sch. 3 cl. 16(1)
amended by
No. 63/2010
s. 72(1).

Sch. 3 cl. 16(2)
amended by
No. 63/2010
s. 72(1).

- (3) A person must within 14 days of receipt of the notice under subsection (2) give or send their licence to the Director.

Penalty: 30 penalty units.

Sch. 3 cl. 17
inserted by
No. 1/2010
s. 19.

17 Transitional—Repeal of Trade Measurement Act 1995

- (1) On and from the commencement of section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, the Director may bring proceedings for an offence under the **Trade Measurement Act 1995** if the alleged offence was committed before the commencement of that section.
- (2) On and from the commencement of section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, any proceeding commenced by the Director, Trade Measurement Victoria in relation to a contravention of the **Trade Measurement Act 1995** before that date, may be continued by the Director of Consumer Affairs Victoria.
- (3) Despite section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, Division 3 of Part 6 of the **Trade Measurement Act 1995**, as in force immediately before its repeal, continues to apply in relation to any matter for which a notice has been served under section 57 of that Act before 1 July 2010.
- (4) Despite section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, Division 4 of Part 6 of the **Trade Measurement Act 1995**, as in force immediately before its repeal, continues to apply in relation to any person who is the subject of disciplinary action taken by the licensing authority under section 58 of that Act.
- (5) Any reference to the licensing authority in Divisions 3 and 4 of Part 6 of the **Trade Measurement Act 1995**, as in force immediately

before the repeal of that Act and that continues to apply by virtue of this clause, is taken to be a reference to the Director of Consumer Affairs Victoria and any disciplinary action commenced by the Director, Trade Measurement Victoria may be continued by the Director of Consumer Affairs Victoria.

- (6) On and from the commencement of section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, any fees that were due and payable under the **Trade Measurement Act 1995** or the regulations on that date, continue to be due and payable and, despite anything to the contrary in that Act or the regulations immediately before its repeal, may be collected by the Director of Consumer Affairs Victoria.
- (7) Despite the repeal of the **Trade Measurement Act 1995**, the powers of an inspector to investigate an offence against that Act under Part 7 of that Act—
- (a) continue to apply where the alleged offence occurred before 1 July 2010; and
 - (b) despite anything to the contrary in that Act as in force immediately before its repeal, may be exercised by an inspector appointed by the Director of Consumer Affairs Victoria for that purpose in accordance with section 114 of this Act.
- (8) On and from the commencement of section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, any item seized by an inspector under section 61 or 62 of the **Trade Measurement Act 1995** as in force immediately before its repeal and held by the administering authority under that Act—

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- (a) must be transferred to the custody of the Director of Consumer Affairs Victoria; and
 - (b) may be returnable to the person from whom it was seized on application, within the time limits specified in section 64 of that Act, to the Director of Consumer Affairs Victoria.
- (9) In this clause, *regulations* includes regulations made under either the **Trade Measurement Act 1995** or the **Trade Measurement (Administration) Act 1995**, or both.

Sch. 3 cl. 18
inserted by
No. 1/2010
s. 19.

18 Transitional—Repeal of Trade Measurement (Administration) Act 1995

- (1) On and from the commencement of section 84 of the **Consumer Affairs Legislation Amendment Act 2010**, the Director may bring proceedings for an offence under the **Trade Measurement (Administration) Act 1995** or the regulations if the alleged offence was committed before the commencement of that section.
- (2) On and from the commencement of section 84 of the **Consumer Affairs Legislation Amendment Act 2010**, any proceeding commenced by the Director in relation to a contravention of the **Trade Measurement (Administration) Act 1995** or the regulations before that date, may be continued by the Director.
- (3) On and from the commencement of section 84 of the **Consumer Affairs Legislation Amendment Act 2010**, any fees that were due and payable under the **Trade Measurement (Administration) Act 1995** or any regulations made under that Act on that date, continue to be due and payable and, despite anything to the contrary in that Act or the regulations immediately before its repeal, are to be paid to the Director of Consumer Affairs Victoria.

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- (4) Despite the repeal of the **Trade Measurement (Administration) Act 1995**, for the purposes of exercising the transitional powers conferred by clause 17 and this clause of this Schedule, the Director of Consumer Affairs Victoria may exercise the power of the Director, Trade Measurement Victoria to appoint a person as an inspector under section 9(1)(a) of that Act.
- (5) On and from the commencement of section 84 of the **Consumer Affairs Legislation Amendment Act 2010**, a certification fee that would be payable on or after 1 July 2010 under section 10 of the **Trade Measurement (Administration) Act 1995** or the regulations as in force immediately before its repeal, that relates to a certification carried out before that date—
- (a) continues to be due and payable despite the repeal of the **Trade Measurement (Administration) Act 1995**; and
 - (b) despite anything to the contrary in that Act, is to be paid to the Director of Consumer Affairs Victoria.
- (6) Despite the repeal of the **Trade Measurement (Administration) Act 1995**, the power of an inspector to apply for a search warrant under section 16 of that Act as in force immediately before its repeal—
- (a) continues to apply if the application relates to premises which may contain evidence of an alleged offence that occurred before 1 July 2010; and
 - (b) despite anything to the contrary in the **Trade Measurement (Administration) Act 1995** as in force immediately before its repeal, may be exercised within the time limits specified in section 24 of that Act by an

inspector appointed by the Director of Consumer Affairs Victoria for that purpose in accordance with section 114 of this Act.

- (7) Despite the repeal of the **Trade Measurement (Administration) Act 1995**, section 18 of that Act as in force immediately before its repeal—
- (a) continues to apply in relation to an offence committed prior to 1 July 2010; and
 - (b) any reference in that section to an authorised officer is taken to be a reference to a person authorised by the Director of Consumer Affairs Victoria for the purpose of this clause.
- (8) In this clause, *regulations* includes regulations made under either the **Trade Measurement Act 1995** or the **Trade Measurement (Administration) Act 1995**, or both.

Sch. 3 cl. 19
inserted by
No. 1/2010
s. 19.

19 Transitional—Transfer of information for the purpose of the National Measurement Act 1960 of the Commonwealth

- (1) On and from the commencement of section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, the following information must be transferred to the custody of the Director of Consumer Affairs Victoria—
- (a) the register of the prescribed particulars relating to licences kept under section 47 of the **Trade Measurement Act 1995**;
 - (b) information obtained by the Director, Trade Measurement Victoria as the administering authority or licensing authority.

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- (2) On and from the commencement of section 83 of the **Consumer Affairs Legislation Amendment Act 2010**, the Director of Consumer Affairs Victoria may provide any information transferred to it under this clause to the National Measurement Institute for the purpose of the administration and enforcement of the National Measurement Act 1960 of the Commonwealth.

19A Transitional provision—repeal of Part 2B

Sch. 3 cl. 19A
inserted by
No. 72/2010
s. 47.

- (1) Part 2-3 of the Australian Consumer Law (Victoria) applies to any new contract entered into on or after the commencement day.
- (2) Subject to subclause (3), Part 2B as in force immediately before its repeal continues to apply to any contract entered into before the commencement day.
- (3) If a contract entered into before the commencement day—
- (a) is renewed on or after that date, Part 2-3 of the Australian Consumer Law (Victoria) applies to the contract as renewed, on and from the day (the **renewal day**) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or
 - (b) if a term of the contract is varied on or after the commencement day, and paragraph (a) has not already applied in relation to the contract, Part 2-3 of the Australian Consumer Law (Victoria) applies to the term as varied, on and from the day (the **variation day**) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.

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- (4) If subsection (3)(b) applies to a term of the contract, sections 23(2) and 27(1) of the Australian Consumer Law (Victoria) apply to the contract.
- (5) In this section, *commencement day* means the day on which section 17 of the **Fair Trading Amendment (Australian Consumer Law) Act 2010** comes into operation.

Sch. 3 cl. 19B
inserted by
No. 72/2010
s. 47.

19B Transitional—jurisdiction of the Tribunal

Despite the amendment of this Act by a provision of the **Fair Trading Amendment (Australian Consumer Law) Act 2010**, the Tribunal continues to have jurisdiction on and from the date of the commencement of that provision in relation to any matter or conduct that took place before that date under this Act as in force at the time the matter or conduct occurred.

Sch. 3 cl. 19C
inserted by
No. 72/2010
s. 47.

19C Savings—Fair Trading (Information Standard) (Australian Builders Plate Standard) Regulations 2009

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

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

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Sch. 3 cl. 19D
inserted by
No. 72/2010
s. 47,
repealed by
No. 16/1999
Sch. 3
cl. 19D(4).

20 Transitional provision—Fair Trading Amendment (Unfair Contract Terms) Act 2010

Sch. 3 cl. 20
inserted by
No. 21/2010
s. 15.

- (1) In this section, *commencement day* means the day on which the **Fair Trading Amendment (Unfair Contract Terms) Act 2010** comes into operation.
- (2) Part 2B as amended by the **Fair Trading Amendment (Unfair Contract Terms) Act 2010** applies to any contract entered into on or after the commencement day.
- (3) Subject to subsection (4), Part 2B as in force before the commencement day continues to apply to any contract entered into before the commencement day.
- (4) If a contract entered into before the commencement day—
 - (a) is renewed on or after the commencement day, Part 2B as amended by the **Fair Trading Amendment (Unfair Contract Terms) Act 2010** applies to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or
 - (b) if a term of the contract is varied on or after the commencement day, and paragraph (a) has not already applied in relation to the contract, Part 2B, as amended by the **Fair Trading Amendment (Unfair Contract Terms) Act 2010**, applies to the term as varied, on and from the day (the *variation day*) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.

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(5) If subsection (4)(b) applies to a term of the contract, sections 32Y(3) and 32ZDA apply to the contract.

ENDNOTES

1. General Information

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 "A Bill 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

The **Fair Trading Act 1999** was assented to on 18 May 1999 and came into operation as follows:

Part 1 (sections 1–6) on 18 May 1999: section 2(1); rest of Act on 1 September 1999: Government Gazette 19 August 1999 page 1901.

Fair Trading Act 1999
No. 16 of 1999

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Fair Trading Act 1999** by Acts and subordinate instruments.

Fair Trading Act 1999, No. 16/1999

Assent Date: 18.5.99
Commencement Date: Sch. 3 cl. 19D(4) on 1.1.12: Sch. 3 cl. 19D(4)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: Ss 39–41 on 19.6.00: Government Gazette 15.6.00 p. 1248
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 42) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading (Unconscionable Conduct) Act 2001, No. 86/2001

Assent Date: 11.12.01
Commencement Date: 12.12.01: s. 2
Current State: All of Act in operation

Fair Trading (Amendment) Act 2003, No. 30/2003 (as amended by No. 106/2003)

Assent Date: 27.5.03
Commencement Date: Ss 3(1)(3), 4–10, 13–25, 39–44, 53, 60, 61, 65, 70 on 28.5.03: s. 2(1); ss 3(2), 12, 26–38, 45–52, 54–59, 62–64, 66–69, 71 on 9.10.03: Government Gazette 9.10.03 p. 2589; s. 11 on 1.6.04: Government Gazette 6.5.04 p. 1068
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003, No. 60/2003

Assent Date: 16.6.03
Commencement Date: S. 20 on 21.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

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Fair Trading (Further Amendment) Act 2003, No. 106/2003

Assent Date: 9.12.03
Commencement Date: Ss 4–6, 16–18 on 10.12.03: s. 2(1); ss 3, 7–15, 19 on 30.8.04: Government Gazette 13.5.04 p. 1218
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading (Consumer Contracts) Act 2004, No. 42/2004

Assent Date: 16.6.04
Commencement Date: S. 3 on 17.6.04: s. 2(1); ss 4, 5 on 30.8.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: Ss 3–28 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 74) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 42) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Motor Car Traders and Fair Trading Acts (Amendment) Act 2005, No. 91/2005

Assent Date: 29.11.05
Commencement Date: S. 7 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Veterans Act 2005, No. 98/2005

Assent Date: 7.12.05
Commencement Date: S. 88 on 21.8.06: Government Gazette 17.8.06 p. 1716
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 19) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

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Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 6) on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Conveyancers Act 2006, No. 75/2006

Assent Date: 10.10.06
Commencement Date: S. 192(Sch. 2 item 3) on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Funerals Act 2006, No. 77/2006

Assent Date: 10.10.06
Commencement Date: S. 90 on 1.11.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: Ss 64–68 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: Ss 3–13 on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: Ss 5–9 on 12.2.08: s. 2(1); ss 4, 11 on 1.7.08: Government Gazette 22.5.08 p. 1077; ss 3, 10 on 1.12.08: s. 2(4)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Consumer Credit (Victoria) and Other Acts Amendment 2008, No. 6/2008

Assent Date: 18.3.08
Commencement Date: S. 27 on 19.3.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 22) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

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Fundraising Appeals and Consumer Acts Amendment Act 2009, No. 2/2009

Assent Date: 10.2.09
Commencement Date: Ss 22, 26 on 11.2.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading and Other Acts Amendment Act 2009, No. 19/2009

Assent Date: 10.6.09
Commencement Date: Ss 3–17 on 11.6.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Statute Law Amendment (Charter of Human Rights and Responsibilities) Act 2009, No. 45/2009

Assent Date: 5.8.09
Commencement Date: Ss 7–9 on 6.8.09: s. 2
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 56) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010 (as amended by No. 63/2010)

Assent Date: 9.2.10
Commencement Date: S. 19 on 1.3.10: Government Gazette 25.2.10 p. 351; s. 105(2) on 1.7.10: s. 2(2); ss 95, 105(1)(3)(4) on 1.8.10: Government Gazette 22.7.10 p. 1628; ss 17, 18, 18A on 1.7.11: Special Gazette (No. 154) 24.5.11 p. 1
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Credit (Commonwealth Powers) Act 2010, No. 11/2010

Assent Date: 30.3.10
Commencement Date: S. 48 on 1.4.10: Special Gazette (No. 114) 31.3.10 p. 1; ss 43–47, 49 on 1.7.10: Government Gazette 24.6.10 p. 1273
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading Amendment (Unfair Contract Terms) Act 2010, No. 21/2010

Assent Date: 1.6.10
Commencement Date: Ss 4–16 on 1.7.10: Government Gazette 24.6.10 p. 1274
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

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No. 16 of 1999

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Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010
(as amended by No. 72/2010)

Assent Date: 28.9.10
Commencement Date: Ss 67–69, 72(1) on 1.11.10: Government Gazette 14.10.10 p. 2404; s. 81(Sch. item 6) on 1.11.10: s. 2(2); s. 70 on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1; ss 7–9, 71 on 1.7.11: Special Gazette (No. 154) 24.5.11 p. 1
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Residential Tenancies Amendment Act 2010, No. 67/2010

Assent Date: 28.9.10
Commencement Date: Ss 172, 173 on 1.9.11: Special Gazette (No. 265) 16.8.11 p. 1
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: Ss 4–47 on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 36) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

Consumer Acts Amendment Act 2011, No. 36/2011

Assent Date: 23.8.11
Commencement Date: Ss 15–18 on 24.8.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fair Trading Act 1999**

3. Explanatory Details

No entries at date of publication.