

Fair Trading Bill 2010

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Schedule 1 — Acts that override this Act

Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Fair Trading Bill 2010

A Bill for

An Act to —

- **promote and encourage fair trading practices and a competitive and fair market, and protect the interests of consumers, by applying the Australian Consumer Law (with modifications) as a law of Western Australia, and providing for codes of practice; and**
- **provide for the powers and functions of a Commissioner, including powers to carry out investigations into alleged breaches of this Act; and**
- **provide for the repeal of the *Consumer Affairs Act 1971*, *Fair Trading Act 1987* and *Door to Door Trading Act 1987*; and**
- **make consequential amendments to various Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Fair Trading Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Object

The object of this Act is to improve consumer well-being through consumer empowerment and protection, to foster effective competition, and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

1 **Part 2 — Interpretation and application**

2 **Division 1 — General interpretation**

3 **4. Application of interpretation legislation to certain**
4 **provisions of this Act**

5 Section 23 deals with the application of the *Acts Interpretation*
6 *Act 1901* (Commonwealth) and the *Interpretation Act 1984* of
7 Western Australia to the *Australian Consumer Law (WA)*.

8 **5. Application of this Division**

9 (1) Sections 6 to 9 apply to this Act other than Part 3 and the
10 *Australian Consumer Law (WA)*.

11 (2) Section 17 applies to the interpretation of terms used in Part 3
12 and the *Australian Consumer Law (WA)*.

13 **6. Terms used**

14 In this Act (other than Part 3 and the *Australian Consumer Law*
15 *(WA)*) —

16 ***acquire*** includes —

17 (a) in relation to goods — acquire by purchase or exchange
18 or by taking on lease, on hire or on hire-purchase; and

19 (b) in relation to services — accept; and

20 (c) in relation to an interest in land — acquire by purchase
21 or exchange or by taking on lease, or in any other
22 manner in which an interest in land may be acquired for
23 valuable consideration;

24 ***Australian Consumer Law (WA)*** has the meaning given in
25 section 17;

26 ***business*** includes —

27 (a) a business not carried on for profit; and

28 (b) a trade or profession;

- 1 **Commissioner** means the person for the time being designated
2 as the Commissioner under section 55;
- 3 **consumer** has the meaning given in section 7;
- 4 **Department** means the department of the Public Service
5 principally assisting the Minister in the administration of this
6 Act;
- 7 **disposal**, in relation to an interest in land, means disposal by
8 sale, exchange or lease or by any other method by which an
9 interest in land may be disposed of for valuable consideration;
- 10 **document** has the meaning given in the *Australian Consumer*
11 *Law (WA)* section 2(1);
- 12 **goods** has the meaning given in the *Australian Consumer Law*
13 *(WA)* section 2(1);
- 14 **interest** has the meaning given in the *Australian Consumer Law*
15 *(WA)* section 2(1);
- 16 **provision**, in relation to an understanding, means any matter
17 forming part of the understanding;
- 18 **re-supply**, in relation to goods acquired from a person,
19 includes —
- 20 (a) a supply of the goods to another person in an altered
21 form or condition; and
- 22 (b) a supply to another person of goods in which the
23 first-mentioned goods have been incorporated;
- 24 **services** has the meaning given in section 8;
- 25 **supplier** means a person who, in the course of business, supplies
26 goods or services;
- 27 **supply** includes —
- 28 (a) in relation to goods —
- 29 (i) supply (including re-supply) by way of sale,
30 exchange, lease, hire or hire-purchase; and

1 (ii) exhibit, expose or have in possession for the
2 purpose of sale, exchange, lease, hire or
3 hire-purchase or for any purpose of
4 advertisement, manufacture or trade;

5 and

6 (b) in relation to services — provide, grant or render for
7 valuable consideration; and

8 (c) in relation both to goods and to services — donate for
9 promotional purposes;

10 **trade or commerce** includes any business or professional
11 activity (whether or not carried on for profit).

12 **7. Meaning of consumer**

13 (1) In this Act (other than Part 3 and the *Australian Consumer*
14 *Law (WA)*) —

15 **consumer** means —

16 (a) a person who purchases or takes on hire or lease, or is a
17 potential purchaser or hirer or lessee of, or borrows
18 money for the purpose of purchasing, goods otherwise
19 than for resale or letting on hire or leasing; or

20 (b) a person who uses or is a potential user of, or borrows
21 money for the purpose of using, any service rendered for
22 fee or reward; or

23 (c) a person who purchases or is the potential purchaser of,
24 or borrows money for the purpose of purchasing, an
25 estate or interest in any land or building otherwise than
26 for resale, letting or leasing; or

27 (d) a person who becomes a tenant or lessee of, or is a
28 potential tenant or lessee of, any land or building or part
29 of a building otherwise than for assignment or
30 underletting.

- 1 (2) However, a person who carries on a trade or business is not a
2 consumer for the purposes of subsection (1) in respect of or in
3 relation to —
- 4 (a) goods purchased or taken on hire or lease by that person,
5 or of which that person is a potential purchaser, hirer or
6 lessee, in the course of or for the purpose of the carrying
7 on of that trade or business;
- 8 (b) a service used by that person, or of which the person is a
9 potential user, in the course of or for the purpose of the
10 carrying on of that trade or business;
- 11 (c) an estate or interest in land or a building purchased by
12 that person, or of which the person is a potential
13 purchaser, in the course of or for the purpose of the
14 carrying on of that trade or business;
- 15 (d) any land or building or part of a building of which the
16 person becomes the tenant or lessee, or is a potential
17 tenant or lessee, in the course of or for the purpose of
18 the carrying on of that trade or business.
- 19 (3) A person who carries on an agricultural, apicultural, pastoral,
20 horticultural, orcharding, viticultural or other farming
21 undertaking does not carry on a trade or business for the
22 purposes of subsection (2).

23 **8. Meaning of services**

- 24 (1) In this Act (other than Part 3 and the *Australian Consumer*
25 *Law (WA)*) —
- 26 *services* includes any rights (including rights in relation to, and
27 interests in, real or personal property), benefits, privileges or
28 facilities that are, or are to be, provided, granted or conferred in
29 trade or commerce.

- 1 (2) Without limiting the generality of subsection (1), the definition
2 of *services* includes the rights, benefits, privileges and facilities
3 that are, or are to be, provided, granted or conferred under —
4 (a) a contract for or in relation to —
5 (i) the performance of work (including work of a
6 professional nature), whether with or without the
7 supply of goods; or
8 (ii) the provision of gas or electricity or the provision
9 of any other form of energy; or
10 (iii) the provision for reward of lodging or
11 accommodation; or
12 (iv) the provision, or making available for use, of
13 facilities for amusement, entertainment,
14 recreation or instruction; or
15 (v) the conferring of rights, benefits or privileges for
16 which remuneration is payable in the form of a
17 royalty, tribute, levy or similar exaction;
18 or
19 (b) a contract of insurance; or
20 (c) a contract between a banker and a customer of the
21 banker entered into in the course of the carrying on by
22 the banker of the business of banking; or
23 (d) a contract for or in relation to the lending of money.
24 (3) The definition of *services* does not include rights or benefits
25 being the supply of goods or the performance of work under a
26 contract of service.
27 (4) Legal services as defined in the *Legal Profession Act 2008*
28 section 3 are not services for the purposes of this section.

1 **9. Further provisions relating to interpretation**

2 (1) In this Act (other than Part 3 and the *Australian Consumer*
3 *Law (WA)*), unless the contrary intention appears —

4 (a) a reference to the supply or acquisition of goods
5 includes a reference to agreeing to supply or acquire
6 goods; and

7 (b) a reference to the acquisition of goods includes a
8 reference to the acquisition of property in, or rights in
9 relation to, goods upon a supply of the goods; and

10 (c) a reference to the supply or acquisition of services
11 includes a reference to agreeing to supply or acquire
12 services; and

13 (d) a reference to the supply or acquisition of goods
14 includes a reference to the supply or acquisition of
15 goods together with other property or services, or both;
16 and

17 (e) a reference to the supply or acquisition of services
18 includes a reference to the supply or acquisition of
19 services together with goods or other property or other
20 services; and

21 (f) a reference to the disposal or acquisition of an interest in
22 land includes a reference to the disposal or acquisition
23 of such an interest together with goods or services; and

24 (g) a reference to goods or services includes a reference to
25 goods and services; and

26 (h) a reference to the disposal or acquisition of an interest in
27 land includes a reference to agreeing to dispose of or
28 acquire such an interest, whether or not the agreement is
29 in writing or evidenced by writing.

30 (2) For the purposes of this Act (other than Part 3 and the
31 *Australian Consumer Law (WA)*) —

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

- 1 (b) any amount by which the price of the goods or services
2 is increased because credit was obtained is the price of
3 the services represented by the obtaining of credit.
- 4 (3) In this Act (other than Part 3 and the *Australian Consumer*
5 *Law (WA)*) —
- 6 (a) a reference to engaging in conduct is to be read as a
7 reference to doing or refusing to do any act,
8 including —
- 9 (i) the making of, or the giving effect to a provision
10 of, a contract or arrangement; or
- 11 (ii) the arriving at, or the giving effect to a provision
12 of, an understanding;
- 13 and
- 14 (b) a reference to conduct, when that expression is used as a
15 noun otherwise than as mentioned in paragraph (a), is to
16 be read as a reference to the doing of or the refusing to
17 do any act, including —
- 18 (i) the making of, or the giving effect to a provision
19 of, a contract or arrangement; or
- 20 (ii) the arriving at, or the giving effect to a provision
21 of, an understanding;
- 22 and
- 23 (c) a reference to refusing to do an act includes —
- 24 (i) a reference to refraining (otherwise than
25 inadvertently) from doing the act; and
- 26 (ii) a reference to making it known that the act will
27 not be done;
- 28 and
- 29 (d) a reference to a person offering to do an act, or to do an
30 act on a particular condition, includes a reference to the
31 person making known a willingness to accept
32 applications, offers or proposals for the person to do the
33 act or to do that act on the condition.

- 1 (4) In this Act (other than Part 3 and the *Australian Consumer*
2 *Law (WA)*) —
- 3 (a) a reference to loss or damage, other than a reference to
4 the amount of any loss or damage, includes a reference
5 to injury; and
- 6 (b) a reference to the amount of any loss or damage includes
7 a reference to damages in respect of an injury.
- 8 (5) In this Act (other than Part 3 and the *Australian Consumer*
9 *Law (WA)*), a reference to the making of a representation
10 includes a reference to the publishing of a statement.

11 **Division 2 — Application**

12 **10. Act binds Crown**

- 13 (1) This Act binds the Crown not only in right of Western Australia
14 but also, so far as the legislative power of Parliament permits,
15 the Crown in all its other capacities.
- 16 (2) This Act applies to and in respect of the Crown in any of its
17 capacities to the same extent as if the Crown were, in that
18 capacity, a body corporate.
- 19 (3) Nothing in this Act makes the Crown in any capacity liable to
20 be prosecuted for an offence.
- 21 (4) The protection in subsection (3) does not apply to an authority
22 of the Crown.
- 23 (5) This section is subject to Part 3 Division 4.

24 **11. Territorial application of Act**

- 25 (1) This Act applies to and in respect of an acquisition or supply or
26 the proposed acquisition or supply of goods or services, or the
27 disposal or proposed disposal of an interest in land —
- 28 (a) if the person by or to whom the goods or services are or
29 are proposed to be acquired or supplied signs in Western

- 1 Australia a document relating to the acquisition or
2 supply or the proposed acquisition or supply; or
- 3 (b) if the person by or to whom the interest in land is or is
4 proposed to be disposed of signs in Western Australia a
5 document relating to the disposal or the proposed
6 disposal of that interest; or
- 7 (c) if that person does not so sign such a document, if the
8 goods or services are or are proposed to be delivered or
9 supplied, or that land is situated, in Western Australia.
- 10 (2) Subsection (1) applies —
- 11 (a) despite anything to the contrary in any other Act or law;
12 but
- 13 (b) except as otherwise expressly provided in or under this
14 Act.
- 15 (3) This Act applies to and in relation to —
- 16 (a) persons carrying on business within this jurisdiction; or
17 (b) bodies corporate incorporated or registered under the
18 law of this jurisdiction; or
- 19 (c) persons ordinarily resident in this jurisdiction; or
20 (d) persons otherwise connected with this jurisdiction.
- 21 (4) Subject to subsection (3), this Act extends to conduct, and other
22 acts, matters and things occurring or existing outside or partly
23 outside this jurisdiction (whether within or outside Australia).
- 24 (5) This Act applies to a contract in the following circumstances,
25 despite the terms of the contract —
- 26 (a) if the proper law of a contract for the supply of goods or
27 services to a consumer would, but for a term that it
28 should be the law of some other place or a term to the
29 like effect, be the law of Western Australia;
- 30 (b) if a contract for the supply of goods or services to a
31 consumer contains a term that purports to substitute, or
32 has the effect of substituting, provisions of the law of

1 some other country or of another State or of a Territory
2 for all or any of the provisions of this Act.

3 (6) This section is subject to section 24.

4 **12. Concurrent operation of laws of other jurisdictions not**
5 **limited**

6 This Act is not intended to exclude or limit the concurrent
7 operation of any law of the Commonwealth or of another State
8 or a Territory.

9 **13. No contracting out**

10 (1) This Act has effect despite any stipulation in any contract or
11 agreement to the contrary.

12 (2) If the making of a contract contravenes this Act because the
13 contract includes a particular provision, nothing in this Act
14 affects the validity or enforceability of the contract otherwise
15 than in relation to that provision, so far as that provision is
16 severable.

17 (3) Subsection (2) is subject to subsection (1) and to any order
18 made under section 105 or 106.

19 **14. Relationship with other Acts and rules of law**

20 (1) This Act is to be read and construed as being in addition to, and
21 not in derogation of or in substitution for, any other Act or rule
22 of law for the time being in force in this State that relates to the
23 duty or liability of persons with respect to goods or services
24 supplied to a consumer.

25 (2) Except as expressly provided by this Act, nothing in this Act is
26 to be taken to limit, restrict or otherwise affect any right or
27 remedy a person would have had if this Act had not been
28 enacted.

1 **15. Inconsistencies with other enactments**

2 (1) This section applies if a provision of this Act or a regulation
3 made under this Act is inconsistent with —

4 (a) a provision of an Act specified in Schedule 1; or

5 (b) a provision of an instrument made under an Act so
6 specified.

7 (2) If this section applies, the provision of the Act so specified, or
8 of the instrument, prevails.

9 (3) This section is subject to section 34.

1 **Part 3 — The Australian Consumer Law**

2 **Division 1 — Object and interpretation**

3 **16. Object of this Part**

4 The object of this Part is to apply (with modifications) the
5 Australian Consumer Law set out in Schedule 2 to the
6 *Competition and Consumer Act 2010* (Commonwealth) as a law
7 of Western Australia.

8 **17. Definitions**

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

10 ***application law*** means —

- 11 (a) a law of a participating jurisdiction that applies the
12 Australian Consumer Law, either with or without
13 modifications, as a law of the participating jurisdiction;
14 or
15 (b) any regulations or other legislative instrument made
16 under a law described in paragraph (a); or
17 (c) the Australian Consumer Law, applying as a law of the
18 participating jurisdiction, either with or without
19 modifications;

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

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

25 ***Australian Consumer Law text*** means the text described in
26 section 18;

27 ***Australian Consumer Law (WA)*** means the provisions applying
28 in this jurisdiction because of section 19;

- 1 **instrument** means any document whatever, including the
2 following —
- 3 (a) an Act or an instrument made under an Act;
 - 4 (b) a law of this jurisdiction or an instrument made under
5 such a law;
 - 6 (c) an award or other industrial determination or order, or
7 an industrial agreement;
 - 8 (d) any other order (whether executive, judicial or
9 otherwise);
 - 10 (e) a notice, certificate or licence;
 - 11 (f) an agreement;
 - 12 (g) an application made, prosecution notice lodged,
13 information or complaint laid, affidavit sworn, or
14 warrant issued, for any purpose;
 - 15 (h) an indictment, presentment, summons or writ;
 - 16 (i) any other pleading in, or process issued in connection
17 with, a legal or other proceeding;

18 **Intergovernmental Agreement** means the Intergovernmental
19 Agreement for the Australian Consumer Law made on
20 2 July 2009 between the Commonwealth, the State of New
21 South Wales, the State of Victoria, the State of Queensland, the
22 State of Western Australia, the State of South Australia, the
23 State of Tasmania, the Australian Capital Territory and the
24 Northern Territory of Australia, as in force for the time being;

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

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

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

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

33 **State** includes a Territory;

- 1 ***Territory*** means the Australian Capital Territory or the Northern
2 Territory of Australia;
- 3 ***this jurisdiction*** means Western Australia.
- 4 (2) Terms used in this Part and also in the *Australian Consumer*
5 *Law (WA)* have the same meanings in this Part as they have in
6 that Law.
- 7 (3) For the purposes of this Part —
- 8 (a) a jurisdiction is taken to have applied the Australian
9 Consumer Law as a law of the jurisdiction if a law of the
10 jurisdiction substantially corresponds to the provisions
11 of the Australian Consumer Law text, as in force from
12 time to time; and
- 13 (b) the corresponding law is taken to be the Australian
14 Consumer Law, or the Australian Consumer Law text,
15 applying as a law of that jurisdiction.

16 **Division 2 — Application of Australian Consumer Law**

17 **18. The Australian Consumer Law text**

18 The Australian Consumer Law text consists of —

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

22 **19. Application of Australian Consumer Law**

23 (1) For the purposes of this section, the Australian Consumer Law
24 text consists of —

- 25 (a) Schedule 2 to the *Competition and Consumer Act 2010*
26 (Commonwealth), as in force on the commencement of
27 this section (but as modified by section 36); and
- 28 (b) the regulations made under section 139G of that Act, as
29 those regulations are in force from time to time.

- 1 (2) The Australian Consumer Law text —
2 (a) applies as a law of this jurisdiction; and
3 (b) as so applying, may be referred to as the *Australian*
4 *Consumer Law (WA)*; and
5 (c) in so far as it constitutes Schedule 2 to the *Competition*
6 *and Consumer Act 2010* (Commonwealth), is part of this
7 Act; and
8 (d) in so far as it constitutes regulations made under section
9 139G of the *Competition and Consumer Act 2010*
10 (Commonwealth), is subsidiary legislation for the
11 purposes of this Act.
- 12 (3) This section has effect subject to sections 20, 21, 22, 23
13 and 116(3).

14 **20. Amendments to Australian Consumer Law**

15 The *Australian Consumer Law (WA)* (as described in
16 section 19(1)(a)) may be amended by bill.

17 **21. Publication and disallowance of regulations and instruments**
18 **under *Australian Consumer Law (WA)***

- 19 (1) This section applies to the following instruments —
20 (a) regulations made under the *Competition and Consumer*
21 *Act 2010* (Commonwealth) section 139G;
22 (b) a determination under the *Australian Consumer Law*
23 *(WA)* section 66(1) (display notices);
24 (c) a notice under the *Australian Consumer Law (WA)*
25 section 104(1) or 105(1) (safety standards);
26 (d) a notice under the *Australian Consumer Law (WA)*
27 section 114(1) or (2) (permanent bans);
28 (e) a notice under the *Australian Consumer Law (WA)*
29 section 117 (revocation of permanent bans);

- 1 (f) a notice under the *Australian Consumer Law (WA)*
2 section 122(1) (recall notices) by a responsible Minister
3 of this jurisdiction;
- 4 (g) a notice under the *Australian Consumer Law (WA)*
5 section 134(1) or 135(1) (information standards).
- 6 (2) Where an instrument to which this section applies is made, a
7 copy of the instrument must be published in the *Gazette* not
8 later than 28 days after the instrument is made.
- 9 (3) If a copy of an instrument is not published in the *Gazette* in
10 accordance with subsection (2) —
- 11 (a) the instrument ceases to have effect in this jurisdiction
12 on the expiry of the 28th day after the instrument is
13 made, but without affecting the validity or curing the
14 invalidity of anything done or of the omission of
15 anything in the meantime; but
- 16 (b) if a copy of the instrument is subsequently published in
17 the *Gazette*, the instrument again has effect on and from
18 the day after the day of publication of a copy of the
19 instrument.
- 20 (4) Where a copy of an instrument to which this section applies is
21 published in the *Gazette*, the *Interpretation Act 1984* section 42
22 applies to that instrument as if it were a regulation published in
23 the *Gazette*.
- 24 **22. Meaning of generic term in Australian Consumer Law for**
25 **purposes of this jurisdiction**
- 26 In the *Australian Consumer Law (WA)* —
27 **regulator** means the Commissioner (as defined in section 6).
- 28 **23. Interpretation of Australian Consumer Law**
- 29 (1) The *Acts Interpretation Act 1901* (Commonwealth) applies as a
30 law of this jurisdiction to the *Australian Consumer Law (WA)*.

- 1 (2) For the purposes of subsection (1), the Commonwealth Act
2 mentioned in that subsection applies as if —
- 3 (a) the statutory provisions in the *Australian Consumer Law*
4 (*WA*) were a Commonwealth Act; and
- 5 (b) the regulations in the *Australian Consumer Law (WA)* or
6 instruments under that Law were regulations or
7 instruments under a Commonwealth Act.
- 8 (3) The *Interpretation Act 1984* of Western Australia does not
9 apply to —
- 10 (a) the *Australian Consumer Law (WA)*; or
11 (b) any instrument under that Law.
- 12 (4) Subsection (3) is subject to section 21.

13 **24. Application of Australian Consumer Law**

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

25 **Division 3 — References to Australian Consumer Law**

26 **25. References to Australian Consumer Law**

- 27 (1) A reference in any instrument to the Australian Consumer Law
28 is a reference to the Australian Consumer Law of any or all of
29 the participating jurisdictions.

1 (2) Subsection (1) has effect except so far as the contrary intention
2 appears in the instrument or the context of the reference
3 otherwise requires.

4 **26. References to Australian Consumer Law of other**
5 **jurisdictions**

6 (1) This section has effect for the purposes of an Act, a law of this
7 jurisdiction or an instrument under an Act or such a law.

8 (2) If a law of a participating jurisdiction other than this jurisdiction
9 provides that the Australian Consumer Law text as in force for
10 the time being applies as a law of that jurisdiction, the
11 Australian Consumer Law of that jurisdiction is the Australian
12 Consumer Law text, applying as a law of that jurisdiction.

13 **Division 4 — Application of Australian Consumer Law**
14 **to Crown**

15 **27. Division does not apply to Commonwealth**

16 In this Division —
17 *participating jurisdiction* or *other jurisdiction* does not include
18 the Commonwealth.

19 **28. Application law of this jurisdiction**

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

25 **29. Application law of other jurisdictions**

26 (1) The application law of each participating jurisdiction other than
27 this jurisdiction binds the Crown in right of this jurisdiction, so
28 far as the Crown carries on a business, either directly or by an
29 authority of this jurisdiction.

1 (2) If, because of this Part, a provision of the law of another
2 participating jurisdiction binds the Crown in right of this
3 jurisdiction, the Crown in that right is subject to that provision
4 despite any prerogative right or privilege.

5 **30. Crown not liable to pecuniary penalty or prosecution**

6 (1) Nothing in the application law of this jurisdiction makes the
7 Crown in any capacity liable to a pecuniary penalty or to be
8 prosecuted for an offence.

9 (2) Without limiting subsection (1), nothing in the application law
10 of a participating jurisdiction makes the Crown in right of this
11 jurisdiction liable to a pecuniary penalty or to be prosecuted for
12 an offence.

13 (3) The protection in subsection (1) or (2) does not apply to an
14 authority of any jurisdiction.

15 **Division 5 — Miscellaneous**

16 **31. No doubling-up of liabilities**

17 (1) For the purposes of this section, a person is convicted of an
18 offence if a court finds the person guilty of the offence, or
19 accepts a plea of guilty of the offence, whether or not a
20 conviction is recorded.

21 (2) If—
22 (a) an act or omission is an offence against the *Australian*
23 *Consumer Law (WA)* and is also an offence against the
24 application law of another participating jurisdiction; and
25 (b) the offender has been acquitted or convicted of the
26 offence with which the offender is charged, or has
27 already been convicted or acquitted of an offence of
28 which the offender might be convicted upon the
29 indictment or prosecution notice on which the offender
30 has been charged, under the application law of the other
31 participating jurisdiction,

1 the offender is not liable to be prosecuted or punished for the
2 offence against the *Australian Consumer Law (WA)*.

3 (3) Nothing in subsection (2) prevents the Commissioner from
4 making or issuing a statement under section 57.

5 (4) If a person has been ordered to pay a pecuniary penalty under
6 the application law of another participating jurisdiction, the
7 person is not liable to a pecuniary penalty under the *Australian
8 Consumer Law (WA)* in respect of the same conduct.

9 **32. Offences against *Australian Consumer Law (WA)* to be**
10 **crimes**

11 A person who commits an offence against the *Australian
12 Consumer Law (WA)* is guilty of a crime.

13 Penalty: the penalty set out in the *Australian Consumer Law
14 (WA)*.

15 Summary conviction penalty: the lesser of a fine of \$36 000 or
16 the maximum penalty provided by the *Australian
17 Consumer Law (WA)* for the offence.

18 **33. Civil evidence and procedure rules apply to proceedings for**
19 **pecuniary penalty**

20 The Court must apply the rules of evidence and procedure for
21 civil matters when hearing proceedings for a pecuniary penalty
22 under the *Australian Consumer Law (WA)* section 224.

23 **34. Relationship with certain provisions of *Health Act 1911***

24 Where any provision of the *Australian Consumer Law (WA)* is
25 inconsistent with the *Health Act 1911* section 338B or 338C, the
26 provisions of the *Australian Consumer Law (WA)* prevail.

27 **35. Relationship with *Sale of Goods Act 1895***

28 (1) Where a provision of the *Australian Consumer Law (WA)*
29 Part 3-2 Division 1 is, in its application to any circumstance,
30 matter or thing, inconsistent with a provision of the *Sale of*

1 *Goods Act 1895* in its application to the same circumstance,
2 matter or thing —

- 3 (a) the provision of the *Australian Consumer Law (WA)*
4 Part 3-2 Division 1 prevails; and
5 (b) the provision of the *Sale of Goods Act 1895* is
6 inoperative to the extent of the inconsistency.

7 (2) This section applies despite —

- 8 (a) any rule of law or construction to the contrary; and
9 (b) an agreement that provides otherwise.

10 **36. Modifications to *Australian Consumer Law (WA)***

11 (1) This section makes the modifications to the text of Schedule 2
12 to the *Competition and Consumer Act 2010* (Commonwealth),
13 as in force on the commencement of section 19, that, together
14 with the regulations referred to in section 19(1)(b), result in the
15 text that section 19(2) applies as the *Australian Consumer Law*
16 (*WA*).

17 (2) In section 73(1) delete paragraphs (b) and (c) and insert:

- 18
19 (b) on a Saturday:
20 (i) between midnight and 9 am; or
21 (ii) between 5 pm and midnight; or
22 (c) on any other day:
23 (i) between midnight and 9 am; or
24 (ii) between 8 pm and midnight.
25

26 (3) In section 170(1) delete paragraphs (b) and (c) and insert:

- 27
28 (b) on a Saturday:
29 (i) between midnight and 9 am; or
30 (ii) between 5 pm and midnight; or

- 1 (c) on any other day:
2 (i) between midnight and 9 am; or
3 (ii) between 8 pm and midnight.
4

5 **Division 6 — Transitional**

6 **37. Proceedings for an injunction already commenced**

- 7 (1) To the extent that any proceedings to which the *Fair Trading*
8 *Act 1987* section 3C(2)(c) applies are proceedings for an
9 injunction under section 74 or 75 of that Act, the proceedings
10 are taken, after the commencement of this section, to be
11 proceedings for an injunction under the *Australian Consumer*
12 *Law (WA)* section 232.
- 13 (2) This section overrides the *Fair Trading Act 1987*
14 section 3C(2)(c).

15 **38. Unfair contract terms**

- 16 (1) The *Australian Consumer Law (WA)* Part 2-3 applies to a
17 contract entered into on or after the commencement of this
18 section.
- 19 (2) That Part does not apply to a contract entered into before that
20 commencement. However —
- 21 (a) if the contract is renewed on or after that
22 commencement — that Part applies to the contract as
23 renewed, on and from the day (the ***renewal day***) on
24 which the renewal takes effect, in relation to conduct
25 that occurs on or after the renewal day; or
- 26 (b) if a term of the contract is varied on or after that
27 commencement, and paragraph (a) has not already
28 applied in relation to the contract — that Part applies to
29 the term as varied, on and from the day (the ***variation***
30 ***day***) on which the variation takes effect, in relation to
31 conduct that occurs on or after the variation day.

1 (3) If subsection (2)(b) applies to a term of a contract,
2 sections 23(2) and 27 of the *Australian Consumer Law (WA)*
3 apply to the contract.

4 **39. Unsolicited consumer agreements**

5 (1) The *Australian Consumer Law (WA)* Part 3-2 Division 2 does
6 not apply to any contract made before the commencement of
7 this section.

8 (2) The *Australian Consumer Law (WA)* Part 3-2 Division 2
9 applies to a contract made on or after the commencement of this
10 section even though negotiations leading to the formation of the
11 contract may have taken place before the commencement of this
12 section.

13 (3) The *Door to Door Trading Act 1987* section 3C relates to the
14 application of that Act to contracts made before the
15 commencement of this section.

16 **40. Requests for itemised bills**

17 The *Australian Consumer Law (WA)* section 101 does not apply
18 in relation to a supply of services to the extent that the services
19 were supplied before the commencement of this section.

20 **41. Pecuniary penalties — having regard to previous findings**

21 The reference in the *Australian Consumer Law (WA)*
22 section 224(2)(c) to proceedings under Chapter 4 or Part 5-2 of
23 that Law includes a reference to proceedings, commenced
24 before the commencement of this section, under or in relation
25 to —

26 (a) Part VC or VI of the *Trade Practices Act 1974*
27 (Commonwealth); or

28 (b) Part II, V, VI or VII of the *Fair Trading Act 1987*.

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Part 4 — Codes of practice

Division 1 — Preliminary

42. Outline

- (1) This Part provides for the making of regulations prescribing a code of practice for fair dealing between a particular class of suppliers and consumers, or by a particular class of persons in relation to consumers.
- (2) If a person carries on business in contravention of a prescribed code of practice applying to them, the Commissioner can apply to the State Administrative Tribunal for an order requiring the person to comply with the code and rectify the consequence of the contravention of the code.
- (3) This section is intended only as a guide to the general scheme and effect of this Part, and does not limit the other provisions of this Part.

43. Term used: code of practice

In this Part —

code of practice means a 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;
or
- (c) in relation to the supply of a particular kind of goods or services.

1 **Division 2 — Development and implementation of codes**
2 **of practice**

3 **44. Preparation of draft code of practice by Commissioner**

4 (1) The Commissioner may, with the approval of the Minister,
5 prepare a draft code of practice for submission to the Minister
6 for consideration.

7 (2) The Commissioner must, if the Minister directs, prepare a draft
8 code of practice for submission to the Minister for
9 consideration.

10 (3) For the purpose of preparing a draft code of practice, the
11 Commissioner must arrange for consultation with, and invite
12 submissions from, persons and organisations that the
13 Commissioner considers would have an interest in the terms of
14 the proposed draft code.

15 (4) Without limiting subsection (3), the Commissioner must consult
16 with, and invite submissions from, the following —

- 17 (a) principal organisations that represent those suppliers that
18 are likely to be affected by the terms of the draft code of
19 practice;
20 (b) principal organisations representing consumers.

21 **45. Regulations prescribing code of practice**

22 (1) The regulations may prescribe a code of practice that —
23 (a) has been submitted to the Minister in accordance with
24 section 44; and
25 (b) has been approved by the Minister with or without
26 amendments.

27 (2) Regulations prescribing a code of practice must provide that the
28 regulations expire on a date specified in the regulations, which
29 must be a date that is not later than the last day of the period of
30 3 years after the date on which the code of practice first takes
31 effect.

- 1 (3) Regulations prescribing a code of practice may be amended to
2 remove the expiry date of the regulations if —
- 3 (a) the Commissioner undertakes a review of the code of
4 practice before the regulations expire; and
- 5 (b) in undertaking the review, the Commissioner follows the
6 consultation procedures set out in section 44.

7 **46. Interim code of practice**

- 8 (1) The regulations may prescribe a code of practice even though
9 the procedures set out in section 44 have not been followed or
10 completed.
- 11 (2) A code of practice prescribed under this section is an interim
12 code of practice, and may have effect for a period (not
13 exceeding 6 months) specified in the regulations.

14 **Division 3 — Enforcement of codes of practice**

15 **47. State Administrative Tribunal may enforce compliance with**
16 **code of practice**

- 17 (1) Where it appears to the Commissioner that a person has carried
18 on business in contravention of a prescribed code of practice
19 applicable to that person, the Commissioner may apply to the
20 State Administrative Tribunal for an order under this section.
- 21 (2) Where, on the application of the Commissioner, the State
22 Administrative Tribunal is satisfied that a person has carried on
23 business in contravention of a prescribed code of practice
24 applicable to that person, the Tribunal may make either or both
25 of the following orders —
- 26 (a) an order that the person cease contravening the code;
27 (b) an order that the person rectify any consequence of that
28 contravention.
- 29 (3) The State Administrative Tribunal may make an order under
30 subsection (2) in relation to a person with that person's consent,

- 1 without being satisfied that there are grounds for making the
2 order.
- 3 (4) Where the contravention is by a body corporate, and the
4 Tribunal is satisfied that it occurred with the consent or
5 connivance of a person who, at the time of the contravention,
6 was a director of the body corporate or a person concerned in its
7 management, the Tribunal may make the following additional
8 orders —
- 9 (a) an order prohibiting the person from continuing to
10 consent to, or connive at, the contravention;
- 11 (b) an order prohibiting the person from consenting to, or
12 conniving at, a similar contravention by any other body
13 corporate of which the person is a director or in whose
14 management the person is concerned.
- 15 (5) An order under this section may be made subject to any
16 conditions (whether as to the duration of the order or otherwise)
17 the State Administrative Tribunal thinks fit, including —
- 18 (a) conditions relating to the future conduct of the person
19 affected; and
- 20 (b) conditions specifying the action to be taken by the
21 person to rectify the consequences of the contravention
22 that is the subject of the order.
- 23 (6) A person who fails to comply with an order of the State
24 Administrative Tribunal under this section commits an offence.
25 Penalty: a fine of \$50 000.

26 **48. Commissioner may take or defend proceedings relating to**
27 **contravention of code of practice**

- 28 (1) This section applies where —
- 29 (a) a person (other than a body corporate) has made a
30 complaint to the Commissioner in respect of a matter
31 arising under a code of practice or in relation to a

- 1 contravention or suspected contravention of a code of
2 practice; and
- 3 (b) the Commissioner, after investigating the complaint, is
4 satisfied —
- 5 (i) that the complainant may, with respect to the
6 matter, have a right to take proceedings before a
7 court or the State Administrative Tribunal, or a
8 defence to proceedings taken before a court or
9 the State Administrative Tribunal by another
10 person against the complainant in respect of the
11 matter; and
- 12 (ii) that it is in the public interest that the
13 Commissioner take or, as the case requires,
14 defend those proceedings on behalf of the
15 complainant.
- 16 (2) If this section applies, the Commissioner may take or defend
17 those proceedings on behalf of, and in the name of, the
18 complainant.
- 19 (3) The Commissioner must not take or defend any proceedings
20 under this section without first obtaining —
- 21 (a) the written consent of the complainant, which once
22 given cannot be revoked unless the Commissioner
23 consents to the revocation; and
- 24 (b) the written consent of the Minister, which may be given
25 subject to any conditions the Minister thinks fit.
- 26 **49. Provisions applying to proceedings instituted or defended by**
27 **Commissioner**
- 28 (1) The following provisions apply in relation to any proceedings
29 instituted or defended by the Commissioner under section 48 on
30 behalf of a complainant —
- 31 (a) the Commissioner has, on behalf of the complainant, in
32 all respects the same rights in and control over the
33 proceedings, including the right to settle any action or

- 1 part of any action, as the complainant would have had in
2 the conduct of those proceedings;
- 3 (b) the Commissioner may, without consulting or seeking
4 the consent of the complainant, conduct the proceedings
5 in whatever manner the Commissioner thinks
6 appropriate and proper;
- 7 (c) any moneys (excluding costs) recovered by the
8 Commissioner belong and must be paid to the
9 complainant without deduction, and any amount
10 awarded against the complainant must be paid by and is
11 recoverable from the complainant;
- 12 (d) in all cases the costs of the proceedings must be borne
13 by or paid to and retained by the Commissioner as the
14 case may require;
- 15 (e) if any party to the proceedings files a counterclaim, or if
16 the complainant on whose behalf the proceedings are
17 being defended is entitled to file a counterclaim, and that
18 counterclaim is not related to the cause of action, the
19 court or, as the case requires, the State Administrative
20 Tribunal hearing the proceedings —
- 21 (i) must, on the application of the Commissioner,
22 order that the counterclaim be heard separately
23 and that the consumer be a party to the
24 counterclaim in the complainant's own right; and
- 25 (ii) may make any other orders or give any directions
26 in that behalf the court or Tribunal thinks fit.
- 27 (2) Any money that the Commissioner becomes liable to pay by
28 virtue of this section is to be charged to the Consolidated
29 Account, and this Act, without any further appropriation, is
30 sufficient authority for the payment of the money.

31 **50. No doubling-up of liabilities**

- 32 (1) For the purposes of this section, a person is convicted of an
33 offence if a court finds the person guilty of the offence, or

1 accepts a plea of guilty of the offence, whether or not a
2 conviction is recorded.

3 (2) If an act or omission is a contravention of a prescribed code of
4 practice and is also an offence against the *Australian Consumer*
5 *Law (WA)*, and an order is made under section 47 in respect of
6 that contravention, the offender is not liable to be punished for
7 the offence against the *Australian Consumer Law (WA)*.

8 (3) If an act or omission is a contravention of a prescribed code of
9 practice and is also an offence against the *Australian Consumer*
10 *Law (WA)*, and the offender has been convicted of the offence
11 under the *Australian Consumer Law (WA)*, the offender is not
12 liable to have an order made against them under section 47.

13 **51. Action taken for breach of code of practice doesn't preclude**
14 **other civil action**

15 (1) The fact that the Commissioner has made an application under
16 section 47 in respect of a matter that is alleged to be a
17 contravention of a prescribed code of practice, or that the State
18 Administrative Tribunal has made an order under that section in
19 respect of that matter, does not prevent any other person from
20 taking proceedings before a court or the State Administrative
21 Tribunal in respect of the matter.

22 (2) Nothing in this section permits a person other than the
23 Commissioner to make an application under section 47.

24 **52. Transitional provision relating to existing codes of practice**

25 (1) Regulations made under the *Fair Trading Act 1987* section 84
26 prescribing a code of practice in accordance with section 43(1)
27 of that Act and that were in force immediately before the
28 commencement of this section continue in force after that
29 commencement as if they were made under section 45, but
30 nothing in section 45(2) and (3) applies in relation to those
31 regulations.

- 1 (2) However, in the case of regulations prescribing a code of
2 practice that first took effect at least 3 years before the
3 commencement of this section, those regulations do not
4 continue in force under subsection (1) unless, within the period
5 of 3 years beginning on the date on which that code of practice
6 first took effect, a review, in accordance with the *Fair Trading*
7 *Act 1987* section 42, has been undertaken.
- 8 (3) Where regulations (other than regulations to which
9 subsection (2) applies) continue in force under subsection (1),
10 the regulations expire at the close of the last day of the period of
11 3 years beginning on the date on which the code of practice
12 prescribed by the regulations first took effect unless, within that
13 period —
14 (a) the Commissioner undertakes a review of the code of
15 practice; and
16 (b) in undertaking the review, the Commissioner follows the
17 consultation procedures set out in section 44.
- 18 (4) Regulations made under the *Fair Trading Act 1987* section 84
19 prescribing an interim code of practice in accordance with
20 section 43(2) of that Act and that were in force immediately
21 before the commencement of this section continue in force after
22 that commencement as if they were made under section 46.
- 23 **53. Transitional provisions relating to undertakings under *Fair***
24 ***Trading Act 1987* section 44**
- 25 (1) The following provisions apply to a deed executed under the
26 *Fair Trading Act 1987* section 44 and that was in force
27 immediately before the commencement of this section —
28 (a) the deed continues in force after that commencement;
29 (b) a person must observe undertakings given by the person
30 in the deed;
31 (c) if, on the application of the Commissioner, the State
32 Administrative Tribunal is satisfied that a person has
33 failed to observe an undertaking given by the person in

1 the deed, the State Administrative Tribunal may order
2 the person —

- 3 (i) to observe the undertaking; and
4 (ii) in the case of an undertaking to rectify the
5 consequence of a contravention of a code of
6 practice — to observe the undertaking within a
7 time specified by the State Administrative
8 Tribunal in the order.

9 (2) A person who contravenes subsection (1)(b) commits an
10 offence.

11 Penalty: a fine of \$10 000.

12 (3) A prosecution for an offence under subsection (2) can be
13 instituted only by the Commissioner, and only with leave of the
14 State Administrative Tribunal given when making an order
15 under subsection (1)(c).

16 (4) Section 47(3) to (6) apply in relation to proceedings under
17 subsection (1)(c) as if they were proceedings for an order under
18 that section.

19 **54. Transitional provision relating to contravention of existing**
20 **code of practice**

21 (1) This section applies if —

- 22 (a) before the commencement of section 52, a person has
23 carried on business in contravention of a prescribed code
24 of practice applicable to the person; and
25 (b) the code of practice continues in force under section 52;
26 and
27 (c) the person did not execute a deed under the *Fair*
28 *Trading Act 1987* section 44 in relation to the
29 contravention of the code of practice before the
30 commencement of this section.

- 1 (2) If this section applies —
- 2 (a) the Commissioner can make an application under
- 3 section 47 in respect of the contravention of the code of
- 4 practice, as long as the application is made not later than
- 5 6 months after the commencement of this section; and
- 6 (b) the State Administrative Tribunal can deal with the
- 7 application under that section accordingly.

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Part 5 — Administrative provisions

Division 1 — Commissioner

55. Commissioner

- (1) In this section —
executive officer has the meaning given by the *Public Sector Management Act 1994* section 3(1).
- (2) The Minister must, by notice published in the *Gazette*, designate an executive officer of the Department as the Commissioner for the purposes of this Act.
- (3) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.

56. General functions of Commissioner

- (1) The functions of the Commissioner include the following —
 - (a) to promote the interests of consumers and assist them to a greater awareness in relation to their assessment and use of goods and services;
 - (b) to collect, collate and disseminate information in respect of matters affecting the interests of consumers;
 - (c) to receive complaints from consumers concerning matters affecting their interests as consumers, to consider and, if the Commissioner considers it warranted, to investigate those complaints and to take whatever action in respect of those complaints as seems proper to the Commissioner;
 - (d) to receive complaints of fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers, and to make whatever investigations and inquiries and to take whatever other action in respect of those complaints as seems proper to the Commissioner;

- 1 (e) to advise and assist consumers who seek from the
2 Commissioner information or guidance on matters
3 affecting their interests as consumers;
- 4 (f) to encourage and undertake the dissemination of
5 information concerning consumer affairs to producers,
6 manufacturers and suppliers of goods or services;
- 7 (g) to perform any other functions that are conferred or
8 imposed on the Commissioner by this Act or any other
9 Act.
- 10 (2) Without limiting the generality of subsection (1), the
11 Commissioner is to —
- 12 (a) make whatever recommendations to the Minister the
13 Commissioner considers necessary or desirable in the
14 interests of consumers and, in particular, investigate and
15 make recommendations to the Minister in relation to any
16 matters that concern the need for, or desirability of,
17 legislative or administrative action in the interests of
18 consumers;
- 19 (b) advise the Minister on any matters affecting the interests
20 of consumers that the Minister may refer to the
21 Commissioner;
- 22 (c) make recommendations to the Minister for the
23 establishment and maintenance of means by which —
- 24 (i) matters that affect the interests of consumers and
25 of persons engaged in the production,
26 manufacture, preparation or supply of goods or
27 in commerce or in the provision of services may
28 receive adequate consideration; and
- 29 (ii) information concerning those matters and
30 considerations may be widely disseminated.
- 31 (3) The Commissioner may cooperate, associate or consult with
32 organisations that have the power to make investigations of the
33 nature referred to in subsection (2)(a).

1 **57. Commissioner may issue warnings or information**

2 (1) The Commissioner may publish (in any form) a statement
3 identifying and giving warnings or information about any of the
4 following —

- 5 (a) goods that are unsatisfactory or dangerous and persons
6 who supply or are likely to supply those goods;
- 7 (b) services supplied in an unsatisfactory or dangerous
8 manner and persons who supply or are likely to supply
9 those services;
- 10 (c) unfair business practices and persons who engage or are
11 likely to engage in those practices;
- 12 (d) any other matter that adversely affects or may adversely
13 affect the interests of consumers in connection with the
14 acquisition by them of goods or services.

15 (2) A statement under subsection (1) may identify particular goods,
16 services, business practices, persons, corporate names, business
17 names and trading names.

18 (3) The Commissioner must not make or issue a statement under
19 this section unless satisfied that it is in the public interest to do
20 so.

21 **58. Instituting or defending legal proceedings on behalf of**
22 **consumers or businesses**

23 (1) This section applies where —

- 24 (a) after a complaint or matter has been made or referred to
25 the Department, the Commissioner is satisfied —
- 26 (i) that a consumer has a cause of action or a good
27 defence to an action; and
- 28 (ii) that it is in the public interest or proper to
29 institute or defend legal proceedings on behalf of
30 the consumer;

31 or

- 1 (b) the Commissioner is satisfied that it is proper to institute
2 or defend legal proceedings on behalf of a business in
3 relation to the supply or possible supply of goods or
4 services in trade or commerce because a matter of public
5 interest is involved.
- 6 (2) If this section applies, the Commissioner may —
- 7 (a) where subsection (1)(a) applies, on behalf of the
8 consumer, institute legal proceedings against any other
9 person, or defend any proceedings brought against the
10 consumer, with a view to enforcing or protecting the
11 rights of the consumer in relation to any infringement or
12 suspected infringement by that other person of those
13 rights or of any of the provisions of any Act or any other
14 law relating to the interests of consumers; or
- 15 (b) where subsection (1)(b) applies, on behalf of the
16 business, institute legal proceedings against any other
17 person, or defend any proceedings brought against the
18 business.
- 19 (3) The Commissioner must not institute or defend any proceedings
20 under this section —
- 21 (a) unless either —
- 22 (i) the amount claimed or involved in either case
23 does not exceed \$100 000 or such greater amount
24 as is prescribed for the purposes of this
25 paragraph; or
- 26 (ii) an order for specific performance of a contract,
27 or an order in the nature of an order for specific
28 performance of a contract, is the only remedy
29 sought in the proceedings;
- 30 and
- 31 (b) without first obtaining —
- 32 (i) the written consent of the consumer or, as the
33 case requires, the business, which once given

1 cannot be revoked unless the Commissioner
2 consents to the revocation; and
3 (ii) the written consent of the Minister, which may
4 be given subject to any conditions the Minister
5 thinks fit.

6 (4) The Commissioner may make any investigation or inquiry
7 under Part 6 that the Commissioner considers necessary or
8 desirable for the purposes of —

- 9 (a) satisfying himself or herself that it is proper to institute
10 or defend legal proceedings on behalf of a business
11 under subsection (1)(b); and
12 (b) instituting or defending those proceedings; and
13 (c) conducting those proceedings.

14 (5) Nothing in subsection (4) limits Part 6.

15 **59. Provisions applying to proceedings instituted or defended by**
16 **Commissioner**

17 (1) The following provisions apply in relation to any proceedings
18 instituted or defended by the Commissioner under section 58 on
19 behalf of a consumer or business —

- 20 (a) the Commissioner has, on behalf of the consumer or
21 business, in all respects the same rights in and control
22 over the proceedings, including the right to settle any
23 action or part of any action, as the consumer or business
24 would have had in the conduct of those proceedings;
25 (b) the Commissioner may, without consulting or seeking
26 the consent of the consumer or business, conduct the
27 proceedings in whatever manner the Commissioner
28 thinks appropriate and proper;
29 (c) any moneys (excluding costs) recovered by the
30 Commissioner belong and must be paid to the consumer
31 or business without deduction, and any amount awarded
32 against the consumer or business must be paid by and is
33 recoverable from the consumer or business;

- 1 (d) in all cases the costs of the proceedings must be borne
2 by or paid to and retained by the Commissioner as the
3 case may require;
- 4 (e) if any party to the proceedings files a counterclaim, or if
5 the consumer or business on whose behalf the
6 proceedings are being defended is entitled to file a
7 counterclaim, and that counterclaim is not related to the
8 cause of action and in no way relates to the interests of
9 the consumer as a consumer or, as the case requires, the
10 interests of the business as a business, the court hearing
11 the proceedings —
- 12 (i) must, on the application of the Commissioner,
13 order that the counterclaim be heard separately
14 and that the consumer or business be a party to
15 the counterclaim in the consumer's or business's
16 own right; and
- 17 (ii) may make any other orders or give any directions
18 in that behalf the court thinks fit.
- 19 (2) Any money that the Commissioner becomes liable to pay by
20 virtue of this section is to be charged to the Consolidated
21 Account, and this Act, without any further appropriation, is
22 sufficient authority for the payment of the money.

23 **60. Delegation by Commissioner**

- 24 (1) The Commissioner may delegate to any other person employed
25 in the Department any power or duty of the Commissioner
26 under a provision of this or any other Act.
- 27 (2) The delegation must be in writing signed by the Commissioner.
- 28 (3) A person to whom a power or duty is delegated under this
29 section cannot delegate that power or duty.
- 30 (4) A person exercising or performing a power or duty that has been
31 delegated to the person under this section is to be taken to do so
32 in accordance with the terms of the delegation unless the
33 contrary is shown.

- 1 (5) Nothing in this section limits the ability of the Commissioner to
2 perform a function through an officer or agent.

3 **61. Judicial notice**

4 All courts, judges and persons acting judicially must take
5 judicial notice of —

- 6 (a) the official signature of every person who is for the time
7 being, and every person who has at any time been, the
8 Commissioner; and
9 (b) the fact that the person holds or has held that office.

10 **Division 2 — Offence**

11 **62. Advertisements not to imply approval by consumer affairs
12 authority**

13 (1) In this section —
14 *consumer affairs authority* —

- 15 (a) means —
16 (i) the Department or the chief executive officer or
17 the Commissioner; or
18 (ii) any person, or statutory body or authority,
19 appointed or constituted under any law of the
20 Commonwealth or of any State or Territory of
21 the Commonwealth and having powers,
22 functions and duties under the laws of the
23 Commonwealth or that State or Territory similar
24 to those of the Department or the chief executive
25 officer or the Commissioner under the laws of
26 this State;

27 and

- 28 (b) includes —
29 (i) any officer of the Department; and
30 (ii) any officer or employee of a statutory body or
31 authority referred to in paragraph (a)(ii) of this
32 definition;

- 1 ***publish*** includes —
- 2 (a) include in a newspaper or other publication published in
3 this State;
- 4 (b) disseminate by the exhibition or broadcast of a
5 photograph, slide, film, video recording, audio recording
6 or other recording of images or sound;
- 7 (c) broadcast by radio or for television;
- 8 (d) include on an internet website or otherwise publicly
9 disseminate by means of the internet;
- 10 (e) publicly exhibit in, on, over or under any building,
11 vehicle or place, or in the air, in view of persons in or on
12 any street or public place;
- 13 (f) include in a document gratuitously sent or delivered to
14 any person or thrown or left on premises occupied by
15 any person or left on a vehicle;
- 16 (g) make verbally to any person.
- 17 (2) A person must not publish or cause to be published any
18 statement —
- 19 (a) that is intended or is apparently intended to promote the
20 sale, hiring or leasing of goods, or the sale of an estate
21 or interest in any land or building, or the letting or
22 leasing of any land or building or part of a building, or
23 the use of a service rendered for fee or reward; and
- 24 (b) that states, either expressly or by implication, that any
25 consumer affairs authority has approved, or has
26 refrained from disapproving, the statement or any
27 material particular in the statement or any claim made in
28 the statement or any goods or services depicted or
29 described, whether by a trade name or otherwise, in the
30 statement.
- 31 Penalty: a fine of \$10 000.

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- 1 (3) It is a defence in any proceedings for an offence under
2 subsection (2) if the accused satisfies the court that, before the
3 publication of the statement, the Minister consented in writing
4 to its publication.

1 **Part 6 — Investigation and enforcement**

2 **Division 1 — Interpretation**

3 **63. Terms used**

4 In this Part —

5 *authorised person* means —

- 6 (a) the Commissioner; and
- 7 (b) in relation to a power of the Commissioner under a
8 provision of this Act or any other Act, a person to whom
9 that power is delegated under section 60; and
- 10 (c) an investigator;

11 *investigator* means a person designated under section 64 as an
12 investigator;

13 *motor vehicle* has the meaning given in the *Road Traffic*
14 *Act 1974* section 5(1).

15 **Division 2 — Investigators**

16 **64. Appointment of investigators**

17 The Commissioner may designate any of the following persons
18 as an investigator for the purposes of this Part —

- 19 (a) any person employed in the Department;
- 20 (b) any person who —
 - 21 (i) is an officer of a Public Sector agency that
22 provides services to the Department; and
 - 23 (ii) assists in the exercise of the Commissioner’s
24 functions under this Act;
- 25 (c) any person engaged by the chief executive officer to
26 assist in the exercise of the Commissioner’s functions
27 under this Act.

1 **65. Certificate of appointment as investigator**

2 (1) The Commissioner is to provide each investigator with a
3 document, signed by the Commissioner, certifying that the
4 person is entitled to exercise the powers of an investigator.

5 (2) A person to whom a document is provided under this section
6 and who ceases to be an investigator must return the document
7 to the Commissioner as soon as practicable.

8 (3) A person who contravenes subsection (2) without reasonable
9 excuse, the onus of proving which is on the person, commits an
10 offence.

11 Penalty: a fine of \$1 000.

12 **66. Investigators to produce certificate of appointment on**
13 **demand**

14 An investigator must produce the document provided under
15 section 65 when demanded by a person in respect of whom the
16 investigator performs, has performed, or is proposing to perform
17 any function under this Act or another Act.

18 **67. Persons assisting investigators**

19 (1) Where an investigator is exercising any of the investigator's
20 powers under this Part, a person (the *assistant*), including an
21 interpreter, may accompany the investigator to assist the
22 investigator if the investigator considers the assistance is
23 necessary.

24 (2) The assistant —

25 (a) may do such things and in such manner as the
26 investigator reasonably requires to assist the investigator
27 to exercise the investigator's powers; but

28 (b) must not do anything that the investigator does not have
29 power to do, except as permitted under a warrant under
30 Division 3.

- 1 (3) Anything done lawfully by the assistant is taken for all purposes
2 to have been done by the investigator.

3 **Division 3 — General powers**

4 **68. Investigation and inquiry by Commissioner**

- 5 (1) The Commissioner may, of the Commissioner's own motion,
6 make any investigation or inquiry that the Commissioner
7 considers necessary or expedient for the purposes of carrying
8 out the Commissioner's functions under this Act or any other
9 Act.
- 10 (2) An authorised person may make an investigation or inquiry
11 under this section on behalf of the Commissioner.

12 **69. Power of Commissioner to investigate, inquire and obtain**
13 **information**

- 14 (1) For the purposes of carrying out any investigation or inquiry in
15 the course of carrying out the Commissioner's functions under
16 this Act or any other Act, an authorised person may —
- 17 (a) require any person —
- 18 (i) to give whatever information the authorised
19 person requires in relation to any matter the
20 subject of an investigation or inquiry; and
- 21 (ii) to answer any question put to the person in
22 relation to any matter the subject of an
23 investigation or inquiry;
- 24 and
- 25 (b) require any person to produce any document or thing
26 relating to an investigation or inquiry; and
- 27 (c) enter at all reasonable times and search any premises or
28 motor vehicle named in a warrant obtained in
29 accordance with this Division and exercise the powers
30 set out in the warrant; and

- 1 (d) make a copy or abstract of any document produced or
2 inspected under this section, or of any entry made in the
3 document.
- 4 (2) A requirement made under subsection (1)(a) —
- 5 (a) may be made orally or by notice in writing served on the
6 person required to give information or answer a
7 question, as the case requires; and
- 8 (b) must specify the time at or within which the information
9 is to be given or the question is to be answered, as the
10 case requires; and
- 11 (c) may, by its terms, require that the information or answer
12 required —
- 13 (i) be given orally or in writing; and
- 14 (ii) be given at or sent or delivered to any place
15 specified in the requirement; and
- 16 (iii) in the case of written information or answers, be
17 sent or delivered by any means specified in the
18 requirement; and
- 19 (iv) be given on oath or affirmation or by statutory
20 declaration.
- 21 (3) An authorised person may administer an oath or affirmation or
22 witness a statutory declaration for the purposes of
23 subsection (2)(c)(iv).
- 24 (4) A requirement made under subsection (1)(b) —
- 25 (a) must be made by notice in writing served on the person
26 required to produce a document or thing, unless the
27 circumstances require the authorised person to have
28 immediate access to the document or thing, in which
29 case the requirement may be given orally; and
- 30 (b) must specify the time at or within which the document
31 or thing is to be produced; and

- 1 (c) may, by its terms, require that the document or thing
2 required be produced —
- 3 (i) at any place specified in the requirement; and
4 (ii) by any means specified in the requirement.
- 5 (5) Where, under subsection (1)(a) or (b), an authorised person
6 orally requires a person to give any information, answer any
7 question or produce any document or thing, the authorised
8 person must inform the other person that the other person is
9 required, under this Act or another Act, to give the information,
10 answer the question or produce the document or thing, as the
11 case requires.
- 12 (6) Where, under subsection (1)(a) or (b), a person is required by
13 notice in writing to give any information, answer any question
14 or produce any document or thing, the notice must state that the
15 person is required, under this Act or another Act, to give the
16 information, answer the question or produce the document or
17 thing, as the case requires.
- 18 **70. Conduct of interviews**
- 19 (1) An interview conducted by an authorised person under
20 section 69(1)(a) must be conducted in private if —
- 21 (a) the authorised person considers it appropriate; or
22 (b) the person being interviewed so requests.
- 23 (2) Subsection (1) does not limit the operation of section 67 or
24 prevent a representative of the person being interviewed from
25 being present at the interview.
- 26 (3) Subsection (1) may be invoked during an interview by —
- 27 (a) the authorised person; or
28 (b) the person being interviewed.
- 29 (4) If subsection (1) is invoked during an interview, the subsection
30 applies to the remainder of the interview.

1 **71. Warrant to enter premises or motor vehicle**

2 (1) If an authorised person considers in a particular case that there
3 are reasonable grounds for believing that entry to premises or a
4 motor vehicle is necessary for the purposes of carrying out any
5 investigation or inquiry in the course of carrying out the
6 Commissioner's functions under this Act or any other Act, the
7 authorised person may apply to a magistrate or justice of the
8 peace for a warrant to be issued in respect of those premises or
9 that motor vehicle.

10 (2) An application for a warrant must —

11 (a) be in writing; and

12 (b) be accompanied by a notice in writing from the
13 authorised person stating that the person considers in the
14 particular case that there are reasonable grounds for
15 believing that entry to premises or a motor vehicle is
16 necessary for the purposes of carrying out an
17 investigation or inquiry in the course of carrying out the
18 Commissioner's functions under this Act or another Act;
19 and

20 (c) set out the grounds for seeking the warrant; and

21 (d) describe the premises or motor vehicle that are to be
22 entered.

23 (3) A magistrate or justice of the peace to whom an application is
24 made under this section must refuse it if —

25 (a) the application does not comply with the requirements
26 of this Act; or

27 (b) when required to do so by the magistrate or justice of
28 the peace, the applicant does not give to the magistrate
29 or justice of the peace more information about the
30 application.

31 (4) The information in an application or given to a magistrate or
32 justice of the peace under this section must be verified before
33 the magistrate or justice of the peace on oath or affirmation or

1 by affidavit, and the magistrate or justice of the peace may for
2 that purpose administer an oath or affirmation or take an
3 affidavit.

4 **72. Warrants by telephone, fax or other electronic means**

5 (1) If an authorised person requires a warrant urgently, or a
6 magistrate or justice of the peace is not available within a
7 reasonable distance of the authorised person, the authorised
8 person may apply to a magistrate or justice of the peace by
9 telephone, fax or other electronic means for a warrant under
10 section 71.

11 (2) The magistrate or justice of the peace may —
12 (a) require communication by voice to the extent that it is
13 practicable in the circumstances; and
14 (b) make a recording of the whole or any part of any such
15 communication by voice.

16 (3) Before applying for the warrant, the authorised person must
17 prepare an affidavit that sets out the grounds on which the
18 warrant is sought.

19 (4) If it is necessary to do so, the authorised person may apply for
20 the warrant before the affidavit is sworn or affirmed.

21 (5) The magistrate or justice of the peace may complete and sign
22 the same warrant that the magistrate or justice of the peace
23 would issue under section 74 if the application had been made
24 under section 71 if the magistrate or justice of the peace is
25 satisfied that there are reasonable grounds for issuing the
26 warrant, after having —

27 (a) considered the terms of the affidavit; and
28 (b) received such further information (if any) as the
29 magistrate or justice of the peace requires concerning
30 the grounds on which the issue of the warrant is sought.

- 1 **73. Further provisions relating to warrants by telephone etc.**
- 2 (1) If a magistrate or justice of the peace completes and signs a
- 3 warrant under section 72(5) —
- 4 (a) the magistrate or justice of the peace must —
- 5 (i) tell the authorised person what the terms of the
- 6 warrant are; and
- 7 (ii) tell the authorised person the day on which and
- 8 the time at which the warrant was signed; and
- 9 (iii) tell the authorised person the day (not more than
- 10 one week after the magistrate or justice of the
- 11 peace completes and signs the warrant) on which
- 12 the warrant ceases to have effect; and
- 13 (iv) record on the warrant the reasons for issuing the
- 14 warrant;
- 15 and
- 16 (b) the authorised person must —
- 17 (i) complete a form of warrant in the same terms as
- 18 the warrant completed and signed by the
- 19 magistrate or justice of the peace; and
- 20 (ii) write on the form the name of the magistrate or
- 21 justice of the peace and the day on which and the
- 22 time at which the warrant was signed.
- 23 (2) The authorised person must also, not later than the day after the
- 24 day of expiry or execution of the warrant, whichever is the
- 25 earlier, send to the magistrate or justice of the peace —
- 26 (a) the form of warrant completed by the authorised person;
- 27 and
- 28 (b) the affidavit referred to in section 72(3), which must
- 29 have been duly sworn or affirmed.

- 1 (3) When the magistrate or justice of the peace receives those
2 documents, the magistrate or justice of the peace must —
- 3 (a) attach them to the warrant that the magistrate or justice
4 of the peace completed and signed; and
- 5 (b) deal with them in the way in which the magistrate or
6 justice of the peace would have dealt with them if the
7 application had been made under section 71.
- 8 (4) A form of warrant duly completed under subsection (1)(b) is
9 authority for the same powers as are authorised by the warrant
10 signed by the magistrate or justice of the peace.
- 11 (5) If a magistrate or justice of the peace completes and signs a
12 warrant under section 72(5), in any proceedings a court must
13 assume, unless the contrary is proved, that the exercise of a
14 power was not authorised by the warrant if —
- 15 (a) it is material, in those proceedings, for the court to be
16 satisfied that the exercise of the power was authorised
17 by this section; and
- 18 (b) the warrant is not produced in evidence.

19 **74. Issue of warrant**

- 20 (1) A magistrate or justice of the peace to whom an application is
21 made under section 71 may issue a warrant if satisfied that the
22 authorised person has reasonable grounds for believing that
23 entry and inspection of the premises or motor vehicle are
24 necessary for the purpose of carrying out an investigation or
25 inquiry under this Act or another Act.
- 26 (2) A warrant under subsection (1) authorises the person to whom
27 the warrant is issued —
- 28 (a) to enter the premises or motor vehicle named in the
29 warrant and search the premises or motor vehicle and
30 any thing that is found on the premises or in or on the
31 motor vehicle; and

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- 1 (b) to inspect documents and other things, and take copies
2 or extracts from documents found on the premises or in
3 or on the motor vehicle; and
- 4 (c) to inspect, examine, take measurements of, or conduct
5 tests on, any thing found on the premises, or in or on the
6 motor vehicle, that is relevant to the investigation or
7 inquiry; and
- 8 (d) to take and remove for examination, analysis or testing a
9 sample of any thing found on the premises, or in or on
10 the motor vehicle, that is relevant to the investigation or
11 inquiry, without paying for the sample; and
- 12 (e) to inspect any service carried on in the premises or from
13 the motor vehicle; and
- 14 (f) to take measurements or recordings of any sort; and
- 15 (g) to take photographs, sound and video recordings and
16 drawings of the premises or motor vehicle searched, and
17 of any thing found in those premises or in or on that
18 motor vehicle, if the person exercising the power has
19 reasonable grounds for believing that the photographs or
20 sound or video recordings or drawings may be relevant
21 to the purposes of the entry and search; and
- 22 (h) to seize things that may be seized under section 79.
- 23 (3) The warrant must state —
- 24 (a) the purpose for which the warrant is issued; and
- 25 (b) the name of the person to whom the warrant is issued;
26 and
- 27 (c) a description of the premises or motor vehicle that may
28 be entered.
- 29 (4) The magistrate or justice of the peace who issues a warrant must
30 cause a record to be made of particulars of the grounds that the
31 magistrate or justice of the peace has relied on to justify the
32 issue of the warrant.

1 **75. Person with knowledge of computer or computer network**
2 **or other data storage devices to assist access**

3 (1) In this section —

4 *access information* includes access codes, passwords, and
5 encryption keys, and any related information that enables access
6 to a computer or other data storage device;

7 *specified person* means a person who —

8 (a) is the owner or lessee of the computer or other data
9 storage device, or is in possession or control of the
10 computer or other data storage device, an employee of
11 any of the above, or any service provider who provides
12 service to the above and holds access information; and

13 (b) has relevant knowledge of —

14 (i) the computer or a computer network of which the
15 computer or other data storage device forms a
16 part; or

17 (ii) measures applied to protect data held in, or
18 accessible from, the computer or other data
19 storage device.

20 (2) A person executing a warrant under section 74 may require a
21 specified person to provide access information and other
22 information or assistance that is reasonable and necessary to
23 allow the person executing the warrant to access data held in, or
24 accessible from —

25 (a) a computer that is on the premises or in or on the motor
26 vehicle named in the warrant; or

27 (b) any other data storage device that is on the premises or
28 in or on the motor vehicle named in the warrant.

29 **76. Further powers conferred by warrant**

30 (1) A warrant under section 74 also authorises the person to whom
31 the warrant is issued —

32 (a) to bring and use in the premises or in or on the motor
33 vehicle named in the warrant any equipment, to use any

- 1 equipment found in the premises or in or on the motor
2 vehicle, and to extract any electricity or other form of
3 energy from the premises or vehicle to operate the
4 equipment that it is reasonable to use in the
5 circumstances, for the purposes of executing the
6 warrant; and
- 7 (b) to access and copy intangible material from computers
8 and other data storage devices located at or accessible
9 from the premises or vehicle named in the warrant
10 (including copying by means of previewing, cloning, or
11 other forensic methods either before or after removal for
12 examination); and
- 13 (c) to use any reasonable measures to —
- 14 (i) gain access to any computer or other data storage
15 device that is at the premises or in or on the
16 vehicle named in the warrant, or that can be
17 accessed from a computer or other data storage
18 device that is at those premises or in or on that
19 vehicle; and
- 20 (ii) create a forensic copy of any material in such a
21 computer or other data storage device.

22 (2) This section does not limit section 74, 75 or 78.

23 **77. Compensation for damage to equipment or data**

- 24 (1) This section applies where —
- 25 (a) either —
- 26 (i) damage is caused to equipment as a result of it
27 being operated as mentioned in section 76; or
- 28 (ii) the data recorded on or accessible from the
29 equipment is damaged;
- 30 and

- 1 (b) the damage was caused as a result of —
- 2 (i) insufficient care being exercised in selecting the
- 3 person who was to operate the equipment; or
- 4 (ii) insufficient care being exercised by the person
- 5 operating the equipment.
- 6 (2) Where this section applies, the owner of the equipment or the
- 7 user of data recorded on or accessible from the equipment is
- 8 entitled to compensation for the damage.
- 9 (3) For the purposes of subsection (1), damage to data includes
- 10 damage by erasure of data or addition of other data.
- 11 (4) An application for compensation is to be made to the
- 12 Commissioner.
- 13 (5) In determining the amount of compensation payable, regard is
- 14 to be had to whether the occupier of the premises (or the person
- 15 in charge of the motor vehicle, as the case requires) and his or
- 16 her employees and agents, if they were available at the time, had
- 17 provided any warning or guidance as to the operation of the
- 18 equipment that was appropriate in the circumstances.
- 19 (6) Any compensation that is payable under this section is to be
- 20 charged to the Consolidated Account, and this Act, without
- 21 further appropriation, is sufficient authority for the payment of
- 22 the compensation.

23 **78. Execution of warrant**

- 24 (1) Entry authorised by a warrant under section 74 may be made
- 25 with whatever assistance and equipment is reasonably necessary
- 26 for the purpose for which entry is required.
- 27 (2) A person executing a warrant under section 74, and a person
- 28 assisting that person, may use any force that is reasonably
- 29 necessary for the execution of the warrant.
- 30 (3) A warrant authorising the entry and search of a motor vehicle
- 31 authorises the person executing the warrant to enter any place

- 1 where the person has reasonable grounds to believe that the
2 vehicle is, for the purpose of locating it and searching it.
- 3 (4) Before entering any premises or motor vehicle under a warrant,
4 the person executing the warrant must show the person, if any,
5 who gives the person entry to the premises or motor vehicle —
- 6 (a) in the case of the Commissioner, a document signed by
7 the Minister and certifying that the person is the
8 Commissioner; and
- 9 (b) in the case of an authorised person other than the
10 Commissioner, a document signed by the Commissioner
11 and certifying that that person is an authorised person.
- 12 (5) The person executing the warrant must produce it for inspection
13 if asked by —
- 14 (a) the occupier or a person in charge of the premises; or
15 (b) a person in charge of the motor vehicle.
- 16 (6) When executing a warrant, an authorised person may require
17 any person who has the control of any premises, motor vehicle
18 or thing that the authorised person is authorised to enter or
19 inspect to furnish reasonable access to it and to give other
20 reasonable assistance.
- 21 (7) A warrant ceases to have effect on the earliest of the
22 following —
- 23 (a) at the end of the period of one month after its issue;
24 (b) if it is withdrawn by the magistrate or justice of the
25 peace who issued it;
26 (c) when it is executed.

27 **79. Seizure**

- 28 (1) An authorised person may seize a document or other thing that
29 is produced or given in response to a requirement under this
30 Division, or that is found as the result of executing a warrant
31 under this Division.

- 1 (2) However, a document or other thing cannot be seized unless the
2 authorised person reasonably suspects that the document or
3 thing —
4 (a) is being, or has been, used to commit a breach of this
5 Act or another Act that confers functions on the
6 Commissioner; or
7 (b) may provide evidence of the commission of a breach of
8 this Act or another Act that confers functions on the
9 Commissioner.
- 10 (3) As soon as practicable after the document or other thing is
11 seized, the authorised person must give a receipt for it to the
12 person from whom it was seized.
- 13 (4) The receipt must clearly describe the document or thing seized
14 and its condition.
- 15 (5) If, for any reason, it is not practicable to comply with
16 subsection (3), the authorised person must —
17 (a) leave the receipt at the place of seizure; and
18 (b) ensure the receipt is left in a reasonably secure way and
19 in a conspicuous position.

20 **80. Copies of seized things to be provided**

- 21 (1) This section applies if the person executing a warrant relating to
22 premises seizes, under section 79 —
23 (a) a document, film, computer file or other thing that can
24 be readily copied; or
25 (b) a storage device, the information in which can be readily
26 copied.
- 27 (2) Where this section applies, the person executing the warrant
28 must, if requested to do so by the occupier of the premises or
29 another person who apparently represents the occupier and who
30 is present when the warrant is executed, give a copy of the
31 document, film, computer file, thing or information to that
32 person as soon as practicable after the seizure.

1 (3) Subsection (2) does not apply if possession by the occupier of
2 the document, film, computer file, thing or information could
3 constitute an offence.

4 **81. Access to things seized**

5 (1) Until a thing seized under section 79 is forfeited or returned, the
6 person in whose custody the seized thing is must allow its
7 owner to inspect it and, if it is a document, to copy it.

8 (2) Subsection (1) does not apply if it is impracticable or would be
9 unreasonable to allow the inspection or copying.

10 **82. Return of seized things**

11 (1) Where a document or other thing is seized under section 79, an
12 authorised person may retain the document or other thing for as
13 long as is reasonably necessary for the purposes of —

14 (a) the investigation to which the document or other thing is
15 relevant; and

16 (b) any proceedings to which the document or other thing is
17 relevant.

18 (2) When the retention of the document or other thing ceases to be
19 reasonably necessary for those purposes, the authorised person
20 must ensure that the document or other thing is delivered to the
21 person who appears to the authorised person to be entitled to
22 possession of it.

23 **83. SAT review: seizure**

24 (1) A person aggrieved by the seizure of any thing under section 79
25 may apply to the State Administrative Tribunal for a review of
26 the decision to seize the thing.

27 (2) In dealing with an application under subsection (1), the State
28 Administrative Tribunal may determine whether the thing
29 seized must be destroyed, disposed of, forfeited to the State,
30 restored to the person from whom it was seized or otherwise
31 dealt with.

1 (3) Subsection (2) does not limit the powers that the *State*
2 *Administrative Tribunal Act 2004* gives the State Administrative
3 Tribunal.

4 **84. Forfeiture of seized thing**

5 (1) The Commissioner may determine that a thing seized under
6 section 79 is forfeited to the State if the authorised person who
7 seized the thing —

- 8 (a) cannot find its owner, after making reasonable inquiries;
9 or
10 (b) cannot return the thing to the owner or other person
11 entitled to possession of the thing, after making
12 reasonable efforts.

13 (2) In applying subsection (1) —

- 14 (a) subsection (1)(a) does not require the authorised person
15 to make inquiries if it would be unreasonable to make
16 inquiries to find the owner; and
17 (b) subsection (1)(b) does not require the authorised person
18 to make efforts if it would be unreasonable to make
19 efforts to return the thing to the owner or other person
20 entitled to possession of the thing.

21 (3) Regard must be had to a thing's nature, condition and value in
22 deciding —

- 23 (a) whether it is reasonable to make inquiries or efforts; and
24 (b) if making inquiries or efforts, what inquiries or efforts,
25 including the period over which they are made, are
26 reasonable.

27 **85. Dealing with forfeited things**

28 (1) On the forfeiture of a thing to the State under section 84, the
29 thing becomes the property of the State, and may be dealt with
30 as the chief executive officer considers appropriate.

1 (2) Without limiting subsection (1), the chief executive officer may
2 cause the thing to be destroyed, sold or disposed of.

3 **86. Privilege against self-incrimination doesn't apply**

4 (1) Where under section 69 a person is required to give any
5 information, or answer any question or produce any document
6 or thing —

7 (a) that person cannot refuse to comply with that
8 requirement on the ground that the information, answer,
9 document or thing may tend to incriminate the person or
10 render the person liable to any penalty; but

11 (b) the information or answer given, or document or thing
12 produced, by the person is not admissible in evidence in
13 any proceedings against the person other than
14 proceedings in respect of an offence against
15 section 88(1)(b).

16 (2) This section is without prejudice to the provisions of the
17 *Evidence Act 1906* section 11.

18 **87. Information**

19 (1) Information concerning the affairs of a person that is obtained
20 under this Division by an authorised person may (for the
21 purposes of section 112 (which relates to the confidentiality of
22 information officially obtained)) be recorded, used or disclosed
23 on the basis that it has been acquired by the authorised person
24 for the purposes of this Act.

25 (2) Where an authorised person copies a document under
26 section 69(1)(d) or when executing a warrant —

27 (a) the authorised person may certify the copy as being a
28 true and accurate copy of the document; and

29 (b) in the absence of proof to the contrary, the certified copy
30 is to be accepted by any court or tribunal as evidence of,
31 and as having equal validity as, the original.

Division 4 — Offences

88. Failure to cooperate with investigation

(1) A person commits an offence who, without reasonable excuse (proof of which lies on the person), when required under Division 3 to give any information, answer any question or produce any document or thing —

- (a) fails to give that information or answer that question at or within the time specified in the requirement; or
- (b) gives any information or answer that is false or misleading in any material particular; or
- (c) fails to produce that document or thing at or within the time specified in the requirement.

Penalty: a fine of \$10 000.

(2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —

- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 69, the authorised person did not, when making the requirement, inform the accused that he or she was required under this Act or the other Act that is relevant to give the information, answer the question or produce the document or thing, as the case requires; or
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 69, the notice did not state that the accused was required under this Act or the other Act that is relevant to give the information, answer the question or produce the document or thing, as the case requires; or
- (c) that the time specified in the requirement did not give the accused sufficient notice to enable him or her to comply with the requirement; or
- (d) that, in any case, the authorised person did not, before making the requirement, have reasonable grounds to

1 believe that compliance with the requirement would
2 materially assist in the investigation or inquiry being
3 carried out.

4 **89. Obstructing authorised person**

5 (1) A person must not prevent or attempt to prevent an authorised
6 person from entering premises or a motor vehicle in the exercise
7 of the authorised person's powers under section 69.

8 Penalty: a fine of \$2 000.

9 (2) A person must not obstruct or impede an authorised person in
10 the exercise of the authorised person's powers under section 69.

11 Penalty: a fine of \$2 000.

12 (3) A person must comply with a requirement to assist an
13 authorised person executing a warrant under section 74 when
14 requested to do so under section 75(2).

15 Penalty: a fine of \$2 000.

16 (4) A person must comply with a requirement to furnish reasonable
17 access to a place or motor vehicle, or to give other reasonable
18 assistance to an authorised person under section 78(6).

19 Penalty: a fine of \$2 000.

20 (5) For the purposes of this section, a reference to an authorised
21 person includes an assistant accompanying an investigator in
22 accordance with section 67.

1 **Part 7 — Criminal and civil proceedings**

2 **Division 1 — Preliminary**

3 **90. Term used: person involved in contravention**

4 A reference in this Division to a person involved in a
5 contravention of a provision of this Act is to be read as a
6 reference to a person who —

- 7 (a) has aided, abetted, counselled or procured the
8 contravention; or
9 (b) has induced, whether by threats or promises or
10 otherwise, the contravention; or
11 (c) has been in any way, directly or indirectly, knowingly
12 concerned in, or party to, the contravention; or
13 (d) has conspired with others to effect the contravention; or
14 (e) has attempted to contravene the provision, or to do any
15 act of a kind referred to in paragraph (a), (b), (c) or (d).

16 **Division 2 — Criminal proceedings**

17 **91. Time limit for commencing proceedings**

18 Proceedings for an offence against this Act may be commenced
19 within 3 years after the alleged commission of the offence.

20 **92. Who may institute criminal proceedings**

- 21 (1) Prosecutions for offences against this Act may be instituted by
22 the Commissioner or by a person authorised in writing by the
23 Commissioner.
24 (2) No other person may institute a prosecution for an offence
25 against this Act unless written consent to the institution of the
26 prosecution is given by —
27 (a) the Commissioner; or

- 1 (b) a person authorised in writing by the Commissioner to
2 give consents under this section.
- 3 (3) In proceedings for an offence against this Act, a document
4 giving consent to the institution of a prosecution and purporting
5 to have been signed by the Commissioner, or by an authorised
6 person, is evidence of that consent without proof of the
7 signature.
- 8 **93. Court of summary jurisdiction to be constituted by**
9 **magistrate**
- 10 A court of summary jurisdiction dealing with an offence under
11 this Act is to be constituted by a magistrate.
- 12 **94. Other powers of courts in criminal proceedings**
- 13 (1) Where proceedings in the Supreme Court or the District Court
14 are taken against a person for contravening, or being involved in
15 a contravention of, a provision of this Act, the Court, in addition
16 to dealing with the offence charged, may —
- 17 (a) grant an injunction under section 99 or 100 against the
18 person in relation to —
- 19 (i) the conduct that constitutes, or is alleged to
20 constitute, the contravention; or
- 21 (ii) other conduct of that kind;
- 22 and
- 23 (b) make an order under section 105 in relation to the
24 contravention.
- 25 (2) If a person is convicted of an offence against this Act, the court
26 by which the conviction was effected may order the offender to
27 reimburse the Department for the cost of purchasing or testing
28 any goods to which the conviction relates.
- 29 (3) Where a person is, by any conviction or order of a court,
30 adjudged to pay a fine, or costs or other sum of money in

1 respect of an offence against this Act, the court by which the
2 conviction or order was effected or made may —

- 3 (a) exercise any power that the court has apart from this
4 section; or
- 5 (b) on the application of the Minister or the Commissioner,
6 order that the amount unpaid be recoverable as if it were
7 a judgment debt payable by the defaulter to the Crown
8 under a judgment entered up in the court.

9 **95. Offences by directors, employers, and vicarious liability**

- 10 (1) Where a corporation within the meaning of the *Corporations*
11 *Act 2001* (Commonwealth) or any other body of persons,
12 corporate or unincorporate, is convicted of an offence against
13 this Act, each person who, at the time of the commission of that
14 offence, was a director of the corporation or was the manager,
15 secretary or other similar officer of that body, or who purported
16 to act in any of those capacities, is also guilty of an offence
17 unless the person proves —
- 18 (a) that the offence was committed without the person's
19 knowledge, or that the person did not authorise or permit
20 the commission of the offence; and
- 21 (b) that the person was not in a position to influence the
22 conduct of that corporation or body or, being in such a
23 position, could not by the exercise of reasonable
24 diligence have prevented the commission of the offence.
- 25 (2) A person who is guilty of an offence by virtue of subsection (1)
26 is liable to a penalty not exceeding the penalty prescribed for the
27 offence of which the corporation or body was convicted.
- 28 (3) Where the affairs of a body of persons are managed by its
29 members, subsection (1) applies in relation to the acts and
30 defaults of a member in connection with the member's function
31 of management as if the person were the manager of that body.
- 32 (4) Where the employee or agent of a person (*person A*) is
33 convicted of an offence against this Act, each person (*person B*)

- 1 who, at the time of the commission of the offence, was
2 person A's employer or principal —
- 3 (a) is also guilty of an offence, unless person B proves that
4 person B could not by the exercise of reasonable
5 diligence have prevented the commission of the offence
6 of which person A was convicted; and
- 7 (b) is liable to a penalty not exceeding the penalty
8 prescribed for the offence of which person A was
9 convicted.
- 10 (5) Where a person has committed an offence against the *Australian*
11 *Consumer Law (WA)* Part 2-1 or Part 2-2 or Part 3-1 (other than
12 Divisions 2 and 3), or would have committed an offence but for
13 the fact that the person could establish a defence under
14 section 96 or 97, and the contravention, or what would have
15 constituted the contravention, was due to the act or default of
16 another person —
- 17 (a) that other person —
- 18 (i) is also guilty of an offence and liable to the same
19 penalty as is provided for the offence against the
20 *Australian Consumer Law (WA)* Part 2-1 or
21 Part 2-2 or Part 3-1 (other than Divisions 2
22 and 3); and
- 23 (ii) may be charged and convicted of the offence,
24 whether or not proceedings are taken against the
25 first-mentioned person for the offence against the
26 *Australian Consumer Law (WA)* Part 2-1 or
27 Part 2-2 or Part 3-1 (other than Divisions 2
28 and 3);
- 29 and
- 30 (b) the first-mentioned person is a competent and
31 compellable witness in any proceedings taken against
32 that other person in respect of the offence.

1 **96. Defence: reasonable mistake**

2 (1) In a prosecution under this Part for an offence against this Act,
3 it is a defence if the accused establishes that the contravention in
4 respect of which the proceeding was instituted was due to
5 reasonable mistake of fact, including a mistake of fact caused by
6 reasonable reliance on information supplied by another person.

7 (2) However, subsection (1) does not apply in relation to
8 information relied upon by the accused that was supplied to the
9 accused by another person who was, at the time when the
10 contravention occurred —

11 (a) an employee or agent of the accused; or

12 (b) if the accused is a body corporate, a director, employee
13 or agent of the accused.

14 (3) If a defence provided by subsection (1) involves an allegation
15 that a contravention was due to reliance on information supplied
16 by another person, the accused is not entitled to rely on that
17 defence unless —

18 (a) the court gives leave; or

19 (b) the accused has, not later than 7 days before the day on
20 which the hearing of the proceeding commences, served
21 on the person who instituted the proceeding a notice in
22 writing giving whatever information the accused then
23 had that would identify or assist in identifying the other
24 person.

25 **97. Defence: act or default of another person etc.**

26 (1) In a prosecution under this Part for an offence against this Act,
27 it is a defence if the accused establishes that —

28 (a) the contravention in respect of which the proceeding
29 was instituted was due to —

30 (i) the act or default of another person; or

31 (ii) an accident; or

- 1 (iii) some other cause beyond the accused's control;
2 and
3 (b) the accused took reasonable precautions and could not
4 by the exercise of due diligence have prevented the
5 commission of the offence.
- 6 (2) However, subsection (1) does not apply in relation to the act or
7 default of another person who was, at the time when the
8 contravention occurred —
- 9 (a) an employee or agent of the accused; or
10 (b) if the accused is a body corporate, a director, employee
11 or agent of the accused.
- 12 (3) If a defence provided by subsection (1) involves an allegation
13 that a contravention was due to the act or default of another
14 person, the accused is not entitled to rely on that defence
15 unless —
- 16 (a) the court gives leave; or
17 (b) the accused has, not later than 7 days before the day on
18 which the hearing of the proceeding commences, served
19 on the person who instituted the proceeding a notice in
20 writing giving whatever information the accused then
21 had that would identify or assist in identifying the other
22 person.

23 **98. Defence: publication of advertisements in ordinary course of**
24 **business**

25 In a proceeding under this Part in relation to a contravention of
26 this Act committed by the publication of an advertisement, it is
27 a defence if it is established —

- 28 (a) that the accused is a person whose business it is to
29 publish or arrange for the publication of advertisements;
30 and
31 (b) that the accused received the advertisement for
32 publication in the ordinary course of business; and

- 1 (c) that the accused did not know and had no reason to
2 suspect that its publication would amount to a
3 contravention of this Act.

4 **Division 3 — Civil proceedings**

5 **99. Injunctions in restraint of conduct**

- 6 (1) The Supreme Court or the District Court, on the application of
7 the Minister, the Commissioner or any other person, may grant
8 an injunction in whatever terms the Court determines to be
9 appropriate where the Court is satisfied that a person —
10 (a) has engaged, or is proposing to engage, in conduct that
11 constitutes or would constitute a contravention of a
12 provision of this Act; or
13 (b) is involved in a contravention of a provision of this Act.
14 (2) The power of the Court to grant an injunction restraining a
15 person (*person A*) from engaging in conduct may be
16 exercised —
17 (a) whether or not it appears to the Court that person A
18 intends to engage again, or to continue to engage, in
19 conduct of that kind; and
20 (b) whether or not person A has previously engaged in
21 conduct of that kind; and
22 (c) whether or not there is an imminent danger of
23 substantial damage to any person if person A engages in
24 conduct of that kind.

25 **100. Other injunctions**

- 26 (1) The Supreme Court or the District Court, on the application of
27 the Commissioner, may grant an injunction in whatever terms
28 the Court determines to be appropriate where the Court is
29 satisfied that a person has engaged, or is proposing to engage, in
30 conduct that constitutes, or would constitute, or is involved in, a
31 contravention of —
32 (a) an interim ban or a permanent ban under the *Australian*
33 *Consumer Law (WA)* Part 3-3 Division 2; or

- 1 (b) a provision of any other legislation administered by the
2 Minister or of an order made under any such legislation,
3 being a provision relevant to the alleged contravention;
4 or
5 (c) a provision of a prescribed code of practice in force
6 under Part 4 in respect of which the Commissioner has
7 applied to the State Administrative Tribunal under
8 section 47; or
9 (d) a provision of an order of the State Administrative
10 Tribunal under section 47.
- 11 (2) If the Court is satisfied, on the application of the Commissioner,
12 that a person has engaged in conduct constituting, or is involved
13 in, a contravention of a provision of this Act, the Court may
14 grant an injunction requiring that person to take specified action
15 to remedy any adverse consequence of that conduct,
16 including —
- 17 (a) an order requiring that person or a person involved in
18 the contravention to disclose, in the way and to the
19 persons specified in the order, such information as is so
20 specified, being information that the person has
21 possession of or access to; or
22 (b) an order requiring the person or a person involved in the
23 contravention to publish, at the person's own expense
24 and in the way specified in the order, an advertisement
25 in the terms specified in, or determined in accordance
26 with, the order.

27 **101. Injunctions generally**

- 28 (1) An injunction granted under this Division may be, or include, an
29 injunction restraining a person from carrying on a business of
30 supplying goods or services (whether or not as part of, or
31 incidental to, the carrying on of another business) —
- 32 (a) for a specified period; or
33 (b) except on specified terms and conditions.

- 1 (2) The power of the Court to grant an injunction under this
2 Division requiring a person to do an act or thing may be
3 exercised —
- 4 (a) whether or not it appears to the Court that the person
5 intends to refuse or fail again, or to continue to refuse or
6 fail, to do that act or thing; and
- 7 (b) whether or not the person has previously refused or
8 failed to do that act or thing; and
- 9 (c) whether or not there is an imminent danger of
10 substantial damage to any person if the first-mentioned
11 person refuses or fails to do that act or thing.

12 **102. Interim injunctions**

- 13 (1) An interim injunction may be granted under this Division
14 pending final determination of the application.
- 15 (2) Where the Minister or the Commissioner makes an application
16 to the Court for the grant of an injunction under this Division,
17 the Court must not require the applicant or any other person, as
18 a condition of granting an interim injunction, to give any
19 undertakings as to damages or costs.
- 20 (3) If, in a case to which subsection (2) does not apply, the Court
21 would, but for this subsection, require a person to give an
22 undertaking as to damages or costs, then —
- 23 (a) if the Minister gives the undertaking, the Court must
24 accept the undertaking by the Minister; and
- 25 (b) the Court must not require a further undertaking from
26 any other person.

27 **103. Final injunction by consent**

28 A final injunction may, by consent of the parties, be granted
29 under this Division without proof that proper grounds for the
30 injunction exist.

1 **104. Injunction may be rescinded or varied**

2 An injunction under this Division may be rescinded or varied at
3 any time.

4 **105. Other orders**

5 (1) Without limiting the generality of section 99 or 100, if, in a
6 proceeding instituted under this Part, or for an offence against
7 this Act, the Supreme Court or the District Court is satisfied that
8 a person has suffered, or is likely to suffer, loss or damage by
9 reason of conduct of another person that contravened a
10 provision of this Act, the Court may make such order or orders
11 as the Court thinks appropriate against the person who engaged
12 in the conduct or a person who was involved in the
13 contravention for the purpose of compensating the
14 first-mentioned person wholly or in part for the loss or damage
15 or of preventing or reducing the extent of the loss or damage.

16 (2) The Court may make an order under this section whether or not
17 an injunction under this Division or any other relief is granted or
18 any other order is made in the proceedings.

19 (3) Whether or not other proceedings have been instituted under
20 this Act in relation to a contravention, the Court may make
21 orders under this section —

22 (a) on the application of a person who has suffered, or is
23 likely to suffer, loss or damage by reason of the
24 contravention; or

25 (b) on the application of the Commissioner on behalf of one
26 or more such persons made with the written consent of
27 each such person.

28 (4) The orders that may be made under this section include the
29 following —

30 (a) an order declaring the whole or any part of a contract
31 made between the person who suffered, or is likely to
32 suffer, the loss or damage and the person who engaged
33 in the conduct or a person who was involved in the

- 1 contravention constituted by the conduct, or of a
2 collateral arrangement relating to such a contract, to be
3 void and, if the Court thinks fit, to have been void from
4 its beginning or at all times on and after such date,
5 before the date on which the order is made, as is
6 specified in the order;
- 7 (b) an order varying such a contract or arrangement in such
8 manner as is specified in the order and, if the court
9 thinks fit, declaring the contract or arrangement to have
10 had effect as so varied on and after such date, before the
11 date on which the order is made, as is so specified;
- 12 (c) an order refusing to enforce any or all of the provisions
13 of such a contract or arrangement;
- 14 (d) an order directing the person who engaged in the
15 conduct or a person who was involved in the
16 contravention constituted by the conduct to refund
17 money or return property to the person who suffered the
18 loss or damage;
- 19 (e) an order directing the person who engaged in the
20 conduct or a person who was involved in the
21 contravention constituted by the conduct to pay to the
22 person who suffered the loss or damage the amount of
23 the loss or damage;
- 24 (f) an order directing the person who engaged in the
25 conduct or a person who was involved in the
26 contravention constituted by the conduct, at the person's
27 own expense, to supply specified services to the person
28 who suffered, or is likely to suffer, the loss or damage;
- 29 (g) an order, in relation to an instrument creating or
30 transferring an interest in land, directing the person who
31 engaged in the conduct or a person who was involved in
32 the contravention constituted by the conduct to execute
33 an instrument that —
- 34 (i) varies, or has the effect of varying, the
35 first-mentioned instrument; or

1 (ii) terminates or otherwise affects, or has the effect
2 of terminating or otherwise affecting, the
3 operation or effect of the first-mentioned
4 instrument.

5 (5) The powers conferred on the Supreme Court and the District
6 Court under this section in relation to a contract or arrangement
7 do not affect any powers that any other court may have in
8 relation to the contract or arrangement in proceedings instituted
9 in that other court in respect of the contract or arrangement.

10 **106. Power of Supreme Court and District Court to prohibit**
11 **payment or transfer of money or other property**

12 (1) In this section, a person (the *first person*) is an associate of
13 another person if —

14 (a) the first person holds money or other property on behalf
15 of the other person; or

16 (b) if the other person is a body corporate, the first person is
17 a wholly-owned subsidiary (within the meaning of the
18 *Corporations Act 2001* (Commonwealth)) of the other
19 person.

20 (2) A Court may, on the application of the Minister or the
21 Commissioner, make an order or orders of the kind specified in
22 subsection (4) if —

23 (a) proceedings of a kind referred to in subsection (3) have
24 been taken against a person, or proceedings of a kind
25 referred to in subsection (3)(d) may be taken against a
26 person; and

27 (b) the Court is satisfied that it is necessary or desirable to
28 make the order or orders for the purpose of preserving
29 money or other property held by, or on behalf of, the
30 person if the person is liable or may become liable under
31 this Act —

32 (i) to pay moneys by way of a fine, damages,
33 compensation, refund or otherwise; or

- 1 (ii) to transfer, sell or return other property;
2 and
3 (c) the Court is satisfied that the making of the order or
4 orders will not unduly prejudice the rights and interests
5 of any other person.
- 6 (3) For the purposes of subsection (2)(a), the kinds of proceedings
7 taken against the person are as follows —
- 8 (a) proceedings in the Supreme Court or the District Court
9 against the person for an offence against this Act;
- 10 (b) an application under section 99 or 100 for an injunction
11 against the person in relation to a contravention of a
12 provision of this Act;
- 13 (c) an action under the *Australian Consumer Law (WA)*
14 section 236(1) against the person in relation to a
15 contravention of a provision of this Act;
- 16 (d) an application for an order under section 105 against a
17 person in relation to a contravention of a provision of
18 this Act.
- 19 (4) The Court may make the following orders under subsection (2)
20 in relation to money or other property held by, or on behalf of, a
21 person (the *respondent*) —
- 22 (a) an order prohibiting, either absolutely or subject to
23 conditions, a person who is indebted to the respondent,
24 or to an associate of the respondent, from making a
25 payment, in total or partial discharge of the debt —
- 26 (i) to the respondent; or
27 (ii) to another person at the direction or request of
28 the respondent;

- 1 (b) an order prohibiting, either absolutely or subject to
2 conditions, a person who is holding money or other
3 property on behalf of the respondent, or on behalf of an
4 associate of the respondent —
- 5 (i) from paying all or any of the money to the
6 respondent, or to another person at the direction
7 or request of the respondent; or
- 8 (ii) from transferring the other property to the
9 respondent, or to another person at the direction
10 or request of the respondent, or otherwise parting
11 with possession of that property;
- 12 (c) an order prohibiting, either absolutely or subject to
13 conditions, the taking or sending by any person of
14 money of the respondent, or of an associate of the
15 respondent, to a place outside the State;
- 16 (d) an order prohibiting, either absolutely or subject to
17 conditions, the taking, sending or transfer by any person
18 of other property of the respondent, or of an associate of
19 the respondent, to a place outside the State;
- 20 (e) if the respondent is a natural person, an order appointing
21 a receiver or trustee of the property, or of part of the
22 property, of the respondent with such powers as are
23 specified in the order.
- 24 (5) If the Court makes an order under this section, the order
25 operates —
- 26 (a) for a period specified in the order (which must not be
27 longer than 30 days if the application for the order was
28 made in the absence of the person against whom the
29 order is sought); or
- 30 (b) if proceedings in relation to which the order is made are
31 concluded before the end of that period, until the
32 conclusion of those proceedings.

- 1 (6) This section —
2 (a) has effect subject to the *Bankruptcy Act 1966*
3 (Commonwealth); and
4 (b) does not affect any other powers of the Supreme Court
5 or the District Court.

6 **107. Offence to contravene order under section 106**

7 A person commits an offence who contravenes or fails to
8 comply with an order by the Supreme Court or the District
9 Court under section 106 that is applicable to the person.

10 Penalty:

- 11 (a) in the case of a body corporate, a fine of \$1 100 000;
12 (b) in the case of a person other than a body corporate, a
13 fine of \$220 000.

14 **108. Finding in certain proceedings to be evidence**

15 (1) In an action against a person under the *Australian Consumer*
16 *Law (WA)* section 236(1) —

- 17 (a) a finding of a fact by a court to which subsection (3)
18 applies is prima facie evidence of that fact; and
19 (b) the finding may be proved by production of a document
20 under the seal of the court from which the finding
21 appears.

22 (2) In proceedings for an order against a person under
23 section 105(3) or the *Australian Consumer Law (WA)*
24 section 237(1), 238(1) or 239(1) —

- 25 (a) a finding of a fact by a court to which subsection (3)
26 applies is prima facie evidence of that fact; and
27 (b) the finding may be proved by production of a document
28 under the seal of the court from which the finding
29 appears.

- 1 (3) This subsection applies to a finding of fact by a court that is
2 made in proceedings under section 99 or 100, or the *Australian*
3 *Consumer Law (WA)* section 228, 232, 246, 247 or 248, or for
4 an offence against this Act, in which the person has been found
5 to have contravened, or to have been involved in a
6 contravention of, a provision of the *Australian Consumer Law*
7 (*WA*) Chapter 2, 3 or 4.

8 **Division 4 — Further provisions relating to proceedings**

9 **109. References to state of mind**

10 A reference in sections 110 and 111 to the state of mind of a
11 person includes a reference to —

- 12 (a) the knowledge, intention, opinion, belief or purpose of
13 the person; and
14 (b) the person's reasons for that intention, opinion, belief or
15 purpose.

16 **110. Conduct and state of mind of directors, employees or agents**
17 **of bodies corporate**

18 (1) Where, in a proceeding under this Part or the *Australian*
19 *Consumer Law (WA)* in respect of conduct that is engaged in by
20 a body corporate and to which this Part or the *Australian*
21 *Consumer Law (WA)* applies, it is necessary to establish the
22 state of mind of the body corporate, it is sufficient to show —

- 23 (a) that a director, employee or agent of the body corporate
24 engaged in that conduct within the scope of the person's
25 actual or apparent authority; and
26 (b) that the director, employee or agent had that state of
27 mind.

- 1 (2) Conduct of the kind set out in paragraph (a) or (b) that is
2 engaged in on behalf of a body corporate is to be treated, for the
3 purposes of this Act, as having been engaged in by the body
4 corporate as well —
- 5 (a) conduct by a director, employee or agent of the body
6 corporate within the scope of the person's actual or
7 apparent authority; or
- 8 (b) conduct by any other person at the direction or with the
9 consent or agreement (whether express or implied) of a
10 director, employee or agent of the body corporate, if the
11 giving of the direction, consent or agreement is within
12 the scope of the actual or apparent authority of the
13 director, employee or agent.

14 **111. Conduct of employees or agents of persons other than bodies**
15 **corporate**

- 16 (1) Where, in a proceeding under this Part or the *Australian*
17 *Consumer Law (WA)* in respect of conduct that is engaged in by
18 a person (the *principal*) other than a body corporate and to
19 which this Part or the *Australian Consumer Law (WA)* applies, it
20 is necessary to establish the state of mind of the principal, it is
21 sufficient to show —
- 22 (a) that an employee or agent of the principal engaged in
23 that conduct within the scope of the person's actual or
24 apparent authority; and
- 25 (b) that the employee or agent had that state of mind.
- 26 (2) Conduct of the kind set out in paragraph (a) or (b) that is
27 engaged in on behalf of a person (the *principal*) other than a
28 body corporate is to be treated, for the purposes of this Act, as
29 having been engaged in by the principal as well —
- 30 (a) conduct by an employee or agent of the principal within
31 the scope of the person's actual or apparent authority; or

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Part 7 Criminal and civil proceedings

Division 4 Further provisions relating to proceedings

s. 111

- 1 (b) conduct by any other person, at the direction or with the
2 consent or agreement (whether express or implied) of an
3 employee or agent of the principal, if the giving of the
4 direction, consent or agreement is within the scope of
5 the actual or apparent authority of the employee or
6 agent.

Part 8 — Miscellaneous

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112. Confidentiality of information officially obtained

(1) In this section —

personal information means information concerning the affairs of a person.

(2) A person must not, either directly or indirectly, make a record of, or divulge or communicate to any other person, any personal information obtained by him or her by reason of his or her office, position, employment or engagement under or for the purposes of this Act.

Penalty: a fine of \$20 000.

(3) Subsection (2) does not prohibit the recording, divulging or communicating of any personal information —

(a) with the consent of the person to whom the information relates, or each of them if there is more than one; or

(b) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information relates; or

(c) for the purposes of performing a function under or in connection with this Act; or

(d) for the purposes of legal proceedings arising out of the administration of this Act or another written law; or

(e) for the purpose of the investigation of any suspected offence or the conduct of proceedings against any person for any offence.

(4) Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

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- 1 **113. Commissioner can use or disclose information for any**
2 **purpose connected with legislation administered by**
3 **Department**
- 4 (1) This section applies to information that is obtained by a person
5 by reason of his or her office, position, employment or
6 engagement under or for the purposes of this Act.
- 7 (2) Without limiting section 112(3), the fact that information to
8 which this section applies is obtained in connection with the
9 performance of a particular function under this Act does not
10 prevent that information from being used or disclosed in
11 connection with the performance of —
- 12 (a) any other function under this Act; or
13 (b) any function under any other written law that is
14 administered through the Department.
- 15 **114. Protection from liability for wrongdoing**
- 16 (1) In this section —
- 17 (a) a reference to the doing of anything includes a reference
18 to an omission to do anything; and
19 (b) *liability* includes liability for defamation.
- 20 (2) A person is not liable for anything that the person has done, in
21 good faith, in the course of the operations of the Department or
22 the administration of this Act.
- 23 (3) The Crown is also relieved of any liability that it might
24 otherwise have had for another person having done anything as
25 described in subsection (2).
- 26 (4) The protection given by this section applies even though the
27 thing done as described in subsection (2) may have been
28 capable of being done whether or not this Act had been enacted.
- 29 (5) This section is subject to the *Chattel Securities Act 1987*
30 sections 24 and 25.

1 **115. Protection from liability for publishing official statements**

- 2 (1) In this section —
3 *liability* includes liability for defamation.
- 4 (2) This section applies to statements made or issued by a person in
5 the course of the operations of the Department or the
6 administration of this Act.
- 7 (3) A person is not liable for publishing, in good faith —
8 (a) a statement to which this section applies; or
9 (b) a fair report or summary of a statement to which this
10 section applies.
- 11 (4) Nothing in this section limits section 114.

12 **116. Regulations**

- 13 (1) The Governor may make regulations prescribing all matters that
14 are required or permitted by this Act to be prescribed, or are
15 necessary or convenient to be prescribed for giving effect to the
16 purposes of this Act.
- 17 (2) A regulation may create an offence punishable by a penalty of a
18 fine not exceeding \$2 000.
- 19 (3) Without limiting subsection (1), regulations made under that
20 subsection may —
21 (a) prescribe calling hours with respect to unsolicited
22 consumer agreements under the *Australian Consumer*
23 *Law (WA)* section 73;
24 (b) provide that the *Australian Consumer Law (WA)*
25 Part 3-2 Division 2 (unsolicited consumer agreements)
26 does not apply, or provisions of that Division that are
27 specified in the regulations do not apply, to or in relation
28 to agreements of a kind specified in the regulations.

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- 1 (4) Regulations made under subsection (3)(a) may alter the
2 operation of the *Australian Consumer Law (WA)* sections 73(1)
3 and 170(1).
- 4 (5) Regulations made under subsection (3)(b) may alter the
5 operation of the *Australian Consumer Law (WA)* Part 3-2
6 Division 2.

1 **Part 9 — Transitional provisions**

2 **117. Transitional regulations**

3 (1) If there is not sufficient provision in this Act for dealing with a
4 transitional matter, regulations under this Act may prescribe all
5 matters that are required or necessary or convenient to be
6 prescribed for dealing with the matter.

7 (2) In subsection (1) —

8 ***transitional matter*** —

9 (a) means a matter that needs to be dealt with for the
10 purpose of effecting the transition from the provisions of
11 the *Consumer Affairs Act 1971*, *Door to Door Trading*
12 *Act 1987* and *Fair Trading Act 1987* to the provisions of
13 this Act; and

14 (b) includes a saving or application matter.

15 (3) Regulations made under subsection (1) may provide that
16 specified provisions of a written law —

17 (a) do not apply to or in relation to any matter; or

18 (b) apply with specified modifications to or in relation to
19 any matter.

20 (4) If regulations under subsection (1) provide that a specified state
21 of affairs is taken to have existed, or not to have existed, on and
22 from a day that is earlier than the day on which the regulations
23 are published in the *Gazette* but not earlier than the day this
24 section comes into operation, the regulations have effect
25 according to their terms.

26 (5) In subsections (3) and (4) —

27 ***specified*** means specified or described in the regulations.

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- 1 (6) If regulations contain a provision referred to in subsection (4),
2 the provision does not operate so as —
- 3 (a) to affect, in a manner prejudicial to any person (other
4 than the State), the rights of that person existing before
5 the day of publication of those regulations; or
- 6 (b) to impose liabilities on any person (other than the State
7 or an authority of the State) in respect of anything done
8 or omitted to be done before the day of publication of
9 those regulations.
- 10 (7) Regulations made under subsection (1) in relation to a matter
11 referred to in subsection (3) must be made within such period as
12 is reasonably and practicably necessary to deal with a
13 transitional matter that arises as a result of the enactment of this
14 Act.

15 **118. Saving - Fair Trading (Product Information Standard)**
16 **Regulations 2005 Part 4 (builders plates for recreational**
17 **vessels)**

- 18 (1) The *Fair Trading (Product Information Standard)*
19 *Regulations 2005* (other than Parts 2 and 3) continue in force
20 after the commencement of this section as if those regulations
21 were an information standard under the *Australian Consumer*
22 *Law (WA)* Part 3-4, and may be enforced accordingly.
- 23 (2) The regulations continued in force by subsection (1) may be
24 repealed as if they were regulations made under section 116.

25 **119. Transitional provision: recall of defective goods**

26 If an order under the *Fair Trading Act 1987* section 54(2) has
27 effect immediately before the commencement of Part 10, that
28 order continues to have effect on and after that commencement
29 as if it were a recall notice issued under the *Australian*
30 *Consumer Law (WA)* section 122(1).

1 **120. Transitional provision: delegations**

2 (1) If a delegation under the *Consumer Affairs Act 1971* section 23
3 has effect immediately before the commencement of Part 10,
4 that delegation continues to have effect on and after that
5 commencement as if it had taken place under section 60.

6 (2) This section does not limit the *Interpretation Act 1984* Part V.

7 **121. Application of *Interpretation Act 1984* to expiring Acts**

8 To avoid doubt, the provisions of the *Interpretation Act 1984*
9 (for example, sections 16(1), 36 and 38) about the repeal of
10 written laws and the substitution of other written laws for those
11 so repealed apply to the *Consumer Affairs Act 1971*, *Door to*
12 *Door Trading Act 1987* and *Fair Trading Act 1987* as if, on the
13 commencement of Part 10, those Acts were repealed and
14 re-enacted by this Act.

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Part 10 — Amendments

Division 1 — *Consumer Affairs Act 1971* amended

122. Act amended

This Division amends the *Consumer Affairs Act 1971*.

123. Sections 2A to 2D inserted

After section 2 insert:

2A. Application of Act limited

- (1) This Act does not apply on or after the date on which the *Fair Trading Act 2010* Part 10 comes into force.
- (2) This section is subject to sections 2C and 2D.

2B. Expiry of Act

- (1) This Act expires on a day fixed by proclamation.
- (2) A proclamation cannot be made under subsection (1) unless the Commissioner has given the Minister a certificate signed by the Commissioner stating that the operation of this Act is no longer necessary.
- (3) In subsection (2) —
Commissioner has the meaning given in the *Fair Trading Act 2010* section 6.

2C. Act continues to apply for certain purposes

- (1) In this section —
commencement day means the day on which the *Fair Trading Act 2010* Part 10 comes into force.

- 1 (2) This Act continues to apply on and after the
2 commencement day only for the following purposes —
3 (a) the investigation and prosecution of offences
4 against this Act committed before the
5 commencement day;
6 (b) the continuation, settlement or discontinuation
7 of proceedings, under or in relation to this Act,
8 that were commenced, but not concluded,
9 before the commencement day.

10 **2D. Acts or omissions that occurred before the**
11 **commencement day**

- 12 (1) This Act continues to apply on and after the
13 commencement day (as defined in section 2C(1)) in
14 relation to acts or omissions that occurred before the
15 commencement day.
16 (2) Without limiting subsection (1), action may be taken
17 under this Act in relation to those acts or omissions.
18

19 **Division 2 — Door to Door Trading Act 1987 amended**

20 **124. Act amended**

21 This Division amends the *Door to Door Trading Act 1987*.

22 **125. Sections 3A to 3D inserted**

23 After section 2 insert:
24

25 **3A. Application of Act limited**

- 26 (1) This Act does not apply on or after the date on which
27 the *Fair Trading Act 2010* Part 10 comes into force.
28 (2) This section is subject to sections 3C and 3D.

- 1 **3B. Expiry of Act**
- 2 (1) This Act expires on a day fixed by proclamation.
- 3 (2) A proclamation cannot be made under subsection (1)
- 4 unless the Commissioner has given the Minister a
- 5 certificate signed by the Commissioner stating that the
- 6 operation of this Act is no longer necessary.
- 7 (3) In subsection (2) —
- 8 **Commissioner** has the meaning given in the *Fair*
- 9 *Trading Act 2010* section 6.
- 10 **3C. Act continues to apply for certain purposes**
- 11 (1) In this section —
- 12 **commencement day** means the day on which the *Fair*
- 13 *Trading Act 2010* Part 10 comes into force.
- 14 (2) This Act continues to apply on and after the
- 15 commencement day to contracts made before the
- 16 commencement day.
- 17 (3) This Act continues to apply on and after the
- 18 commencement day only for the following purposes —
- 19 (a) the investigation and prosecution of offences
- 20 against this Act committed before the
- 21 commencement day;
- 22 (b) the giving, withdrawal or payment of
- 23 infringement notices in respect of offences
- 24 against this Act committed before the
- 25 commencement day;
- 26 (c) the continuation, settlement or discontinuation
- 27 of proceedings, under or in relation to this Act,
- 28 that were commenced, but not concluded,
- 29 before the commencement day.
- 30 (4) To avoid doubt, the *Door to Door Trading*
- 31 *Regulations 1987* continue in force on and after the

1 commencement day for the purposes of subsection (3)
2 and section 3D and for no other purpose.

3 **3D. Acts or omissions that occurred before the**
4 **commencement day**

5 (1) This Act continues to apply on and after the
6 commencement day (as defined in section 3C(1)) in
7 relation to acts or omissions that occurred before the
8 commencement day.

9 (2) Without limiting subsection (1), action may be taken
10 under this Act in relation to those acts or omissions.
11

12 **Division 3 — *Fair Trading Act 1987* amended**

13 **126. Act amended**

14 This Division amends the *Fair Trading Act 1987*.

15 **127. Sections 3A to 3D inserted**

16 After section 2 insert:
17

18 **3A. Application of Act limited**

19 (1) This Act does not apply on or after the date on which
20 the *Fair Trading Act 2010* Part 10 comes into force.

21 (2) This section is subject to sections 3C and 3D.

22 **3B. Expiry of Act**

23 (1) This Act expires on a day fixed by proclamation.

24 (2) A proclamation cannot be made under subsection (1)
25 unless the Commissioner has given the Minister a
26 certificate signed by the Commissioner stating that the
27 operation of this Act is no longer necessary.

- 1 (3) In subsection (2) —
2 **Commissioner** has the meaning given in the *Fair*
3 *Trading Act 2010* section 6.
- 4 **3C. Act continues to apply for certain purposes**
- 5 (1) In this section —
6 **commencement day** means the day on which the *Fair*
7 *Trading Act 2010* Part 10 comes into force.
- 8 (2) This Act continues to apply on and after the
9 commencement day only for the following purposes —
- 10 (a) the investigation and prosecution of offences
11 against this Act committed before the
12 commencement day;
- 13 (b) the giving, withdrawal or payment of
14 infringement notices under section 73 in respect
15 of offences against this Act committed before
16 the commencement day;
- 17 (c) the continuation, settlement or discontinuation
18 of proceedings, under or in relation to this Act,
19 that were commenced, but not concluded,
20 before the commencement day.
- 21 (3) To avoid doubt, the *Fair Trading (Infringement*
22 *Notices) Regulations 2006* continue in force on and
23 after the commencement day for the purposes of
24 subsection (3) and section 3D and for no other purpose.
- 25 (4) Subsection (2)(c) is subject to the *Fair Trading*
26 *Act 2010* section 37.
- 27 **3D. Acts or omissions that occurred before the**
28 **commencement day**
- 29 (1) This Act continues to apply on and after the
30 commencement day (as defined in section 3C(1)) in

- 1 relation to acts or omissions that occurred before the
2 commencement day.
- 3 (2) Without limiting subsection (1), action may be taken
4 under this Act in relation to those acts or omissions.
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Schedule 1 — Acts that override this Act

[s. 15]

The following enactments are specified for the purpose of section 15(1)(a) —

Agricultural Products Act 1929

Agriculture and Related Resources Protection Act 1976

Dangerous Goods Safety Act 2004

Fertilizers Act 1977

Firearms Act 1973

Health Act 1911

Mines Safety and Inspection Act 1994

Motor Vehicle Dealers Act 1973

Occupational Safety and Health Act 1984

Plant Diseases Act 1914

Poisons Act 1964

Radiation Safety Act 1975

Road Traffic Act 1974

Seeds Act 1981

Spear-guns Control Act 1955

Trade Measurement Act 2006

Veterinary Chemical Control and Animal Feeding Stuffs Act 1976.



Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
access information	76(1)
acquire	6
application law	17(1)
assistant	68(1)
Australian Consumer Law	17(1)
Australian Consumer Law (WA)	6, 17(1)
Australian Consumer Law text	17(1)
authorised person	64
business	6
code of practice	44
Commissioner	6
consumer	6, 7(1)
consumer affairs authority	63(1)
Department	6
disposal	6
document	6
executive officer	56(1)
first person	107(1)
goods	6
instrument	17(1)
interest	6
Intergovernmental Agreement	17(1)
investigator	64
jurisdiction	17(1)
law	17(1)
liability	115(1), 116(1)
modifications	17(1)
motor vehicle	64
other jurisdiction	27
participating jurisdiction	17(1), 27
person A	96(4), 100(2)
person B	96(4)
personal information	113(1)
principal	112(1), (2)
provision	6
publish	63(1)
regulator	22
renewal day	39(2)
respondent	107(4)

Defined Terms

re-supply	6
services	6, 8(1)
specified	118(5)
specified person	76(1)
State	17(1)
supplier	6
supply	6
Territory.....	17(1)
this jurisdiction	17(1)
trade or commerce	6
transitional matter	118(2)
variation day	39(2)