

# NORTHERN TERRITORY OF AUSTRALIA

## CONSUMER AFFAIRS AND FAIR TRADING ACT

As in force at 1 November 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 November 1996

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## CONSUMER AFFAIRS AND FAIR TRADING ACT

**An Act to provide for the appointment and functions of a Commissioner and Deputy Commissioners of Consumer Affairs, to constitute a Consumer Affairs Council, to make provision with respect to product safety and product information, to prohibit unfair practices in consumer transactions and promote the development of codes of practice for fair dealing in consumer transactions, to imply conditions and warranties in contracts for goods and services and enable recourse to manufacturers, to regulate door-to-door trading, credit reporting, credit providers and the provision and redemption of trading stamps, to provide a licensing system for motor vehicle dealers and make provision generally with respect to dealings in motor vehicles, to provide for the licensing of travel agents and the regulation of their operations, and for related purposes**

### **Part I                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Consumer Affairs and Fair Trading Act*.

#### **2                      Commencement**

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

#### **3                      Extent to which crown bound**

- (1) Subject to subsections (2) and (3), this Act binds the Crown not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly so permits, in all its other capacities.
- (2) The Crown, in any of its capacities, is not required to hold a licence under Part XI.
- (3) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

## 4 Interpretation

(1) In this Act, unless the contrary intention appears:

**acquire** includes:

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

**authorized officer** means a person who is, in accordance with section 18, an authorized officer for the purposes of all or any of Parts IV to XII.

**business** includes:

- (a) a business not carried on for profit; and
- (b) a trade or profession.

**code of practice** means a code of practice for the time being prescribed pursuant to section 227.

**Commissioner** means the Commissioner of Consumer Affairs appointed under section 6, and includes any person for the time being acting in, or performing the duties of, the office of Commissioner.

**consumer** has the meaning given by section 5.

**Council** means the Consumer Affairs Council established by section 13 of this Act.

**director**, in relation to a body corporate, includes any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position.

**document** includes any record of information, whether or not the information is available only after the record is subjected to electronic or other process.

**enactment** includes regulations made under an Act.

**goods** includes:

- (a) ships, aircraft and other vehicles;
- (b) animals, including fish;

- (c) minerals, trees and crops, whether on, under or attached to land or not; and
- (d) gas and electricity.

**officer**, in relation to a body corporate, has the same meaning as in the Companies (Northern Territory) Code.

**price** includes a charge of any description.

**product information standard** means a standard prescribed by regulations pursuant to section 38.

**product safety standard** means a standard prescribed by regulations pursuant to section 25.

**regulations** means regulations made under section 237.

**send** includes deliver.

**services** includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

- (a) a contract for or in relation to:
  - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods;
  - (ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
  - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance;
- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- (d) any contract for or in relation to the lending of moneys,

but does not include rights or benefits consisting in the supply of goods or the performance of work under a contract of service.

**supplier** means a person who, in the course of a business, supplies goods or services.

**supply** includes:

- (a) in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services – provide, grant or confer for valuable consideration.

**this Act** includes regulations under this Act.

**trade or commerce** includes any business or professional activity.

(2) In this Act, unless the contrary intention appears:

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in consequence of a supply of the goods;
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services;
- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both;
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and
- (e) a reference to the re-supply of goods acquired from a person includes a reference to:
  - (i) a supply of the goods to another person in an altered form or condition; and
  - (ii) a supply to another person of goods in which the first-mentioned goods have been incorporated.

(3) For the purposes of this Act:

- (a) the obtaining of credit by a person in connection with the acquisition of goods or services by the person is an acquisition by the person of services; and

- (b) any amount by which the price of goods or services is increased because credit was obtained is the price of the services represented by the obtaining of credit.

(4) In this Act:

- (a) a reference to conduct is a reference to the doing of any act, or the refusing to do any act, including an act that constitutes (or would but for the refusal constitute) making or giving effect to a provision of a contract or arrangement, arriving at or giving effect to a provision of an understanding, or requiring or entering into a covenant;
- (b) a reference to refusing to do an act includes a reference to:
  - (i) refraining (otherwise than inadvertently) from doing that act; or
  - (ii) making it known that that act will not be done; and
- (c) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

(5) In this Act:

- (a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and
- (b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

## 5 **Meaning of *consumer***

- (1) In this Act, a reference to a consumer is, subject to subsection (2), a reference to a person who acquires goods or services from a supplier.
- (2) In subsection (1), **goods** does not include goods which are acquired, or are held out as being acquired:
  - (a) for the purpose of re-supply; or
  - (b) for the purpose of using them up or transforming them, in the course of a business, in or in connection with a process of manufacture or production,

and in that subsection as it has effect for the purposes of Parts V and VI, the term also does not include goods which are acquired, or held out as being acquired, for the purpose of using them up or transforming them, in the course of a business, in or in connection with the repair or treatment of other goods or of fixtures on land.

## **Part II                      Consumer Affairs Commissioner and Council**

### **Division 1                Commissioner of Consumer Affairs**

#### **6                      Appointment of Commissioner**

The Minister shall appoint a person to be Commissioner of Consumer Affairs.

#### **7                      Functions of Commissioner**

- (1) The functions of the Commissioner are:
- (a) to promote the interests of consumers, and to assist consumers to a greater awareness in relation to their assessment and use of goods and services;
  - (b) without prejudice to the generality of paragraph (a), to promote the maintenance of fair trading practices and of product safety;
  - (c) to receive complaints from consumers concerning matters touching their interests as consumers, to investigate those complaints, and to take such action in respect thereof as seems proper to the Commissioner;
  - (d) to receive complaints of fraudulent, misleading, deceptive or unfair practices in relation to matters which affect, or are likely to affect, the interests of consumers or of traders, and to take such action as seems proper to the Commissioner;
  - (e) to advise and assist consumers who seek from the Commissioner information or guidance on matters affecting their interests as consumers;
  - (f) to collect, collate and disseminate information in respect of matters affecting the interests of consumers;
  - (g) to encourage and undertake the dissemination of information concerning consumer affairs (and in particular, the maintenance of fair trading practices and of product safety) to producers, manufacturers, traders and suppliers of goods or services;



- (h) to carry out consumer education programs;
- (j) to issue consumer guidelines to the public; and
- (k) to perform such other functions as are conferred on the Commissioner by or under this or any other Act.

(2) The Commissioner shall:

- (a) keep under critical examination, and from time to time report to the Minister on, the laws in force relating to the interests of consumers;
- (b) keep under review market-place trends and other matters affecting the interests of consumers and, where that appears desirable, make recommendations to the Minister with respect to responses thereto; and
- (c) report to the Minister on any matter that is referred to the Commissioner by the Minister as relating to the interests of consumers,

and, for those purposes, may conduct research and make investigations.

(3) The Commissioner shall give such assistance to the Council in carrying out its functions as the Council may require, and shall in particular:

- (a) arrange for investigations to be carried out on behalf of the Council;
- (b) arrange for the collection, collation and furnishing to the Council of data; and
- (c) make available to the Council and its members any information with respect to matters affecting the interests of consumers that comes into the Commissioner's possession.

(4) The Commissioner shall attend a meeting of the Council if requested to do so by the Chairman of the Council, and may if invited to do so participate in the meeting, but is not entitled to vote on any matter.

(5) Nothing in this section is to be construed as requiring the Commissioner, or any person under the Commissioner's direction or control, to give, or to hold him or herself out as ready or competent to give, advice to a consumer concerning the consumer's rights and liabilities in law in respect of any matter.

## **8 Power of Commissioner to obtain information**

- (1) The Commissioner may, for the purpose of, or in connection with, the performance of any function conferred on the Commissioner by or under this or any other Act, require any person to furnish the Commissioner with such information as the Commissioner requires or to answer any question put by the Commissioner.
- (2) The Commissioner may under subsection (1) require that information be given, or a question answered:
  - (a) orally, at a place and time specified by the Commissioner; or
  - (b) in writing, within a period specified by the Commissioner,and, in a case falling within paragraph (a), may further require that the information or question be furnished or answered on oath (the Commissioner being empowered for this purpose to administer an oath).
- (3) A person is not excused from furnishing any information or answering any question pursuant to a requirement under subsection (1) on the ground that the information or answer might tend to incriminate the person, or to make the person liable to a penalty, but information so furnished or an answer so given is not admissible against the person in any criminal proceedings other than proceedings for an offence against this Act.
- (4) A person who:
  - (a) fails to furnish information, or to answer a question, pursuant to a requirement under subsection (1); or
  - (b) pursuant to such a requirement, furnishes information or gives an answer which is false or misleading in any material particular,is (subject, in a case falling within paragraph (a), to subsection (5)) guilty of an offence.

Penalty: \$20,000 or imprisonment for 3 years.
- (5) A person is not guilty of an offence by reason of a failure mentioned in subsection (4)(a) unless, before the failure, the Commissioner warned the person that it is an offence not to comply with a requirement under subsection (1).

- (6) Where a person is found guilty of an offence falling within subsection (4)(a), the court may order that person to furnish the information or answer the question which was the subject of the offence.

## **9 Other powers of Commissioner**

- (1) The Commissioner may, with the approval of the Minister and on terms and conditions approved by the Public Service Commissioner, arrange with a department or statutory corporation, or a council within the meaning of the *Local Government Act*, for the use of the services of any staff, or the use of any facilities, of the department, corporation or council.
- (2) With the approval of the Minister, and on such terms and conditions as the Minister thinks fit, the Commissioner may, for a particular purpose and otherwise than under a contract of service, appoint and employ any person, body or organization considered to be capable of providing information, services or advice that would assist in the performance of the Commissioner's functions.
- (3) The Commissioner may, at the Commissioner's sole discretion, institute and defend proceedings in a court of competent jurisdiction for or on behalf of a consumer or class of consumers.
- (4) Where a dispute arises concerning a consumer, the Commissioner may:
- (a) if the dispute is governed by an arbitration agreement which appoints the Commissioner as arbitrator or empowers the Commissioner to appoint an arbitrator – act as arbitrator or, as the case may be, appoint an arbitrator; and
  - (b) in the absence of an arbitration agreement, with the consent in writing of all the parties to the dispute – act as arbitrator in the dispute or nominate a person to act as arbitrator.

## **10 Advisory committees**

- (1) The Minister may appoint committees for the purpose of advising the Commissioner with respect to matters arising under section 7(2).
- (2) An advisory committee:
- (a) shall consist of such number of persons as the Minister thinks fit;
  - (b) may include an employee or employees as defined in the *Public Sector Employment and Management Act*;

- (c) has such functions in relation to the provision of advice as the Minister directs; and
  - (d) subject to any directions given by the Minister, may regulate its own procedure for the calling of meetings and the conduct of business at meetings.
- (3) The Minister may at any time terminate a person's appointment as a member of an advisory committee or dissolve an advisory committee.
- (4) A member of an advisory committee is entitled to receive:
  - (a) such travelling expenses as are fixed by the Minister; and
  - (b) unless the member is an employee as defined in the *Public Sector Employment and Management Act*, such fees as are fixed by the Minister for attending meetings and transacting business of the committee.

## **11 Delegation**

- (1) Subject to subsection (2), the Commissioner may, by instrument in writing, delegate any function or power conferred on the Commissioner by or under this or any other Act:
  - (a) to an employee as defined in the *Public Sector Employment and Management Act*, or
  - (b) with the consent of the Minister, to any other person.
- (2) The power of delegation conferred by subsection (1) is not itself capable of being delegated.
- (3) A power or function delegated under this section shall, when exercised or performed by the delegate, be deemed for the purposes of the Act by or under which it is conferred to have been exercised or performed by the Commissioner.
- (4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

## **12 Annual report**

- (1) The Commissioner shall submit annually to the Minister a report on the Commissioner's activities and, on behalf of the Council, a report on the activities of the Council prepared by its Chairman.
- (2) The Commissioner's report shall include an account of the operation during the year to which it relates of Parts X, XI and XIA.

- (3) Neither the Commissioner nor the Chairman of the Council shall, unless satisfied that it is in the public interest to do so, disclose in any report furnished pursuant to this section:
  - (a) information with respect to any plant, equipment or process used in a business carried on by a person; or
  - (b) information with respect to a person's financial affairs.
- (4) The Minister shall, within 6 sitting days of the Legislative Assembly after receiving a report furnished pursuant to this section, lay a copy of the report before the Assembly.

## **Division 2                      Consumer Affairs Council**

### **13                      Establishment of Council**

There is established by this Act a Council to be known as the Consumer Affairs Council.

### **14                      Membership of Council**

- (1) The Council shall consist of not less than 6 and not more than 10 members, who shall be appointed by the Minister by notice in the *Gazette*.
- (2) Of the members of the Council:
  - (a) at least 4 shall be persons who are not engaged wholly or primarily in commerce or industry; and
  - (b) not more than 2 shall be persons engaged in commerce or the manufacture of goods or the business of advertising.
- (3) Subject to this Act, a member of the Council holds office as a member for a term of 3 years, or for such shorter term as is specified in the notice appointing the member, but is eligible for reappointment.
- (4) Part I of Schedule 1 also has effect with respect to the membership of the Council.

### **15                      Chairman and Deputy Chairman**

- (1) The Minister shall appoint a member of the Council to be its Chairman, and the members shall elect a Deputy Chairman from amongst their number.

- (2) Subject to subsection (3), the Chairman and Deputy Chairman hold their respective offices for so long as they remain members of the Council, disregarding for this purpose any subsequent reappointment as a member.
- (3) The Chairman and Deputy Chairman may resign their respective offices by writing, signed and delivered to the Minister, and the Deputy Chairman ceases to hold office as such if he or she is appointed Chairman.

## **16 Functions and powers of Council**

- (1) The functions of the Council are:
  - (a) to act as an advisory body to the Minister on matters affecting the interests of consumers;
  - (b) to investigate matters calculated to protect the interests of consumers, and make recommendations thereon to the Minister;
  - (c) to investigate matters referred to the Council by the Minister, and make recommendations thereon to the Minister;
  - (d) to consult and receive submissions from:
    - (i) manufacturers, retailers, advertisers and other persons concerned with the provision and distribution of consumer goods and services; and
    - (ii) consumers and consumer organizations,with respect to matters affecting the interests of consumers; and
  - (e) to disseminate information to the public relating to matters affecting the interests of consumers.
- (2) The Council has power:
  - (a) to affiliate and co-operate with organizations, wherever formed, whose powers or objects include the investigation of matters of interest to consumers or the protection of the interests of consumers;
  - (b) to establish committees for such purposes as the Council thinks fit, including the carrying out of any of its functions, and to appoint as members of its committees persons who are not members of the Council; and

- (c) to take any other action incidental to the performance of its functions or the exercise of its powers.

## **17 Meetings and proceedings of Council and its committees**

Part II of Schedule 1 has effect with respect to meetings and proceedings of the Council and committees of the Council.

## **Part III Authorized officers**

### **18 Authorized officers for purposes of Parts IV to XII**

- (1) There shall be, in accordance with this section, authorized officers for the purposes of Parts IV to XII, or for the purposes of one or more of those Parts only.
- (2) The Commissioner is an authorized officer for the purposes of Parts IV to XII.
- (3) The Commissioner may, by instrument in writing, appoint a person to be an authorized officer either for the purposes of Parts IV to XII or for the purposes of one or more of those Parts specified in the instrument.
- (4) Every member of the Police Force is an authorized officer for the purposes of Part X.
- (5) An authorized officer is, in the exercise of the officer's powers as such, subject to the control and direction of the Commissioner.

### **19 Requirements as to identity cards and their production**

- (1) The Commissioner shall issue to each authorized officer appointed under section 18(3) an identity card containing the officer's photograph and signature.
- (2) An authorized officer appointed under section 18(3) who is exercising or proposing to exercise a power conferred by this Part shall produce the officer's identity card on request.
- (3) On the termination of an appointment under section 18(3), the person whose appointment is terminated shall surrender his or her identity card to the Commissioner.

### **20 Powers of entry of authorized officers**

- (1) For the purpose of ascertaining whether a provision of this Act, of regulations or of a code of practice is being or has been complied with, a person who is an authorized officer for the purposes of the

Part which contains that provision, or of the Part for the purposes of which the regulations were made or under which the code was prescribed, may at any reasonable time (but subject to subsection (2)) enter as may be appropriate in relation to that provision any place which the officer knows or believes on reasonable grounds to be:

- (a) a place where:
  - (i) goods are produced, manufactured, assembled, prepared, stored or supplied;
  - (ii) services are supplied or arranged; or
  - (iii) documents are kept relating to goods or services supplied or to be supplied;
- (b) a place where a person carries on business as a dealer in motor vehicles within the meaning of Part X, or where documents relating to any such business are kept;
- (c) a place where a person carries on business as a travel agent within the meaning of Part XI, or where documents relating to any such business are kept; or
- (d) a place where any activity takes place to which a code of practice applies, or where documents relating to any such activity are kept,

and exercise the powers conferred by section 21 in relation to that place.

- (2) An authorized officer is not entitled to enter any place used for residential purposes except:
  - (a) with the consent of the occupier; or
  - (b) under the authority of a search warrant.
- (3) A justice who is satisfied on the application of an authorized officer that, for the purpose specified in subsection (1), there is reasonable cause to permit the officer to enter a place referred to in that subsection with a view to exercising the powers conferred by section 21 may issue a warrant directed to the authorized officer to enter the place specified in the warrant for the purpose of exercising those powers.



- (4) A warrant issued under subsection (3) is, for a period of one month from its issue, sufficient authority:
  - (a) to the authorized officer to whom it is directed, and to all persons acting in aid of the authorized officer, to enter the place specified in the warrant; and
  - (b) to the authorized officer, to exercise in respect of the place specified in the warrant the powers conferred on an authorized officer by section 21.
- (5) Where it is impracticable for an authorized officer to apply in person to a justice for a warrant under subsection (3), the officer may make the application to a justice by telephone, and the justice may issue such a warrant on that application.
- (6) Where a justice issues a warrant by virtue of subsection (5):
  - (a) the justice shall complete and sign the warrant, shall inform the authorized officer by telephone of its terms, and shall record on the warrant the justice's reasons for issuing it; and
  - (b) the authorized officer shall complete in duplicate a form of warrant in the terms furnished by the justice, shall write on it the name of the justice and the date and time of its issue, and shall forward a copy to the justice.
- (7) On receiving the copy referred to in subsection (6)(b), the justice shall compare it with the warrant signed by the justice and, if satisfied that they are in substance identical, shall note this fact on the warrant and forward both the warrant and the copy to the Commissioner.
- (8) A form of warrant prepared by an authorized officer pursuant to subsection (6)(b) has, if it is in accordance with the terms of the warrant signed by the justice, the like authority as that which the justice's warrant has by virtue of subsection (4).

## **21 Powers exercisable after entry**

- (1) The powers exercisable by an authorized officer who has entered a place under or by virtue of section 20 are those specified in subsections (2), (3) and (4) so far as applicable to that place.
- (2) In the case of a place falling within section 20(1)(a)(i) or (d), the authorized officer may:
  - (a) inspect any goods, or partly manufactured or assembled goods, and make such other inspections, and such searches, as the officer considers necessary;

- (b) weigh, or otherwise measure, any goods;
  - (c) open any room, container or package which the officer believes on reasonable grounds to contain goods;
  - (d) seize without payment, and detain, any goods which the officer believes on reasonable grounds are intended for supply, or have been supplied, in contravention of section 31(1);
  - (e) take (otherwise than by way of seizure under paragraph (d)) any goods, or partly manufactured or assembled goods, for which the officer undertakes on behalf of the Commissioner that a fair price will be paid; and
  - (f) take a sample of anything from which goods are manufactured or produced in that place.
- (3) In the case of a place falling within section 20(1)(b), the authorized officer may inspect any motor vehicle there which is offered or displayed for sale, or which the authorized officer believes on reasonable grounds may be there for the purposes of sale.
- (4) In the case of any of the places referred to in section 20(1), the authorized officer may:
- (a) ask questions of any person found there;
  - (b) require the production of documents;
  - (c) inspect and require explanations of any document; and
  - (d) take copies of or extracts from any document or, if in the officer's opinion it is not appropriate for copies or extracts to be taken at the place, remove a document for a reasonable time to enable copies or extracts to be taken.
- (5) If an authorized officer seizes goods under subsection (2)(d) and:
- (a) proceedings for an offence against section 31(1) in connection with the goods are not instituted within 6 months after their seizure; or
  - (b) proceedings for such an offence are instituted within that period but the defendant is not on the determination of those proceedings (whether or not within that period) found guilty of an offence,

the person from whom the goods were seized is, on application to the Commissioner, entitled to their return.

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- (6) If an application for the return of goods is not made within 3 months after the entitlement to their return arises, the Commissioner may dispose of the goods as the Commissioner thinks fit.
  - (7) If, in proceedings for an offence against section 31(1), the court finds the offence proved, and to have concerned goods seized under subsection (2)(d), the court may order that the goods be forfeited to the Territory.

## **22 Power to obtain information, documents and evidence**

- (1) Where a person who is an authorized officer for the purposes of a Part of this Act believes on reasonable grounds that another person is capable of furnishing information, producing documents or giving evidence in relation to a possible contravention of that Part, or of regulations or a code of practice made for the purposes of or prescribed under that Part, he or she may serve on that other person a notice under subsection (2).
- (2) A notice under this subsection may require the person on whom it is served:
  - (a) to furnish in writing to the Commissioner, within the time and in the manner specified in the notice, any information referred to in subsection (1) of which that person has knowledge;
  - (b) to produce to the Commissioner, in accordance with the notice, any documents referred to in subsection (1); or
  - (c) to appear before the Commissioner at a time and place specified in the notice, and give any evidence referred to in subsection (1) and produce any documents so referred to.
- (3) Where a document has been produced in response to a notice under subsection (2), the Commissioner may:
  - (a) inspect the document and take copies of or extracts from it; and
  - (b) if the person otherwise entitled to possession of the document is supplied as soon as practicable with a copy certified by the Commissioner to be a true copy, retain possession of the document for as long as is necessary for the purposes of this Act.
- (4) A certified copy of a document provided under subsection (3)(b) is admissible in all courts as if it were the original.
- (5) Until a certified copy of a document is provided under subsection (3)(b), the Commissioner shall, at such times and places

as the Commissioner thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorized by that person, to inspect the document and take copies of or extracts from it.

## **23 Offences**

(1) A person shall not:

- (a) hinder or obstruct an authorized officer in the exercise by the officer of a power conferred by this Part;
- (b) assault, or directly or indirectly threaten, an authorized officer while the officer is exercising a power conferred by this Part; or
- (c) impersonate an authorized officer.

Penalty: \$5,000 or imprisonment for 12 months.

(2) A person who:

- (a) fails to answer a question asked by an authorized officer pursuant to section 21(4)(a);
- (b) fails to comply with a requirement of an authorized officer under section 21(4)(b) or (c); or
- (c) fails to comply with a notice under section 22(2),

is, to the extent that the person is capable of answering the question or complying with the requirement or notice (but subject, in a case falling within paragraph (a) or (b), to subsection (3)) guilty of an offence.

Penalty: \$5,000.

(3) A person is not guilty of an offence by reason of a failure mentioned in subsection (2)(a) or (b) unless, before the failure, the authorized officer warned the person that it would be an offence for the person not to answer the question or, as the case may be, comply with the requirement.

(4) A person who:

- (a) gives to a question asked by an authorized officer pursuant to section 21(4)(a) an answer that the person knows to be false or misleading in a material particular;

- (b) gives pursuant to a requirement of an authorized officer under section 21(4)(c) an explanation that the person knows to be false or misleading in a material particular; or
- (c) in purported compliance with a notice under section 22(2), knowingly furnishes information, produces a document or gives evidence that is false or misleading in a material particular,

is guilty of an offence.

Penalty: \$5,000.

## **24 Self-incrimination**

A person is not excused from:

- (a) answering a question asked by an authorized officer pursuant to section 21(4)(a);
- (b) producing a document or giving an explanation of a document pursuant to a requirement of an authorized officer under section 21(4)(b) or (c); or
- (c) furnishing information, producing a document or giving evidence in response to a notice under section 22(2),

on the ground that the answer, document, explanation, information or evidence may tend to incriminate the person or make the person liable to a penalty, but an answer, document, explanation, information or evidence given, produced or furnished as mentioned in any of paragraphs (a) to (c) is inadmissible against the person in criminal proceedings other than proceedings for an offence against this Act.

## **Part IV Product safety and product information**

### **Division 1 Safety standards**

#### **25 Product safety standards may be prescribed**

- (1) Regulations may, in accordance with subsection (2), prescribe a product safety standard for a class or description of goods specified in the regulations.

- (2) A product safety standard shall consist of such requirements as to:
- (a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of goods of the class or description to which the standard relates;
  - (b) the testing of such goods during or after the completion of manufacture or processing;
  - (c) the form and content of markings, warnings or instructions to accompany the goods, or to be placed on a vending machine for the goods or a display stand or sign adjacent to the goods; and
  - (d) any equipment or accessories to be supplied with the goods,
- as are reasonably necessary to prevent or reduce the risk of injury to a person.

**26 Prohibition on supply of goods not complying with safety standards**

- (1) A person shall not, in trade or commerce, supply goods:
- (a) that are intended to be used, or are of a kind likely to be used, by a consumer; and
  - (b) in relation to which there is a product safety standard,
- unless the goods comply with the standard.
- (2) If:
- (a) a person supplies goods in contravention of subsection (1); and
  - (b) another person suffers loss or damage because of a defect in the goods, or a dangerous characteristic of the goods, or by not having particular information in relation to the goods, but would not have suffered it had the goods complied with the product safety standard,
- the person who suffers the loss or damage shall be deemed for the purposes of this Act to have suffered it by the supplying of the goods.

**27            Recovery of money paid for goods not complying with safety standards**

- (1) Subject to subsection (2), where goods are supplied to a person in contravention of section 26(1), the person to whom the goods are supplied may recover from the supplier as a debt due and payable any money paid for the goods.
- (2) Where judgment is given for the plaintiff in an action brought by virtue of subsection (1), the judgment debt may, if the court so directs, be satisfied by the repair or modification of the goods in such a manner that:
  - (a) the contravention relied on by the plaintiff would not have occurred had the goods been supplied as repaired or modified; and
  - (b) the repaired or modified goods are accepted by the plaintiff on or before a day specified in the direction.

**Division 2            Prohibition of, or restriction on, supply of dangerous goods**

**28            Investigation of goods by Commissioner**

The Commissioner may, and on the direction of the Minister shall, investigate the question whether particular goods, or goods of a particular class or description, are of such a nature as to be dangerous to health or a possible source of danger to health.

**29            Power of commissioner to establish investigation committee**

- (1) The Commissioner may, on undertaking an investigation pursuant to section 28, establish by instrument under the Commissioner's hand, a committee to assist and advise the Commissioner in the matter.
- (2) A committee established under subsection (1) shall consist of persons who, in the opinion of the Commissioner, have expertise in product safety.
- (3) For the purpose of assisting and advising the Commissioner in connection with an investigation, a committee established under subsection (1) may serve on any person a notice in writing signed by the member appointed by the Commissioner to be its Chairman:
  - (a) requiring the person to attend at a time and place specified in the notice, and to give evidence to the committee or a member of the committee nominated by it for the purpose; or

- (b) requiring the person to produce at a time and place specified in the notice, to the committee or a member of the committee nominated by it for the purpose, any goods or documents described in the notice that are in the custody or under the control of that person.
- (4) A committee established under subsection (1) may, after paying a fair price for them, cause goods produced pursuant to a notice under subsection (3) to be subjected to such tests and examinations as the committee considers necessary for the purpose of determining whether or not the goods are dangerous to health or a possible source of danger to health.
- (5) A person is not compellable to give any evidence, or produce any document, pursuant to a notice under subsection (3) which the person could not be compelled to give or produce in civil proceedings in the Supreme Court.
- (6) A person is not required to comply with a notice under subsection (3) unless the reasonable expenses of attending on the committee are paid or tendered to the person.
- (7) A person shall not:
  - (a) without reasonable excuse, refuse or fail to do anything required of the person by a notice under subsection (3);
  - (b) in response to a notice under subsection (3), give evidence that the person knows to be false or misleading in a material particular; or
  - (c) alter, suppress or destroy any document which the person is required to produce by a notice under subsection (3).

Penalty: \$5,000.

### **30 Power of minister to prohibit or restrict supply of goods**

- (1) Where the Commissioner notifies the Minister in writing that the Commissioner has undertaken an investigation under section 28, the Minister may, by notice in the *Gazette*, prohibit the supply in the Territory, for a period not exceeding 28 days specified in the notice, of the goods to which the investigation relates or, as the case may be, of goods of the class or description to which the investigation relates.
- (2) The Minister may, by further notice in the *Gazette*, extend for up to 28 days the period specified in a notice under subsection (1), but the power conferred by this subsection may be exercised once only in relation to any such notice.



- (3) Where the Commissioner has, after carrying out an investigation under section 28, reported to the Minister in writing that particular goods or goods of a particular class or description are dangerous to health or a possible source of danger to health, the Minister may, by notice in the *Gazette*:
  - (a) prohibit the supply in the Territory of the goods, or goods of the class or description, to which the report relates; or
  - (b) restrict the supply in the Territory of such goods in such manner as is specified in the notice.

### **31 Compliance with prohibition or restriction notice**

- (1) A person shall not supply goods in contravention of a notice in force under section 30.
- (2) If:
  - (a) a person supplies goods in contravention of subsection (1); and
  - (b) another person suffers loss or damage because of a defect in the goods, or a dangerous characteristic of the goods, or by not having particular information as to a characteristic of the goods,

the person who suffers the loss or damage shall be deemed for the purposes of this Act to have suffered it by the supplying of the goods.

### **32 Recovery of money paid for supply of dangerous goods**

- (1) Where goods are supplied to a person in contravention of section 31(1), the person to whom the goods are supplied may, subject to subsection (2), recover from the supplier as a debt due and payable any money paid for the goods.
- (2) Where judgment is given for the plaintiff in an action brought by virtue of subsection (1), the judgment debt may, if the court so directs, be satisfied by the repair or modification of the goods in such a manner that:
  - (a) the contravention relied on by the plaintiff would not have occurred had the goods been supplied as repaired or modified; and
  - (b) the repaired or modified goods are accepted by the plaintiff on or before a day specified in the direction.

## **Division 3            Product recall, &c.**

### **33            Power of Minister to require product recall, &c.**

- (1) The Minister may, by notice in the *Gazette*, require a supplier of defective goods to do any one or more of the following in the manner and within the period specified in the notice:
- (a) recall the goods;
  - (b) disclose to the public, or to a class or description of persons specified in the notice, any of the following:
    - (i) the nature of any defect in or dangerous characteristic of the goods identified in the notice;
    - (ii) the circumstances in which the use of the goods is dangerous; or
    - (iii) procedures for disposing of the goods;
  - (c) notify the public, or a class or description of persons specified in the notice, that the supplier undertakes to do, within a period specified in the notice, whichever of the following the supplier considers appropriate:
    - (i) except where the notice discloses a dangerous characteristic of the goods - repair the goods;
    - (ii) replace the goods; or
    - (iii) refund the price of the goods to a person to whom the goods were supplied (whether by the supplier or by some other person).
- (2) The reference in subsection (1) to defective goods is a reference to goods which:
- (a) do not comply with a product safety standard applicable to the goods; or
  - (b) are the subject, or belong to a class or description of goods which are the subject, of an investigation undertaken by the Commissioner pursuant to section 28 or of a notice in force under section 30.

### **34 Ancillary provisions with respect to notices under section 33**

- (1) Where, pursuant to a notice under section 33, a supplier undertakes to repair goods, the supplier shall cause the goods to be repaired so that:
  - (a) any defect in the goods which is identified in the notice is remedied; and
  - (b) if there is a product safety standard for goods of that kind, the goods comply with that standard.
- (2) Where, pursuant to a notice under section 33, a supplier undertakes to replace goods, the supplier shall replace the goods with like goods which:
  - (a) if a defect in or dangerous characteristic of the goods to be replaced was identified in the notice, do not contain that defect or characteristic; and
  - (b) if there is a product safety standard for goods of that kind, comply with that standard.
- (3) A supplier who has undertaken a duty to repair or replace goods bears the cost of the repair or replacement, including any costs of transportation.
- (4) Where, pursuant to a notice under section 33, a supplier undertakes to refund the price of goods and a period exceeding 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier, the amount of the refund may, if the notice so provides, be reduced by an amount that is attributable to the use which a person has had of the goods and is calculated as specified in the notice.

### **35 Compliance with notice under section 33**

Where a notice under section 33 is in force in relation to a supplier, the supplier shall not:

- (a) fail to comply with a requirement of the notice;
- (b) if the notice identifies a defect in or dangerous characteristic of goods, supply goods of the kind to which the notice relates and which contain that defect or characteristic;
- (c) in a case not falling within paragraph (b), supply goods of the kind to which the notice relates; or

- (d) fail to carry out (in accordance with section 34 where applicable) any undertaking notified by the supplier pursuant to the notice.

**36            Special provisions as to notification of recall (including voluntary recall)**

- (1) Where goods are recalled, whether voluntarily or in accordance with a notice under section 33, a person who has supplied or supplies any of the recalled goods to another person outside the Territory shall, as soon as practicable after the supply of the goods, give to that other person a notice in writing:
  - (a) stating that the goods are subject to recall;
  - (b) if the goods have a defect or dangerous characteristic, stating the nature of the defect or characteristic; and
  - (c) if the goods do not comply with a product safety standard for the goods, setting out the nature of the non-compliance.
- (2) A person who is required by subsection (1) to give a notice to another person shall, within 10 days after giving that notice, provide the Commissioner with a copy of it.

Penalty:        In the case of an individual – \$5,000.

In the case of a body corporate – \$20,000.

- (3) A supplier who voluntarily takes action to recall goods shall, not later than 2 days after taking that action, give to the Commissioner a notice in writing:
  - (a) stating that the goods are subject to recall;
  - (b) if the goods have a defect or dangerous characteristic, stating its nature; and
  - (c) if the goods do not comply with a product safety standard for the goods, setting out the nature of the non-compliance.

Penalty:        In the case of an individual – \$5,000.

In the case of a body corporate – \$20,000.

- (4) It is a sufficient compliance with subsection (3) if, within the time allowed by that subsection, a copy of a notice relating to the goods is given to the Commissioner pursuant to subsection (2).

**37            Certain amounts recoverable as debt or damages**

- (1) Where a supplier fails to carry out an under-taking, notified pursuant to a notice under section 33, to refund the price of goods to a person, that person may recover from the supplier as a debt due and payable the amount that should have been refunded.
- (2) Where a supplier fails to carry out an under-taking, notified pursuant to a notice under section 33, to repair or replace any goods within a specified period, the supplier shall be deemed to have given instead an undertaking so notified to refund the price of the goods within that period.
- (3) Where:
  - (a) a person fails to comply with any requirement of a notice under section 33, or supplies goods in contravention of section 35(b); and
  - (b) another person suffers loss or damage because of a defect in or dangerous characteristic of the goods, or by not having particular information as to a characteristic of the goods,

the person who suffered the loss or damage shall be deemed for the purposes of this Act to have suffered it because of the failure or contravention.

**Division 4            Product information**

**38            Product information standards may be prescribed**

- (1) Regulations may, in accordance with subsection (2), prescribe a product information standard for a class or description of goods specified in the regulations.
- (2) A product information standard for a class or description of goods shall consist of requirements for the disclosure of the information with respect to the goods specified in subsection (3), and requirements as to the form and manner of such disclosure.
- (3) The information referred to in subsection (2) is such information as to:
  - (a) the price, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;
  - (b) the place of manufacture or production of the goods;

- (c) the identity of the manufacturer, producer or supplier of the goods;
- (d) the date of manufacture or production of the goods, and their durable life; and
- (e) the care and storage of the goods,

as is reasonably necessary to give to persons using the goods information as to their origin, quantity, quality, nature, durability or value.

### **39            Compliance with product information standard**

- (1) A person shall not, in trade or commerce, supply goods:
  - (a) that are intended to be used, or are of a kind likely to be used, by a consumer; and
  - (b) in relation to which there is a product information standard,unless the person has complied with the standard in relation to the goods.
- (2) Where:
  - (a) a person supplies goods in contravention of subsection (1); and
  - (b) another person suffers loss or damage by not having particular information relating to the goods and would not have suffered it had the product information standard been complied with in relation to the goods,

the person who suffers the loss or damage shall be deemed for the purposes of this Act to have suffered it by the supplying of the goods.

## **Division 5            Miscellaneous**

### **40            Certain action not to affect insurance contracts**

The liability of an insurer under a contract of insurance with a person, being a contract relating to the recall of goods supplied or proposed to be supplied by the person or to the liability of the person with respect to possible defects in, or dangerous characteristics of, goods supplied or proposed to be supplied by the person, shall not be affected only because the person gives to the Commissioner, to a committee established by the Commissioner under section 29, to a member of such a committee, or to an

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authorized officer, information relating to any goods supplied or proposed to be supplied by the person.

## **Part V                      Fair trading, conditions and warranties implied in contracts for goods or services, recourse to manufacturers, &c.**

### **Division 1                Prohibition of unfair trade practices**

#### **41                      Interpretation of Division 1**

- (1) For the purposes of this Division, where a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.
- (2) The onus of establishing that a person had reasonable grounds for making a representation referred to in subsection (1) is on the person.
- (3) Subsection (1) shall not be taken to limit by implication the meaning of a reference in this Division to a misleading representation, a representation that is misleading in a material particular, or conduct that is misleading or is likely or liable to mislead.

#### **42                      Misleading or deceptive conduct generally**

- (1) A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) Nothing in this Division shall be taken as limiting by implication the generality of subsection (1).

#### **43                      Unconscionable conduct in relation to supply of certain goods or services**

- (1) A supplier shall not, in trade or commerce, in connection with the supply or possible supply to a person (in this section referred to as the customer) of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, engage in conduct that is, in all the circumstances, unconscionable.

- (2) Without limiting the matters to which regard may be had for the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services, regard may be had to:
  - (a) the relative strengths of the bargaining positions of the supplier and the customer;
  - (b) whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
  - (c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services;
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer (or a person acting on behalf of the customer) by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and
  - (e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier.
- (3) A supplier shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a customer by reason only that the supplier institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.
- (4) For the purposes of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services to a customer:
  - (a) regard shall not be had to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
  - (b) regard may be had to conduct engaged in, or circumstances existing, before the coming into operation of this section.
- (5) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply, or for the purpose of using them up or transforming them in trade or commerce.



#### **44 False or misleading representations in relation to goods or services**

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

- (a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or particular previous use;
- (b) falsely represent that services are of a particular standard, quality or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire goods or services;
- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (f) represent that the person has a sponsorship, approval or affiliation the person does not have;
- (g) make a false or misleading representation concerning the price of goods or services;
- (h) make a false or misleading representation concerning the availability of facilities for the repair of goods or the availability of spare parts for goods;
- (j) make a false or misleading representation concerning the place of origin of goods;
- (k) make a false or misleading representation concerning the need for any goods or services; or
- (m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

**45 False or misleading representations, and other offensive conduct, in relation to land**

- (1) A person shall not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or the promotion by any means of the sale or grant of an interest in land:
  - (a) represent that the person has a sponsorship, approval or affiliation the person does not have;
  - (b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land; or
  - (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.
- (2) A person shall not use physical force or undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.
- (3) Nothing in this section shall be taken as implying that other provisions of this Division do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.
- (4) In this section, **interest** in relation to land means:
  - (a) a legal or equitable estate or interest in the land;
  - (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of:
    - (i) the holding of shares; or
    - (ii) a contract to purchase shares, in a body corporate that owns the land or building; or
  - (c) a right, power or privilege over or in connection with the land.

**46 Misleading conduct in relation to employment**

A person shall not, in relation to employment that is to be, or may be, offered by that person or another person, engage in conduct which is liable to mislead persons seeking the employment as to

the availability, nature, terms or conditions of, or any other matter relating to, the employment.

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

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

#### **48 Certain misleading conduct in relation to services**

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

#### **49 Misleading representations about certain business activities**

- (1) A person shall not, in trade or commerce, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from any place of residence.
- (2) Where a person, in trade or commerce, invites (whether by advertisement or otherwise) other persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring:
  - (a) the performance by the other persons of work; or
  - (b) the investment of money by the other persons and the performance by them of work associated with the investment,

the inviter shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

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

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies the cash price for the goods or services.

## **51      Offering gifts and prizes**

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or the promotion by any means of the supply or use of goods or services, offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

## **52      Bait advertising**

- (1) A person shall not, in trade or commerce, advertise goods or services for supply at a specified price if there are reasonable grounds, of which the person is aware or ought reasonably to be aware, for believing that the person will not be able to offer those goods or services for supply at that price for a period that is, and in the quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.
- (2) A person who has, in trade or commerce, advertised goods or services for supply at a specified price shall offer the goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.
- (3) In proceedings for an offence in relation to a failure to offer goods or services to a person (in this subsection referred to as the customer) in accordance with subsection (2), it is a defence if it is established:
  - (a) that the defendant offered to supply, or to procure another person to supply, to the customer goods or services of the kind advertised within a reasonable time, in a reasonable quantity and at the advertised price; or
  - (b) that the defendant offered to supply immediately, or to procure another person to supply within a reasonable time, to the customer equivalent goods or services in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised,

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

**53 Referral selling**

A person shall not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving the person the names of prospective customers or otherwise assisting the person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

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

A person shall not, in trade or commerce, accept payment or other consideration for goods or services where, at the time of the acceptance:

- (a) the person intends:
  - (i) not to supply the goods or services; or
  - (ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted; or
- (b) there are reasonable grounds, of which the person is aware or ought reasonably to be aware, for believing that the person will not be able to supply the goods or services within the period specified by the person or, if no period is specified, within a reasonable time.

**55 Harassment and coercion**

A person shall not use physical force or undue harassment or coercion in connection with the supply, or possible supply, of goods or services to a consumer, or in connection with the payment for goods or services by a consumer.

**56 Pyramid selling**

- (1) A person contravenes this section if:
  - (a) he or she is the promoter of, or (if there are more than one) one of the promoters of, or is a participant in, a trading scheme to which this section applies; and
  - (b) another person who is a participant in the trading scheme, or has applied or been invited to become a participant in the

trading scheme, makes a payment to or for the benefit of the first-mentioned person, being a payment that he or she is induced to make because the prospect is held out to him or her of receiving payments or other benefits in respect of the introduction (whether by himself or herself or by another person) of other persons who become participants in the trading scheme.

(2) A person also contravenes this section if:

- (a) he or she is the promoter of, or (if there are more than one) one of the promoters of, is a participant in, or is otherwise acting in accordance with, a trading scheme to which this section applies; and
- (b) he or she, by holding out to another person the prospect of receiving payments or other benefits in respect of the introduction (whether by that person or by another person) of other persons who become participants in the trading scheme, attempts to induce the person to whom the prospect is held out:
  - (i) if that person is already a participant in the trading scheme – to make any payment to or for the benefit of the promoter or any of the promoters, or to or for the benefit of a participant in the trading scheme; or
  - (ii) if that person is not already a participant in the trading scheme – to become such a participant and to make a payment of a kind referred to in subparagraph (i).

(3) A person also contravenes this section if he or she promotes, or takes part in the promotion of, a scheme under which:

- (a) a payment is to be made by another person who participates, or has applied or been invited to participate, in the scheme to or for the benefit of the first-mentioned person or of another person who takes part in the promotion of the scheme, or to or for the benefit of another person who participates in the scheme; and
- (b) the inducement for making the payment is the holding out to the person who makes or is to make the payment of the prospect of receiving payments from other persons who may participate in the scheme.

- (4) For the purposes of subsection (1), (2) or (3):
- (a) a prospect of a kind referred to in that subsection shall be taken to be held out to a person whether or not it is held out so as to confer on the person a legally enforceable right;
  - (b) in determining whether an inducement or attempt to induce is made by holding out a prospect of a kind referred to in that subsection, it is sufficient if a prospect of that kind constitutes, or would constitute, a substantial part of the inducement; and
  - (c) a reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of the person and partly to or for the benefit of one or more other persons.
- (5) For the purposes of this section, a scheme is a trading scheme to which this section applies if the elements of the scheme include:
- (a) the provision of goods or services by the person promoting the scheme (in this section referred to as the **promoter**) or, in the case of a scheme promoted by 2 or more persons acting in concert (in this section referred to as the **promoters**), by one or more of those persons; and
  - (b) the supply of those goods or services to or for other persons under transactions arranged or effected by persons who participate in the scheme (each of whom is in this section referred to as a **participant**), being persons not all of whom are promoters.
- (6) For the purposes of subsection (5):
- (a) a scheme shall be taken to include the element referred to in subsection (5)(b) whether a participant who is not a promoter acts in relation to a transaction in the capacity of a servant or agent of the promoter, or of one of the promoters, or in any other capacity;
  - (b) a scheme includes any arrangements made in connection with the carrying on of a business, whether or not those arrangements are made or recorded wholly or partly in writing; and
  - (c) a reference to the provision of goods or services by a person includes a reference to the provision of goods or services under arrangements to which the person is a party.

## 57 Unsolicited credit and debit cards

- (1) A person shall not send a prescribed card to another person (***the recipient***) except:
  - (a) in pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card; or
  - (b) in renewal or replacement of, or in substitution for:
    - (i) a prescribed card of the same kind previously sent to the recipient in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card; or
    - (ii) a prescribed card of the same kind previously sent to the recipient and used for a purpose for which it was intended to be used.
- (2) Subsection (1) applies only in relation to the sending of a prescribed card by or on behalf of the person who issued the card.
- (3) A person shall not take any action that enables another person who has a credit card or a debit card to use the card as a debit card or a credit card, as the case may be, except in accordance with a request in writing by the other person.
- (4) In this section:

***article*** includes a token, card and document.

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

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

***prescribed card*** means a credit card, a debit card or an article that may be used as a credit card and a debit card.



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

- (1) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the person asserting the right has reasonable cause to believe that there is a right to payment.
- (2) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the person asserting the right has reasonable cause to believe that there is a right to payment.
- (3) A person shall not assert a right to payment from another person of a charge for the making in a directory of an entry relating to the other person, or to the profession, business, trade or occupation of the other person, unless the person asserting the right knows, or has reasonable cause to believe, that the other person has authorized the making of the entry.
- (4) A person is not liable to make any payment to another person, and is entitled to recover by action in a court of competent jurisdiction against another person any payment made by the person to the other person, in full or part satisfaction of a charge for the making of an entry in a directory unless the first-mentioned person has authorized the making of the entry.
- (5) For the purposes of this section, a person shall be taken to assert a right to payment from another person for unsolicited goods or unsolicited services, or of a charge for the making of an entry in a directory, if the first-mentioned person:
  - (a) makes a demand for the payment or asserts a present or prospective right to the payment;
  - (b) threatens to bring any legal proceedings with a view to obtaining the payment;
  - (c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;
  - (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining payment; or
  - (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as

prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.

- (6) A person shall not be taken for the purposes of this section to have authorized the making of an entry in a directory unless:
- (a) a document authorizing the making of the entry has been signed by, or with the authority of, the person;
  - (b) the document specifies:
    - (i) the name of the directory;
    - (ii) the name and address of the person publishing the directory;
    - (iii) particulars of the entry; and
    - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated; and
  - (c) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted.
- (7) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person shall be deemed to have been sent by that person unless the contrary is established.
- (8) In a proceeding against a person in respect of a contravention of this section:
- (a) in the case of a contravention constituted by asserting a right to payment from another person for unsolicited goods or unsolicited services -the burden lies on the defendant of proving that the defendant had reasonable cause to believe that there was a right to payment; or
  - (b) in the case of a contravention constituted by asserting a right to payment from another person of a charge for the making of an entry in a directory – the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the other person had authorized the making of the entry.

(9) In this section:

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

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

**unsolicited goods** means goods sent to a person without any request for the goods being made by, or by the authority of, that person.

**unsolicited services** means services supplied to a person without any request for the services being made by, or by the authority of, that person.

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

- (1) A person to whom unsolicited goods are supplied by another person, in trade or commerce, is not liable to make any payment for the goods and is not liable for the loss of or damage to the goods other than loss or damage resulting from the doing by him or her of a wilful and unlawful act in relation to the goods during the period specified in subsection (4).
- (2) Subject to subsection (3), where a person sends, in trade or commerce, unsolicited goods to another person:
  - (a) neither the person who sent the goods nor any person claiming under that person is entitled after the expiration of the period specified in subsection (4) to take action for the recovery of the goods from the person to whom the goods were sent; and
  - (b) upon the expiration of that period the goods become, by force of this section, the property of the person to whom the goods were sent, freed and discharged from all liens and charges of any description.
- (3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if:
  - (a) the person has at any time during the period specified in subsection (4) unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;

- (b) the sender or the owner of the goods has within that period taken possession of the goods; or
  - (c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for him or her.
- (4) The period referred to in subsections (1), (2) and (3) is:
  - (a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (5):
    - (i) one month next following the day on which the notice is given; or
    - (ii) 3 months next following the day on which the person received the goods,whichever first expires; and
  - (b) in any other case – 3 months next following the day on which the person received the goods.
- (5) A notice referred to in subsection (4) shall be in writing and shall:
  - (a) state the name and address of the person who received the goods;
  - (b) state the address at which possession may be taken of the goods if it is an address other than that person's address; and
  - (c) contain a statement to the effect that the goods are unsolicited goods.
- (6) In this section, ***unsolicited goods*** has the same meaning as in section 58.

## **60 Application of division 1 to prescribed information providers**

- (1) Nothing in section 42, 44, 45, 47, 48 or 49 applies to a prescribed publication of matter by a prescribed information provider, other than:
  - (a) a publication of matter in connection with:
    - (i) the supply or possible supply of goods or services;
    - (ii) the sale or grant, or possible sale or grant, of interests in land;

(iii) the promotion by any means of the supply or use of goods or services; or

(iv) the promotion by any means of the sale or grant of interests in land,

where:

(v) the goods or services were relevant goods or services, or the interests in land were relevant interests in land, as the case may be, in relation to the prescribed information provider; or

(vi) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:

(A) a person who supplies goods or services of that kind, or who sells or grants interests in land, being interests of that kind; or

(B) a body corporate that is, for the purposes of the Companies (Northern Territory) Code, related to a body corporate that supplies goods or services of that kind, or that sells or grants interests in land, being interests of that kind; or

(b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:

(a) in any case – the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or

(b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of **prescribed information provider** in subsection (3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition) – the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section:

**consortium** has the same meaning as in Part IIIB of the *Broadcasting and Television Act 1942* of the Commonwealth.

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

- (a) a person to whom, or each of the members of a consortium to which, a licence has been granted under Part IIIB of the *Broadcasting and Television Act 1942* of the Commonwealth;
- (b) the Australian Broadcasting Corporation; and
- (c) the Special Broadcasting Service.

***relevant goods or services***, in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is, for the purposes of the Companies (Northern Territory) Code, to be deemed to be related to the prescribed information provider.

***relevant interests in land***, in relation to a prescribed information provider, means interests in land, being interests of a kind sold or granted by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is, for the purposes of the Companies (Northern Territory) Code, to be deemed to be related to the prescribed information provider.

## **Division 2      Implied conditions and warranties in contract for goods or services**

### **61      Interpretation of Division 2**

(1) In this Division:

- (a) a reference to the quality of goods includes a reference to the state or condition of the goods;
- (b) a reference to a contract does not include a reference to a contract made before the coming into operation of the provision containing the reference;
- (c) a reference to antecedent negotiations in relation to a contract for the supply of goods by a person to a consumer is a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by that other person whereby the consumer was induced to make the contract, or which otherwise promoted the transaction to which the contract

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relates; and

- (d) a reference to the person by whom any antecedent negotiations were conducted is a reference to the person by whom the negotiations or arrangements concerned were conducted or made.
- (2) Goods of any kind are of merchantable quality within the meaning of this Division if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all other relevant circumstances.

## **62 Implied undertakings as to title, encumbrances and quiet possession**

- (1) In every contract for the supply of goods to a consumer, other than a contract to which subsection (3) applies, there is:
  - (a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;
  - (b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and
  - (c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer - an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.
- (2) A person is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in subsection (1)(c) by reason only of the existence of a floating charge over assets of the person unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

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(3) In a contract for the supply of goods to a consumer in the case of which there appears from the contract, or is to be inferred from the circumstances of the contract, an intention that the supplier should transfer only such title as the supplier or a third person may have, there is:

(a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and

(b) an implied warranty that:

(i) the supplier;

(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have – that person; and

(iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made,

will not disturb the consumer's quiet possession of the goods.

## **63 Supply by description**

(1) Where there is a contract for the supply to a consumer of goods by description, being a supply by a person in the course of a business and otherwise than by way of sale by auction, there is an implied condition that the goods will correspond with the description; and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

## **64 Implied undertakings as to quality or fitness**

(1) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section:

(a) as regards defects specifically drawn to the consumer's attention before the contract is made; or



- (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.
- (2) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier or to another person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose (whether or not that is a purpose for which such goods are commonly supplied) except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the skill or judgment of the supplier or of that other person.
- (3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for another as they apply to a contract for the supply of goods made by a supplier in the course of a business, except where that other is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.

## **65 Supply by sample**

Where in a contract for the supply (otherwise than by way of sale by auction) by a person in the course of business of goods to a consumer there is a term in the contract, express or implied, to the effect that the goods are supplied by reference to a sample there is an implied condition:

- (a) that the bulk will correspond with the sample in quality;
- (b) that the consumer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) that the goods will be free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample.

## **66 Warranties in relation to the supply of services**

- (1) In every contract for the supply by a person in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

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- (2) Where a person supplies services (other than services of a professional nature provided by a qualified architect or engineer) to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the services are required or the result that the consumer desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services will be reasonably fit for that purpose, or are of such a nature and quality that they might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the supplier's skill or judgment.
- (3) A reference in this section to services does not include a reference to services that are, or are to be, provided, granted or conferred under:
  - (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
  - (b) a contract of insurance.

## **67        Rescission of contract for breach of implied condition**

- (1) Where:
  - (a) a person supplies goods to a consumer in the course of a business; and
  - (b) there is a breach of a condition that is, by virtue of a provision of this Division, implied in the contract for the supply of the goods,
 the consumer is, subject to this section, entitled to rescind the contract by:
  - (c) causing to be served on the supplier a notice in writing signed by the consumer giving particulars of the breach; or
  - (d) causing the goods to be returned to the supplier and giving to the supplier, either orally or in writing, particulars of the breach.

- (2) Where a consumer purports to rescind a contract for the supply of goods by virtue of this section, the purported rescission does not have any effect if:
- (a) the notice is not served, or the goods are not returned, within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods;
  - (b) in the case of a rescission effected by service of a notice, after the delivery of the goods to the consumer but before the notice is served:
    - (i) the goods were disposed of by the consumer, were lost, or were destroyed otherwise than by reason of a defect in the goods;
    - (ii) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
    - (iii) the goods were damaged by abnormal use; or
  - (c) in the case of a rescission effected by return of the goods, while the goods were in the possession of the consumer:
    - (i) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
    - (ii) the goods were damaged by abnormal use.
- (3) Where a contract for the supply of goods has been rescinded in accordance with this section:
- (a) if the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to, the supplier - the property in the goods re-vests in the supplier upon the service of the notice or the return of the goods; and
  - (b) the consumer may recover from the supplier, as a debt due and payable, the amount or value of any consideration paid or provided by the consumer for the goods.
- (4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under this Act or any other law.

## **68 Application of provisions not to be excluded or modified**

- (1) A term of a contract (including one that is not set out in the contract but is incorporated in it by another term of the contract) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:
  - (a) the application of a provision of this Division;
  - (b) the exercise of a right conferred by such a provision; or
  - (c) any liability of a person for breach of a condition or warranty implied by such a provision,is void.
- (2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision unless it does so expressly or is inconsistent with the provision.

## **69 Limitation of liability for breach of certain conditions or warranties**

- (1) Subject to this section, a term of a contract for the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 68 by reason only that the term limits the liability of the supplier for a breach of a condition or warranty (other than a condition or warranty implied by section 62) to:
  - (a) in the case of goods, any one or more of the following:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - (iv) the payment of the cost of having the goods repaired; or
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

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- (2) Subsection (1) does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the supplier to rely on that term.
- (3) In determining for the purposes of subsection (2) whether or not reliance on a term of a contract is fair or reasonable, a court shall have regard to all the circumstances of the case and in particular to the following matters:
  - (a) the strength of the bargaining positions of the supplier and the person to whom the goods or services were supplied (in this subsection referred to as ***the buyer***) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;
  - (b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;
  - (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties); and
  - (d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

## 70 Conflict of laws

Where:

- (a) the proper law of a contract for the supply of goods or services to a consumer would, but for a term that it should be the law of some other place, be the law of the Territory; or
- (b) a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other place for all or any of the provisions of this Division,

this Division applies to the contract notwithstanding that term.

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## 71 Convention on contracts for the international sale of goods

The provisions of the United Nations Convention on Contracts for the International Sale of Goods, as set out in and given effect to by the *Sale of Goods (Vienna Convention) Act*, prevail over the provisions of this Division to the extent of any inconsistency.

## Division 3 Actions against manufacturers and importers of goods

### 72 Interpretation of Division 3

(1) In this Division:

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

- (a) the quality, performance or characteristics of the goods;
- (b) the provision of services that are or may at any time be required in respect of the goods;
- (c) the supply of parts that are or may at any time be required for the goods; or
- (d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made form part,

which is given or made in connection with the supply of the goods, or the promotion by any means of the supply or use of the goods, and the natural tendency of which is to induce persons to acquire the goods.

**manufactured** includes grown, extracted, produced, processed and assembled.

(2) In this Division:

- (a) a reference to goods is, unless the contrary intention appears, a reference to goods of a kind ordinarily acquired for personal, domestic or household use or consumption;
- (b) a reference to a person who acquires goods from a consumer does not include a reference to a person who acquires goods for the purpose of re-supply;

- (c) a reference to the quality of goods includes a reference to the state or condition of the goods;
- (d) a reference to antecedent negotiations in relation to the acquisition of goods by a consumer is a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by that other person whereby the consumer was induced to acquire the goods, or which otherwise promoted the acquisition of the goods by the consumer; and
- (e) a reference to the person by whom any antecedent negotiations were conducted is a reference to the person by whom the negotiations or arrangements concerned were conducted or made.

(3) A person who:

- (a) holds him or herself out to the public as the manufacturer of goods;
- (b) causes or permits the person's name, a name by which the person carries on business, or a brand or mark of the person, to be applied to goods supplied by the person; or
- (c) causes or permits another, in connection with the supply or possible supply of goods by that other or the promotion by that other by any means of the supply or use of goods, to hold out the person to the public as the manufacturer of the goods,

shall be deemed for the purposes of this Division to have manufactured the goods.

(4) If:

- (a) goods are imported into Australia by a person who was not the manufacturer of the goods; and
- (b) at the time of the importation the manufacturer of the goods does not have a place of business in Australia,

the importer shall be deemed for the purposes of this Division to have manufactured the goods.

- (5) For the purposes of subsection (3)(b):
- (a) a name, brand or mark shall be deemed to be applied to goods if it is:
    - (i) woven in, impressed on, worked into or annexed or affixed to the goods; or
    - (ii) applied to a covering, label, reel or thing in or with which the goods are supplied; and
  - (b) if the name of a person, a name in which a person carries on business or a brand or mark of a person is applied to goods, it shall be presumed, unless the contrary is established, that the person caused or permitted the name, brand or mark to be applied to the goods.
- (6) The reference in subsection (5)(a)(ii) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper, and the reference in that subparagraph to a label includes a reference to a band or ticket.
- (7) If goods are imported into Australia on behalf of a person, that person shall be deemed for the purposes of this Division to have imported the goods into Australia.
- (8) For the purposes of this Division, goods shall be taken to be supplied to a consumer notwithstanding that, at the time of the supply, they are affixed to land or premises.

### **73      Actions in respect of unsuitable goods**

- (1) Where:
- (a) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply;
  - (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer;
  - (c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the supplier, either directly or through the person from whom the consumer acquired the goods or a person by whom any antecedent negotiations in connection with the acquisition of the goods were conducted;



- (d) the goods are not reasonably fit for that purpose, whether or not it is a purpose for which such goods are commonly supplied; and
- (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose,

the supplier is liable to compensate the consumer or that other person for the loss or damage, and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

(2) Subsection (1) does not apply:

- (a) if the goods are not reasonably fit for the purpose referred to in that subsection by reason of:
  - (i) an act or default of any person (not being the supplier or a servant or agent of the supplier); or
  - (ii) a cause independent of human control,  
occurring after the goods have left the control of the supplier;  
or
- (b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the supplier.

## 74      **Actions in respect of false descriptions**

(1) Where:

- (a) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply;
- (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer by description;
- (c) the goods do not correspond with the description; and
- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods do not correspond with the description,

the supplier is liable to compensate the consumer or that other person for the loss or damage, and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

- (2) Subsection (1) does not apply if the goods do not correspond with the description referred to in that subsection by reason of:
  - (a) an act or default of any person (not being the supplier or a servant or agent of the supplier); or
  - (b) a cause independent of human control,  
occurring after the goods have left the control of the supplier.
- (3) A supplier is not liable to compensate a person for loss or damage suffered by the person by reason that goods do not correspond with a description unless the description was applied to the goods:
  - (a) by or on behalf of the supplier; or
  - (b) with the consent of the supplier, whether express or implied.
- (4) If the goods referred to in subsection (1) are supplied to the consumer by reference to a sample as well as by description, it is not a defence to an action under this section that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.
- (5) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

## **75 Actions in respect of goods of unmerchantable quality**

- (1) Where:
  - (a) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply;
  - (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer;
  - (c) the goods are not of merchantable quality; and

- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not of merchantable quality,

the supplier is liable to compensate the consumer or that other person for the loss or damage, and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

- (2) Subsection (1) does not apply:

- (a) if the goods are not of merchantable quality by reason of:
  - (i) an act or default of any person (not being the supplier or a servant or agent of the supplier); or
  - (ii) a cause independent of human control,  
occurring after the goods have left the control of the supplier;
- (b) as regards defects specifically drawn to the consumer's attention before the making of the contract for the supply of the goods to the consumer; or
- (c) where the consumer examines the goods before that contract is made, as regards defects that the examination ought to reveal.

- (3) Goods of any kind are of merchantable quality within the meaning of this section if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to:

- (a) any description applied to the goods by the supplier;
- (b) the price received by the supplier for the goods (if relevant);  
and
- (c) all other relevant circumstances.

## **76 Actions in respect of non-correspondence with samples, &c.**

- (1) Where:

- (a) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply;

- (b) a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer;
- (c) the goods are supplied to the consumer by reference to a sample;
- (d) the bulk of the goods does not correspond with the sample in quality, or the goods have a defect rendering them unmerchantable that is not, or would not be, apparent on reasonable examination of the sample; and
- (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the bulk does not correspond with the sample in quality or by reason that the goods have that defect,

the supplier is liable to compensate the consumer or that other person for the loss or damage, and the consumer or that other person may recover the amount of the loss or damage by action against the supplier in a court of competent jurisdiction.

(2) Subsection (1) does not apply where:

- (a) the sample is not supplied by the supplier;
- (b) the supply by sample is made without the express or implied concurrence of the supplier; or
- (c) the failure of the bulk of the goods to correspond with the sample in quality or the existence of the defect is due to:
  - (i) an act or default of any person (not being the supplier or a servant or agent of the supplier), or a cause independent of human control, occurring after the goods have left the control of the supplier; or
  - (ii) other circumstances that were beyond the control of the supplier and that the supplier could not reasonably be expected to have fore-seen.

## **77      Actions in respect of failure to provide facilities for repairs or parts**

(1) Where:

- (a) a person (***the supplier***), in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the supplier to a consumer; or
- (b) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer,

and, in either case:

- (c) at a time (***the relevant time***) after the acquisition of the goods by the consumer:
  - (i) the goods require to be repaired, but facilities for their repair are not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer; or
  - (ii) a part is required for the goods, but the part is not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer;
- (d) the supplier acted unreasonably in failing to ensure that facilities for the repair of the goods were, or that the required part was, reasonably available to the consumer or that other person at the relevant time; and
- (e) the consumer or that other person suffers loss or damage by reason of the failure of the supplier to ensure that facilities for the repair of the goods were, or that the required part was, reasonably available to the consumer or that other person at the relevant time,

the supplier is liable to compensate the consumer or that other person for the loss or damage, and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

- (2) Subsection (1) does not apply where the relevant supplier took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he or she acquired the goods that:
- (a) the supplier did not promise that facilities for the repair of the goods, or that parts for the goods, would be available; or
  - (b) the supplier did not promise that facilities for the repair of the goods, or that parts for the goods, would be available after a specified period, being a period that expired before the relevant time.
- (3) Where the relevant supplier took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he or she acquired the goods that the supplier did not promise that:
- (a) facilities for the repair of the goods, being facilities of a kind specified in the notice, would be available;
  - (b) parts for the goods, being parts of a kind specified in the notice, would be available; or
  - (c) facilities for the repair of the goods would be available at, or parts for the goods would be available from, a place or places specified in the notice,

the supplier is not liable to compensate the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer for loss or damage suffered by the consumer or that other person by reason of the failure of the supplier to ensure that facilities of the kind specified in the notice, or parts of the kind specified in the notice, were available, or that facilities for the repair of the goods were available at, or parts for the goods were available from, a place or places specified in the notice, as the case may be.

- (4) In determining whether a supplier acted unreasonably in failing to ensure that facilities for the repair of goods were, or that a part was, reasonably available to a person at the relevant time, a court shall have regard to all the circumstances of the case, and, in particular, to the existence at the relevant time of circumstances that prevented those facilities or that part being so available, being circumstances beyond the control of the supplier.

## **78        Actions in respect of non-compliance with express warranty**

(1) Where:

- (a) a person (***the supplier***), in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the supplier to a consumer; or
- (b) a person (***the supplier***), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer,

and, in either case:

- (c) the supplier fails to comply with an express warranty given or made by the supplier in relation to the goods; and
- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason of the failure,

the supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.

(2) For the purposes of any action instituted against a supplier under this section, where:

- (a) an undertaking, assertion or representation was given or made in connection with the supply of goods or the promotion by any means of the supply or use of goods; and
- (b) the undertaking, assertion or representation would, if it had been given or made by the supplier or a person acting on behalf of the supplier, have constituted an express warranty in relation to the goods,

it shall be presumed that the undertaking, assertion or representation was given or made by the supplier or a person acting on behalf of the supplier unless the supplier proves that the supplier did not give or make, and did not cause or permit the giving or making of, the undertaking, assertion or representation.

## **79 Right of seller to recover against manufacturer or importer**

(1) Where:

- (a) a person (***the seller***) is under a liability to another person (***the customer***) in respect of loss or damage suffered by the customer as a result of a breach of a condition or warranty implied by a provision of Division 2 in a contract for the supply of goods (whether or not of a kind ordinarily acquired for personal, domestic or household use or consumption) by the seller to the customer; and
- (b) a third person (***the manufacturer***):
  - (i) is liable to compensate the customer in respect of the same loss or damage by reason of a provision of this Division; or
  - (ii) in a case where the goods referred to in paragraph (a) are not of the kind ordinarily acquired for personal, domestic or household use or consumption – would, if sections 73, 74, 75 and 76 applied in relation to those goods, be liable to compensate the customer in respect of the same loss or damage by reason of any of those sections,

the manufacturer is liable to indemnify the seller in respect of the seller's liability to the customer.

- (2) Where subsection (1) applies, the seller may, in respect of the manufacturer's liability to indemnify the seller, institute an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the seller could have obtained if that liability had arisen under a contract of indemnity made between the manufacturer and the seller.

## **80 Time for commencing actions**

- (1) Subject to this section, an action under a provision of this Division may be commenced at any time within 3 years after the day on which the cause of the action accrued.
- (2) For the purposes of this section, a cause of action shall be deemed to have accrued:
  - (a) in the case of an action other than an action under section 79, on the day on which the consumer or a person who acquired the goods from, or derived title to the goods through or under, the consumer first became aware, or ought reasonably to



have become aware:

- (i) in the case of an action under section 73 – that the goods were not reasonably fit for the purpose referred to in that section;
  - (ii) in the case of an action under section 74 – that the goods did not correspond with the description referred to in that section;
  - (iii) in the case of an action under section 75 – that the goods were not of merchantable quality;
  - (iv) in the case of an action under section 76 – that the goods did not correspond with the sample in quality or the goods had the defect referred to in that section;
  - (v) in the case of an action under section 77 – that the goods required to be repaired or that the part was required for the goods, as the case may be; or
  - (vi) in the case of an action under section 78 – of the failure of a supplier within the meaning of that section to comply with the express warranty referred to in that section; or
- (b) in the case of an action under section 79, on:
- (i) the day, or the first day, as the case may be, on which the seller within the meaning of that section made a payment in respect of, or otherwise discharged in whole or in part, his or her liability to the customer within the meaning of that section; or
  - (ii) the day on which a proceeding was instituted by that customer against that seller in respect of that liability or, if more than one such proceeding was instituted, the day on which the first such proceeding was instituted,

whichever was the earlier.

- (3) In an action under a provision of this Division, it is a defence if the defendant proves that the action was not commenced within 10 years after the time of the first supply to a consumer of the goods to which the action relates.

## **81 Application of division not to be excluded or modified**

- (1) Any term of a contract (including one that is not set out in the contract but is incorporated in the contract by another term of the

contract) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any liability of a person to compensate or indemnify another person that may arise under this Division, is void.

- (2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with that provision.
- (3) Nothing in this section applies to a term of contract referred to in section 82(4).

## **82 Limitation in certain circumstances of liability of manufacturer to seller**

- (1) Notwithstanding section 79 but subject to this section, in the case of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of a manufacturer to a seller is limited to a liability to pay to the seller an amount equal to:
  - (a) the cost of replacing the goods;
  - (b) the cost of obtaining equivalent goods; or
  - (c) the cost of having the goods repaired,whichever is the lowest amount.
- (2) Subsection (1) does not apply in relation to particular goods if the seller establishes that it is not fair or reasonable for the liability under that section of a manufacturer in respect of those goods to be limited as mentioned in subsection (1).
- (3) In determining for the purposes of subsection (2) whether or not it is fair or reasonable for the liability of a manufacturer to a seller in respect of goods to be limited as mentioned in subsection (1), a court shall have regard to all the circumstances of the case and, in particular, to:
  - (a) the availability of suitable alternative sources of supply of the goods;
  - (b) the availability of equivalent goods; and
  - (c) whether the goods were manufactured, processed or adapted to the special order of the seller.

- (4) This section is subject to any term of a contract between the manufacturer and the seller imposing on the manufacturer a greater liability than the liability mentioned in subsection (1).
- (5) In this section, the expressions **manufacturer** and **seller** have the same respective meanings as in section 79.

## **Division 4      Transactions involving credit providers**

### **83      Joint liability of supplier and credit provider for breach of certain contracts**

- (1) Where:
  - (a) a person (**the supplier**) supplies goods, or causes goods to be supplied, to a linked credit provider of the supplier and a consumer enters into a contract with the linked credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer; or
  - (b) a consumer enters into a contract with a linked credit provider of a person (**the supplier**) for the provision of credit in respect of the supply by the supplier of goods or services, or goods and services, to the consumer,

and the consumer suffers loss or damage as a result of misrepresentation, breach of contract, or failure of consideration in relation to the contract, or as a result of a breach of a condition that is implied in the contract by virtue of section 63, 64, or 65 or of a warranty that is implied in the contract by virtue of section 66, the supplier and the linked credit provider are, subject to this section, jointly and severally liable to the consumer for the amount of the loss or damage, and the consumer may recover that amount by action in accordance with this section in a court of competent jurisdiction.

- (2) Where:
  - (a) a person (**the supplier**) supplies goods, or causes goods to be supplied, to a credit provider who is not a linked credit provider of the supplier;
  - (b) a consumer enters into a contract with the credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer;

- (c) antecedent negotiations in relation to the contract were conducted with the consumer by or on behalf of the supplier; and
- (d) the credit provider did not take physical possession of the goods before they were delivered to the consumer,

or where a consumer enters into a contract with a credit provider for the provision of credit in respect of the supply of services to the consumer by a person (***the supplier***) of whom the credit provider is not a linked credit provider, then if the consumer suffers loss or damage as a result of a breach of a condition that is implied in the contract by virtue of section 63, 64 or 65 or of a warranty so implied by virtue of section 66, the credit provider is not under any liability to the consumer for the amount of the loss or damage, but the consumer may recover that amount by action in a court of competent jurisdiction against the supplier.

- (3) A linked credit provider of a particular supplier is not liable to a consumer by virtue of subsection (1) in proceedings arising under that subsection if the credit provider establishes:
  - (a) that the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer that was not induced by the supplier;
  - (b) where the proceedings relate to the supply by way of lease, hire or hire-purchase of goods by the linked credit provider to the consumer, that:
    - (i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and
    - (ii) after becoming a linked credit provider of the supplier, the credit provider had not had cause to suspect that:
      - (A) the consumer might be entitled to recover an amount of loss or damage suffered as a result of misrepresentation or breach of a condition or warranty referred to in subsection (1); and
      - (B) the supplier might be unable to meet the supplier's liabilities as and when they fall due;

(c) where the proceedings relate to a contract of sale with respect to which a tied loan contract applies, that:

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(ii) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that:

(A) the consumer might, if the contract were entered into, be entitled to recover an amount of loss or damage suffered as a result of misrepresentation, breach of contract or failure of consideration in relation to the contract, or as a result of a breach of a condition or warranty referred to in subsection (1); and

(B) the supplier might be unable to meet the supplier's liabilities as and when they fall due; or

(d) where the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider applies, that, having regard to:

(i) the nature and volume of business carried on by the linked credit provider; and

(ii) such other matters as appear to be relevant in the circumstances of the case,

the linked credit provider, before becoming aware of the contract of sale or of proposals for the making of the contract of sale (whichever the credit provider first became aware of), had not had cause to suspect that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for misrepresentation, breach of contract, failure of consideration, breach of a condition or breach of a warranty as referred to in subsection (1).

(4) Subject to subsection (5), in any proceedings in relation to a contract referred to in subsection (1)(a) or (b) in which a credit provider claims damages or an amount of money from a consumer, the consumer may set up the liability of the credit provider under subsection (1) in diminution or extinction of the consumer's liability.

(5) Subject to subsection (6), a consumer may not, in respect of a liability for which, by reason of this section, a supplier and a linked credit provider are jointly and severally liable:

- (a) bring proceedings to recover an amount of loss or damage from the credit provider; or
- (b) where proceedings are brought against the consumer by the credit provider, make a counter-claim or exercise the right conferred by subsection (4) against the credit provider,

unless the consumer brings the action against the supplier and the credit provider jointly or, in the case of a counter-claim or the right conferred by subsection (4), claims in the proceedings against the supplier in respect of the liability by third-party proceedings or otherwise.

(6) Subsections (5), (8)(a) and (9)(a) do not apply in relation to proceedings where:

- (a) the supplier, being a body corporate, has been dissolved or is commenced to be wound up; or
- (b) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied and the court has, on the application of the consumer, declared that those provisions do not apply in relation to the proceedings.

(7) The liability of a linked credit provider to a consumer for damages or a sum of money in respect of a contract referred to in subsection (1) does not exceed the sum of:

- (a) the amount financed under the tied loan contract, tied continuing credit contract, lease contract, contract of hire or contract of hire-purchase;
- (b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and
- (c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.

- (8) Where in proceedings arising under subsection (1), judgment is given against a supplier and a linked credit provider, the judgment:
- (a) shall not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days; and
  - (b) may be enforced against the linked credit provider only to the extent of:
    - (i) the amount calculated in accordance with subsection (7); or
    - (ii) so much of the judgment debt as has not been satisfied by the supplier,whichever is the lesser.
- (9) Where in proceedings arising under subsection (1), a right conferred by subsection (4) is established against a linked credit provider, the consumer:
- (a) shall not receive the benefit of the right unless judgment has been given against the supplier and linked credit provider, a written demand has been made on the supplier for satisfaction of the judgment and the demand has remained unsatisfied for not less than 30 days; and
  - (b) may receive the benefit only to the extent of:
    - (i) the amount calculated in accordance with subsection (7); or
    - (ii) so much of the judgment debt as has not been satisfied by the supplier,whichever is the lesser.
- (10) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of the linked credit provider's liability under subsection (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the proceedings by reason of which the liability was incurred.

(11) Notwithstanding any other law, where, in proceedings arising under subsection (1), judgment is given against a supplier and a linked credit provider or against a linked credit provider for an amount of loss or damage, the court in which the proceedings are taken shall, on the application of the consumer, unless good cause is shown to the contrary, award interest to the consumer against the supplier and credit provider or against the credit provider, as the case may be, on the whole or a part of the amount, from the time when the consumer became entitled to recover the amount until the date on which the judgment is given, at whichever of the following rates is the greater:

(a) where the amount payable by the consumer to the credit provider for the obtaining of credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum – that rate or, if more than one, the lower or lowest of those rates;

(b) 8% or such other rate as is prescribed.

(12) In determining whether good cause is shown against awarding interest under subsection (11) on the whole or part of an amount of loss or damage, the court shall take into account any payment made into court by the supplier or credit provider.

(13) Where a judgment given in proceedings arising under subsection (1) is enforced against a linked credit provider of a particular supplier, the credit provider is subrogated to the extent of the judgment so enforced to any rights that the consumer would have had but for the judgment against the supplier or any other person.

(14) In this section:

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

**linked credit provider**, in relation to a supplier, means a credit provider:

(a) with whom the supplier has a contract, arrangement or understanding relating to:

(i) the supply to the supplier of goods in which the supplier deals;

(ii) the business carried on by the supplier of supplying goods or services; or



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

***tiered continuing credit contract*** means a continuing credit contract (as defined in section 84) under which the credit provider provides credit in respect of the payment by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

***tiered loan contract*** means a loan contract (as defined in section 85) entered into between a credit provider and a consumer where:

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

and section 61(1)(c) and (d) have effect for the purposes of this section as they have effect for the purposes of Division 2.

- (15) This section does not apply to contracts made before its coming into operation.

**84            Meaning of *continuing credit contract* for purposes of section 83**

- (1) For the purposes of section 83, a continuing credit contract is any agreement whereby:
  - (a) a person (***the creditor***), in the course of a business carried on by the creditor, agrees with a consumer to provide credit to the consumer in respect of:
    - (i) payment for goods or services or cash supplied by the creditor to the consumer from time to time; or
    - (ii) payment by the creditor to a third person in respect of goods or services or cash supplied by that third person to the consumer from time to time; and
  - (b) the amounts owing to the creditor from time to time under the agreement are or are to be calculated on the basis that all amounts owing, and all payments made, by the consumer under or in respect of the agreement are entered in one or more accounts kept for the purpose of the agreement.
- (2) Where the creditor agrees to make payments to a third person in respect of goods or services or cash supplied by that third person to the consumer, as mentioned in subsection (1)(a)(ii), then, for the purposes of this section, the creditor shall, in respect of any goods or services or cash so supplied, be deemed to have provided credit to the consumer to the extent of any payments made or to be made by the creditor to that third person.
- (3) For the purposes of this section:
  - (a) a reference to an agreement includes a reference to an arrangement, understanding or course of dealing; and
  - (b) a person shall be deemed to agree with another person with respect to a matter if the first-mentioned person has an agreement, arrangement or understanding with the other person, or is engaged in a course of dealing with the other person, with respect to the matter.

**85            Meaning of *loan contract* for purposes of section 83**

For the purposes of section 83, *loan contract* means a contract under which a person in the course of a business carried on by that person provides or agrees to provide, whether on one or more occasions, credit to a consumer in one or more of the following ways:

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

**86            Section 83 not to be excluded or modified**

- (1) A term of a contract (including one that is not set out in the contract but is incorporated in it by another term of the contract) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, the application of section 83 or the exercise of a right conferred by section 83 is void.
- (2) A term of a contract shall not be taken to exclude, restrict or modify the application of section 83 unless it does so expressly or is inconsistent with that section.

**Part VI                    Enforcement, &c., of Part IV and Part V,  
Division 1****87            Interpretation of Part VI**

- (1) A reference in this Part to a person involved in a contravention of a provision of Part IV or Division 1 of Part V is 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; or
  - (d) has conspired with others to effect the contravention.
- (2) A reference in this Part to a judgment is, unless the contrary intention appears, a reference to a judgment, decree or order, whether final or interlocutory.

## **88 Offences**

- (1) A person who:
- (a) contravenes;
  - (b) aids, abets, counsels or procures a person to contravene;
  - (c) induces or attempts to induce a person, whether by threats or promises or otherwise, to contravene;
  - (d) is in any way, directly or indirectly, knowingly concerned in or party to the contravention by a person of; or
  - (e) conspires with others to contravene,
- a provision of Part IV, or a provision of Division 1 of Part V other than section 42 or 43, is guilty of an offence.
- (2) A person guilty of an offence as mentioned in subsection (1) is (except in a case where a different penalty is applicable by virtue of section 29(7) or 36(2) or (3)) liable:
- (a) in the case of an individual – to a penalty not exceeding \$20,000; or
  - (b) in the case of a body corporate – to a penalty not exceeding \$100,000.
- (3) Where:
- (a) a person is found guilty of 2 or more offences constituted by, or relating to, contraventions of the same provision of Part IV or Division 1 of Part V; and
  - (b) the contraventions appear to the sentencing court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time (whether or not the person is also found guilty of an offence or offences

constituted by, or relating to, another contravention or other contraventions of that provision which were of a different nature or occurred at a different time),

the court shall not, in respect of the offences referred to in paragraph (a), impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by the person against that provision.

(4) Where:

- (a) a person is found guilty of an offence constituted by, or relating to, a contravention of a provision of Part IV or Division 1 of Part V; and
- (b) a fine has, or fines have, previously been imposed on the person by the sentencing court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision, being a contravention which, or contraventions each of which, appears to the court to have been of the same nature as, or of a substantially similar nature to, and to have occurred at or about the same time as, the first-mentioned contravention (whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time),

the court shall not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence under subsection (2) is greater than the amount of the fine, or the sum of the amounts of the fines, first referred to in paragraph (b).

- (5) In proceedings in the Supreme Court against a person for contravening a provision of Part IV or Division 1 of Part V, the Court may:
  - (a) grant an injunction under section 89 against the person in relation to:
    - (i) the conduct that constitutes, or is alleged to constitute, the contravention; or
    - (ii) other conduct of that kind; or
  - (b) make an order under section 90 in relation to the contravention.

- (6) Where a person on whom a fine has been imposed for an offence constituted by or relating to a contravention of a provision of Part IV or Division 1 of Part V defaults in payment of the fine, the Supreme Court may (whether the fine was imposed by that Court or by the Court of Summary Jurisdiction) make on the application of the Minister or Commissioner an order for the enforcement of the fine as if it were a judgment debt under a judgment of the Supreme Court.
- (7) On the making of an order under subsection (6), the fine becomes enforceable as if it were such a debt, and payment thereof ceases to be enforceable in any other way.
- (8) Proceedings for an offence constituted by or relating to a contravention of a provision of Part IV or Division 1 of Part V may be commenced within 3 years after the alleged offence.

## **89 Injunctions**

- (1) Where, on the application of the Minister, the Commissioner or any other person, the Supreme Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
  - (a) a contravention of a provision of Part IV or Division 1 of Part V;
  - (b) attempting to contravene such a provision;
  - (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
  - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
  - (f) conspiring with others to contravene such a provision,the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Without limiting the generality of subsection (1), an injunction granted under that subsection may be, or include, 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):

- (a) for a specified period; or
  - (b) except on specified terms and conditions.
- (3) Where an application for an injunction under subsection (1) has been made, the Supreme Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind specified in subsection (1).
- (4) Where in the opinion of the Supreme Court it is desirable to do so, the Court may grant an injunction pending determination of an application under subsection (1).
- (5) The Supreme Court may at any time rescind or vary an injunction granted under this section.
- (6) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (7) The power of the Supreme Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
  - (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-mentioned person refuses or fails to do that act or thing.
- (8) Where the Minister or the Commissioner makes an application to the Supreme Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertaking

as to damages or costs.

- (9) If in the case of an application made otherwise than by the Minister or the Commissioner:

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

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person.

## **90 Order to disclose information or publish advertisement**

Without limiting the generality of section 89, where, on the application of the Minister or the Commissioner, the Supreme Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Part IV, or of Division 1 of Part V other than section 43, the Court may make either or both of the following orders:

- (a) an order requiring that person or a person involved in the contravention to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access;
- (b) an order requiring that person or a person involved in the contravention to publish, at the person's own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order.

## **91 Actions for damages**

- (1) A person who suffers loss or damage by conduct of another person that is in contravention of a provision of Part IV, or of Division 1 of Part V other than section 43, may recover the amount of the loss or damage against that other person or against any person involved in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.



**92 Finding in proceedings to be evidence**

In a proceeding against a person under section 91, or in an application under section 95(2) for an order against a person, a finding of any fact made by a court in:

- (a) proceedings under section 89 or 90; or
- (b) proceedings for an offence in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of Part IV or Division 1 of Part V,

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.

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

- (1) Where, in a proceeding in respect of conduct engaged in by a body corporate, being conduct in relation to which a provision of Part IV or Division 1 of Part V applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
  - (a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed for the purposes of this Act to have been engaged in also by the body corporate.

- (3) Where, in a proceeding in respect of conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of Part IV or Division 1 of Part V applies, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.

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- (4) Conduct engaged in on behalf of a person other than a body corporate:
- (a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,
- shall be deemed for the purposes of this Act to have been engaged in also by the first-mentioned person.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

## 94 Defences

- (1) Subject to subsection (3), in a prosecution in relation to a contravention of a provision of Part IV or Division 1 of Part V, it is a defence if the defendant establishes:
- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake;
  - (b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or
  - (c) that:
    - (i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
    - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In subsection (1)(b) and (c), **another person** does not include a person who was:
- (a) a servant or agent of the defendant; or
  - (b) in the case of a defendant being a body corporate, a director, servant or agent of the defendant,

at the time when the contravention occurred.

- (3) If a defence provided by section (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.
- (4) In a proceeding in relation to a contravention of a provision of Division 1 of Part V committed by the publication of an advertisement, it is a defence if it is established that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the defendant received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of that provision.

## **95 Other orders**

- (1) Without limiting the generality of section 89, where, in a proceeding instituted under this Part, or for an offence constituted by or relating to a contravention of a provision of Part IV or Division 1 of Part V, the Supreme Court finds that a person has suffered, or is likely to suffer, loss or damage by conduct of another person that contravened such a provision, the Court may, whether or not it grants an injunction under section 89 or makes an order under section 90 or 91, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders specified in subsection (5)) if the Court considers that the order or orders concerned will compensate the first-mentioned person wholly or in part for the loss or damage or will prevent or reduce the loss or damage.
- (2) Without limiting the generality of section 89, the Supreme Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage by conduct of another person that contravened a provision of Part IV or Division 1 of Part V, or on the application of the Commissioner in accordance with subsection (4) on behalf of such a person or 2 or more such persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders specified in subsection (5)) if the Court considers that the order or orders

concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, wholly or in part for the loss or damage or will prevent or reduce the loss or damage.

- (3) An application may be made under subsection (2) in relation to a contravention of a provision of Part IV or Division 1 of Part V even if a proceeding has not been instituted under another provision of this Part in relation to the contravention.
- (4) Where, in a proceeding instituted for an offence constituted by or relating to a contravention of a provision of Part IV or Division 1 of Part V or instituted by the Minister or the Commissioner under section 89, a person is found to have engaged in conduct in contravention of a provision of Part IV or Division 1 of Part V, the Commissioner may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but the Commissioner shall not make such an application except with the consent in writing given before the application is made by the person, or by each of the persons, on whose behalf the application is made.
- (5) The orders referred to in subsections (1) and (2) are:
  - (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or the whole or any part of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void from its beginning or at all times on and after such date before the date on which the order is made as is specified in the order;
  - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date before the date on which the order is made as is so specified;
  - (c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;
  - (d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage;

- (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;
  - (f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage;
  - (g) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage; and
  - (h) an order, in relation to an instrument creating or transferring an interest in land within the meaning of section 45(4), directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that:
    - (i) varies, or has the effect of varying, the first-mentioned instrument; or
    - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.
- (6) An application under subsection (2) in relation to conduct in contravention of section 43 may be made at any time within 2 years after the cause of action accrued, and an application under that subsection may in any other case be made at any time within 3 years after the cause of action accrued.
- (7) For the purpose of determining whether to make an order under this section in relation to a contravention of section 43, the Court may have regard to the conduct of the parties to the proceedings since the contravention occurred.
- (8) The powers conferred on the Court under this section in relation to a contract or arrangement do not affect any powers that any other court may have in relation to the contract or arrangement in proceedings instituted in that other court in respect of the contract or arrangement.

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**96 Power of supreme court to prohibit payment or transfer of money or other property**

(1) Where:

- (a) proceedings have been commenced against a person for an offence constituted by or relating to a contravention of a provision of Part IV or Division 1 of Part V;
- (b) an application has been made under section 89 for an injunction against a person in relation to a contravention of any such provision;
- (c) an action has been commenced under section 91(1) against a person in relation to a contravention of any such provision; or
- (d) an application for an order under section 95(2) has been or may be made against a person in relation to a contravention of any such provision,

the Supreme Court may, on the application of the Minister or the Commissioner, make an order mentioned in subsection (2) if the Court is satisfied that:

- (e) it is necessary or desirable to do so for the purpose of preserving money or other property held by or on behalf of a person referred to in paragraph (a), (b), (c) or (d), as the case may be (in this section referred to as the **relevant person**), where the relevant person is liable or may become liable under this Act to pay money by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or refund other property; and
- (f) it will not unduly prejudice the rights and interests of any other person.

(2) The orders referred to in subsection (1) are:

- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or on behalf of an associate of the relevant person from paying all or any of the money, or transferring or otherwise parting with possession of the other

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property, to, or to another person at the direction or request of, the person on whose behalf the money or other property is held;

- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the relevant person or of an associate of the relevant person to a place outside the Territory;
  - (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the relevant person or of an associate of the relevant person to a place outside the Territory; and
  - (e) an order appointing, where the relevant person is a natural person, a receiver or trustee of the property or of part of the property of the relevant person with such powers as are specified in the order.
- (3) Subject to subsection (4), an order under this section may be expressed to operate:
  - (a) for a period specified in the order; or
  - (b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.
- (4) An order under this section made in the absence of the person against whom the order is sought shall not be expressed to operate for a period exceeding 30 days.
- (5) A person who contravenes or fails to comply with an order under this section that is applicable to the person is guilty of an offence punishable on a finding of guilt:
  - (a) in the case of an individual – by a fine not exceeding \$20,000; or
  - (b) in the case of a body corporate – by a fine not exceeding \$100,000.
- (6) A reference in this section to a person who is an associate of a relevant person is a reference to:
  - (a) a person holding money or other property on behalf of the relevant person; or
  - (b) if the relevant person is a body corporate – a wholly owned subsidiary of the relevant person for the purposes of the Companies (Northern Territory) Code.

## **Part VII              Door-to-door trading**

### **Division 1              Preliminary**

#### **97              Interpretation of Part VII**

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

***contract to which this Part applies*** means a contract to which this Part applies by virtue of section 98.

***cooling-off period***, in relation to a prescribed contract, means the period of 10 days commencing on and including the day on which the contract is made.

***dealer*** means a person who in the course of door-to-door trading:

- (a) enters into negotiations with another person with a view to the making of a contract for the supply of goods or services to that other person; or
- (b) calls on another person for the purpose of entering into such negotiations,

whether or not the first-mentioned person is or is to be the supplier of the goods or services.

***door-to-door trading*** means the trading practice under which:

- (a) a person:
  - (i) goes from place to place; or
  - (ii) makes telephone calls,seeking out persons who may be prepared to enter as consumers into contracts for the supply of goods or services; and
- (b) that person or some other person then or subsequently enters into negotiations with those prospective consumers with a view to the making of such contracts.

***negotiation*** includes any discussion or dealing directed towards the making of a contract (whether or not the terms of the contract are open to negotiation).

***premises*** includes land.

***prescribed contract*** has the meaning given by section 100.



***related contract or instrument***, in relation to a contract to which this Part applies, means:

- (a) a contract of guarantee or indemnity that is related to the contract;
  - (b) an instrument related to the contract that creates a mortgage or charge in favour of the supplier or dealer, or a person nominated by the supplier or dealer; or
  - (c) any other contract or instrument (not being an instrument of the kind referred to in paragraph (b)) that is collateral or related to the contract.
- (2) In this Part:
- (a) a reference to the consumer or supplier under a contract for the supply of goods or services extends to any person to whom the rights of the original consumer or supplier under the contract are assigned or transferred, or pass by operation of law; and
  - (b) a reference to negotiation of a contract to which this Part applies is a reference to negotiation of a contract that would, on its formation, be a contract to which this Part applies.
- (3) For the purposes of this Part a contract is a contract for the supply of goods or services to a person (being a party to the contract) if it provides for the supply of goods or services either to that person or to some other person on the order of that person.

## **98      Contracts to which Part VII applies**

- (1) Subject to subsection (5), this Part applies to a contract for the supply of goods or services to a consumer (whether or not the law of the Territory is the proper law of the contract) if the following conditions are satisfied:
- (a) negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the consumer and a dealer in each other's presence in the Territory at a place other than trade premises of the supplier;
  - (b) the dealer attends at that place:
    - (i) in the course of door-to-door trading; and
    - (ii) otherwise than at the unsolicited invitation of the consumer.

- (2) In determining for the purposes of subsection (1)(b)(ii) whether an invitation is solicited or unsolicited, any solicitation by way of printed or written material delivered but not addressed personally to the consumer, or by way of advertisement addressed to the public or a substantial section of the public, shall be disregarded.
- (3) For the purposes of subsection (1)(b)(ii), where an invitation arises, except as mentioned in subsection (2), from a communication initiated by the supplier or dealer or a person acting on behalf of the supplier or dealer, the invitation shall not be regarded as unsolicited.
- (4) The reference in subsection (1)(a) to the trade premises of a supplier is a reference to premises that constitute an established place of business of the supplier or an agent of the supplier.
- (5) This Part does not apply to a contract of a kind excluded by regulations from the application of this Part.

## **Division 2            Special provisions with respect to contracts**

### **99            Prohibition of certain terms in contracts to which Part VII applies**

- (1) A contract to which this Part applies must not contain:
  - (a) a provision purporting to provide that the contract, or any proceeding arising from the contract, is governed by the law of a place other than the Territory;
  - (b) a provision purporting to provide that legal proceedings arising out of, or in relation to, the contract are justiciable only by the courts of a place other than the Territory;
  - (c) a provision purporting to exclude, restrict, or modify any right conferred on a consumer by this Part; or
  - (d) a provision of a kind prohibited by regulations.
- (2) Where a contract to which this Part applies contains a provision contrary to subsection (1), the provision is void and the supplier and the dealer are each guilty of an offence.

Penalty:        \$5,000.

- (3) In this section ***contract to which this part applies*** includes a related contract or instrument.

**100            Certain Part VII contracts to be prescribed contracts**

- (1) Subject to this section, a contract to which this Part applies is a prescribed contract if the total consideration payable by the consumer under, or in respect of, the contract:
- (a) is not ascertainable at the time of the making of the contract; or
  - (b) is ascertainable at the time of the making of the contract and exceeds \$50 or, if another amount is prescribed by regulations, that other amount.
- (2) Where:
- (a) 2 or more contracts relate to substantially the same transaction; and
  - (b) the transaction could have been effected by a single contract which would, in that case, have constituted a prescribed contract,
- then each of the contracts that would not, if it stood alone, constitute a prescribed contract becomes a pre-scribed contract and, for the purpose of ascertaining the cooling-off period in relation to such a contract, it shall be deemed to have been made when the last of the contracts was made.
- (3) The following are not prescribed contracts:
- (a) a contract of insurance;
  - (b) a contract solely for the provision of credit;
  - (c) a contract of a kind declared by regulations not to be a prescribed contract.

**101            Requirements in relation to prescribed contracts**

- (1) The following requirements must be complied with in relation to a prescribed contract:
- (a) the contract must set out in full all the contractual terms including:
    - (i) the total consideration to be paid or provided by the consumer or, if the total consideration is not ascertainable at the time the contract is made, the manner in which it is to be calculated; and

- (ii) if the contract provides for the carrying out of work of a prescribed nature – detailed particulars of the work (including any such particulars required by regulations);
- (b) the contractual terms must be printed or type-written (apart from any insertions or amendments to the printed or typewritten form, which may be handwritten);
- (c) the making of the contract must be completed by the consumer signing the contract after it has already been executed by or on behalf of the supplier;
- (d) the consumer must be given a duplicate of the contract immediately after the making of the contract;
- (e) where the dealer is not the supplier, the contract must set out the full name and address of the dealer and identify that person as the dealer;
- (f) the contract must contain, immediately above the place provided for the signature of the consumer, the statement "THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF TEN DAYS" printed in upper case in type not smaller than 18 point;
- (g) the consumer must be given 2 notices at or immediately before the making of the contract:
  - (i) one being a notice in the prescribed form explaining the right of the consumer to rescind the contract; and
  - (ii) the other being a notice in the prescribed form that may be used by the consumer to rescind the contract;
- (h) the notices referred to in paragraph (g) must:
  - (i) be printed or typewritten (apart from any insertion, which may be handwritten);
  - (ii) set out the full name and address of the supplier and identify that person as the supplier; and
  - (iii) be separate from, and not attached to, any other document;
- (j) the printing or typewriting of the contract, the statement referred to in paragraph (f), and the notices referred to in paragraph (g), must be readily legible and conform with the requirements of regulations;

(k) any handwriting (apart from a signature or initial) in the contract or a notice referred to in paragraph (g) must be readily legible.

(2) If any of the requirements of subsection (1) is not complied with, the supplier and the dealer are each guilty of an offence.

Penalty:      \$5,000.

(3) Where a consumer acknowledges in writing receipt of a document required to be given under subsection (1), the acknowledgment is evidence, but not conclusive evidence, that the document was given to the consumer as required by that subsection.

**102      No consideration, &c., during cooling-off period in prescribed contract**

(1) If a supplier or dealer accepts any money or other consideration from a consumer under a prescribed contract or a related contract or instrument before the expiration of the cooling-off period, the supplier and the dealer are each guilty of an offence.

Penalty:      \$5,000.

(2) Subject to subsection (3), if services are supplied under a prescribed contract before the expiration of the cooling-off period, the supplier is guilty of an offence.

Penalty:      \$5,000.

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

**Division 3      Regulation of door-to-door trading practices**

**103      Dealers not to call during certain hours**

Except by prior appointment, a dealer shall not call on a person:

(a) at any time on a Sunday or a public holiday;

(b) on a Saturday:

(i) before 9.00 am; or

(ii) between 5.00 pm and midnight; or

(c) on any other day:

(i) before 9.00 am; or

- (ii) between 8.00 pm and midnight,

for the purpose of negotiating a contract to which this Part applies or for an incidental or related purpose.

Penalty:      \$5,000.

**104      Dealers to indicate their purpose for making calls**

A dealer who calls on a person for the purpose of negotiating a contract to which this Part applies or for an incidental or related purpose shall, as soon as it is practicable to do so:

- (a) make known to that person the purpose of the call; and
- (b) produce to that person an identity card setting out:
  - (i) the dealer's full name and address; and
  - (ii) if the dealer is not the supplier, the supplier's full name and address.

Penalty:      \$5,000.

**105      Dealers to leave premises when so requested**

A dealer who calls at premises for the purpose of negotiating a contract to which this Part applies or for an incidental or related purpose shall leave the premises at the request of the occupier of the premises or any person acting with the actual or implied authority of the occupier.

Penalty:      \$5,000.

**106      Harassment and coercion**

- (1) No dealer or other person shall, for the purpose of, or in the course of, negotiating a contract to which this Part applies, harass or coerce a consumer.

Penalty:      \$5,000.

- (2) No dealer or other person shall harass or coerce a consumer for the purpose of dissuading or preventing the consumer from exercising a right conferred on the consumer by this Part.

Penalty:      \$5,000.

## **Division 4      Rescission of contracts**

### **107      Right of consumer to rescind in certain circumstances**

- (1) A consumer may rescind a contract to which this Part applies (whether or not the contract is a prescribed contract) within 6 months of the date of the contract:
  - (a) if the contract or a related contract or instrument contains a provision contrary to section 99; or
  - (b) if the supplier or a dealer commits an offence against section 103, 104, 105 or 106(1) in the course of, or in relation to, the negotiations leading to the formation of the contract.
- (2) A consumer may rescind a prescribed contract:
  - (a) at any time before the expiration of the cooling-off period;
  - (b) if there has been a failure to comply with any of the requirements of section 101 in relation to the contract - within 6 months of the date of the contract; or
  - (c) if the supplier or dealer commits an offence against section 102(1) or (2) in relation to the prescribed contract or a related contract or instrument – within 6 months of the date of the prescribed contract.
- (3) A right of rescission conferred by this section may be exercised:
  - (a) notwithstanding affirmation of the contract by the consumer; and
  - (b) notwithstanding that the contract has been fully executed.

### **108      Exercise of right of rescission**

- (1) A consumer exercises a right of rescission conferred by section 107 by giving notice of rescission to the supplier.
- (2) The notice of rescission:
  - (a) must be in writing, in the form prescribed by regulations or in a form that clearly indicates an intention on the part of the consumer to rescind the contract;
  - (b) must (except in the case of a notice given in respect of a prescribed contract during the cooling-off period) state the ground of rescission; and

- (c) must be given to the supplier:
  - (i) by delivering it personally to the supplier; or
  - (ii) by delivering it, or sending it by post, in an envelope addressed to the supplier, to the supplier's address.
- (3) A notice of rescission sent by post to a supplier in accordance with subsection (2) shall be deemed to have been given to the supplier at the time of posting.
- (4) In this section, a reference to the supplier's address is a reference to:
  - (a) a place at which the supplier resides or carries on business; or
  - (b) the supplier's address as shown on a notice given to the consumer under this Part.

#### **109 Restitution following rescission**

- (1) Where a contract to which this Part applies is rescinded under this Division, restitution shall be made by the parties to the contract as follows:
  - (a) the supplier shall return or refund to the consumer any consideration, or the value of any consideration, given by the consumer under the contract or a related contract or instrument;
  - (b) the consumer shall:
    - (i) return or refund to the supplier any goods, or the value (as at the date of supply) of any goods, received from the supplier under the contract; and
    - (ii) pay to the supplier the value of any services supplied under the contract up to the time of rescission (but not including the value of any such services supplied under a prescribed contract before the expiration of the cooling-off period in contravention of section 102(2)).
- (2) Where the consumer makes goods available for collection by the supplier, at the place at which they were received from the supplier, for the period of 28 days from the date of rescission of the contract and the supplier fails to collect the goods before the expiration of that period, the consumer shall be deemed to have made restitution in respect of those goods as required by subsection (1) and the goods shall become the property of the consumer free of any other right or interest.



- (3) Where the consumer returns goods to the supplier under this section but has failed to take reasonable care of the goods, the consumer is liable to pay compensation to the supplier for the damage to or depreciation in the value of the goods, but the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or circumstances beyond the control of the consumer.
- (4) Where restitution of goods is not possible (because the goods have been consumed or affixed to land, because a third party has acquired an interest in the goods, or for any other reason), the impossibility of restitution of the goods is not a bar to rescission under this Division but, in that event, the consumer is liable to pay to the supplier the value of the goods as at the date of supply.
- (5) The obligations imposed by this section may be enforced by action in any court of competent jurisdiction.
- (6) A court finding guilty a supplier of an offence against this Part is competent to make orders, on the application of the prosecutor, for the enforcement of obligations imposed by this section.
- (7) A person who fails to comply with an order under subsection (6) is guilty of an offence.

Penalty:      \$5,000.

#### **110      Rescission avoids related contracts and instruments**

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

#### **111      Consumers not competent to waive rights**

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

#### **112      Prohibition of certain actions**

- (1) Where a contract to which this Part applies has been rescinded, or is capable of being rescinded, under this Division, no person shall, for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument:
  - (a) bring, or assert an intention to bring, legal proceedings against the consumer;
  - (b) place the name of the consumer, or cause the name of the consumer to be placed, on any list of defaulters or debtors, or assert an intention of placing the name of the consumer, or

causing the name of the consumer to be placed, on any such list; or

- (c) take any other action against the consumer.

Penalty: \$5,000.

- (2) Subsection (1)(a) does not prohibit:

- (a) the bringing of, or the asserting of an intention to bring, legal proceedings to determine whether or not a contract to which this Part applies has been, or is capable of being, rescinded under this Division; or

- (b) the continuation of such proceedings (for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument) where it is determined that the contract has not been, or is not capable of being, so rescinded.

- (3) It is a defence to a charge for an offence against subsection (1) to prove that, at the time of the alleged offence, the defendant did not know, and could not reasonably be expected to have known, that the contract had been rescinded or was capable of being rescinded.

- (4) Where a person is found guilty of an offence against subsection (1)(b), the court may order the person responsible for keeping any list on which the name of the consumer has been wrongfully placed to remove the name from that list.

- (5) A person who fails to comply with an order under subsection (4) is guilty of an offence.

Penalty: \$5,000.

## **Division 5      Miscellaneous**

### **113      Evidentiary matters concerning Part VII**

- (1) Where it is alleged in any proceedings that a contract for the supply of goods or services is a contract to which this Part applies or a prescribed contract, it shall be presumed unless the contrary is proved that the contract is one to which this Part applies or, as the case may require, a prescribed contract.
- (2) Where it is alleged in any proceedings that a contract is a related contract to a contract to which this Part applies, it shall be presumed unless the contrary is proved that the contract is such a contract.

- (3) Where it is alleged in any proceedings that a person was acting as a dealer within the meaning of this Part, it shall be presumed unless the contrary is proved that the person was so acting.

## **Part VIII Fair reporting**

### **114 Interpretation of Part VIII**

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

**file** means any repository or record in which information relating to any person is recorded or retained, in any manner or form, by a reporting agency.

**premises** includes land.

**prescribed benefit** means:

- (a) a benefit of a commercial nature;
- (b) a benefit in or affecting employment; or
- (c) a lease of premises or a licence conferring a right to occupy premises.

**prescribed report** means a communication made to a trader by a reporting agency or another trader of information relating to a person, not being a communication made with the knowledge of, and of information known to, that person.

**reporting agency** means a person who carries on the business of providing information relating to other persons.

**trader** means a person who, in the course of a business, supplies or offers to supply goods or services, or sells or lets or offers to sell or let premises.

- (2) For the purposes of this Part, where a prescribed report consists of a communication by electronic or mechanical means (except by telephone or other means of voice transmission) the report shall be regarded as being written.

**115 Application of Part VIII**

This Part applies to and in relation to a reporting agency or trader where:

- (a) the reporting agency or trader provides a prescribed report to a person carrying on business or letting premises in the Territory; and
- (b) the person to whom the report relates is domiciled or resident in the Territory.

**116 Procedures in respect of prescribed reports**

- (1) A reporting agency or trader shall adopt all procedures reasonably practicable for ensuring accuracy and fairness in the contents of prescribed reports provided by the agency or trader.
- (2) A reporting agency or trader shall not include in a prescribed report:
  - (a) any information based on evidence that is not the best evidence reasonably available; or
  - (b) any unfavourable personal information based on hearsay evidence, unless the agency or trader has made reasonable efforts to substantiate the evidence on which the information is based and, where the information is unsubstantiated, the lack of substantiation is stated in the report in which the information is given.
- (3) A reporting agency or trader shall not include in a prescribed report any information as to the race, colour or religious or political belief or affiliation of any person.

**117 Duty of trader to disclose receipt of prescribed report**

Where a trader:

- (a) denies a prescribed benefit sought by a person; or
- (b) grants a prescribed benefit sought by a person, but on terms less favourable than those on which the trader grants similar benefits to other persons in the course of the trader's business,

and the trader has during the last preceding 6 months received a prescribed report in relation to that person, the trader shall, if that person asks in writing whether such a report has been so received:

- (c) inform the person that the trader has received the report; and

- (d) give the person the name and address of the reporting agency or trader who provided the report.

### **118 Duty of disclosure of reporting agencies**

- (1) A reporting agency shall, on the written application of a person in relation to whom the agency has recorded information, disclose to that person without charge:
  - (a) all information in its files relating to that person at the time of the request;
  - (b) the name and address of every person to whom a prescribed report relating to that person has been provided within the year preceding the date of the request; and
  - (c) a copy of every such prescribed report that was in writing.
- (2) A reporting agency may require a person seeking disclosure of information under this section to produce reasonable evidence of the person's identity.
- (3) A reporting agency shall take reasonable steps to ensure that information to which a person is entitled under this section is disclosed in a form that is readily intelligible to that person and shall permit that person to make a copy of, or take an extract from, the information so disclosed.
- (4) A reporting agency shall not require a person to give any undertaking, or to waive any right that the person may have, as a condition of disclosing information under this section.

### **119 Correction of errors**

- (1) A person who disputes the accuracy or completeness of any information compiled by a reporting agency in relation to the person or included in a prescribed report relating to the person provided by a reporting agency or trader may, by notice in writing served on the agency or trader, object to the inaccuracy or incompleteness of the information.
- (2) Where, pursuant to subsection (1), a person disputes the accuracy or completeness of any information, the reporting agency or trader shall, within a reasonable time, use their best endeavours to verify or supplement the information in accordance with good practice.

- (3) A reporting agency or trader upon whom a notice of objection is served under this section shall, within 30 days after the date of service of the notice, inform the person by whom the objection was made:
  - (a) whether the agency or trader has made any amendment or supplementation to or deletion from the information; and
  - (b) if so, the nature of the amendment, supplementation or deletion.
- (4) Where information is altered under this section by amendment, supplementation or deletion, the following provisions apply:
  - (a) where a reporting agency makes such an alteration, the agency shall give notice in writing of the alteration to:
    - (i) every person provided by the agency with a prescribed report based on the information within 60 days before the making of the alteration; and
    - (ii) every person provided by the agency with such a prescribed report before the commencement of that period and nominated by the person to whom the information relates;
  - (b) where a trader makes such an alteration, the trader shall give notice in writing of the alteration to every person provided by the trader with a prescribed report based on the information and nominated by the person to whom the information relates.
- (5) A person by whom an objection has been made under this section may appeal to the Local Court against any failure on the part of a reporting agency or trader to make any deletion from or amendment or supplementation to information.
- (6) Upon the hearing of an appeal under this section, the Local Court may make such orders as it considers just.
- (7) Where an objection or appeal has been made or instituted under this section and a prescribed report is made by the reporting agency or trader before the determination by the agency or trader or the Local Court of the matters raised in the objection or appeal, the agency or trader shall include in the report a statement to the effect that those matters are subject to an objection or appeal under this Part.

**120 Qualified privilege**

- (1) Subject to subsection (2), a communication of information relating to the credit-worthiness of any person made:
  - (a) to a reporting agency or trader; or
  - (b) to a trader by a reporting agency or another trader,is protected by qualified privilege.
- (2) Subsection (1) does not apply where information is communicated in contravention of an order under this Part.

**121 Offences**

A person who:

- (a) contravenes, or fails to comply with, this Part;
- (b) contravenes, or fails to comply with, an order of the Local Court under section 119(6);
- (c) knowingly provides false or misleading information to another person, being a person who is engaged in compiling information for a prescribed report;
- (d) divulges information relating to another person from the files of a reporting agency without proper authority to do so or except for the purposes of legal proceedings; or
- (e) obtains information relating to another person from a reporting agency or trader by false pretences,

is guilty of an offence.

Penalty: \$5,000.

**122 Powers of Local Court**

- (1) The Local Court may, on the application of the Commissioner or any other person, make such orders against a reporting agency or trader as may be necessary or expedient in the opinion of the Court to ensure that the reporting agency or trader complies with this Part.
- (2) Where a reporting agency or trader:
  - (a) commits an offence against this Part; or

- (b) does any act which, in the opinion of the Local Court, shows the agency or trader to be unfit to provide prescribed reports, the Court may, on the application of the Commissioner, make an order:
  - (c) prohibiting the agency or trader from providing prescribed reports; or
  - (d) requiring the agency or trader to comply with conditions specified in the order in relation to the provision of prescribed reports.
- (3) An order under subsection (1) or (2) is effective for such period as is specified in the order or until further order of the Court.
  - (4) A reporting agency or trader that contravenes, or fails to comply with, an order under subsection (1) or (2) is guilty of an offence.

Penalty: \$5,000 or imprisonment for 2 years.

## **Part IX                    Trading stamps**

### **123                    Definitions for purposes of Part IX**

In this Part, unless the contrary intention appears:

***prohibited trading stamp*** means:

- (a) a third-party trading stamp which is provided, or intended to be provided, in connection with a third-party trading stamp scheme that does not comply with the prescribed conditions; or
- (b) a trading stamp which is provided or intended to be provided in connection with the sale of, or for the purpose of promoting the sale of, tobacco, cigarettes, cigars or other tobacco products.

***redeem***, in relation to a trading stamp, means to give any form of prize, gift or other benefit in return for, on production of or otherwise in respect of a trading stamp.

***sale***, in relation to services, means the making of a contract under which one party (the vendor) agrees to provide services for another party (the purchaser).



***third-party trading stamp*** means a trading stamp which is redeemable by a person who is not the manufacturer or a vendor of the goods or services to which the trading stamp relates.

***trading stamp*** means a stamp, coupon, token, voucher, ticket or other thing:

- (a) which is provided or intended to be provided in connection with the sale of, or for the purpose of promoting the sale of, goods or services; or
- (b) by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit (whether the trading stamp constitutes an absolute entitlement or qualification or a conditional one only).

## **124 Offences**

- (1) A person who provides or offers to provide a prohibited trading stamp in connection with the sale of goods or services is guilty of an offence.

Penalty: \$5,000.

- (2) A person who redeems a prohibited trading stamp is guilty of an offence.

Penalty: \$5,000.

- (3) A person who publishes or causes to be published an advertisement relating to prohibited trading stamps is guilty of an offence.

Penalty: \$5,000.

- (4) It is a defence to a charge for an offence against subsection (3) for the defendant to prove that the defendant did not know and could not reasonably be expected to have known that the trading stamps to which the advertisement related were prohibited trading stamps.

## Part X            Motor vehicle dealers

### Division 1       Preliminary

#### 125        Definitions for purposes of Part X

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

**accessories** includes car radios, sound reproducing equipment, air conditioning units, and spare wheels and tools usually carried on motor vehicles.

**body number**, in relation to a motor vehicle, means the figures, letters or other symbols (if any) recorded on the body of the vehicle by its manufacturer as a means of identifying the vehicle.

**commercial vehicle** is to be construed in accordance with subsections (2) and (3).

**consignor**, in relation to a dealer, means a person from whom the dealer receives a motor vehicle for sale on consignment.

**dealer** means a person who buys, sells, offers for sale or exchanges motor vehicles as a business (whether alone or in partnership, and whether or not as the person's sole business) but does not include:

- (a) a person whose business consists exclusively of buying motor vehicles for the purpose of demolishing or dismantling them;
- (b) a financier; or
- (c) an exempt trader.

**dealings register** means a dealings register kept by a licensed dealer in pursuance of section 157.

**demonstration vehicle** means a motor vehicle which has only been used for the purposes of a dealer's business as such, and which is the subject of an unexpired manufacturer's warranty.

**exempt trader** means a person (other than a financier) who carries on the business of buying, selling or exchanging motor vehicles, but does not (otherwise than by an agent who is a licensed dealer) offer or display motor vehicles for sale to the public or hold him or herself out as ready to purchase vehicles from the public.

**financier** is to be construed in accordance with subsections (4) and (5).

**hire-purchase agreement**, in relation to a motor vehicle, includes:

- (a) a letting of the vehicle with an option to purchase; and
- (b) an agreement the object of which is the sale and purchase of the vehicle by instalments (whether described as rent, hire or in any other manner), not being an agreement under which the property in the vehicle passes at the time of the agreement or at any time before delivery of the vehicle.

**licence** means a licence under this Part.

**licensed dealer** means a person holding a current licence under this Part.

**manufacturer** means a person who carries on the business of making or assembling motor vehicles.

**model designation**, in relation to a motor vehicle of a particular model, means the words, figures, letters or other symbols (if any) applied by its manufacturer to describe or identify a vehicle of that model.

**motor vehicle** means any motor car, motor cycle or other vehicle used on land which is propelled wholly or partly by any volatile spirit, by steam, gas, oil or electricity, or by any means other than human or animal power (whether the vehicle is new or used, and whether or not it is in working condition or complete) but does not include:

- (a) a vehicle used on a railway or tramway; or
- (b) a vehicle included in a class or description of vehicles that the Minister has, by notice in the *Gazette*, declared not to be motor vehicles for the purposes of this Part.

**odometer** means an instrument or device which measures and records the distance travelled by a motor vehicle, but does not include one that is designed so as to permit, as part of its normal functioning, manual alteration of the distance so recorded.

**owner**, in relation to a motor vehicle, includes a person who:

- (a) is a joint owner or part owner of the vehicle;
- (b) has possession of the vehicle under or subject to a hire-purchase agreement, bill of sale or similar instrument; or
- (c) has possession of the vehicle under a contract of hire or lease,

but does not include a person in whom the property in the vehicle, or an absolute or conditional right to take possession of the vehicle, is vested under or subject to a contract of hire, a hire-purchase agreement, a bill of sale or any similar instrument, but who does not for the time being have possession of the vehicle.

**sale on consignment**, in relation to a motor vehicle, means its sale by a dealer for or on behalf of another person.

**sell** means to sell as principal or agent.

**trade owner** means a dealer, a financier or an exempt trader.

**vehicle identification number** has the same meaning as in the Motor Vehicles Act.

- (2) Subject to subsection (3), a commercial vehicle is a motor vehicle which is constructed or adapted principally for:
- (a) the carriage of goods;
  - (b) the carriage of 10 or more adult persons; or
  - (c) industrial or agricultural use,

but does not include, except where (before a contract for its sale is entered into) the prospective purchaser has, by written notice to the dealer in the prescribed form, confirmed that the vehicle is to be used principally for commercial purposes:

- (d) a vehicle of a kind known as a utility, a station waggon or a panel van;
  - (e) a vehicle that is adapted for camping use, or is of a type known as a motor home or mobile home; or
  - (f) a 4 wheel drive vehicle of a type which is reasonably capable of both commercial use and private recreational and leisure use.
- (3) Regulations may provide that a specified motor vehicle, or a motor vehicle of a specified class or description of motor vehicles, is a commercial vehicle for the purposes of this Part or is not a commercial vehicle for those purposes.

- (4) Subject to subsection (5), a financier is a person who carries on the business of buying, selling or exchanging motor vehicles only for one or more of the following purposes:
- (a) the purpose of hiring motor vehicles under hire-purchase agreements;
  - (b) the purpose of selling motor vehicles on instalment terms;
  - (c) the purpose of taking or enforcing securities over motor vehicles;
  - (d) the purpose of letting out motor vehicles on hire without granting any right to purchase them;
  - (e) any purpose that is for the time being prescribed;
  - (f) the purpose of disposing of motor vehicles which the person has acquired in connection with a purpose falling within any of paragraphs (a) to (e).
- (5) The following persons are not financiers:
- (a) a person who (except by an agent who is a licensed dealer) offers or displays motor vehicles for sale to the public otherwise than for the purpose specified in subsection (4)(f);
  - (b) a person who holds him or herself out as ready to purchase motor vehicles from the public;
  - (c) a person who is declared by regulations not to be a financier, or who belongs to a class or description of persons declared by regulations not to be financiers.

## **126       Other rules for interpreting Part X**

- (1) For the purposes of this Part, a person who sells 4 or more motor vehicles during any period of 12 months is to be presumed until the contrary is proved as having sold them in the course of carrying on a business of selling motor vehicles.
- (2) Where:
- (a) a motor vehicle is made the subject of a hire-purchase agreement; or
  - (b) one person enters into an agreement with another for the hire or leasing to that other of a motor vehicle other than a second-hand vehicle,

the motor vehicle is to be treated for the purposes of this Part as having been sold by its owner to the hirer by a sale made at the time when the agreement was entered into, but this does not by itself constitute the owner a dealer for the purposes of this Part.

(3) Where:

(a) a dealer sells a motor vehicle to a financier in the expectation that the vehicle will be sold, or treated by virtue of subsection (2) as having been sold, by the financier to a particular third person; and

(b) the vehicle is so sold or treated as having been so sold,

the dealer shall be treated for the purposes of this Part as having sold the vehicle to that third person.

(4) Where:

(a) a body corporate enters into an agreement with a person for the letting on hire to that person of a motor vehicle other than a second-hand motor vehicle; and

(b) that body corporate is not a dealer, but is, for the purposes of the Companies (Northern Territory) Code, to be deemed to be related to another body corporate which is a dealer,

the first-mentioned body corporate is liable to the hirer in all respects as if it were a dealer unless another person who is a dealer is to be treated by virtue of subsection (3) as having sold the vehicle to the hirer.

(5) For the purposes of this Part, a motor vehicle is to be treated as having been sold notwithstanding that all or part of the consideration which passed from the purchaser in respect of the sale is represented by another vehicle or some other thing.

## **127 Application of Part X to partnerships**

(1) Subject to this Part and regulations made for the purposes of this Part, where a licensed dealer carries on the business of a dealer in partnership with one or more other licensed dealers, this Part applies to and in relation to each of those dealers as if:

(a) the business were carried on by that dealer alone; and

(b) anything done or omitted to be done in connection with the business by one of the dealers had been done or omitted to be done by each of them.

- (2) Nothing in subsection (1) renders a dealer guilty of an offence as a result of the doing of an act by another dealer in the partnership.

**Division 2            Offences of unlicensed dealing, dealing from  
unlicensed premises, &c.**

**128            Unlicensed dealing**

Subject to this Part, a person other than a licensed dealer shall not:

- (a) carry on the business of a dealer; or
- (b) hold him or herself out as a dealer.

Penalty:        \$20,000.

**129            Dealing from unlicensed premises**

- (1) Subject to subsection (2), a licensed dealer shall not:
- (a) buy, sell or exchange a motor vehicle in the course of the dealer's business as a dealer, otherwise than at a place of business specified in the licence; or
  - (b) permit a motor vehicle which is offered for sale, or intended to be offered for sale, in the course of the dealer's business as a dealer, to be on land (including a public place) adjacent to the place of business specified in the licence.

Penalty:        \$20,000.

- (2) Regulations may exempt from subsection (1) (conditionally or unconditionally) transactions of a specified class or description, or transactions taking place in specified circumstances.

**130            Breach of terms or conditions of licence**

A licensed dealer shall not contravene or fail to comply with any term or condition of the licence.

Penalty:        \$5,000.

**131            Forfeiture of vehicles and proceeds for unlicensed dealing**

- (1) Subject to subsection (9), the court before which a person is found guilty of an offence against section 128 may, in addition to any penalty it may impose, make either or both of the following orders:
- (a) an order that any specified motor vehicle to which the offence relates be forfeited to the Territory;

- (b) an order that the person pay to the Territory an amount, as assessed by the court, equal to the proceeds derived by the person from the commission of the offence or any other offence against section 128 which the court has taken into account in imposing any such penalty.
- (2) Before making an order under this section, the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (3) For the purpose of making an order under subsection (1)(b), the court may:
  - (a) treat any interest in property (real or personal) which the found guilty person acquired by means of proceeds derived from the commission of an offence as being, to an extent determined by the court, proceeds so derived; and
  - (b) treat as proceeds derived by the found guilty person from the commission of an offence the equivalent in money terms of any interest in property (real or personal) so derived.
- (4) Without affecting any other right of appeal, an order under subsection (1)(a) in relation to a motor vehicle may be appealed by any person who has an interest in the vehicle:
  - (a) in the case of a person found guilty of the offence – in the same manner as if the order were, or were part of, an order imposing a penalty in respect of the offence; and
  - (b) in any other case – in the same manner as if the person had been found guilty of an offence against section 128, and the order were, or were part of, an order imposing a penalty in respect of the offence.
- (5) Without affecting any other right of appeal, an order under subsection (1)(b) may be appealed in the same manner as if it were, or were part of, an order imposing a penalty in respect of the offence.
- (6) The court to which an appeal is made in respect of an order under subsection (1)(a) may, pending the hearing and determination of the appeal, make such orders as it thinks fit for the custody of the motor vehicle the subject of the order.
- (7) On appeal, an order under this section may be confirmed, revoked or varied.



- (8) An order under subsection (1)(b) (including an order made by the Court of Summary Jurisdiction) may be enforced as if it were a judgment in a civil matter given by the Supreme Court.
- (9) No order may be made under this section with respect to a vehicle sold by a dealer for or on behalf of another person or with respect to the proceeds derived from the sale.

## **Division 3            Licences**

### **Subdivision A   Grant of licence**

#### **132            Application for licence**

- (1) A person may apply to the Commissioner for a licence.
- (2) An application must be made in accordance with the prescribed form, giving such details as are indicated by the form or otherwise prescribed, and must be accompanied by the prescribed processing fee.

#### **133            Commissioner may require additional information**

- (1) An applicant for a licence shall, if required to do so by the Commissioner, provide the Commissioner with such particulars additional to those included in the application, and with such documents in relation to those particulars, as the Commissioner requires.
- (2) The Commissioner may require the applicant for a licence or, where the applicant is a body corporate, all or any of the directors or other persons concerned in the management of the body corporate, to appear personally before the Commissioner and to furnish such further information as the Commissioner requires in connection with the application.

#### **134            Objections to application**

- (1) On receiving an application for a licence, the Commissioner shall:
  - (a) send a copy of it to the Commissioner of Police, together with copies of any accompanying documents other than statements relating to the material and financial resources of the applicant; and
  - (b) publish, in a newspaper circulating throughout the Territory and (if there be one) in a further newspaper circulating in the locality in which the applicant proposes to carry on business as a dealer, notices stating that the application has been

made, setting out the prescribed details with respect to the application, and specifying a period during which members of the public may, by notice in writing lodged with the Commissioner, object to the granting of a licence on any of the grounds specified in section 136(1) or 137(1).

- (2) The Commissioner of Police shall, within 28 days of receiving a copy of an application pursuant to subsection (1)(a), lodge with the Commissioner a notice in writing which either supports the application or objects to the grant of a licence on the grounds that the applicant may not be a fit and proper person.
- (3) A notice of objection under subsection (1)(b) or (2) must state the reasons for the objection.
- (4) References in this section to an applicant's not being a fit and proper person are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate not being a fit and proper person.

### **135        Inquiry by Commissioner**

Where an objection to the grant of a licence is duly lodged with the Commissioner under section 134, or it otherwise appears to the Commissioner that there may be grounds for refusing to grant a licence, the Commissioner shall hold an inquiry into the matter.

### **136        Grounds for refusal of licence to individual**

- (1) An application for a licence made by an individual shall be refused if it appears to the Commissioner:
  - (a) that the applicant has not attained the age of 18 years;
  - (b) that the applicant is disqualified from holding a licence;
  - (c) that the applicant is taking the benefit of a law for the relief of bankrupt or insolvent debtors, or is a person whose remuneration is for the time being assigned for the benefit of creditors;
  - (d) that the applicant does not have, or is not likely to continue to have, sufficient material and financial resources to carry on business as a dealer, having regard to the scope of the business operations which the applicant proposes to engage in as such and the liabilities which the applicant may incur in connection therewith;

- (e) that the applicant is not likely to carry on business as a dealer honestly and fairly;
  - (f) that the applicant is in any other way not a fit and proper person to hold a licence; or
  - (g) that any person with whom, if the licence is granted, the applicant intends to carry on business as a dealer in partnership is a person in respect of whom the Commissioner would be required to refuse an application for the licence if that person were the applicant.
- (2) The Commissioner shall also refuse an individual's application for a licence if the applicant:
  - (a) fails to provide such banker's or other guarantee (if any) as the Commissioner thinks it desirable to require; or
  - (b) fails to comply with a requirement of the Commissioner under section 133.
- (3) Without affecting the generality of subsection (1)(f), the Commissioner may, in determining whether or not an applicant is a fit and proper person to hold a licence, have regard (if such be the case) to the fact that the applicant, or a person who is associated with the applicant within the meaning of the Companies (Northern Territory) Code:
  - (a) has, during the period of 10 years immediately preceding the making of the application, been found guilty of, or served any part of a term of imprisonment for, an offence (wherever committed) involving fraud, dishonesty or physical violence;
  - (b) was, at the time the application was made, bound in relation to such an offence by a recognizance;
  - (c) was, at the time the application was made, the subject of a charge in relation to such an offence; or
  - (d) has at any time been found guilty of an offence against this Act, the regulations, or any other enactment administered by the Minister.
- (4) An applicant who proposes to carry on the business of a dealer in partnership with another person or other persons shall not be refused a licence on the grounds specified in subsection (1)(d) if the Commissioner is satisfied that the applicant and the other person or persons together have, and are likely to continue to have, sufficient material and financial resources to carry on the business.

- (5) Regulations may prescribe criteria to be taken into account by the Commissioner in assessing the adequacy of an applicant's material and financial resources for the purposes of subsection (1)(d) or (as mentioned in subsection (4)) the adequacy for those purposes of the material and financial resources of the applicant and another person or other persons.

**137        Grounds for refusal of licence to body corporate**

- (1) An application for a licence made by a body corporate shall be refused if it appears to the Commissioner:
- (a) that a person concerned in the management of the body corporate has not attained the age of 18 years;
  - (b) that the body corporate is disqualified from holding a licence;
  - (c) that the body corporate does not have, or is not likely to continue to have, sufficient material and financial resources to carry on business as a dealer, having regard to the scope of the business operations which the body corporate proposes to engage in as such and the liabilities which the body corporate may incur in connection therewith;
  - (d) that the body corporate is not likely to carry on business as a dealer honestly and fairly;
  - (e) that the reputation of the body corporate is such that it would not be a fit and proper person to hold a licence;
  - (f) that a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if the director or person were to apply for a licence personally;
  - (g) that any person (other than an officer of the body corporate) who, in the opinion of the Commissioner, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly; or
  - (h) that any person with whom, if the licence is granted, the body corporate intends to carry on business as a dealer in partnership is a person in respect of whom the Commissioner would be required to refuse an application for the licence if that person were the applicant.

- (2) The Commissioner shall also refuse an application for a licence by a body corporate if:
  - (a) the body corporate fails to provide such banker's or other guarantee (if any) as the Commissioner thinks it desirable to require; or
  - (b) a director of, or a person concerned in the management of, the body corporate fails to comply with a requirement of the Commissioner under section 133.
- (3) Without affecting the generality of subsection (1)(e), (f), (g) or (h), the Commissioner may, in determining any matter referred to in those paragraphs, have regard (if such be the case) to the fact that the body corporate, or a person referred to in any of those paragraphs or associated with such a person within the meaning of the Companies (Northern Territory) Code:
  - (a) has, during the period of 10 years immediately preceding the making of the application, been found guilty of, or served any part of a term of imprisonment for, an offence (wherever committed) involving fraud, dishonesty or physical violence;
  - (b) was, at the time the application was made, bound in relation to such an offence by a recognizance;
  - (c) was, at the time the application was made, the subject of a charge in relation to such an offence; or
  - (d) has at any time been found guilty of an offence against this Act, the regulations, or any other enactment administered by the Minister.
- (4) A body corporate which proposes to carry on the business of a dealer in partnership with another person or other persons is not to be refused a licence on the grounds specified in subsection (1)(c) if the Commissioner is satisfied that the body corporate and the other person or persons together have, and are likely to continue to have, sufficient material and financial resources to carry on the business.
- (5) Regulations may prescribe criteria to be taken into account by the Commissioner in assessing the adequacy of a body corporate's material and financial resources for the purposes of subsection (1)(c) or (as mentioned in subsection (4)) the adequacy for those purposes of the material and financial resources of a body corporate and another person or other persons.

**138                Grant of licence**

- (1) The Commissioner shall, unless required by section 136 or 137 to refuse the application, grant a licence to an applicant on payment of the prescribed fee.
- (2) A licence shall authorize the holder to carry on business as a dealer at a place or places specified in the licence, and, where it specifies 2 or more places, shall state which of them is the holder's principal place of business.
- (3) The Commissioner may grant a licence subject to such terms and conditions as the Commissioner considers necessary or desirable, and any terms or conditions imposed by virtue of this subsection shall be endorsed on the licence.

**139                Notification of commissioner's decision, appeals, &c.**

- (1) The Commissioner shall, not later than 45 days after the date of receiving an application for a licence conforming with section 132(2), give notice in writing to the applicant either that the application has been refused or that a licence will be granted on payment of the prescribed fee.
- (2) Where the Commissioner proposes to grant a licence subject to any terms or conditions, the notice required by subsection (1) must set these out, and afford to the applicant an opportunity to make submissions with respect to them orally or in writing.
- (3) Where the Commissioner has refused an application, the applicant may, within 14 days after the date on which the notice under subsection (1) is given, appeal to the Local Court against the refusal; and the notice must inform the applicant of this right and record the reasons for the refusal.
- (4) An appeal under subsection (3) shall be by way of rehearing of the application, and the Local Court has on the appeal all the powers of the Commissioner with respect to the matter.

**Subdivision B      Duration of licence, annual fee and return, &c.**

**140                Duration of licence**

Except while it is suspended by or pursuant to this Part, a dealer's licence continues in force until:

- (a) it is cancelled by, or revoked or sur-rendered pursuant to, this Part;

- (b) the dealer, being an individual, dies (but subject in that event to section 144); or
- (c) the dealer, being a body corporate, is dissolved.

#### **141        Annual fee and return**

- (1) A licensed dealer shall, not later than the prescribed date in each year:
  - (a) pay to the Commissioner the prescribed annual licence fee; and
  - (b) lodge with the Commissioner an annual return containing the prescribed information.
- (2) Where a dealer fails to pay the annual licence fee or lodge the annual return in accordance with subsection (1), the Commissioner may, by notice in writing to the dealer, require the dealer to make good the default and, in addition, to pay to the Commissioner the amount (if any) prescribed as a penalty for default.
- (3) Where a dealer fails to comply with a notice under subsection (2) within 14 days after service of the notice, the dealer's licence shall, by force of this subsection, be suspended until the dealer complies with the notice.
- (4) The Commissioner shall cause notice of a suspension under subsection (3) (being notice in the prescribed form) to be published in a newspaper circulating throughout the Territory.
- (5) Where a licence has been suspended by virtue of subsection (3) for a continuous period of 6 months, the licence shall, by force of this subsection, be cancelled.
- (6) A dealer shall not in, or in relation to, any information in an annual return lodged pursuant to subsection (1)(b) make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty:        \$5,000.

- (7) It is a defence to a prosecution of a person for an offence against subsection (6) if the person proves that, when the information was provided, the person:
  - (a) believed on reasonable grounds that the false matter was true;

- (b) believed on reasonable grounds that the misleading matter was not misleading; or
- (c) in the case of an omission:
  - (i) believed on reasonable grounds that no material matter had been omitted; or
  - (ii) did not know that the omitted matter was material.

**142        Licence not transferable**

A licence is not transferable.

**143        Surrender of licence**

A dealer may surrender his or her licence by notice in writing to the Commissioner.

**144        Death of licensed dealer**

- (1) Where a licensed dealer dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the deceased dealer may, within 28 days after the death or such longer period as the Commissioner allows, apply to the Commissioner to be allowed to carry on the deceased dealer's business as a dealer during:
  - (a) the period that commences with the date of the death and ends 6 months later; or
  - (b) the period that commences with the date of the death and ends immediately before the next succeeding anniversary of the date on which the licence was granted,whichever is the longer.
- (2) The Commissioner may grant or refuse an application under subsection (1) and, where the Commissioner grants the application, may impose such conditions as the Commissioner thinks fit, being conditions subject to which the business to which the application relates may be carried on.
- (3) A person authorized under this section to carry on the business of a deceased dealer shall, subject to this Part and any conditions imposed under subsection (2), be deemed to be, while so authorized, the holder of the deceased dealer's licence.
- (4) Where, under subsection (2), the Commissioner imposes conditions subject to which a person is authorized to carry on the business to



which a licence relates, the person shall, on being required by the Commissioner to do so within a specified time, produce the licence to the Commissioner within that time for endorsement of the conditions.

Penalty:       \$5,000.

## **Subdivision C   Revocation and suspension &c., of licence**

### **145       Powers of Commissioner**

Where any of the grounds specified in section 146 exists, the Commissioner has power, subject to and in accordance with this Subdivision:

- (a)   to revoke a licence;
- (b)   to suspend a licence for a specified period; or
- (c)   to vary any term or condition to which a licence is subject or impose new terms or conditions.

### **146       Grounds for exercise of powers**

The grounds referred to in section 145 are:

- (a)   that the licence was obtained by means of misrepresentation;
- (b)   that the holder of the licence is a person who, if that person were (instead of being such a holder) an applicant for a licence under section 132, would be refused a licence pursuant to section 136 or 137; and
- (c)   that the holder of the licence, being a body corporate, has failed to give notice under section 147(1) of a change in the directors, or persons concerned in the management, of the body corporate.

### **147       Changes in directors, &c., of body corporate**

- (1)   Where a body corporate is a licensed dealer, and a person becomes a director of the body corporate or otherwise concerned in its management in addition to or in the place of an existing director or person so concerned, the body corporate shall, not later than 28 days after the date on which the event occurs, give to the Commissioner a notice complying with subsection (2).

(2) A notice under subsection (1) must:

- (a) state the full name, date of birth and present residential address of the person who has become a director of the body corporate or otherwise concerned in its management;
- (b) give the date on which the event in question occurred;
- (c) state any other addresses at which the person has resided during the period of 3 years immediately preceding the date of the notice;
- (d) where the person has (whether in the Territory or elsewhere) previously carried on business as a dealer or been employed by a dealer, give particulars of that business or employment; and
- (e) be accompanied by a certificate signed by 2 others to the effect that the person would be a fit and proper person to hold a licence.

(3) Where a body corporate gives to the Commissioner a notice under subsection (1), the Commissioner shall send a copy of the notice to the Commissioner of Police, who shall, within 14 days of receiving it, lodge with the Commissioner a notice in writing which either:

- (a) objects to the continuation in force of the licence held by the body corporate on the grounds that the person who has become a director, or otherwise concerned in its management, would not be a fit and proper person to hold a licence; or
- (b) states that nothing is known about that person which warrants such an objection.

#### **148        Commissioner's discretion**

The Commissioner is not required to exercise a power conferred by section 145 if it appears to the Commissioner that, in the circumstances of a particular case, this is not necessary in the public interest.

#### **149        Inquiry before exercise of power**

(1) The Commissioner shall not exercise a power conferred by section 145 without first holding an inquiry under this section.

- (2) Where the Commissioner proposes to hold an inquiry under this section, the Commissioner shall give written notice of that fact to the holder of the licence, and must in the notice:
  - (a) state the ground or grounds which the Commissioner considers may authorize the exercise of a power conferred by section 145;
  - (b) afford the holder of the licence not less than 7 clear days after the date on which it is given in which to make to the Commissioner written submissions with respect to the matter; and
  - (c) specify a date after the expiry of the period allowed under paragraph (b) on which the Commissioner will be prepared to hear oral submissions from the holder.
- (3) Where it appears to the Commissioner that the exercise of a power conferred by section 145 may also affect a person or persons other than the holder of the licence in respect of which the power is exercised, the Commissioner shall give to that person or each of those persons a like notice to that required by subsection (2), inviting the recipient of the notice to make written and oral submissions.
- (4) The Commissioner may, by a notice under subsection (2), suspend the holder's licence from the date on which the notice is given until the giving of a notice under section 150(1) or (2).

## **150            Result of inquiry**

- (1) Where after holding an inquiry under section 149 the Commissioner decides to take no further action in the matter, the Commissioner shall give written notice to that effect to the holder of the licence.
- (2) Where after holding such an inquiry the Commissioner decides to exercise a power conferred by section 145, the Commissioner shall do so by notice in writing to the holder of the licence, and the notice must:
  - (a) state the ground or grounds on which the power is exercised;
  - (b) where it revokes or suspends the licence, inform the holder of the right of appeal conferred by section 151(1); and
  - (c) where it varies a term or condition of a licence, or imposes new terms or conditions, require the holder, within the time specified in the notice, to produce the licence to the Commissioner for endorsement accordingly.

- (3) A person who fails to produce a licence to the Commissioner in accordance with a requirement in a notice under subsection (2) is guilty of an offence.

Penalty:       \$5,000.

## **151       Appeals**

- (1) Where the Commissioner has, by a notice under section 150(2), revoked or suspended a licence, the holder of the licence may, within 14 days after the date on which the notice is given, appeal against the revocation or suspension to the Local Court.
- (2) An appeal under subsection (1) shall be by way of rehearing, and the Local Court has on the appeal all the powers of the Commissioner with respect to the matter.

## **Subdivision D   General**

### **152       Application for variation of licence**

The Commissioner may, on an application by the holder of a licence and on payment of the prescribed fee:

- (a) vary any of the terms or conditions endorsed on the licence; or
- (b) amend the licence with respect to the place or places at which the holder is authorized to carry on business as a dealer, or the place which is the holder's principal place of business.

### **153       Licence to be displayed**

- (1) A licensed dealer shall cause the licence held by the dealer to be exhibited at all times in a conspicuous position:
- (a) at the place where the licence authorizes the dealer to carry on business as such; or
  - (b) where there are 2 or more such places, at the place stated in the licence as the holder's principal place of business.

Penalty:       \$5,000.

- (2) Where:

- (a) the Commissioner has:
  - (i) by a notice under section 150(2), varied a term or condition of a licence or imposed new terms or conditions on a licence; or

- (ii) imposed under section 144(2) conditions subject to which a person may carry on the business to which the licence of a deceased dealer related; and
- (b) the licence has not been produced for endorsement pursuant to a requirement in the notice or, as the case may be, a requirement of the Commissioner under section 144(4),

subsection (1) is not complied with unless a copy of the notice or, as the case may require, of the conditions imposed under section 144(2) is exhibited with the licence.

#### **154        Lost, &c., Licences**

Where the Commissioner is satisfied that a licence has been lost, defaced or destroyed, the Commissioner may, on payment of the prescribed fee, issue to the holder of the licence a duplicate licence which shall be of the same force and effect as the original licence.

### **Division 4        Register of Motor Vehicle Dealers**

#### **155        Commissioner to keep Register of Motor Vehicle Dealers**

- (1) The Commissioner shall keep a register of licensed dealers to be known as the Register of Motor Vehicle Dealers.
- (2) The Register shall be kept in the prescribed form, and shall contain such particulars as are prescribed.

#### **156        Register to be open to public**

A person may, on payment of the prescribed fee, inspect and take extracts from the Register of Motor Vehicle Dealers.

### **Division 5        Dealings in Motor Vehicles**

#### **Subdivision A   Dealings registers**

#### **157        Duty of dealer to maintain dealings register**

- (1) Subject to subsection (2), a licensed dealer shall keep and maintain a dealings register, being a register provided by the Commissioner on payment of the prescribed fee:
  - (a) if the dealer carries on business at one place only – at that place; or

- (b) if the dealer has 2 or more places of business:
  - (i) at the dealer's principal place of business, in respect of that place and any other place of business which is within a radius of 20 km (or such other distance as is for the time being prescribed) of that place; and
  - (ii) at each place of business not falling within subparagraph (i).

Penalty:       \$5,000.

- (2) Where 2 or more licensed dealers carry on business in partnership, subsection (1) is complied with if the partners keep and maintain one dealings register at each place at which that subsection would require a register to be kept if all of the places at which members of the partnership carry on business were places of business of a sole licensed dealer.
- (3) A dealings register remains the property of the Commissioner, and must be returned to the Commissioner if:
  - (a) the licence of the dealer by whom the register is kept or, as the case may be, of any of the partners by whom the register is kept, is revoked or suspended or expires without renewal; or
  - (b) the dealer by whom the register is kept ceases to carry on business as a dealer or, as the case may be, the partners by whom the register is kept cease to carry on the business of a dealer in partnership.

## **158        Details to be entered in dealings register**

- (1) A licensed dealer shall:
  - (a) within 2 working days after coming into possession of a second-hand motor vehicle which the dealer has purchased or otherwise acquired for the purposes of disposal in the course of the dealer's business (or, where the dealer disposes of a second-hand motor vehicle so purchased or acquired before it comes into the dealer's possession, within 2 working days after the disposal) enter or cause to be entered in the dealings register the particulars specified in subsection (2);
  - (b) within 2 working days after coming into possession of a motor vehicle that the dealer is authorized to sell in accordance with section 172, enter or cause to be entered in the dealings register the particulars specified or referred to in subsection (3);

- (c) within 2 working days after selling or otherwise disposing of a motor vehicle otherwise than in a demolished or dismantled condition, enter or cause to be entered in the dealings register the particulars specified in subsection (4); and
- (d) within 2 working days after having demolished or permanently dismantled a motor vehicle, enter or cause to be entered in the dealings register a notice of the vehicle's demolition or dismantling and of the date on which the demolition or dismantling began.

Penalty:       \$5,000.

(2) The particulars required by subsection (1)(a) are:

- (a) the make, model designation and type, and year of manufacture, of the vehicle;
- (b) the registered number of the vehicle, if any;
- (c) the engine number of the vehicle and, where known, its vehicle identification number or body number;
- (d) where the vehicle is fitted with an odometer, the distance travelled by the vehicle as recorded on the odometer when the vehicle came into the dealer's possession or, if the odometer was not then functioning, a statement to that effect;
- (e) the name and address of the person from whom the dealer purchased or otherwise acquired the vehicle; and
- (f) the date on which the dealer purchased or otherwise acquired the vehicle.

(3) The particulars required by subsection (1)(b) are:

- (a) those specified in subsection (2)(a), (b), (c) and (d);
- (b) an indication in the prescribed form that the vehicle is for sale on consignment; and
- (c) the date on which the vehicle came into the dealer's possession.

(4) The particulars required by subsection (1)(c) are:

- (a) the date on which the dealer sold or otherwise disposed of the vehicle;

- (b) the name and address of the person to whom the dealer sold or otherwise disposed of the vehicle;
  - (c) where the vehicle is fitted with an odometer, the distance travelled by the vehicle as recorded on the odometer at the time when the dealer sold or otherwise disposed of it or, if the odometer was not then functioning, a statement to that effect;
  - (d) where the vehicle was not in working condition at the time when it was sold or otherwise disposed of, an indication to that effect in the prescribed form; and
  - (e) the cash or other consideration given or agreed to be given, and a description of any such other consideration.
- (5) Where a licensed dealer has 2 or more places of business, the particulars required by subsection (1) in respect of a motor vehicle are to be entered in the dealings register kept by the dealer at the place at which the dealing in question takes place or, if by virtue of section 157(1)(b)(i) a dealings register in respect of that place is kept at the dealer's principal place of business, in that register.

#### **159       Seller to supply information to dealer**

- (1) A person who disposes of a motor vehicle to a licensed dealer in circumstances such that the dealer is required by section 158(1)(a) to enter particulars concerning the vehicle in a dealings register shall, at the request of the dealer, supply the dealer with the prescribed information in respect of the vehicle so far as known to the person.
- (2) The prescribed information is that indicated by a form prescribed for the purposes of this section, and the person required to supply it shall, if so requested by the dealer, do so by completing and signing a form according with the prescribed form.
- (3) A person who:
  - (a) fails to comply with a request under subsection (1) or (2); or
  - (b) in purported compliance with such a request, gives information which the person knows to be false or misleading in a material particular,

is guilty of an offence.

Penalty:       \$5,000.



## **Subdivision B   General provisions with respect to dealings**

### **160        Contract for sale of second-hand vehicle to be in prescribed form**

- (1) A contract by a dealer to sell a second-hand motor vehicle must be made in writing in the prescribed form, and a dealer who contracts to sell such a vehicle otherwise than in compliance with this requirement is guilty of an offence.

Penalty:       \$5,000.

- (2) Where a dealer contracts to sell a second-hand motor vehicle otherwise than in writing in the prescribed form, the purchaser may rescind the contract by giving a written notice of rescission to the dealer not later than 3 months after the date of the contract.

- (3) Where a contract is rescinded pursuant to subsection (2):

(a) the dealer shall return or refund to the purchaser any consideration given by the purchaser under the contract, or the value of any such consideration as at the date of the contract; and

(b) the purchaser shall return or refund to the dealer:

(i) the vehicle, or its value as at the date of the contract; and

(ii) any other consideration given by the dealer under the contract, or the value of any other such consideration as at the date of the contract.

- (4) A person who returns a vehicle or other thing to another pursuant to subsection (3) is liable to pay compensation to the other in respect of any damage to, or depreciation in the value of, the vehicle or thing which is attributable to his or her failure to take reasonable care of it, but is not liable for any damage or depreciation attributable to normal use of the vehicle or thing or to circumstances beyond his or her control.

- (5) The obligations imposed by subsections (3) and (4) may be enforced by action in any court of competent jurisdiction.

- (6) A court finding guilty a dealer of an offence against subsection (1) is competent to make orders, on the application of the prosecutor, for the enforcement of obligations imposed by subsections (3) and (4).

- (7) A person who fails to comply with an order under subsection (6) is guilty of an offence.

Penalty: \$5,000.

## **161 Replacement and alteration of odometers**

- (1) A dealer shall not without the consent in writing of the Commissioner offer or display a motor vehicle for sale where the dealer has:

- (a) replaced, or caused to be replaced, the vehicle's odometer; or
- (b) altered, or caused to be altered, the distance recorded by the vehicle's odometer.

Penalty: \$5,000.

- (2) A person other than a dealer who replaces a motor vehicle's odometer, or alters the distance recorded on a motor vehicle's odometer, shall not offer to sell the vehicle to a dealer without disclosing the replacement or alteration to the dealer.

Penalty: \$5,000.

- (3) A dealer who knows that a motor vehicle's odometer has been replaced or altered shall not offer or display the vehicle for sale without disclosing the replacement or alteration to the purchaser or a prospective purchaser of the vehicle.

Penalty: \$5,000.

## **162 Sale price partly recoverable in case of certain offences**

- (1) Where a person has been found guilty of an offence:
- (a) consisting of a contravention of section 44 committed by falsely stating the year in which a motor vehicle was manufactured or first registered, or the model designation of the vehicle; or
  - (b) against section 161,

a person who purchased the motor vehicle in respect of which the offence was committed relying on the statement or, in the case of an offence against section 161, on the reading on the odometer of the vehicle at the time of the purchase may apply to the Commissioner for an order under subsection (2).

- (2) Where on an application under subsection (1) the Commissioner is satisfied that the sale price of the vehicle exceeded its fair value at the time of the sale, the Commissioner shall order the person found guilty of the offence to pay the amount of the excess to the purchaser.
- (3) An order of the Commissioner under subsection (2) is enforceable as if it were an order for the payment of money made by the Local Court.

**163            Prohibition of sale of vehicles without vehicle identification number**

- (1) Subject to subsection (2), a person shall not offer or display for sale a motor vehicle unless the motor vehicle has marked or affixed on it a vehicle identification number which, in pursuance of section 101 of the *Motor Vehicles Act*, would permit the Registrar, within the meaning of that Act, to register or renew the registration of the motor vehicle under that section.

Penalty:        \$5,000.

- (2) Subsection (1) does not apply to a person offering or displaying a motor vehicle for sale where the motor vehicle is offered or displayed for sale solely for the purpose of the motor vehicle being used as a source of spare parts for other motor vehicles.

**164            Prohibition on sale of vehicles registered interstate**

A dealer shall not sell, or offer or display for sale, a motor vehicle which:

- (a) is currently registered in a place outside the Territory; or
- (b) has affixed to it a number plate or number plates issued otherwise than under the *Motor Vehicles Act*.

Penalty:        \$5,000.

**165            Roadworthiness on sale of vehicle**

- (1) Subject to subsection (2), it is a condition of the sale of a motor vehicle by a dealer that the vehicle is of a standard fit to meet the requirements of the *Motor Vehicles Act* with respect to registration.
- (2) Subsection (1) does not apply to:
  - (a) a motor vehicle sold for wrecking; or

- (b) a motor vehicle sold under a contract excluding its application, being a contract in the prescribed form.

#### **166 Dealings with infants**

- (1) A licensed dealer shall not:

- (a) purchase or otherwise acquire a second-hand motor vehicle from a person who has not attained the age of 18 years; or
- (b) sell or otherwise dispose of a second-hand vehicle to such a person,

without the consent in writing of that person's parent or guardian.

Penalty: \$5,000.

- (2) In proceedings against a dealer for an offence against subsection (1), it is a defence that the dealer believed, on reasonable grounds, that the person in question had attained the age of 18 years.

#### **167 Documents to be complete before signing**

A licensed dealer shall not, in respect of the sale of a motor vehicle, submit a document to a person for signature unless at the time of submitting the document:

- (a) all material particulars in it have been completed; and
- (b) any matter in it which is not relevant to the sale has been deleted.

Penalty: \$5,000.

### **Subdivision C Warranties**

#### **168 Obligation of dealer to repair certain defects**

- (1) Where:

- (a) a dealer sells a motor vehicle, and a defect in the vehicle (including a defect existing or potentially existing at the time of the sale) subsequently appears or occurs; and
- (b) the circumstances fall within Case 1 or 2 in subsection (2),

the dealer is, subject to sections 169 and 171 and regulations referred to in section 170, liable in respect of the defect to the extent specified in subsection (3).

(2) Cases 1 and 2 are as follows:

Case 1    The vehicle was sold:

- (i) otherwise than as a second-hand vehicle; or
- (ii) as a second-hand vehicle which the dealer represented to the purchaser as being a demonstration vehicle.

The defect appeared or occurred:

- (i) where the vehicle was sold subject to an unexpired manufacturer's warranty – before the expiry of the warranty; or
- (ii) in any other case – before the vehicle had been driven 5000 km after the sale or (if earlier) the expiry of 3 months after the sale.

Case 2    The vehicle was sold as a second-hand vehicle, and:

- (i) the sale was effected not more than 10 years (or in the case of a motor cycle, not more than 5 years) after the date of manufacture of the vehicle; and
- (ii) the vehicle had, at the time of the sale, been driven for less than 160 000 km (or, in the case of a motor cycle, less than 30 000 km).

The defect appeared or occurred before the vehicle had been driven 5000 km after the sale or (if earlier) the expiry of 3 months after the date on which the purchaser took possession of the vehicle.

- (3) The liability of a dealer in respect of a defect is, at the dealer's own expense, to repair and make good the defect (or cause the defect to be repaired and made good) so as to place the vehicle in a reasonable condition having regard to its age and the distance it has travelled.
- (4) The liability imposed on a dealer by this section shall be treated as arising under an express term of the contract of sale relating to the vehicle.
- (5) For the purposes of Case 2 in subsection (2), the date of manufacture of a vehicle is the date indicated as such by the manufacturer on the body of the vehicle or, if no date is so indicated, the date specified in the vehicle's certificate plate within the meaning of the *Motor Vehicles Act*.

- (6) For the avoidance of doubt, it is hereby declared that:
- (a) this section applies to the sale of a motor vehicle by a dealer notwithstanding that it is a sale on consignment; and
  - (b) nothing in this section derogates from the application of section 64 to the sale of a motor vehicle by a dealer.

**169       Exclusions from duty to repair**

- (1) Section 168 does not apply:
- (a) to defects of a kind described in subsection (2);
  - (b) to vehicles, or sales of vehicles, of a kind described in subsection (3); or
  - (c) where a motor vehicle is purchased under a written contract of sale which provides expressly that the section does not apply to the sale, and the requirements specified in subsection (4) have been met before the contract is signed by the purchaser.
- (2) The defects referred to in subsection (1)(a) are:
- (a) defects arising from, or incidental to, accidental or malicious damage suffered by the vehicle after the purchaser took delivery of it from the dealer;
  - (b) defects arising from misuse of the vehicle after the purchaser took delivery of it from the dealer, from the negligence of a driver of the vehicle after that time, or from the use of the vehicle after that time for motor racing or motor rallying;
  - (c) defects arising from superficial damage to the vehicle (whether to its paintwork, its upholstery, or of any other nature) which would have been apparent on a reasonable inspection of the vehicle carried out at the time of its sale or (if earlier) its delivery from the dealer to the purchaser; and
  - (d) defects in an accessory which was not fitted to or supplied with the vehicle at the time of its manufacture.
- (3) The vehicles, and sales of vehicles, referred to in subsection (1)(b) are:
- (a) commercial vehicles (other than one which at the time of its sale is declared, or included in a class or description of commercial vehicles declared, by the Minister by notice in the *Gazette* to be a commercial vehicle or, as the case may be, class or description of commercial vehicles to which

section 168 applies notwithstanding this paragraph);

- (b) a vehicle which at the time of its sale is declared, or included in a class or description of vehicles declared, by the Minister by notice in the *Gazette* to be a vehicle or, as the case may be, class or description of vehicles to which section 168 does not apply;
  - (c) a used vehicle which has been continuously in the purchaser's possession or under the purchaser's control for a period of not less than 3 months immediately preceding the sale;
  - (d) the sale of a vehicle to a trade owner; and
  - (e) the sale of a vehicle by auction, where the auction is conducted by a licensed auctioneer in accordance with the *Auctioneers Act*.
- (4) The requirements referred to in subsection (1)(c) are:
- (a) that the purchaser signs a document in the prescribed form stating that the purchaser:
    - (i) intends to purchase the motor vehicle under a contract of sale which excludes the application of section 168; and
    - (ii) understands the effects of the exclusion;
  - (b) that the purchaser signs the document referred to in paragraph (a):
    - (i) otherwise than at a place at which the dealer carries on business as such; and
    - (ii) in the presence of a person nominated in writing by the Commissioner for the purposes of this subparagraph or a member of the Police Force; and
  - (c) that the person or member of the Police Force referred to in paragraph (b)(ii):
    - (i) before the purchaser signs the document referred to in paragraph (a), reads to the purchaser a prescribed warning about the rights the purchaser is forgoing; and
    - (ii) after the purchaser has signed the document, witnesses the signature.

**170                      Carrying out of duty to repair**

- (1) Regulations may make ancillary provision with respect to the carrying out by a dealer of the dealer's obligation under section 168 in respect of a defect in a motor vehicle, and may in particular (but without limiting the generality of the foregoing) provide that, according to circumstances specified in the regulations:
  - (a) the obligation is dependent on the person seeking to enforce it delivering the vehicle at that person's expense to a place determined in accordance with the regulations;
  - (b) the obligation is dependent on that person delivering the vehicle to a place so determined, but at the dealer's expense; or
  - (c) the dealer is, for the purpose of carrying out the obligation, under a further obligation to collect, or arrange for the collection of, the vehicle at the dealer's expense.
- (2) Where a person delivers a vehicle to a place in accordance with the regulations, and the regulations provide for the delivery to be at the dealer's expense, the person may recover the cost of the delivery from the dealer as a debt due and payable.

**171                      Other provisions ancillary to section 168**

- (1) For the purpose of calculating in relation to a motor vehicle the period of 3 months referred to in Case 1 or 2 in section 168(2), no account shall be taken of any period during which the vehicle has been in the possession of the dealer, or of a person acting on behalf of the dealer, for the purpose of ascertaining or carrying out the obligations of the dealer under that section.
- (2) Subject to subsection (3), the liability of a dealer under Case 1 in section 168(2) subsists for the benefit of the owner from time to time of the vehicle, and, for that purpose, the owner from time to time of the vehicle shall be deemed to have contracted to buy the vehicle from the dealer who is under the liability on the date of the sale giving rise to the liability.
- (3) The liability of a dealer under Case 1 in section 168(2) is extinguished if, subsequent to the sale giving rise to the liability, the vehicle is acquired by a dealer as owner or repossessed by a financier.
- (4) The liability of a dealer under Case 2 in section 168(2) is a liability only to the person who purchased the vehicle from the dealer.



## **Subdivision D Sales on consignment**

### **172 Authority required by dealer for sale of motor vehicle on consignment**

(1) A dealer shall not:

- (a) sell a motor vehicle, or an interest in a motor vehicle, for or on behalf of another person; or
- (b) offer or display a motor vehicle for sale for or on behalf of another person,

unless the dealer is authorized to do so by the owner of the vehicle or interest by writing in the prescribed form.

Penalty: \$5,000.

(2) An authorization under subsection (1) must be prepared in duplicate, and must:

- (a) be signed by the owner and by or on behalf of the dealer;
- (b) bear the date on which it is signed by the owner;
- (c) contain a full statement of the terms of the authorization;
- (d) sufficiently describe the vehicle;
- (e) state whether or not the vehicle is encumbered, and, if encumbered, to whom and in what respect; and
- (f) contain a full statement of the commission or other remuneration to which the dealer is or is to be entitled.

(3) A dealer who is given an authorization under subsection (1) shall:

- (a) return one copy to the owner after it has been signed by or on behalf of the dealer; and
- (b) where the dealer has effected a sale in reliance on the authorization, retain the other copy for 3 years after the date of the sale.

Penalty: \$5,000.

(4) An authorization under subsection (1) may be varied only by agreement of the parties in writing.

- (5) An authorization under subsection (1) ceases to have effect on the expiry of 90 days beginning on the day after that on which it is signed by the owner, or at such earlier time as the parties may have agreed in writing.
- (6) A dealer is not entitled to any commission or other remuneration in respect of the sale of a motor vehicle, or an interest in a motor vehicle, effected by the dealer for or on behalf of another person unless:
  - (a) the sale is effected in accordance with an authorization complying with this section; and
  - (b) the dealer has complied with subsection (3)(a).

**173            Period for accounting to consignor**

A dealer shall account to a consignor in respect of the proceeds of the sale on consignment of a motor vehicle within 14 days after the date of sale of the vehicle or, where a different period has been prescribed, within that period.

**Division 6            Miscellaneous**

**174            Notice to be displayed by licensed dealer**

- (1) A licensed dealer shall exhibit, and keep exhibited, at each place of business specified in the dealer's licence and in such a position as to be easily visible by a person entering the place, a notice complying with subsection (2) and any further requirements that are for the time being prescribed.

Penalty:        \$5,000.

- (2) The notice required by subsection (1) must:
  - (a) consist of bold black letters on a white background, with the letters being not less than 7 cm high and not less than one centimetre wide;
  - (b) state the dealer's name and, where the dealer carries on business as such under a different name, the name under which the business is carried on; and
  - (c) contain the words "LICENSED MOTOR VEHICLE DEALER NUMBER" or the letters "LMVD", followed in either case by the number of the dealer's licence.

**175      Advertisements by dealers**

A dealer shall not cause or permit to be published an advertisement relating to or connected with the business of the dealer as such unless the advertisement states that the dealer is a licensed dealer, and specifies the dealer's licence number and place of business (or, if the dealer has 2 or more places of business, the dealer's principal place of business).

Penalty:      \$5,000.

**176      Dealers' managers to be approved by Commissioner**

(1) A licensed dealer shall not carry on business as such at a place unless there is present and in charge of the day-to-day conduct of the business at that place:

- (a) where the dealer is a body corporate – an individual approved by the Commissioner for the purposes of this section; or
- (b) where the dealer is an individual – either the dealer or a person so approved.

Penalty:      \$5,000.

(2) Regulations may:

- (a) make provision with respect to applications to the Commissioner for approvals for the purposes of this section;
- (b) require the Commissioner, on an application for approval being duly made, to grant or withhold approval within a specified time;
- (c) specify the grounds on which the Commissioner is to withhold approvals;
- (d) enable the Commissioner to grant approvals subject to conditions or restrictions;
- (e) make provision as to the duration of approvals;
- (f) empower the Commissioner to revoke approvals on specified grounds;
- (g) provide for the payment of application fees and fees for the granting of approvals; and

- (h) enable the Commissioner to seek such information and advice as the Commissioner considers necessary for the purpose of dealing with applications in accordance with the regulations.

**177            Disqualifications resulting from revocation, cancellation or suspension of licence**

- (1) Where a dealer's licence has been revoked by a notice under section 150(2), or cancelled by the operation of section 141(5), or suspended either by a notice under section 150(2) or by the operation of section 141(3), this section applies to the dealer:
  - (a) in the case of revocation – subject to subsection (2), for a period of 12 months from the service of the notice;
  - (b) in the case of cancellation – for a period of 12 months from the date when the cancellation took effect; and
  - (c) in the case of suspension – until the suspension ends.
- (2) This section ceases to apply to a dealer whose licence has been revoked if the revocation is set aside on appeal.
- (3) Where this section applies to a dealer:
  - (a) the dealer is disqualified from holding a licence; and
  - (b) if the dealer becomes employed or otherwise engaged in the business of another dealer, both the dealer and the other dealer are guilty of an offence against this section.

Penalty:        \$5,000.

**178            Commissioner to be notified of dissolution of partnership**

Where 2 or more licensed dealers have been carrying on business as dealers in partnership with each other and the partnership is dissolved, each of those dealers shall within 14 days after the date of dissolution give written notice thereof to the Commissioner.

Penalty:        \$5,000.

**179            Dealer not entitled to indemnity by antecedent owner**

- (1) Subject to subsection (2), where a licensed dealer incurs any costs or expenses by virtue of the operation of this Part in respect of the sale of a motor vehicle, the dealer is not entitled to be indemnified in respect of those costs or expenses by any antecedent owner, and any contract or agreement providing directly or indirectly for the licensed dealer to be so indemnified is, to the extent that it does so,

void.

- (2) Subsection (1) does not apply to a contract or agreement providing for a licensed dealer to be so indemnified where the antecedent owner is a trade owner, a manufacturer, or a manufacturer's distributor.

**180            Commissioner's certificate as evidence**

- (1) A certificate signed by the Commissioner stating that a person specified in the certificate was or was not, on a date or dates or during a period so specified, the holder of a licence so specified is, in all courts and before all persons and bodies authorized to receive evidence, evidence of the matter so stated.
- (2) For the purposes of subsection (1), a document that purports to have been signed by the Commissioner shall be taken to have been so signed unless the contrary is proved.

**181            Contracts not to exclude Part X**

- (1) Subject to subsection (2), a term of an agreement which purports to exclude or limit the operation of this Part, or to preclude any right of action or any defence based on or arising out of any failure to comply with this Part, is void.
- (2) Subsection (1) does not apply in the case of an agreement the parties to which are a licensed dealer and a body corporate.

**182            Power of commissioner to grant temporary exemptions**

The Commissioner may, by notice in the *Gazette*, exempt a person specified in the notice, for a period not exceeding 12 months so specified and either conditionally or unconditionally, from the application of this Part or of any provision or provisions of this Part so specified.

**183            Regulatory offences**

An offence of contravening or failing to comply with section 153(1), 157(1), 160(1), 163, 164, 172(1) or (3) or 174(1) is a regulatory offence.

## **Division 7            Vehicle rental businesses**

### **184            Certain provisions of Part X to apply to vehicle rental businesses**

- (1) In this section, **vehicle rental business** means a business of letting or hiring out motor vehicles without granting any right to purchase them which is, for the greater part, comprised of letting or hiring out motor vehicles for periods not exceeding 4 months or for periods as prescribed.
- (2) Subject to subsection (4), the provisions specified in subsection (3) shall have effect as if references therein to licensed dealers and dealers included references to persons carrying on vehicle rental businesses.
- (3) The provisions referred to in subsection (2) are:
  - (a) section 157;
  - (b) section 158, so far as it applies in relation to the disposal of motor vehicles by sale or otherwise;
  - (c) section 160;
  - (d) section 161(3);
  - (e) section 164;
  - (f) section 165;
  - (g) section 166, so far as it applies in relation to the disposal of second-hand motor vehicles by sale or otherwise;
  - (h) section 167; and
  - (j) sections 168 to 171, and regulations making any such provision as is mentioned in section 170(1).
- (4) If regulations so provide, a provision applying to or in relation to persons carrying on vehicle rental businesses by virtue of this section shall do so subject to such adaptations or modifications as are specified in the regulations.

## **Part XI              Travel agents**

### **Division 1           Preliminary**

#### **185              Definitions for purposes of Part XI**

In this Part, unless the contrary intention appears:

***compensation fund*** means the compensation fund established by the trust deed.

***compensation scheme*** means the scheme established by the trust deed.

***compensation scheme trustees*** means the trustees for the time being by whom the compensation scheme is administered.

***corresponding law*** means a law in force in a State, or another Territory of the Commonwealth which provides for the licensing of a person as a travel agent.

***exempted person*** means a person who is exempted from holding a licence by section 3(2) (the Crown), by a regulation made for the purposes of section 236A(1), or by a notice under section 236A(2).

***licence*** means a licence in force under this Part, and ***licensee*** means the holder of such a licence.

***sale***, in relation to rights, includes the conferral or assignment of the rights.

***trust deed*** means the trust deed approved for the time being under section 220.

***vehicle*** includes a boat, aircraft and other means of transport.

#### **186              Meaning of carrying on business as travel agent**

- (1) For the purposes of this Part but subject to this section, a person carries on business as a travel agent if the person, in the course of a business, sells or arranges for the sale of, or advertises that he or she is willing to sell or arrange for the sale of:
  - (a) rights to travel; or
  - (b) rights to travel and accommodation.

- (2) A person does not carry on business as a travel agent:
- (a) by reason only of anything done by the person in the course of his or her employment;
  - (b) by reason only of selling, or arranging for the sale of, rights to travel in a vehicle owned by the person;
  - (c) by reason only of selling, or arranging for the sale of, rights to accommodation at a place which the person owns; or
  - (d) by reason only of holding out, or advertising, that the person is willing to carry on an activity referred to in paragraph (b) or (c).
- (3) For the purposes of this section, a person is the owner of a vehicle or place of accommodation if he or she has lawful possession of the vehicle or place of accommodation.

## **Division 2            Restriction on carrying on business as travel agent**

### **188            Travel agents to be licensed**

- (1) A person (other than an exempted person) shall not:
- (a) carry on business as a travel agent otherwise than in accordance with the authority conferred on that person by a licence; or
  - (b) carry on business as a travel agent in partnership with a person who is not a licensee.

Penalty:        \$50,000.

- (2) Where a person is found guilty of an offence against subsection (1), the court by which the finding of guilt is recorded shall order the person to pay to the Territory an amount estimated by the court to be the amount of the profit that has accrued to him or her, or to any other person with whom he or she has a business or personal association, in consequence of the commission of the offence.
- (3) The Territory shall pay into the compensation fund any amount recovered in pursuance of an order under subsection (2) (which may be enforced as if it were a judgment given by the Supreme Court in a civil matter).
- (4) No action lies for the recovery of any fee, commission or other reward for any service done or performed in the course of carrying on business as a travel agent by a person (other than an exempted person) who does not hold a licence.



**188A      Dealings with unlicensed travel agents**

- (1) A person who carries on a business that supplies rights to travel in an aircraft, vessel or vehicle (including a train) of any kind owned or leased by the person (not being a prescribed aircraft, vessel or vehicle) shall ensure that:
- (a) rights to travel in the aircraft, vessel or vehicle are not sold by the person, or his or her agent, to a travel agent; or
  - (b) arrangements to sell rights to travel in the aircraft, vessel or vehicle are not made by the person, or his or her agent, with a travel agent,

unless the travel agent holds a licence in force under this Part or is, under section 236A, exempted from the requirement to hold such a licence.

Penalty:      \$2,000.

- (2) It is a defence to a prosecution for an offence against subsection (1) if it is proved that the person who supplied the travel:
- (a) made reasonable inquiries as to whether the travel agent held a licence in force under this Part or was an exempted person; and
  - (b) had no reason to believe that the travel agent did not hold such a licence or was not an exempted person.

**189      Injunction on application by Commissioner**

The Supreme Court may, if satisfied on an application by the Commissioner that a person who is not an exempted person and is not a licensee has carried on business as a travel agent, issue an injunction restraining that person from carrying on business as a travel agent whilst not an exempted person or a licensee.

**Division 3      Licences**

**190      Application for licence**

- (1) A person may apply to the Commissioner for a licence.
- (2) An application must be made in accordance with the prescribed form, and be accompanied by the prescribed processing fee.

- (3) An application shall specify:
- (a) the name and address:
    - (i) where the application is made by an individual – of that person; or
    - (ii) where the application is made by a body corporate – of each director of the body corporate;
  - (b) where the application is made by a body corporate – the date and place of incorporation of the body corporate, its corporate name and the address of its registered office;
  - (c) the name under which the applicant proposes to carry on business as a travel agent;
  - (d) the address of the place that, if a licence were granted pursuant to the application, would be the principal place of business of the licensee;
  - (e) the address of any other place at which, if a licence were granted pursuant to the application, the licensee would carry on business as a travel agent;
  - (f) where the applicant intends to carry on business in partnership – the name and address of each natural person with whom the applicant intends to carry on business in partnership;
  - (g) where the applicant intends to carry on business in partnership with a body corporate:
    - (i) the date and place of incorporation;
    - (ii) the corporate name;
    - (iii) the address of the registered office; and
    - (iv) the name and address of each director,of each body corporate with which the applicant intends to carry on business in partnership;
  - (h) the name, address, and such other particulars as are prescribed, of the persons it is proposed to have in charge (in compliance with section 213) at each place referred to in paragraphs (d) and (e); and
  - (j) such other matters as are prescribed.

- (4) Where an application is made for a licence and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (3), the applicant shall, within 14 days after the occurrence of the change, give to the Commissioner notice in writing specifying particulars of the change.

Penalty:        \$5,000.

- (5) An applicant for a licence shall, if required to do so by the Commissioner, provide the Commissioner with such particulars additional to those included in the application, and with such documents in relation to those particulars, as the Commissioner requires.
- (6) A person shall not in, or in relation to, an application under this section, a notice under subsection (4) or any particulars provided under subsection (5), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty:        \$5,000.

- (7) It is a defence to a prosecution of a person for an offence against subsection (6) if the person proves that, when the application was made, the notice given or the particulars provided, the person:
- (a) believed on reasonable grounds that the false matter was true;
  - (b) believed on reasonable grounds that the misleading matter was not misleading; or
  - (c) in the case of an omission:
    - (i) believed on reasonable grounds that no material matter had been omitted; or
    - (ii) did not know that the omitted matter was material.

## **191        Objections to application**

- (1) On receiving an application for a licence, the Commissioner shall:
- (a) send a copy of it to the Commissioner of Police, together with copies of any accompanying documents other than statements relating to the material and financial resources of the applicant; and
  - (b) publish, in a newspaper circulating throughout the Territory and (if there be one) in a further newspaper circulating in the

locality in which the applicant proposes to carry on business as a travel agent, notices stating that the application has been made, setting out the prescribed details with respect to the application, and specifying a period during which members of the public may, by notice in writing lodged with the Commissioner, object to the granting of a licence on the grounds that the applicant is not a fit and proper person.

- (2) The Commissioner of Police shall, within 28 days of receiving a copy of an application pursuant to subsection (1)(a), lodge with the Commissioner a notice in writing which either supports the application or objects to the grant of a licence on the grounds that the applicant may not be a fit and proper person.
- (3) A notice of objection under subsection (1)(b) or (2) must state the reasons for alleging that the applicant is not or, as the case requires, may not be a fit and proper person.
- (4) References in this section to an applicant's not being a fit and proper person are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate not being a fit and proper person.

## **192      Inquiry by Commissioner**

Where an objection to the grant of a licence is duly lodged with the Commissioner under section 191, or it otherwise appears to the Commissioner that there may be grounds for refusing an application for a licence, the Commissioner shall hold an inquiry into the matter.

## **193      Grant or refusal of licence**

- (1) The Commissioner shall approve an application for a licence except where its refusal is required by this section.
- (2) An application made by an individual shall be refused if it appears to the Commissioner:
  - (a) that the applicant has not attained the age of 18 years;
  - (b) that the applicant is disqualified from holding a licence under this Part or a corresponding law;
  - (c) that the applicant is disqualified under this Part or a corresponding law from being involved in the direction, management or conduct of a business as travel agent;

- (d) that a person proposed to be employed for the purposes of section 213 has neither the qualifications nor the experience prescribed for the purposes of that section, or is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the person were to apply for a licence;
  - (e) that the applicant is not a person likely to carry on such a business honestly and fairly; or
  - (f) that the applicant is in any other way not a fit and proper person to be a licensee.
- (3) Without affecting the generality of subsection (2)(f), the Commissioner may, in determining whether or not an applicant is a fit and proper person to be a licensee, have regard (if such be the case) to the fact that the applicant, or a person who is associated with the applicant within the meaning of the Companies (Northern Territory) Code:
  - (a) has, during the period of 10 years immediately preceding the making of the application, been found guilty of, or served any part of a term of imprisonment for, an offence in the Territory or elsewhere involving fraud, dishonesty or physical violence;
  - (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance;
  - (c) was, at the time of the making of the application, the subject of a charge pending in relation to such an offence;
  - (d) has, at any time, been found guilty of an offence against this Act, the regulations or any other enactment administered by the Minister;
  - (e) has been refused a licence under a corresponding law; or
  - (f) has been the subject of action that, under a corresponding law, had an effect similar to the effect under this Part of action under section 205(1)(a), (b), (c), (d) or (g).
- (4) An application for a licence made by a body corporate shall be refused if it appears to the Commissioner:
  - (a) that a person concerned in the management of the body corporate has not attained the age of 18 years;
  - (b) that the body corporate is disqualified from holding a licence under this Part or a corresponding law;

- (c) that the body corporate is disqualified under this Part or a corresponding law from being involved in the direction, management or control of a business as a travel agent;
  - (d) that a person proposed to be employed for the purposes of section 213 has neither the qualifications nor the experience prescribed for the purposes of that section, or is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the person were to apply for a licence;
  - (e) that the body corporate is not likely to carry on such a business honestly and fairly;
  - (f) that the reputation of the body corporate is such that it would not be a fit and proper person to be a licensee;
  - (g) that an officer of the body corporate is disqualified from being involved in the direction, management or conduct of the business of a travel agent;
  - (h) that a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the director or person were to apply for the licence personally; or
  - (j) that any person (other than an officer of the body corporate) who, in the opinion of the Commissioner, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly.
- (5) Without affecting the generality of subsection (4)(f), (h) or (j), the Commissioner may, in determining any matter referred to in those paragraphs, have regard (if such be the case) to the fact that the body corporate, or a person so referred to or associated with such a person within the meaning of the Companies (Northern Territory) Code:
- (a) has, during the period of 10 years immediately preceding the making of the application, been found guilty of, or served any part of a term of imprisonment for, an offence in the Territory or elsewhere involving fraud, dishonesty or physical violence;
  - (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance;
  - (c) was, at the time of the making of the application, the subject of a charge pending in relation to such an offence;

- (d) has, at any time, been found guilty of an offence against this Act, the regulations or any other enactment administered by the Minister;
  - (e) has been refused a licence under a corresponding law; or
  - (f) has been the subject of action that, under a corresponding law, had an effect similar to the effect under this Act of action under section 205(1)(a), (b), (c), (d) or (g).
- (6) An application for a licence, whether made by an individual or by a body corporate, shall also be refused unless the compensation scheme trustees have certified:
- (a) that the applicant is eligible to become a participant in the compensation scheme; and
  - (b) that the applicant will be admitted as a participant in the compensation scheme on becoming licensed.
- (7) Where an application for a licence is refused, the Commissioner shall forthwith, by notice in writing served on the applicant, inform the applicant of the refusal, and of the ground on which the refusal is based.
- (8) Where an application for a licence is approved, the Commissioner shall notify the applicant accordingly but shall not grant the licence until the prescribed fee for the licence is paid to the Commissioner.
- (9) The Commissioner may refrain from approving or refusing an application for a licence until:
- (a) the individual or individuals to whom the application relates; and
  - (b) the director and officers of any body corporate to which the application relates,

or such of them as the Commissioner specifies or refers to, has or have appeared personally before the Commissioner and satisfied the Commissioner as to such relevant matters referred to in this section as the Commissioner thinks appropriate.

**194      Licence to state licensee's name, business name and place of business**

- (1) A licence:
- (a) shall state the name of the licensee;

- (b) may authorize the licensee to carry on business as a travel agent under a different name; and
    - (c) shall specify the place or places at which the licensee is authorized to carry on business as a travel agent.
  - (2) A licensee shall not carry on business as a travel agent:
    - (a) under a name other than that of the licensee, or that under which the licensee is authorized by the licence to carry on business; or
    - (b) subject to subsection (3), at a place other than one authorized by the licence.
- Penalty:      \$5,000.
- (3) Regulations may exempt (conditionally or unconditionally) from the application of subsection (2)(b) transactions of a specified class or description, or transactions taking place in specified circumstances.
  - (4) An offence against subsection (2) is a regulatory offence.
  - (5) The Commissioner may, on the application of a licensee and payment of the prescribed fee (if any), vary the licence:
    - (a) so as to authorize the licensee to carry on business under a name different from that of the licensee, or different from that previously authorized by the licence; or
    - (b) with respect to the place or places at which the licensee is authorized to carry on business,

but shall not make a variation mentioned in paragraph (b) unless satisfied that the variation has been approved by the compensation scheme trustees.

## **195      Conditions of, and restrictions on, licence**

- (1) A licence is subject to:
  - (a) a condition that each place at which the licensee carries on business as a travel agent shall at all times comply with such standards, and such other requirements, as are prescribed;
  - (b) a condition that the licensee shall, at all times during the currency of the licence, be a participant in the compensation scheme;
  - (c) any prescribed conditions or restrictions; and



- (d) any conditions and restrictions imposed under this section or any other provision of this Part.
- (2) The Commissioner may grant a licence subject to such conditions and restrictions as the Commissioner thinks fit, and any conditions and restrictions imposed by virtue of this subsection shall be endorsed on the licence.
- (3) The Commissioner may at any time, either on the application of a licensee or of the Commissioner's own motion, by notice in writing served on the licensee vary the conditions or restrictions to which a licence is subject or impose new conditions or restrictions.
- (4) The Commissioner shall not exercise the power conferred by subsection (2) or (except on the application of a licensee) that conferred by subsection (3) unless the Commissioner has first given the applicant for the licence or, as the case may be, the licensee an opportunity to make (as the Commissioner thinks fit) oral or written submissions with respect to the conditions or restrictions proposed to be imposed or the variation proposed to be made.
- (5) The variation of a condition or restriction, or imposition of a new condition or restriction, by a notice under subsection (3) has effect notwithstanding that the variation or new condition or restriction is not endorsed on the licence; but the licensee shall, if the Commissioner so directs, produce the licence to the Commissioner for endorsement in accordance with the notice.
- (6) A licensee shall not contravene or fail to comply with a condition or restriction to which the licence is for the time being subject.

Penalty:      \$5,000.

**196      Licence not transferable**

A licence is not transferable.

**197      Duration of licence**

Except while it is suspended by or pursuant to this Part, a licence continues in force until:

- (a) it is surrendered by the licensee or cancelled by or pursuant to this Part;
- (b) the licensee, being an individual, dies (but subject in that event to section 203); or
- (c) the licensee, being a body corporate, is dissolved.

**198      Annual fee and return**

- (1) A licensee shall, not later than the prescribed date in each year:
  - (a) pay to the Commissioner the prescribed annual licence fee;  
and
  - (b) lodge with the Commissioner an annual return containing the prescribed information.
- (2) Where a licensee fails to pay the annual licence fee or lodge the annual return in accordance with subsection (1), the Commissioner may, by notice in writing to the licensee, require the licensee to make good the default and, in addition, to pay to the Commissioner the amount (if any) prescribed as a penalty for default.
- (3) Where a licensee fails to comply with a notice under subsection (2) within 14 days after service of the notice, the licence shall, by force of this subsection, be suspended until he or she complies with the notice.
- (4) The Commissioner shall cause notice of a suspension under subsection (3) (being notice in the prescribed form) to be published in a newspaper circulating throughout the Territory.
- (5) Where a licence has been suspended by virtue of subsection (3) for a continuous period of 6 months, the licence shall, by force of this subsection, be cancelled.
- (6) A licensee shall not in, or in relation to, any information provided in an annual return lodged pursuant to subsection (1)(b) make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty:      \$5,000.

- (7) It is a defence to a prosecution of a person for an offence against subsection (6) if the person proves that, when the information was provided, the person:
  - (a) believed on reasonable grounds that the false matter was true;  
or
  - (b) believed on reasonable grounds that the misleading matter was not misleading; or

- (c) in the case of an omission:
  - (i) believed on reasonable grounds that no material matter had been omitted; or
  - (ii) did not know that the omitted matter was material.

## **199      Register of licences**

- (1) For the purposes of this Part, the Commissioner shall keep a register of licences which, without limiting the operation of subsection (2), includes the addresses of the principal and other places at which each licensee is authorized to carry on business as a travel agent and the name and address last notified to the Commissioner of the person in charge at each of those places in compliance with section 213.
- (2) The register shall contain the prescribed particulars and shall be kept in such form and manner as the Commissioner thinks fit.
- (3) The register shall be made available at all reasonable times for inspection by any person at the office of the Commissioner.
- (4) The Commissioner may, on the application of a person, issue to the person a certificate stating whether or not a person specified in the certificate is or was, on a date or during a period specified in the certificate, a licensee.
- (5) The Commissioner may charge the prescribed fee, if any, for the issue of a certificate under subsection (4).

## **200      Surrender of licence**

The holder of a licence may, by notice in writing given to the Commissioner, surrender the licence.

## **201      Return of licence on suspension or cancellation**

Where a licence is suspended or cancelled by or pursuant to this Part, the licensee or former licensee shall at the direction of the Commissioner return the licence to the Commissioner.

Penalty:      \$5,000.

## **202      Lost, &c., Licences**

- (1) If the Commissioner is satisfied that a licence has been lost, defaced or destroyed, the Commissioner may, on payment of the prescribed fee, issue a duplicate licence.

- (2) A duplicate licence issued under subsection (1) has the same effect as the original licence.

**203      Death of licensee**

- (1) Where a licensee dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the deceased licensee may, within 28 days after the death or such longer period as the Commissioner allows, apply to the Commissioner to be allowed to carry on the business as a travel agent of the deceased licensee during:
- (a) the period that commences with the date of death of the licensee and ends 6 months later; or
  - (b) the period that commences with the date of death of the licensee and ends immediately before the next succeeding anniversary of the date on which the licence was granted,
- whichever is the longer.
- (2) The Commissioner may grant or refuse an application under this section and, where the Commissioner grants the application, may impose such conditions as the Commissioner thinks fit, being conditions subject to which the business to which the application relates may be carried on.
- (3) A person authorized under this section to carry on the business of a deceased licensee shall, subject to this Part and any conditions imposed under subsection (2), be deemed to be, while so authorized, the holder of the licence of the deceased licensee.
- (4) Where, under subsection (2), the Commissioner imposes conditions subject to which a person is authorized to carry on the business to which a licence relates, the person shall, upon being required by the Commissioner to do so within a specified time, produce the licence to the Commissioner within that time for endorsement of the conditions.

Penalty:      \$5,000.

## **Division 4            Disciplinary proceedings**

### **204            Notice to show cause**

- (1) Where, at any time, the Commissioner is of the opinion that there are reasonable grounds for believing that:
- (a) a licence has been improperly obtained or, at the time a licence was granted, there were grounds for refusing to grant it;
  - (b) a licensee has been found guilty of an offence against this Act, the regulations or any other enactment administered by the Minister;
  - (c) a licensee has failed to comply with this Act, a condition or restriction to which the licence is subject or a requirement under section 205(1)(b) applicable to the licensee;
  - (d) a licensee has been found guilty of an offence involving fraud or dishonesty punishable on a finding of guilt by imprisonment for 3 months or more;
  - (e) a licensee does not have, or is not likely to continue to have, sufficient financial resources to enable the licensee to continue to carry on business as a travel agent;
  - (f) the business to which a licence relates is being carried on in a dishonest or unfair manner;
  - (g) if a person were not a licensee, the Commissioner would refuse an application by the person for a licence;
  - (h) a licensee has, for a period of one month or more, ceased to carry on the business to which the licence relates;
  - (j) a person (other than the licensee) involved in the direction, management or conduct of a business to which the licence relates is not a fit and proper person to be so involved;
  - (k) a licensee has been refused a licence under a corresponding law;
  - (m) a licensee has been the subject of action that, under a corresponding law, had an effect similar to the effect under this Part of action under section 205(1)(a), (b), (c), (d) or (g); or
  - (n) a licensee is not, for any other reason, a fit and proper person to continue to hold a licence,

the Commissioner may, by notice in writing served on the licensee, call upon the licensee to show cause, within such period, being not less than 14 days, as is specified in the notice, why the licensee should not, for such of the reasons referred to in paragraphs (a) to (n) as are specified in the notice, be dealt with in accordance with section 205(1).

- (2) A notice may not be served on a licensee for the reason specified in subsection (1)(j) unless:
  - (a) the notice specifies the reasons why it is considered that the person involved in the direction, management or conduct of the business to which the licence relates is not a fit and proper person to be so involved; and
  - (b) a notice in writing is also served on the person so involved calling on the person to show cause, within the same period as is specified in the notice served on the licensee, why the person should not, for reasons specified in the notice (being the same as those specified under paragraph (a)) be disqualified in accordance with section 205(2).
- (3) A notice may not be served on a licensee for the reason specified in subsection (1)(n) unless the notice specifies the reasons why it is considered that the licensee is not a fit and proper person to continue to hold a licence.
- (4) A licensee on whom a notice under subsection (1) has been served, a person with whom the licensee carries on in partnership the business to which the licence relates and, where the licensee is a body corporate, an officer of the body corporate, may, within the period specified in the notice, make submissions in writing with respect to the matters to which the notice relates.
- (5) A person on whom a notice under subsection (2)(b) has been served may, within the period specified in the notice, make submissions in writing with respect to the matter to which the notice relates.
- (6) In order to determine:
  - (a) whether or not to serve a notice under subsection (1); or
  - (b) whether or not to take action under section 205,the Commissioner may make such investigations as the Commissioner thinks fit.

- (7) The Commissioner of Police shall, if the Commissioner for Consumer Affairs so requests, make such investigations for the purposes of subsection (6) as are specified by the Commissioner for Consumer Affairs, and shall, as soon as practicable after completing the investigations, make a report thereon to the Commissioner for Consumer Affairs.
- (8) The Commissioner may suspend a licence for any one or more of the following periods:
  - (a) a period of not more than 14 days pending a determination as to whether or not a notice should be served on the licensee under subsection (1);
  - (b) where such a notice is so served, the period specified under subsection (1) in the notice;
  - (c) pending a determination as to whether or not action is to be taken under section 205, a period of not more than 14 days.

**205            Determination of disciplinary measures by commissioner**

- (1) If, after compliance with section 204, the Commissioner is satisfied that any matter referred to in section 204(1) has been established in relation to a licence, a licensee or the business carried on pursuant to a licence, the Commissioner may, by notice in writing served on the licensee or, in the case of action under paragraph (f), on the person referred to in that paragraph, do any one or more of the following:
  - (a) reprimand the licensee;
  - (b) require the licensee to comply with a specified requirement within a specified time;
  - (c) suspend the licence for a specified period not exceeding 12 months;
  - (d) impose a condition or restriction on the licence;
  - (e) disqualify the licensee (or, if the licence has been surrendered, the former licensee) in accordance with subsection (2);
  - (f) where a notice was served on a person under section 204(2)(b), disqualify the person in accordance with subsection (2);
  - (g) except where the Commissioner acts in accordance with paragraph (a), (b), (c) or (d), cancel the licence.

- (2) A person is disqualified in accordance with this subsection if either or both of the following disqualifications is or are imposed, either permanently or for such period as is specified by the Commissioner when imposing the disqualification:

- (a) a disqualification from holding a licence;
- (b) a disqualification from being involved in the direction, management or conduct of business as a travel agent.

- (3) Where by a notice under subsection (1) a licensee is required to comply with a specified requirement within a specified time, the licensee shall comply with that requirement within that time.

Penalty:      \$5,000.

- (4) Where the Commissioner disqualifies a licensee in accordance with subsection (2), the Commissioner shall cancel the licence.

- (5) A person disqualified in accordance with subsection (2) in the manner mentioned in subsection (2)(b) shall not, while so disqualified, act in contravention of the disqualification.

Penalty:      \$5,000.

## **Division 5      Appeals**

### **206      Appeals to local court**

- (1) Where the Commissioner:

- (a) refuses an application for a licence;
- (b) imposes conditions or restrictions to which a licence is to be subject; or
- (c) varies (otherwise than on the application of the licensee) the conditions or restrictions to which a licence is subject,

the applicant or licensee as the case may be may, within 28 days beginning with the day after that on which the Commissioner serves notice of the decision in question on the applicant or licensee (or, where a licence is granted subject to conditions or restrictions in the first place, beginning with the day after that on which it is granted) appeal against the decision to the Local Court, and the Local Court may:

- (d) dismiss the appeal; or



- (e) make any determination in relation to the matter of the appeal that could have been made by the Commissioner, which determination shall be deemed for the purposes of this Part to be a decision of the Commissioner instead of the decision appealed against.
- (2) Where the Commissioner suspends or cancels a licence, or imposes a disqualification in accordance with section 205(2), the former licensee or the person disqualified may, within 28 days beginning with the day after that on which the Commissioner serves notice of the suspension, cancellation or disqualification pursuant to section 205(1), appeal against the decision of the Commissioner to the Local Court, and section 207 applies.
- (3) Where the compensation scheme trustees:
  - (a) determine that a person is not eligible, or is no longer eligible, to be a contributor to the compensation fund; or
  - (b) make their determination that a person is eligible, or is to remain eligible, to be such a contributor conditional on any conduct,the person may, within 28 days after service of notice of the determination, appeal against the determination or condition to the Local Court, and section 208 applies.
- (4) Subject to the rules of the Court an appellant under this section shall, within 7 days after lodging the appeal, give notice in writing of the appeal, together with the grounds of the appeal, to the Commissioner and, in the case of an appeal under subsection (3), to the compensation scheme trustees.
- (5) An appeal under subsection (1) or (2) does not operate to stay the action appealed against unless the Court otherwise orders and any conditions imposed by the Court when ordering the stay are complied with.

## **207 Determination of appeal concerning disciplinary action**

- (1) Where the Local Court, after hearing an appeal under section 206(2), is satisfied that any matter referred to in section 204(1) has been established, the Court may:
  - (a) dismiss the appeal; or
  - (b) exercise any one or more of the powers conferred on the Commissioner by section 205(1), which powers shall, for the purposes of this paragraph, be deemed to include a power to fine an appellant licensee an amount not exceeding \$5,000,

but, if the Court declares that it is not so satisfied, the decision of the Commissioner appealed against shall be deemed not to have been made.

- (2) Where the Local Court acts under subsection (1)(b), the decision of the Court shall (except to the extent that the Court imposes a fine) be deemed to be a decision of the Commissioner under section 205(1) instead of the decision appealed against and shall be given effect accordingly.

## **208        Determination of appeal regarding compensation scheme**

On an appeal under section 206(3), the Local Court may:

- (a) confirm or reverse a determination of the compensation scheme trustees; or
- (b) confirm, vary or quash a condition to which a determination is subject,

and may in either case make consequential or ancillary orders.

## **Division 6            Conduct of business**

### **209        Certain particulars to be displayed**

A licensee shall cause to be displayed at each place at which business is carried on pursuant to the licence a legible notice in the prescribed form that contains the prescribed particulars and is clearly visible to persons entering the place of business.

Penalty:        \$5,000.

### **210        Advertisements**

A licensee shall not cause or permit to be published an advertisement relating to the business carried on pursuant to the licence unless the advertisement legibly specifies the number of the licence and:

- (a) the name of the licensee; or
- (b) where the licence authorizes the licensee to carry on business under a different name, that name.

Penalty:        \$5,000.

**211 Name to appear on documents**

A licensee shall not, in the course of carrying on business pursuant to the licence, issue a letter, statement, invoice, cheque, receipt or other document on which there does not appear in legible characters the name of the licensee or, where the licence authorizes the licensee to carry on business under a different name, that name.

Penalty: \$5,000.

**212 Accounts to be kept**

- (1) A person who carries on business as a travel agent shall keep such accounting records as are necessary correctly to record and explain the financial transactions and financial position of the business and shall retain those records for 7 years.

Penalty: \$5,000.

- (2) The accounting records referred to in subsection (1) shall:
- (a) contain sufficient information for the preparation and audit of true and fair profit and loss accounts and balance sheets;
  - (b) be kept at the person's principal place of business in the Territory; and
  - (c) be kept in the English language or, where not kept in writing, be kept in such manner as will enable them to be readily converted into writing in the English language.

**213 Supervision of day-to-day conduct of business**

A licensee shall not carry on business as a travel agent at a place unless there is present and in charge of the day-to-day conduct of the business at that place a person (whether or not the licensee) who has the prescribed qualifications or experience.

Penalty: \$5,000.

**214 Employment of disqualified person**

- (1) Except with the approval of the Commissioner, a licensee shall not employ a person for the purposes of the business carried on pursuant to the licence if the person:
- (a) is disqualified under this Part from holding a licence or is disqualified under a corresponding law from holding a licence under the corresponding law;

- (b) is disqualified under this Part or a corresponding law from being involved in any capacity in the carrying on of business as a travel agent;
- (c) has been refused a licence under this Part on a ground referred to in section 193(2)(e) or (f), or a licence under a corresponding law on a similar ground; or
- (d) is a person whose adverse qualities were responsible for a body corporate being refused a licence on a ground referred to in section 193(4)(h) or (j), or a licence under a corresponding law on a similar ground.

Penalty:        \$5,000.

- (2) It is a defence to a prosecution for an offence against subsection (1) if it is proved that the person responsible for the prohibited employment had made reasonable inquiries regarding the person employed and had no reason to believe that the person employed was within the prohibition.

## **Division 7            Unjust conduct by travel agents**

### **215            Meaning of *unjust conduct***

For the purposes of this Division, conduct of a person who carries on business as a travel agent (including an exempted person) is unjust if it is conduct:

- (a) that is dishonest or unfair;
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought;
- (c) that consists of a contravention of this Act or the regulations or any other enactment administered by the Minister; or
- (d) that, in the case of a licensee, consists of the failure to comply with a condition or restriction to which the licence is subject.

## **216      Undertakings regarding unjust conduct**

- (1) Where it appears to the Commissioner that a person who carries on business as a travel agent has, in the course of that business, repeatedly engaged in unjust conduct, the Commissioner may:
  - (a) request the person to execute a deed in terms approved by the Commissioner whereby the person gives undertakings as to:
    - (i) the discontinuance of the unjust conduct;
    - (ii) the person's future conduct; and
    - (iii) the action the person will take to rectify the consequences of the person's unjust conduct,or any of those matters; or
  - (b) apply to the Local Court for an order under section 218(1).
- (2) Where a person executes a deed under subsection (1)(a) and observes the undertakings given in the deed:
  - (a) a notice may not be served under section 204 or any thing done under section 205; and
  - (b) the Commissioner may not apply for an order under section 218(1),in respect of any conduct to which the undertakings relate.
- (3) A person who fails to observe an undertaking given in a deed executed under subsection (1)(a) is guilty of an offence.

Penalty:      \$5,000.
- (4) A prosecution for an offence under subsection (3) shall not be instituted except by the Commissioner with the leave of the Local Court given when making an order in accordance with section 218(2).

## **217      Register of undertakings**

- (1) The Commissioner shall maintain in such form and manner as the Commissioner thinks fit a register of undertakings given pursuant to section 216(1)(a).

- (2) Where a person executes a deed containing undertakings pursuant to section 216(1)(a), the Commissioner shall:
  - (a) retain the deed and enter in the register of undertakings the prescribed particulars with respect to the deed; and
  - (b) give a copy of the deed to the person who executed it.
- (3) The register of undertakings may, at any reason-able time, be inspected by any person free of charge.

## **218        Restraining, &c., orders**

- (1) Where, on the application of the Commissioner, the Local Court is satisfied that a person who carries on business as a travel agent has in the course of that business repeatedly engaged in unjust conduct, the Court may order the person to refrain from engaging in unjust conduct in the course of carrying on that business and the person shall comply with the order.

Penalty:        \$5,000.

- (2) Where, on the application of the Commissioner, the Local Court is satisfied that a person has failed to observe an undertaking given by the person in a deed executed pursuant to section 216(1)(a), the Court may make an order under subsection (1) against the person and, in the case of an undertaking referred to in section 216(1)(a)(iii), may by such an order require the person to observe that undertaking within a time specified by the Court when making the order.
- (3) Where:
  - (a) the Commissioner applies under subsection (1) or (2) for an order under subsection (1) against a body corporate; and
  - (b) the Local Court is satisfied that the unjust conduct or breach of undertaking to which the application relates was engaged in with the consent or connivance of a person who was at the time of the conduct or breach a director of, or otherwise concerned in the management of, the body corporate,

the Court may, in addition to any other order, make an order prohibiting that person from consenting to or conniving at engagement in unjust conduct, or in a breach of an undertaking under section 216(1)(a), by the body corporate or by any other body corporate of which the person is a director or in the management of which the person is otherwise concerned.

- (4) A person who contravenes an order under subsection (3) is guilty of an offence.

Penalty:      \$5,000.

- (5) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Court thinks fit, including conditions as to the future conduct of a licensee and conditions specifying the action to be taken by a licensee to rectify the consequences of the licensee's unjust conduct.

## **219      Variation and discharge of orders**

The Local Court may on the application of the Commissioner vary or discharge an order made under section 218.

## **Division 8      The compensation scheme**

### **220      Approval of the trust deed**

- (1) The Minister may for the purposes of this Part:
- (a) approve an instrument as the trust deed; and
  - (b) approve any amendment to the trust deed.
- (2) The Minister shall give notice in the *Gazette* of any approval under subsection (1), and a notice under this subsection shall state where copies of the trust deed, or the trust deed as for the time being in force, may be obtained or inspected.

### **221      Obligation of licensee to participate in compensation scheme**

- (1) A licensee must be a contributor to the compensation fund.
- (2) If the compensation scheme trustees determine that a licensee is no longer eligible to be a contributor to the compensation fund, the licence is cancelled by force of this subsection, but the licence revives if the determination is reversed on appeal under section 208.

### **222      Compensation scheme trustees to have certain rights by subrogation and otherwise**

- (1) Where a payment is made to a claimant under the compensation scheme by reason of an act or omission by a person carrying on business as a travel agent, the compensation scheme trustees are subrogated to the rights of the claimant in relation to that act or omission.

- (2) Where the rights conferred by subsection (1) on the compensation scheme trustees are exercisable against a body corporate, those rights are, subject to subsection (3), enforceable jointly against the body corporate and the persons who were its directors at the time of the act or omission and severally against the body corporate and each of those directors.
- (3) Where it is proved that an act or omission by a body corporate occurred without the knowledge or consent of a director of the body corporate, rights are not enforceable as provided by subsection (2) against that director in relation to that act or omission.
- (4) Where an act or omission referred to in subsection (1) was the act or omission of a person who, at the time of the act or omission, was neither a licensee nor an exempted person (in this section called ***the unlicensed person***) a person who aided, counselled or procured the carrying on by the unlicensed person of the business of a travel agent shall be deemed for the purposes of subsections (1), (2) and (3) to have, at the time of the act or omission, carried on business in partnership with the unlicensed person.
- (5) Subsection (4) has effect whether or not the person who aided, counselled or procured the carrying on of the business by the unlicensed person has been found guilty of an offence by virtue of section 12 of the Criminal Code.

**223            Name in which trustees may sue and be sued**

- (1) The compensation scheme trustees may sue and be sued under the name "The Travel Compensation Fund".
- (2) In proceedings brought by the trustees it shall be presumed, in the absence of proof to the contrary, that any provisions of the trust deed in relation to the bringing of proceedings have been satisfied.

**Division 9            Miscellaneous**

**224            Commissioner's certificate as evidence**

- (1) A certificate signed by the Commissioner stating that a person specified in the certificate was or was not, on a date or dates or during a period so specified, the holder of a licence so specified is, in all courts and before all persons and bodies authorized to receive evidence, evidence of the matters so stated.
- (2) For the purposes of subsection (1), a document that purports to have been signed by the Commissioner shall be taken to have been so signed unless the contrary is proved.



## **225      Regulations for purposes of Part XI**

Regulations made for the purposes of this Part may:

- (a) provide for different categories of licences for different classes or descriptions of business specified in the regulations, and prescribe different fees in relation to different categories of licences;
- (b) prescribe as a fee either a specified sum or a sum to be calculated in a specified manner;
- (c) prescribe a procedure for the making of claims for compensation in relation to anything done or omitted to be done by a person exempted under section 236A from the application of section 221; and
- (d) provide for rights of appeal to the Local Court against decisions made in respect of such claims for compensation and the powers of the Local Court in relation to such appeals.

## **Part XIA      Credit providers**

### **Division 1      Preliminary**

#### **225A      Definitions for purposes of Part XIA**

In this Part, unless the contrary intention appears:

**Consumer Credit Code** means the Consumer Credit Code within the meaning of the *Consumer Credit (Northern Territory) Act*.

**Court** means the court established by the *Local Court Act*.

**credit** means credit provided under a contract where:

- (a) payment of a debt owed by one person (the debtor) to another (the credit provider) is deferred; or
- (b) one person (the debtor) incurs a deferred debt to another (the credit provider).

**credit provider** means a person who provides credit and includes a prospective credit provider.

**director** of a body corporate includes:

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position; and
- (b) a person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act.

**Fund** means the Consumer Credit Fund established by Division 3.

## **Division 2      Control of credit providers**

### **225B      Assurances**

- (1) Where the Commissioner is of the opinion that a credit provider:
  - (a) has engaged in conduct that constitutes a contravention of, or a failure to comply with, a provision of the Consumer Credit Code or a provision of this Act relating to the provision of credit; or
  - (b) has acted improperly, negligently or unfairly in the course of conducting the business of the credit provider,

(**unacceptable activity**) the Commissioner may serve on the credit provider a notice specifying the unacceptable activity and requesting the credit provider to execute within a time specified in the notice a deed of assurance in terms approved by the Commissioner.

- (2) A deed executed under subsection (1) shall contain assurances by the credit provider as to:
  - (a) his or her discontinuance of the unacceptable activity;
  - (b) his or her future compliance with this Act;
  - (c) his or her future compliance with the Consumer Credit Code; and
  - (d) the action the person will take to rectify the consequences of his or her unacceptable activity,or any of those matters.

- (3) A person who fails to observe an assurance given in a deed executed under subsection (2) is guilty of an offence.

Penalty:      \$5,000.

- (4) Action against a credit provider who has given an assurance under this section shall not be taken in relation to the particular incident of unacceptable activity specified in the notice under subsection (1) served on the credit provider.
- (5) This section applies to conduct occurring before or after the commencement of this Part but a person shall not be held to be in breach of a deed of assurance by virtue of an activity that occurred before the deed of assurance was executed.

## **225C      Basis of disciplinary action**

- (1) There is a proper basis for disciplinary action against a credit provider if:
- (a) the credit provider has acted contrary to an assurance accepted by the Commissioner under section 225B;
  - (b) the credit provider or any other person has acted unlawfully, improperly, negligently or unfairly in the course of conducting, or being employed or otherwise engaged in, the business of the credit provider; or
  - (c) the credit provider has failed to execute a deed of assurance as requested and within the time specified under section 225B(1) by the Commissioner.
- (2) A proper basis for disciplinary action against a corporate credit provider is also a proper basis for disciplinary action against each of its directors.
- (3) Notwithstanding subsection (1) or (2), disciplinary action may not be taken against a credit provider or a director for the act or default of another if the credit provider or director could not reasonably be expected to have prevented that act or default.
- (4) This section applies to conduct occurring before or after the commencement of this Part but a person shall not be held to be in breach of a deed of assurance by virtue of an activity that occurred before the deed of assurance was executed.

## **225D      Complaints**

The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute a proper basis for disciplinary action under this Part.

## **225E      Hearing by court**

- (1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute a proper basis for disciplinary action under this Act.
- (2) Without limiting the usual powers of the Court, the Court may during the hearing:
  - (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
  - (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to such conditions as to adjournment and notice to parties and other conditions as the Court thinks fit.

## **225F      Disciplinary action**

- (1) On the hearing of a complaint, the Court may, if satisfied on the balance of probabilities that there is a proper basis for disciplinary action against the defendant, make an order or orders exercising one or more of the following powers:
  - (a) reprimanding the defendant;
  - (b) imposing a fine not exceeding \$8,000;
  - (c) prohibiting the defendant from carrying on the business of a credit provider;
  - (d) prohibiting the defendant from being employed or otherwise engaged in the business of a credit provider;
  - (e) prohibiting the defendant from being a director of a corporate credit provider.
- (2) The Court may:
  - (a) order that a prohibition is to apply:
    - (i) permanently;

- (ii) for a specified period;
  - (iii) until the fulfilment of stipulated conditions; or
  - (iv) until further order; or
- (b) impose conditions about the conduct of the person or the person's business until a time fixed in the order.
- (3) Before making an order against a credit provider, the Court shall consider the effect the order would have on the prudential standing of the credit provider.
- (4) If:
  - (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,the person is not liable to a fine under this section for conduct giving rise to the offence.

#### **225G Contravention of prohibition order**

- (1) If a person carries on the business of a credit provider in contravention of an order of the Court, the person is guilty of an offence.

Penalty: \$30,000 or imprisonment for 6 months.

- (2) If a person:
- (a) is employed, or otherwise engages, in the business of a credit provider; or
  - (b) becomes a director of a corporate credit provider,

in contravention of an order of the Court, that person and the credit provider are each guilty of an offence.

Penalty: \$8,000.

#### **225H Register of disciplinary action**

- (1) The Commissioner shall keep a register of disciplinary action taken under this Act and shall make a note on the register of any assurance given by a credit provider under section 225B.
- (2) A person may inspect the register on payment of the prescribed fee.

**225J      Commissioner and proceedings before court**

- (1) The Commissioner is entitled to be joined as a party to proceedings under this Part.
- (2) The Commissioner may appear personally in the proceedings or may be represented at the proceedings by a legal practitioner or an employee, as defined in the *Public Sector Employment and Management Act*.

**225K      Investigations**

The Commissioner of Police shall, at the request of the Commissioner, investigate and report on matters that might constitute a proper basis for disciplinary action under this Part.

**Division 3      Consumer Credit Fund**

**225L      Consumer Credit Fund**

- (1) The Consumer Credit Fund is established for the purposes of section 106 of the Consumer Credit Code.
- (2) The Fund will be administered by the Commissioner and will consist of:
  - (a) money paid by a credit provider as a civil penalty under section 106 of the Consumer Credit Code;
  - (b) interest accruing from investment of the Fund; and
  - (c) money required to be paid into the Fund under this or any other Act.
- (3) The Commissioner may invest money constituting, or forming part of, the Fund, in accordance with the Regulations.
- (4) Money standing to the credit of the Fund is to be applied by the Commissioner:
  - (a) in payment of the costs of administering the Fund; and
  - (b) in making any other payment authorized by the Minister.

**Division 4      Miscellaneous**

**225M      Prosecutions**

- (1) Proceedings for an offence against this Part shall be commenced within 2 years after the date on which the offence is alleged to have

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been committed or, with the authorization of the Minister, at a later time within 5 years after the date on which the offence is alleged to have been committed.

- (2) A prosecution for an offence against this Part cannot be commenced except by:
  - (a) the Commissioner;
  - (b) an authorized officer; or
  - (c) a person who has the consent of the Minister to commence the prosecution.
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorization of, or consent to, a prosecution for an offence against this Part will be accepted, in the absence of proof to the contrary, as proof of the authorization or consent.

## **Part XII                      Codes of practice**

### **226                      Preparation of draft codes of practice**

- (1) The Commissioner may with the approval of the Minister, and shall if the Minister so directs, prepare and submit to the Minister for consideration a draft code of practice for fair dealing:
  - (a) between a particular class of suppliers and consumers; or
  - (b) by a particular class of persons in relation to consumers.
- (2) For the purpose of preparing a draft code of practice, the Commissioner shall:
  - (a) arrange for consultation with, and invite submissions from, such persons and organizations as, in the opinion of the Commissioner, would have an interest in the terms of the proposed code; and
  - (b) give notice in a newspaper circulating in the Territory that a draft code is in course of preparation, and invite members of the public to make written submissions with respect to its terms.
- (3) If the Commissioner is satisfied that associated persons in a field of trade or commerce have, in consultation with organizations representing consumers and other interested persons, agreed to abide by a particular code of practice in their dealings with or in

relation to consumers, the Commissioner may submit the code to the Minister for consideration, together with any recommendations by the Commissioner with respect to amendments to the code.

**227 Regulations may prescribe code approved by Minister**

Regulations may prescribe a code of practice which has been:

- (a) submitted to the Minister in accordance with section 226; and
- (b) approved by the Minister with or without amendments.

**228 Undertakings by persons contravening code**

- (1) Where it appears to the Commissioner that a person has carried on business in contravention of a code of practice applicable to the person, the Commissioner may request the person to execute within a specified time a deed in terms approved by the Commissioner under which the person gives undertakings as to:

- (a) discontinuance of the conduct;
- (b) future compliance with the code of practice; and
- (c) the action the person will take to rectify the consequences of the contravention,

or any of those matters.

- (2) A person who fails to observe an undertaking given in a deed executed under subsection (1) is guilty of an offence.

Penalty: \$5,000.

**229 Registers of undertakings**

- (1) The Commissioner shall maintain in such form as the Commissioner thinks fit registers of undertakings given pursuant to section 228(1).
- (2) Where a person executes a deed containing undertakings pursuant to section 228(1), the Commissioner shall:
  - (a) retain the deed and enter in a register of undertakings the prescribed particulars with respect to the deed; and
  - (b) give a copy of the deed to the person who executed it.
- (3) A register of undertakings may, at any reasonable time, be inspected by any person free of charge.



**230 Orders by local court where undertaking refused or breached**

- (1) Where a person fails to comply with a request by the Commissioner for the giving of an undertaking under section 228(1), the Local Court may, on the application of the Commissioner or any other person, and on being satisfied that there were grounds for requesting the undertaking, order the first-mentioned person:
  - (a) to act in a manner that would have been required; or
  - (b) to refrain from acting in a manner that would have been prohibited,by the undertaking if it had been given.
- (2) Where, on the application of the Commissioner or any other person, the Local Court is satisfied that a person has failed to observe an undertaking given by that person under section 228(1), the Local Court may make an order under subsection (3).
- (3) The Local Court may order the person by whom the undertaking was given:
  - (a) to observe the undertaking; and
  - (b) in the case of an undertaking to rectify the consequences of a contravention of a code of practice – to observe the undertaking within a time specified in the order.
- (4) Where:
  - (a) the failure on which an application under subsection (1) or (2) is based is a failure by a body corporate; and
  - (b) the Local Court is satisfied that the failure occurred with the consent or connivance of a person who, at the time of the failure, was a director of the body corporate or a person otherwise concerned in its management,the Court may, in addition to any other order, make an order under subsection (5).
- (5) The Local Court may, in a case falling within subsection (4), make an order prohibiting the person from:
  - (a) continuing to consent to, or connive at, the failure; or

- (b) consenting to, or conniving at, a like failure by any other body corporate of which the person is a director or in the management of which the person is concerned.
- (6) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Court thinks fit including:
  - (a) conditions as to the future conduct of the person affected; and
  - (b) conditions specifying the action to be taken by the person to rectify the consequences of the failure the subject of the application under this section.
- (7) A person who contravenes or fails to comply with an order under this section is guilty of an offence.

Penalty: \$5,000.

### **231 Variation and discharge of orders**

The Local Court may on the application of the Commissioner vary or discharge an order made under section 230.

## **Part XIII Miscellaneous**

### **232 Offences by bodies corporate**

- (1) Subject to subsection (2), where a body corporate is found guilty of an offence under this Act, each person who is a director of the body corporate or otherwise concerned in its management shall be deemed to have committed that offence, and is liable to be proceeded against and punished accordingly.
- (2) In proceedings brought against a person by virtue of subsection (1), it is a defence for that person to prove that he or she could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

### **232A Liability for act or default of officer, employee or agent**

For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

**233 Allegation that person was a consumer**

If it is alleged in any proceedings under this Act, or in any other proceedings in respect of a matter arising under this Act, that a person was a consumer in relation to particular goods or services, it shall be presumed until the contrary is established that that person was a consumer in relation to those goods or services.

**234 Service of notices, &c.**

- (1) Where by this Act a notice or other document is required to be given to or served on a person, it may, subject to this Act, be given or served:
  - (a) to or on an individual – as mentioned in subsection (2); or
  - (b) to or on a body corporate – as mentioned in subsection (3).
- (2) In the case of an individual, the notice or other document may be given or served:
  - (a) by delivering it to the individual personally;
  - (b) by leaving it at the individual's place of residence last known to the person who issued it with a person who apparently resides there and who has, or apparently has, attained the age of 16 years;
  - (c) without limiting the other provisions of this subsection, where the individual is the holder of a licence under Part X or XI, by leaving it at a place at which the holder is authorized to carry on the business to which the licence relates with a person who is apparently employed at that place and who has, or apparently has, attained the age of 16 years; or
  - (d) by sending it by prepaid post addressed to the individual at the place of residence referred to in paragraph (b) or, where the individual is the holder of a licence under Part X or XI, a place referred to in paragraph (c).
- (3) In the case of a body corporate, the notice or other document may be given or served:
  - (a) by delivering it to a person who is, or apparently is, concerned in the management of the body corporate;
  - (b) by leaving it at the registered office of the body corporate with a person who is apparently employed there and who has, or apparently has, attained the age of 16 years;

- (c) without limiting the other provisions of this subsection, where the body corporate is the holder of a licence under Part X or XI, by leaving it at a place at which the holder is authorized to carry on the business to which the licence relates with a person who is apparently employed at that place and who has, or apparently has, attained the age of 16 years; or
  - (d) by sending it by prepaid post addressed to the body corporate at its registered office or, where the body corporate is the holder of a licence under Part X or XI, a place referred to in paragraph (c).
- (4) Nothing in this section affects:
  - (a) the operation of any other law of the Territory that authorizes the service of a document in any other way; or
  - (b) the power of a court to authorize service of a document in any other way.

## **235      Secrecy**

- (1) Subject to subsection (2), a person shall not divulge or communicate information which the person acquires by reason of being employed or engaged or otherwise concerned in or in connection with the administration or enforcement of this Act except:
  - (a) with the consent of the person from whom the information was obtained;
  - (b) in connection with the administration or enforcement of this Act;
  - (c) to the Commissioner of Police; or
  - (d) for the purposes of legal proceedings.

Penalty:      \$5,000.

- (2) Notwithstanding subsection (1), the Commissioner or a person authorized by the Commissioner may communicate to the appropriate Minister or official of the Crown in right of the Commonwealth or of the Territory or of any State or other Territory of the Commonwealth information which the Commissioner considers should be communicated for the purpose of the administration or enforcement of any law of the Commonwealth, of the Territory, or of any State or other Territory of the Commonwealth.

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**236 Protection of commissioner, council members, officers, &c.**

No action or proceeding, civil or criminal, shall be commenced or lie against the Commissioner, the Chairman of the Council, any other member of the Council, a member of any committee appointed or established under this Act or any person otherwise employed or engaged in or in connection with the administration or enforcement of this Act for or in respect of any act or thing done or omitted to be done by him or her in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

**236A Power to grant exemptions**

- (1) Regulations may provide that a statutory body specified in the regulations is not required to hold a licence under Part XI.
- (2) The Minister may, by notice in the *Gazette*, exempt (conditionally or unconditionally) from the application of a specified provision of this Act:
  - (a) a specified person or persons of a specified class or description;
  - (b) specified goods or goods of a specified class or description; or
  - (c) specified transactions or transactions of a specified class or description.
- (3) The Minister may, by instrument in writing, delegate to a named person or the holder from time to time of a specified designation, office or position, his or her power of exemption under subsection (2).

**237 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A provision of a regulation may be of general application or limited application, or may apply with variations as between different classes or descriptions of persons, matters or things.
- (3) A regulation may provide for an offence punishable by a penalty not exceeding \$2,000.

**Part XIV            Repeals, savings and transitional provisions****238            Repeals**

The enactments specified in Schedule 2 are repealed.

**239            Savings and transitional provisions**

Schedule 3 has effect.

## **Schedule 1 Further provisions with respect to the Council and its committees**

sections 14(4), 17

### **Part I Members of the Council**

#### **1. Vacation of office**

##### **(1) The office of a member of the Council becomes vacant:**

- (a) on the expiry of the term for which the member was appointed;
- (b) if the member dies;
- (c) if the member resigns as such by writing signed by the member and delivered to the Minister;
- (d) if the member, except with the leave of the Minister, is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member either personally or by post;
- (e) if the member is found guilty in the Territory of an offence punishable by imprisonment for 12 months or more, or is found guilty elsewhere of an offence which, if committed in the Territory, would be an offence so punishable;
- (f) if the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (g) if the member becomes a voluntary patient within the meaning of, or is ordered to be kept in custody under section 13 of, the *Mental Health Act*, or is similarly confined, controlled or restricted under a law of a State or another Territory of the Commonwealth which provides for the care and control of persons who are mentally ill; or
- (h) if the member is removed from office by the Minister under subsection (2).

##### **(2) The Minister may remove a member of the Council from office:**

- (a) for misbehaviour or incapacity;

- (b) if it appears to the Minister, after consultation with the Chairman of the Council, that, by reason of a change in the member's circumstances, it is no longer appropriate for the member to continue as such; or
- (c) if the member appears to the Minister to have contravened or failed to comply with paragraph 7(1).

2. Filling of casual vacancies

Where a vacancy occurs in the office of a member of the Council otherwise than by the expiry of the term for which the member was appointed, the Minister shall by notice in the *Gazette* appoint a person to fill the vacancy, and the person so appointed shall hold office as a member for the unexpired period of office of the member in whose stead he or she is appointed.

**Part II Meetings and Proceedings of the Council and its Committees**

3. Convening and frequency of council meetings

- (1) The Chairman of the Council shall convene such meetings of the Council as are necessary for the exercise of its powers and the performance of its functions, and so that the interval between one meeting and the next does not exceed 6 months.
- (2) The Chairman shall convene a meeting of the Council whenever requested by the Minister to do so.
- (3) The Chairman shall convene a meeting by notice in writing to the other members of the Council specifying the time and place at which the meeting is to be held.

4. Presiding at council meetings

- (1) The Chairman of the Council or, in the absence of the Chairman, its Deputy Chairman (if present) shall preside at meetings of the Council.
- (2) If the Chairman and the Deputy Chairman are both absent from a meeting, the members of the Council present at the meeting shall elect one of their number to preside for so long as both continue to be absent, and the person elected has during that time all the powers of the Chairman.



5. Procedure at council meetings

- (1) At a meeting of the Council:
  - (a) 50% of the members of the Council for the time being holding office constitute a quorum;
  - (b) questions arising shall be decided by a majority of the votes of the members present and voting; and
  - (c) in the event of an equality of votes on a question, the question shall be taken to have been decided in the negative.
- (2) The Council must keep a full and accurate record of its proceedings.
- (3) Subject to this Part, the procedure at meetings of the Council shall be as decided by the Council.

6. Committees

Meetings of a committee of the Council shall be convened and conducted in accordance with any directions given by the Council and, subject thereto, in such manner as the committee decides.

7. Members to declare interests

- (1) Subject to subparagraph (2), a member of the Council, or of a committee of the Council, who has an interest in any matter before the Council or that committee as the case may be, must declare that interest to the Chairman of the Council (or, in the Chairman's absence, to the Deputy Chairman) and shall not take part in any decision of the Council or committee in respect of that matter.
- (2) Subparagraph (1) does not apply to a person's interest in any matter as a consumer.

8. Validity of proceedings

No action or proceeding of the Council or a committee of the Council, or of a member of either, is invalid by reason only of:

- (a) a defect in the appointment of a member of the Council or a committee;
- (b) a disqualification of such a member;
- (c) a defect in the convening or conduct of a meeting of the Council or a committee;

- (d) there being a vacancy in the membership of the Council or a committee; or
- (e) a contravention of, or failure to comply with, paragraph 7(1).

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**Schedule 2      Repeals**

section 238

1.      Consumer Protection  
*Consumer Protection Ordinance 1978*      No. 41, 1978  
*Consumer Protection Amendment Act 1983*      No. 17, 1983
2.      Door-to-Door Sales  
*Door to Door Sales Ordinance 1967*      No. 47, 1967  
*Door to Door Sales Ordinance 1973*      No. 14, 1973  
*Door to Door Sales Ordinance (No. 2) 1973*      No. 62, 1973
3.      False Advertising  
*False Advertising Ordinance 1970*      No. 58, 1970
4.      Motor Vehicle Dealers  
*Motor Vehicle Dealers Act 1979*      No. 85, 1979  
*Motor Vehicle Dealers Regulations*  
(comprising Regulations No. 22, 1980 and  
No. 4, 1981)
5.      Unordered Goods and Services  
*Unordered Goods and Services Ordinance 1972*      No. 74, 1972
6.      Trading Stamps  
*Trading Stamp Act, 1904* of the State of South Australia (No. 859  
of 1904) so far as that Act applies to the Territory as a law of the  
Territory

## Schedule 3 Savings and transitional provisions

section 239

### 1. Application of *Interpretation Act*

The provisions of this Schedule do not prejudice the operation in relation to the repeals effected by this Act of section 12 of the *Interpretation Act* so far as that section is consistent with those provisions.

### 2. Consumer Protection

(1) In this paragraph:

***appointed day*** means the day on which the repeal of the enactments specified in paragraph 1 of Schedule 2 takes effect.

***new Council*** means the Consumer Affairs Council established by this Act.

***old Council*** means the Consumer Affairs Council established by the *Consumer Protection Ordinance 1978*.

- (2) The person who, immediately before the appointed day, holds office under the *Consumer Protection Ordinance 1978* (as amended) as Commissioner of Consumer Affairs for the Northern Territory shall, as from that day, be deemed to have been appointed under this Act as Commissioner of Consumer Affairs.
- (3) The persons who, immediately before the appointed day, are members of the old Council shall, as from that day, be deemed to have been appointed under this Act as members of the new Council, and, subject to this Act, shall hold office as such for the balance of the terms of their appointments to the old Council; and the Chairman and Deputy Chairman of the old Council immediately before the appointed day shall, as from that day, be deemed to have been appointed or elected as the case may require as Chairman and Deputy Chairman respectively of the new Council, and, subject to this Act, shall hold office as such for the balance of the terms of their appointments as members of the old Council.
- (4) Where, immediately before the appointed day, a person then holding office under the *Consumer Protection Ordinance 1978* (as amended) as Commissioner of Consumer Affairs for the Northern Territory or Deputy Commissioner of Consumer Affairs for the Northern Territory is engaged in any investigation, consultation or other matter arising under or undertaken by virtue of that Ordinance as amended (including the conduct or defence of any proceedings

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and acting as an arbitrator), the matter shall be treated as from that day as having been initiated in accordance with this Act by the person holding the office of Commissioner of Consumer Affairs by virtue of subparagraph (2), and may be continued by that person accordingly.

- (5) An order in force immediately before the appointed day under section 19 of the *Consumer Protection Ordinance 1978* as amended shall, as from that day, have effect:
- (a) in the case of an order under section 19(2), as if it were a notice in force under section 30(1) of this Act; and
  - (b) in the case of an order under section 19(3), as if it were a notice in force under section 30(3) of this Act.

### 3. Door to Door Sales

Notwithstanding the repeal of the enactments specified in paragraph 2 of Schedule 2, the *Door to Door Sales Ordinance 1967* as amended shall, on and after the day on which the repeal takes effect, continue to have effect in relation to agreements to which it applied immediately before that day.

### 4. Motor Vehicle Dealers

- (1) In this paragraph, ***appointed day*** means the day on which the repeal of the enactments specified in paragraph 4 of Schedule 2 takes effect.
- (2) If it appears to the Commissioner to be desirable to do so having regard to the length of time between:
- (a) the end of the period covered by the report on the operation of the *Motor Vehicle Dealers Act 1979* last submitted to the Minister pursuant to section 45 of that Act; and
  - (b) the appointed day,

the Commissioner shall, as soon as practicable after the appointed day, submit to the Minister a report on the operation of the Act from the end of that period to the appointed day; and section 12(4) of this Act shall apply to the report as it applies to a report under that section.

- (3) Licences of individual dealers in force under the *Motor Vehicle Dealers Act 1979* immediately before the appointed day shall be treated as from that day as having been granted under Part X of this Act (and shall be so treated, and of full force and effect under Part X, notwithstanding that they do not comply as to form or

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content with the requirements of that Part); and where, immediately before the appointed day, a single licence under the Act of 1979 is held by 2 or more dealers carrying on business as such in partnership, each of those dealers shall be treated as from that day as holding a licence granted under Part X in the terms of that licence.

- (4) The Commissioner may issue to a dealer referred to in subparagraph (3) a licence in a form issued under Part X endorsed with the terms to which the licence, by virtue of that subparagraph, is subject.
- (5) For the purposes of section 129(1), a place at which a licensed dealer carries on business as such immediately before the appointed day shall be treated as from that day as specified in the dealer's licence as it has effect by virtue of subparagraph (3).
- (6) In relation to a licence to which subparagraph (3) applies, section 153 shall have effect as if it required the dealer to cause the licence to be exhibited at all times in a conspicuous position at the place where the dealer carries on business as such or, if the dealer carries on business as such at 2 or more places, at whichever of those is the dealer's principal place of business.
- (7) Where subparagraph (3) has effect, section 174 shall have effect as if the reference in subsection (1) to each place of business specified in a dealer's licence were a reference to each place of business at which the dealer carries on business as such.
- (8) The Register of Motor Vehicle Dealers kept immediately before the appointed day pursuant to section 6 of the *Motor Vehicle Dealers Act 1979* shall be treated as from that day as the Register of Motor Vehicle Dealers kept pursuant to section 155 of this Act.
- (9) As from the appointed day, all authorities given for the purposes of section 21 of the *Motor Vehicle Dealers Act 1979* shall cease to have effect.

## **5. Unordered Goods and Services**

Notwithstanding its repeal, the *Unordered Goods and Services Ordinance 1972* as amended shall, on and after the day on which the repeal takes effect, continue to have effect in relation to events and matters to which it applied immediately before that day.

## **6. Regulations**

- (1) Regulations may make further provision of a savings or transitional nature consequential on the repeal of any of the enactments specified in Schedule 2.

- (2) A provision referred to in subparagraph (1) shall, if the regulations so provide, have effect despite any other paragraph of this Schedule.

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## ENDNOTES

**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Consumer Affairs and Fair Trading Act 1990 (Act No. 49, 1990)***

Assent date	4 October 1990
Commenced	ss 1 to 96, 123, 124, 232, 239 and sch 2 paras 1, 3, 5 and 6: 1 April 1991 (Gaz S20, 28 March 1991); ss 226 to 231: 1 April 1992 (Gaz G12, 25 March 1992, p 2); ss 97 to 113: 1 July 1992 (Gaz G23, 10 June 1992, p 3); sch 2 para 2: 9 September 1992 (Gaz G36, 9 September 1992, p 3); ss 125 to 175, 177 to 184, sch 2 para 4: 14 December 1992 (Gaz G49, 9 December 1992, p 6); s 176: 26 February 1993 (Gaz S19, 26 February 1993); ss 114 to 122: 1 May 1993 (Gaz G17, 28 April 1993, p 2); ss 185 to 225: 1 July 1995 (Gaz G26, 28 June 1995, p 2)

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and Gaz S53, 29 June 1993)

***Consumer Affairs and Fair Trading Amendment Act 1993 (Act No. 43, 1993)***

Assent date	22 September 1993
Commenced	22 September 1993

***Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)***

Assent date	31 December 1993
Commenced	1 June 1994 (s 2, s 2 <i>Local Government Act 1993</i> (Act No. 83, 1993) and Gaz S35, 20 May 1994)

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date	20 September 1994
Commenced	20 September 1994



**Consumer Affairs and Fair Trading Amendment Act 1996 (Act No. 9, 1996)**

Assent date 20 March 1996  
 Commenced s 15: 1 November 1996; rem: 17 April 1996 (Gaz G35, 28 August 1996, p 2 and Gaz G16, 17 April 1996, p 5)

**Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)**

Assent date 19 April 1996  
 Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

s 16 *Consumer Affairs and Fair Trading Amendment Act 1996* (Act No. 9, 1996)

**4 LIST OF AMENDMENTS**

It	amd No. 9, 1996, s 4
s 6	amd No. 28, 1993, s 3
s 8	amd No. 17, 1996, s 6
s 9	amd No. 84, 1993, s 6
ss 10 – 11	amd No. 28, 1993, s 3
s 12	amd No. 9, 1996, s 5
s 21	amd No. 17, 1996, s 6
s 88	amd No. 17, 1996, s 6
s 96	amd No. 17, 1996, s 6
s 109	amd No. 17, 1996, s 6
s 112	amd No. 17, 1996, s 6
s 123	amd No. 9, 1996, s 6
s 129	amd No. 9, 1996, s 7
s 131	amd No. 17, 1996, s 6
ss 136 – 137	amd No. 17, 1996, s 6
s 160	amd No. 17, 1996, s 6
s 162	amd No. 17, 1996, s 6
s 163	sub No. 43, 1993, s 2
s 165	amd No. 50, 1994, s 5
s 184	amd No. 50, 1994, s 5
s 185	amd No. 9, 1996, s 8
s 187	rep No. 9, 1996, s 9
s 188	amd No. 17, 1996, s 6
s 188A	ins No. 9, 1996, s 10
s 193	amd No. 17, 1996, s 6
s 204	amd No. 17, 1996, s 6
s 222	amd No. 17, 1996, s 6
s 225	amd No. 9, 1996, s 11
pt XIA hdg	ins No. 9, 1996, s 12
pt XIA	
div 1 hdg	ins No. 9, 1996, s 12
s 225A	ins No. 9, 1996, s 12
pt XIA	
div 2 hdg	ins No. 9, 1996, s 12
ss 225B –	
225K	ins No. 9, 1996, s 12
pt XIA	
div 3 hdg	ins No. 9, 1996, s 12
s 225L	ins No. 9, 1996, s 12

## ENDNOTES

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pt XIA	
div 4 hdg	ins No. 9, 1996, s 12
s 225M	ins No. 9, 1996, s 12
s 232	amd No. 17, 1996, s 6
s 232A	ins No. 9, 1996, s 13
s 236A	ins No. 9, 1996, s 14
sch 1	amd No. 17, 1996, s 6
sch 3	amd No. 43, 1993, s 3