



Trade Practices Revision Act 1986

No. 17 of 1986

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Trade Practices Revision Act 1986

No. 17 of 1986

An Act to make various amendments of the law relating to trade practices

[Assented to 13 May 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Trade Practices Revision Act 1986*.

Commencement

2. (1) Sections 1 and 2 and sub-sections 49 (1), 51 (1) and 64 (1) shall come into operation on the day on which this Act receives the Royal Assent.

- (2) Part III shall be deemed to have come into operation on 25 October 1984.

- (3) Sections 31 and 35 shall come into operation on 1 July 1986.

(4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

PART II—AMENDMENTS OF THE TRADE PRACTICES ACT 1974

Principal Act

3. The *Trade Practices Act 1974*¹ is in this Part referred to as the Principal Act.

Interpretation

4. Section 4 of the Principal Act is amended—
- (a) by omitting from sub-section (1) the definition of “special price”;
and
 - (b) by omitting sub-section (5).

Consumers

5. Section 4B of the Principal Act is amended—
- (a) by adding at the end of sub-paragraph (1) (a) (ii) “or the goods consisted of a commercial road vehicle”;
 - (b) by omitting from paragraph (2) (a) “\$15,000” and substituting “\$40,000”; and
 - (c) by adding at the end the following sub-section:
“(4) In this section, ‘commercial road vehicle’ means a vehicle or trailer acquired for use principally in the transport of goods on public roads.”.

Exclusionary provisions

6. Section 4D of the Principal Act is amended by inserting in sub-paragraphs (1) (b) (i) and (ii) “or classes of persons” after “particular persons”.

Severability

7. Section 4L of the Principal Act is amended by inserting “or 87A” after “section 87”.

Extended application of Parts IV and V

8. Section 5 of the Principal Act is amended by adding at the end the following sub-sections:

“(3) Where a claim under section 82 is made in a proceeding, a person is not entitled to rely at a hearing in respect of that proceeding on conduct to which a provision of this Act extends by virtue of sub-section (1) or (2) of this section except with the consent in writing of the Minister.

“(4) A person other than the Minister or the Commission is not entitled to make an application to the Court for an order under sub-section

87 (1) or (1A) in a proceeding in respect of conduct to which a provision of this Act extends by virtue of sub-section (1) or (2) of this section except with the consent in writing of the Minister.

“(5) The Minister shall give a consent under sub-section (3) or (4) in respect of a proceeding unless, in the opinion of the Minister—

- (a) the law of the country in which the conduct concerned was engaged in required or specifically authorised the engaging in of the conduct; and
- (b) it is not in the national interest that the consent be given.”.

Additional operation of Act

9. Section 6 of the Principal Act is amended—

- (a) by omitting paragraph (2) (f);
- (b) by omitting from paragraph (2) (h) “, (f)”;
- (c) by inserting in paragraph (2) (h) “, 50A” after “50”;
- (d) by omitting from paragraph (2) (h) “or sub-section 88 (9)”;
- (e) by omitting sub-section (3) and substituting the following sub-section:

“(3) In addition to the effect that this Act, other than Part X, has as provided by sub-section (2), Divisions 1 and 1A of Part V have, by force of this sub-section, the effect they would have if—

- (a) those Divisions (other than section 55) were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct involves the use of postal, telegraphic or telephonic services or takes place in a radio or television broadcast; and
 - (b) a reference in those Divisions to a corporation included a reference to a person not being a corporation.”; and
- (f) by adding at the end the following sub-sections:

“(4) In addition to the effect that this Act, other than Part X, has as provided by sub-sections (2) and (3), Division 1 of Part V (other than sections 53A, 55 and 61) also has, by force of this sub-section, the effect it would have if—

- (a) that Division were, by express provision, confined in its operation to engaging in conduct in a Territory; and
- (b) a reference in that Division to a thing done by a corporation in trade or commerce included a reference to a thing done in the course of the promotional activities of a professional person.

“(5) In the application of section 73 in relation to a supplier who is a natural person, that section has effect as if there were substituted for paragraph 73 (6) (a) the following paragraph:

- (a) the supplier had died or is an undischarged bankrupt or a person whose affairs are being dealt with under Part X of the *Bankruptcy Act 1966*; or’ ”.

Acting Chairman

10. Section 11 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “, or is expected to be,” after “there is”; and
- (b) by inserting after sub-section (1) the following sub-section:
“(1A) A person appointed under sub-section (1) to act during a vacancy shall not continue so to act for more than 12 months.”.

11. Section 17 of the Principal Act is repealed and the following section is substituted:

Disclosure of interests by members

“17. (1) Where a member of the Commission other than the Chairman is taking part, or is to take part, in the determination of a matter before the Commission and the member has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the determination of the matter—

- (a) the member shall disclose the interest to the Chairman; and
- (b) the member shall not take part, or continue to take part, in the determination of the matter if—
 - (i) the Chairman gives a direction under paragraph (2) (a) in relation to the matter; or
 - (ii) all of the persons concerned in the matter do not consent to the member taking part in the determination of the matter.

“(2) Where the Chairman becomes aware that a member of the Commission is taking part, or is to take part, in the determination of a matter and that the member has in relation to the determination of the matter such an interest—

- (a) if the Chairman considers that the member should not take part, or should not continue to take part, in the determination of the matter—the Chairman shall give a direction to the member accordingly; or
- (b) in any other case—the Chairman shall cause the interest of the member to be disclosed to the persons concerned in the matter.

“(3) The Chairman shall give written notice to the Minister of all pecuniary interests that the Chairman has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.

“(4) In this section, ‘member of the Commission’ includes an associate member of the Commission.”.

Meetings of Commission

12. Section 18 of the Principal Act is amended by adding at the end the following sub-sections:

“(7) If the Commission so determines, a member or members may participate in, and form part of a quorum at, a meeting of the Commission

or a Division of the Commission by means of any of the following methods of communication:

- (a) telephone;
- (b) closed circuit television;
- (c) another method of communication determined by the Commission.

“(8) A determination made by the Commission under sub-section (7) may be made in respect of a particular meeting or meetings of the Commission or a Division of the Commission or in respect of all meetings of the Commission or a Division of the Commission.”.

Commission to comply with directions of Minister and requirements of the Parliament

13. Section 29 of the Principal Act is amended by omitting from paragraph (1) (b) “not including, except as mentioned in paragraph (a), functions or powers related directly or indirectly to Part VII” and substituting “not being directions relating to the performance of its functions or the exercise of its powers under section 65J, 65K, 65M or 65N or Part VII in relation to individual cases”.

14. Section 40 of the Principal Act is repealed and the following section is substituted:

Disclosure of interests by members of Tribunal

“40. (1) Where a member of the Tribunal is, or is to be, a member of a Division of the Tribunal in any proceedings and the member has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the proceedings—

- (a) the member shall disclose the interest to the President; and
- (b) the member shall not take part, or continue to take part, in the proceedings if—
 - (i) the President gives a direction under paragraph (2) (a) in relation to the proceedings; or
 - (ii) all of the persons concerned in the proceedings do not consent to the member taking part in the proceedings.

“(2) Where the President becomes aware that a member of the Tribunal is, or is to be, a member of a Division of the Tribunal in any proceedings and that the member has in relation to the proceedings such an interest—

- (a) if the President considers that the member should not take part, or should not continue to take part, in the proceedings—the President shall give a direction to the member accordingly; or
- (b) in any other case—the President shall cause the interest of the member to be disclosed to the persons concerned in the proceedings.

“(3) In this section—

- (a) a reference to proceedings shall be read as including a reference to proceedings by way of an inquiry by the Tribunal under this Act; and
- (b) a reference to a person concerned in proceedings, being an inquiry conducted by the Tribunal under section 132, shall be read as a reference to a person entitled, or granted leave, to be represented in the inquiry.”.

Contracts, arrangements or understandings restricting dealings or affecting competition

15. Section 45 of the Principal Act is amended by omitting from sub-section (6) “of sub-section 88 (8)” (wherever occurring) and substituting “of sub-section 47 (10) or 88 (8)”.

Covenants in relation to prices

16. Section 45C of the Principal Act is amended by omitting from sub-section (1) “a market” and substituting “any market”.

Misuse of market power

17. Section 46 of the Principal Act is amended—

- (a) by omitting sub-sections (1), (2), (3) and (4) and substituting the following sub-sections:

“(1) A corporation that has a substantial degree of power in a market shall not take advantage of that power for the purpose of—

- (a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market;
- (b) preventing the entry of a person into that or any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

“(2) If—

- (a) a body corporate that is related to a corporation has, or 2 or more bodies corporate each of which is related to the one corporation together have, a substantial degree of power in a market; or
- (b) a corporation and a body corporate that is, or a corporation and 2 or more bodies corporate each of which is, related to that corporation, together have a substantial degree of power in a market,

the corporation shall be taken for the purposes of this section to have a substantial degree of power in that market.

“(3) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the Court shall have regard to the extent to which the

conduct of the body corporate or of any of those bodies corporate in that market is constrained by the conduct of—

- (a) competitors, or potential competitors, of the body corporate or of any of those bodies corporate in that market; or
- (b) persons to whom or from whom the body corporate or any of those bodies corporate supplies or acquires goods or services in that market.

“(4) In this section—

- (a) a reference to power is a reference to market power;
- (b) a reference to a market is a reference to a market for goods or services; and
- (c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.”; and

- (b) by adding at the end the following sub-section:

“(7) Without in any way limiting the manner in which the purpose of a person may be established for the purposes of any other provision of this Act, a corporation may be taken to have taken advantage of its power for a purpose referred to in sub-section (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the corporation or of any other person or from other relevant circumstances.”.

Mergers and other acquisitions

18. Section 50 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “control or” (wherever occurring);
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) A person other than a corporation shall not acquire, directly or indirectly, any shares in the capital, or any assets, of a corporation if—

- (a) as a result of the acquisition, the person would be, or be likely to be, in a position to dominate a market for goods or services; or
- (b) in a case where the person is in a position to dominate a market for goods or services—
 - (i) the corporation or a body corporate that is related to the corporation is, or is likely to be, a competitor of the person; and
 - (ii) the acquisition would, or would be likely to, substantially strengthen the power of the person to dominate that market.”;

- (c) by inserting in sub-section (2) “, or associated with,” after “related to” (wherever occurring);
- (d) by omitting from sub-section (2) “control or” (wherever occurring);

- (e) by inserting after sub-section (2) the following sub-sections:

“(2A) For the purposes of this section, a body corporate shall be taken to be associated with another body corporate (not being another body corporate that is related to the first-mentioned body corporate) if one of those bodies corporate (in this sub-section referred to as the ‘dominant body corporate’) is, either alone or together with another body corporate that is, or other bodies corporate each of which is, related to the dominant body corporate, or associated with the dominant body corporate by another application or other applications of this sub-section, in a position to exert, whether directly or indirectly, a substantial degree of influence over the activities in a market of the other body corporate.

“(2B) For the purposes of sub-section (2A), the fact that a body corporate is in a position to exert a substantial degree of influence over the activities of another body corporate by reason only that—

(a) those bodies corporate are in competition in the same market;
or

(b) one of those bodies corporate supplies goods or services to the other,

shall be disregarded.”;

- (f) by omitting from paragraph (3) (a) “or in a State” and substituting “, in a State or in a Territory”;
- (g) by omitting from paragraph (3) (b) “controlling or” (wherever occurring); and
- (h) by omitting from sub-section (4) “corporation” (wherever occurring) and substituting “person”.

19. After section 50 of the Principal Act the following section is inserted:

Acquisitions outside Australia

“50A. (1) Where a person acquires, outside Australia, otherwise than by reason of the application of paragraph (8) (b), a controlling interest in any body corporate and, by reason, but not necessarily by reason only, of the application of paragraph (8) (b) in relation to the controlling interest, obtains a controlling interest in a corporation or each of 2 or more corporations, the Tribunal may, on the application of the Minister, the Commission or any other person, if the Tribunal is satisfied that—

- (a) as a result of the obtaining by the person of the last-mentioned controlling interest, the person would be, or be likely to be, in a position to dominate a substantial market for goods or services in Australia, in a State or in a Territory;
- (b) in a case where the person is in a position to dominate such a market—
- (i) the body corporate or another body corporate that is related to that body corporate is, or is likely to be, a competitor of

the person or of a body corporate that is related to the person; and

(ii) the acquisition would, or would be likely to, substantially strengthen the power of the person to dominate that market; and

(c) the obtaining by the person of the last-mentioned controlling interest would not, in all the circumstances, result, or be likely to result, in such a benefit to the public that the obtaining of that controlling interest should be disregarded for the purposes of this section,

make a declaration accordingly.

“(2) Where an application under sub-section (1) is made—

(a) the Tribunal shall give to—

(i) each corporation in relation to which the application relates; and

(ii) the Minister and the Commission,

a notice in writing stating that the application has been made; and

(b) the persons referred to in paragraph (a) and, if the application was made by another person, that other person are entitled to appear, or be represented, at the proceedings following the application.

“(3) An application under sub-section (1) may be made at any time within 12 months after the date of the acquisition referred to in that sub-section in relation to which the application is made.

“(4) The Tribunal may, on the application of the Minister, the Commission or any other person, or of its own motion, revoke a declaration made under sub-section (1).

“(5) The Tribunal shall state in writing its reasons for making, refusing to make or revoking a declaration under sub-section (1).

“(6) After the end of 6 months after a declaration is made under sub-section (1) in relation to the obtaining of a controlling interest in a corporation or 2 or more corporations by a person or, if the person, before the end of that period of 6 months, makes an application to a presidential member for an extension of that period, after the end of such further period (not exceeding 6 months) as the presidential member allows, the corporation or each of the corporations, as the case may be, shall not, while the declaration remains in force, carry on business in the market to which the declaration relates.

“(7) Sub-section (1) does not apply in relation to an acquisition referred to in that sub-section if sub-section 50 (1) or (1A) applies in relation to that acquisition.

“(8) For the purposes of this section—

(a) a person shall be taken to hold a controlling interest in a body corporate if the body corporate is, or, if the person were a body corporate, would be, a subsidiary of the person (otherwise than by

- reason of the application of paragraph 4A (1) (b)); and
- (b) where a person holds a controlling interest (including a controlling interest held by virtue of another application or other applications of this paragraph) in a body corporate and that body corporate—
- (i) controls the composition of the board of directors of another body corporate;
 - (ii) is in a position to cast, or control the casting of, any votes that might be cast at a general meeting of another body corporate; or
 - (iii) holds shares in the capital of another body corporate,
- the person shall be deemed (but not to the exclusion of any other person) to control the composition of that board, to be in a position to cast, or control the casting of, those votes or to hold those shares, as the case may be.”.

Exceptions

20. Section 51 of the Principal Act is amended by omitting from paragraph (2) (a) “any provision of a contract, arrangement or understanding to the extent that the provision” and substituting “the making of a contract or arrangement or the entering into of an understanding, or to any provision of a contract, arrangement or understanding, to the extent that the contract, arrangement or understanding, or the provision,”.

21. After section 51 of the Principal Act the following section is inserted in Division 1 of Part V:

Interpretation

“51A. (1) For the purposes of this Division, where a corporation makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the corporation does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

“(2) For the purposes of the application of sub-section (1) in relation to a proceeding concerning a representation made by a corporation with respect to any future matter, the corporation shall, unless it adduces evidence to the contrary, be deemed not to have had reasonable grounds for making the representation.

“(3) Sub-section (1) shall be deemed not to limit by implication the meaning of a reference in this Division to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.”.

22. After section 52 of the Principal Act the following section is inserted:

Unconscionable conduct

“52A. (1) A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

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“(2) Without in any way limiting the matters to which the Court may have regard for the purpose of determining whether a corporation has contravened sub-section (1) in connection with the supply or possible supply of goods or services to a person (in this sub-section referred to as the ‘consumer’), the Court may have regard to—

- (a) the relative strengths of the bargaining positions of the corporation and the consumer;
- (b) whether, as a result of conduct engaged in by the corporation, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the corporation;
- (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the corporation or a person acting on behalf of the corporation in relation to the supply or possible supply of the goods or services; and
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the corporation.

“(3) A corporation shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that the corporation institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

“(4) For the purpose of determining whether a corporation has contravened sub-section (1) in connection with the supply or possible supply of goods or services to a person—

- (a) the Court shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) the Court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

“(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

“(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.”.

False or misleading representations

23. Section 53 of the Principal Act is amended—

- (a) by inserting after paragraph (b) the following paragraph:

“(bb) falsely represent that a particular person has agreed to acquire goods or services;”;
- (b) by omitting from paragraphs (e), (f) and (g) “statement” and substituting “representation”; and
- (c) by inserting after paragraph (e) the following paragraphs:

“(ea) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;

“(eb) make a false or misleading representation concerning the place of origin of goods;”.

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

24. Section 53A of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “statement” and substituting “representation”; and
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) A corporation shall not use physical force or undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.”.

25. Section 53B of the Principal Act is repealed and the following sections are substituted:

Misleading conduct in relation to employment

“53B. A corporation shall not, in relation to employment that is to be, or may be, offered by the corporation or by another person, engage in conduct that is liable to mislead persons seeking the employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment.

Cash price to be stated in certain circumstances

“53C. A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the corporation also specifies the cash price for the goods or services.”.

Bait advertising

26. Section 56 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

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

(b) by omitting from sub-section (2) “special price” and substituting “specified price”.

27. (1) Section 58 of the Principal Act is repealed and the following section is substituted:

Accepting payment without intending or being able to supply as ordered

“58. A corporation shall not, in trade or commerce, accept payment or other consideration for goods or services where, at the time of the acceptance—

(a) the corporation intends—

(i) not to supply the goods or services; or

(ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted; or

(b) there are reasonable grounds, of which the corporation is aware or ought reasonably to be aware, for believing that the corporation will not be able to supply the goods or services within the period specified by the corporation or, if no period is specified, within a reasonable time.”.

(2) The amendment made by sub-section (1) applies only in relation to contracts made after the commencement of this section.

Misleading representations about certain business activities

28. Section 59 of the Principal Act is amended—

(a) by omitting from sub-section (1) “statement” and substituting “representation”;

(b) by inserting in sub-section (1) “or from” after “at”;

(c) by inserting in sub-section (2) “the performance by the persons concerned of work, or” after “business activity requiring”; and

(d) by omitting from sub-section (2) “statement” and substituting “representation”.

29. Section 60 of the Principal Act is repealed and the following section is substituted:

Harassment and coercion

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

Pyramid selling

30. Section 61 of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-section:

“(2A) A corporation also contravenes this section if the corporation promotes, or takes part in the promotion of, a scheme under which—

(a) a payment is to be made by a person who participates, or who has applied or been invited to participate, in the scheme to or for the benefit of the corporation or another person who takes part in the promotion of the scheme or to or for the benefit of another person who participates in the scheme; and

(b) the inducement for making the payment is the holding out to the person who makes or is to make the payment the prospect of receiving payments from other persons who may participate in the scheme.”;

(b) by omitting from sub-section (3) “or (2)” and substituting “, (2) or (2A)”;

(c) by omitting paragraph (4) (b) and substituting the following paragraph:

“(b) the goods or services so provided are to be supplied to or for other persons under transactions arranged or effected by persons who participate in the scheme (each of whom is in this section referred to as a ‘participant’), being persons not all of whom are promoters.”; and

(d) by omitting paragraph (5) (a) and substituting the following paragraph:

“(a) a scheme shall be taken to include the element referred to in paragraph (4) (b) whether a participant who is not a promoter acts in relation to a transaction referred to in that paragraph in the capacity of a servant or agent of the promoter or of one of the promoters or in any other capacity;”.

Repeal of sections 62, 63 and 63AA

31. (1) Sections 62, 63 and 63AA of the Principal Act are repealed.

(2) Notwithstanding the repeal effected by sub-section (1), a prescribed consumer product safety standard, a prescribed consumer product information standard or a notice declaring goods to be unsafe goods in force under section 62 or 63 of the Principal Act immediately before the commencement of this section shall continue in force after that commencement as if that standard had been prescribed or declared, or that notice had been published, under section 65C or 65D, as the case requires, of the Principal Act as amended by this Act.

Unsolicited credit and debit cards

32. Section 63A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “credit” (first occurring) and substituting “prescribed”;
- (b) by omitting from paragraph (1)(b) “credit card” (wherever occurring) and substituting “prescribed card of the same kind”;
- (c) by omitting from sub-section (2) “credit” and substituting “prescribed”; and
- (d) by inserting after the definition of “credit card” in sub-section (3) the following definitions:

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

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

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

33. (1) Section 64 of the Principal Act is amended by omitting sub-sections (2) and (2B).

(2) The amendment made by sub-section (1) applies only in relation to the supply of goods or services after the commencement of this section.

Liability of recipient of unsolicited goods

34. (1) Section 65 of the Principal Act is amended by omitting sub-section (6).

(2) The amendment made by sub-section (1) applies only in relation to the supply of goods after the commencement of this section.

35. After Division 1 of Part V of the Principal Act the following Division is inserted:

“Division 1A—Product Safety and Product Information

Warning notice to public

“65B. (1) The Minister may publish a notice in writing in the *Gazette* containing one or both of the following:

- (a) a statement that goods of a kind specified in the notice are under investigation to determine whether the goods will or may cause injury to any person;
- (b) a warning of possible risks involved in the use of goods of a kind specified in the notice.

“(2) Where—

- (a) an investigation referred to in sub-section (1) has been completed; and
- (b) neither a notice under section 65J inviting a supplier to notify the Commission whether the supplier wishes the Commission to hold a conference nor a notice under section 65L has been published in relation to the goods since the commencement of the investigation,

the Minister shall, as soon as practicable after the investigation has been completed, by notice in writing published in the *Gazette*, announce the results of the investigation, and may announce in the notice whether, and if so, what action is proposed to be taken in relation to the goods under this Division.

Product safety standards and unsafe goods

“65C. (1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind—

- (a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;
- (b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods; or
- (c) in respect of which there is in force a notice under this section imposing a permanent ban on the goods.

“(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as to—

- (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;
- (b) testing of the goods during, or after the completion of, manufacture or processing; and
- (c) the form and content of markings, warnings or instructions to accompany the goods,

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

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“(3) A corporation shall not export goods the supply in Australia of which is prohibited by sub-section (1) unless the Minister has, by notice in writing given to the corporation, approved the export of those goods.

“(4) Where the Minister approves the export of goods under sub-section (3), the Minister shall cause a statement setting out particulars of the approval to be laid before each House of the Parliament within 7 sitting days of that House after the approval is given.

“(5) Subject to section 65J, where it appears to the Minister that goods of a particular kind will or may cause injury to any person, the Minister may, by notice in writing published in the *Gazette*, declare the goods to be unsafe goods.

“(6) A notice under sub-section (5) remains in force until the end of 18 months after the date of publication of the notice in the *Gazette* unless it is revoked before the end of that period.

“(7) Subject to section 65J, where—

- (a) a period of 18 months has elapsed after the date of publication of a notice in the *Gazette* declaring goods to be unsafe goods; and
- (b) there is not a prescribed consumer product safety standard in respect of the goods,

the Minister may, by notice in writing published in the *Gazette*, impose a permanent ban on the goods.

“(8) Where—

- (a) the supplying of goods by a corporation constitutes a contravention of this section by reason that the goods do not comply with a prescribed consumer product safety standard;
- (b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information in relation to the goods; and
- (c) the person would not have suffered the loss or damage if the goods had complied with that standard,

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

“(9) Where—

- (a) the supplying of goods by a corporation constitutes a contravention of this section by reason that there is in force a notice under this section declaring the goods to be unsafe goods or imposing a permanent ban on the goods; and
- (b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods,

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

Product information standards

“65D. (1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless the corporation has complied with that standard in relation to those goods.

“(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product information standard consisting of such requirements as to—

- (a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) the form and manner in which that information is to be disclosed on or with the goods,

as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.

“(3) Sub-section (1) does not apply to goods that are intended to be used outside Australia.

“(4) If there is applied to goods—

- (a) a statement that the goods are for export only; or
- (b) a statement indicating by the use of words authorised by the regulations to be used for the purposes of this sub-section that the goods are intended to be used outside Australia,

it shall be presumed for the purposes of this section, unless the contrary is established, that the goods are intended to be so used.

“(5) For the purposes of sub-section (4), a statement shall be deemed to be applied to goods if—

- (a) the statement is woven in, impressed on, worked into or annexed or affixed to the goods; or
- (b) the statement is applied to a covering, label, reel or thing in or with which the goods are supplied.

“(6)^e A reference in sub-section (5) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and a reference in that sub-section to a label includes a reference to a band or ticket.

“(7) Where—

- (a) the supplying of goods by a corporation constitutes a contravention of this section by reason that the corporation has not complied with a prescribed consumer product information standard in relation to the goods;
- (b) a person suffers loss or damage by reason of not having particular information in relation to the goods; and

- (c) the person would not have suffered the loss or damage if the corporation had complied with that standard in relation to the goods,

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

Power of Minister to declare product safety or information standards

“65E. (1) The Minister may, by notice in writing published in the *Gazette*, declare that, in respect of goods of a kind specified in the notice, a particular standard, or a particular part of a standard, prepared or approved by the Standards Association of Australia or by a prescribed association or body, or such a standard or part of a standard with additions or variations specified in the notice, is a consumer product safety standard for the purposes of section 65C or a consumer product information standard for the purposes of section 65D.

“(2) Where a notice is so published, the standard, or the part of the standard, referred to in the notice, or the standard or part of a standard so referred to with additions or variations specified in the notice, as the case may be, shall be deemed to be a prescribed consumer product safety standard for the purposes of section 65C or a prescribed consumer product information standard for the purposes of section 65D, as the case may be.

“(3) Sub-section (1) does not authorise the publication of a notice in relation to goods of a particular kind if the standard or the part of the standard referred to in the notice, or the standard or the part of the standard so referred to with additions and variations specified in the notice, is inconsistent with a standard prescribed in relation to goods of that kind by regulations made for the purposes of section 65C or 65D.

Compulsory product recall

“65F. (1) Subject to section 65J, where—

- (a) a corporation (in this section referred to as the ‘supplier’), in trade or commerce, supplies on or after 1 July 1986 goods that are intended to be used, or are of a kind likely to be used, by a consumer;
- (b) one of the following sub-paragraphs applies:
- (i) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person;
 - (ii) the goods are goods of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard;
 - (iii) the goods are goods of a kind in relation to which there is in force a notice under sub-section 65C (5) or (7); and
- (c) it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods causing injury to any person,

the Minister may, by notice in writing published in the *Gazette*, require the supplier to do one or more of the following:

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- (d) take action within the period specified in the notice to recall the goods;
- (e) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following:
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods identified in the notice;
 - (ii) the circumstances, being circumstances identified in the notice, in which the use of the goods is dangerous; or
 - (iii) procedures for disposing of the goods specified in the notice;
- (f) inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) except where the notice identifies a dangerous characteristic of the goods—repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods, within the period specified in the notice.

“(2) Notwithstanding sub-paragraph (1) (f) (iii), where the Minister, in a notice under sub-section (1), requires the supplier to take action under paragraph (1) (f), the Minister may specify in the notice that, where—

- (a) the supplier chooses to refund the price of the goods; and
- (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier,

the amount of a refund may be reduced by the supplier by an amount attributable to the use which a person has had of the goods, being an amount calculated in a manner specified in the notice.

“(3) The Minister may, by notice in writing published in the *Gazette*, give directions as to the manner in which the supplier is to carry out a recall of goods required under sub-section (1).

“(4) Where the supplier, under sub-section (1), undertakes to repair goods, the supplier shall cause the goods to be repaired so that—

- (a) any defect in the goods identified in the notice under sub-section (1) is remedied; and
- (b) if there is a prescribed consumer product safety standard in respect of the goods—the goods comply with that standard.

“(5) Where the supplier, under sub-section (1), undertakes to replace goods, the supplier shall replace the goods with like goods which—

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- (a) if a defect in, or a dangerous characteristic of, the first-mentioned goods was identified in the notice under sub-section (1)—do not contain that defect or have that characteristic; and
- (b) if there is a prescribed consumer product safety standard in respect of goods of that kind—comply with that standard.

“(6) Where the supplier, under sub-section (1), undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

“(7) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under paragraph (1) (d), a person who has supplied or supplies any of the recalled goods to another person outside Australia shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person—

- (a) stating that the goods are subject to recall;
- (b) if the goods contain a defect or have a dangerous characteristic—setting out the nature of that defect or characteristic; and
- (c) if the goods do not comply with a prescribed consumer product safety standard in respect of the goods—setting out the nature of the non-compliance.

“(8) Where a person is required under sub-section (7) to give a notice in writing to another person, the first-mentioned person shall, within 10 days after giving that notice, provide the Minister with a copy of that notice.

“(9) A person who contravenes sub-section (8) is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.

Compliance with product recall order

“65G. Where a notice under sub-section 65F (1) is in force in relation to a corporation, the corporation—

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

Loss or damage caused by contravention of product recall order

“65H. Where—

- (a) a corporation contravenes section 65G by—
 - (i) supplying goods of a kind in relation to which a notice under sub-section 65F (1) is in force; or
 - (ii) failing to comply with the requirements of such a notice; and
- (b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods,

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods, or by the failure of the corporation to comply with the notice, as the case may be.

Opportunity for conference to be afforded before certain powers exercised

“65J. (1) Subject to section 65L, where the Minister proposes to publish a notice under sub-section 65C (5) or (7) or 65F (1) in relation to goods of a particular kind, the Minister shall prepare—

- (a) a draft of the notice proposed to be published; and
- (b) a summary of the reasons for the proposed publication of the notice, and shall, by notice in writing published in the *Gazette*, invite any person (in this section referred to as a ‘supplier’) who supplied or proposes to supply goods of that kind to notify the Commission, within the period (in this section referred to as the ‘relevant period’) of 10 days commencing on the day specified in the last-mentioned notice, being not earlier than the day on which that notice is published in the *Gazette*, whether the supplier wishes the Commission to hold a conference in relation to the proposed publication of the first-mentioned notice.

“(2) A notice published under sub-section (1) shall set out a copy of the draft notice under sub-section 65C (5) or (7) or 65F (1) and a copy of the summary of the reasons for the proposed publication of the notice.

“(3) If no supplier notifies the Commission in writing within the relevant period or within such longer period as the Commission allows that the supplier wishes the Commission to hold a conference in relation to the proposed publication of the notice under sub-section 65C (5) or (7) or 65F (1), the Commission shall notify the Minister accordingly.

“(4) If a supplier notifies the Commission in writing within the relevant period or within such longer period as the Commission allows that the supplier wishes the Commission to hold a conference in relation to the proposed publication of a notice under sub-section 65C (5) or (7) or 65F (1), the Commission shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the conference, and give notice of the day, time and place so appointed to the Minister and to each supplier who so notified the Commission.

“(5) At a conference under this section—

- (a) the Commission shall be represented by a member or members nominated by the Chairman;
- (b) each supplier who notified the Commission in accordance with sub-section (4) is entitled to be present or to be represented;
- (c) any other person whose presence at the conference is considered by the Commission to be appropriate is entitled to be present or to be represented;
- (d) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present; and
- (e) the procedure to be followed shall be as determined by the Commission.

“(6) The Commission shall cause a record of proceedings at a conference under this section to be kept.

“(7) The Commission shall, as far as is practicable, ensure that each person who, in accordance with sub-section (5), is entitled to be present or who is representing such a person at a conference is given a reasonable opportunity at the conference to present his or her case and, in particular, to inspect any documents which the Commission proposes to consider for the purpose of making a recommendation after the conclusion of the conference, other than any document that contains particulars of a secret formula or process, and to make submissions in relation to those documents.

Recommendation after conclusion of conference

“65K. As soon as is practicable after the conclusion of a conference in relation to the proposed publication of a notice under sub-section 65C (5) or (7) or 65F (1), the Commission shall—

- (a) by notice in writing given to the Minister, recommend that—
 - (i) the Minister publish the first-mentioned notice in the same terms as the draft notice referred to in sub-section 65J (1);
 - (ii) the Minister publish the first-mentioned notice with such modifications as are specified by the Commission; or
 - (iii) the Minister not publish the first-mentioned notice; and
- (b) cause a copy of the notice in writing given to the Minister to be given to each supplier who was present or represented at the conference.

Exception in case of danger to public

“65L. (1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister may, by notice in writing published in the *Gazette*, certify that a notice in relation to the goods under sub-section 65C (5) or 65F (1) should be published without delay.

“(2) Where the Minister publishes a notice in the *Gazette* under sub-section (1)—

- (a) in a case where the notice is published before the Minister takes any action under sub-section 65J (1) in relation to goods of a particular kind—section 65J does not apply in relation to the action that the Minister may take under sub-section 65C (5) or 65F(1) in relation to goods of that kind; or
- (b) in any other case—any action taken by the Minister under sub-section 65J (1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 65J, been arranged or such a conference had commenced or been completed without the Commission making a recommendation under section 65K, the Minister may publish the notice under sub-section 65C (5) or 65F (1) without regard to the action taken under sub-section 65J (1).

Conference after goods banned

“65M. (1) Where—

- (a) a notice has been published under sub-section 65C (5) in relation to goods of a particular kind; and
- (b) the Minister publishes a notice under section 65L in relation to goods of that kind,

the Minister shall, by notice in writing published in the *Gazette*, invite any person (in this section referred to as a ‘supplier’) who supplied or proposes to supply goods of that kind to notify the Commission within the period (in this section referred to as the ‘relevant period’) of 10 days commencing on the day specified in the last-mentioned notice, being not earlier than the day on which that notice is published in the *Gazette*, to notify the Commission whether the supplier wishes the Commission to hold a conference in relation to the notice referred to in paragraph (a).

“(2) If a supplier notifies the Commission in writing within the relevant period, or within such longer period as the Commission allows, that the supplier wishes the Commission to hold a conference in relation to the notice published under sub-section 65C (5), the Commission shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the conference and give notice of the day, time and place so appointed to the Minister and to each supplier who so notified the Commission.

“(3) Sub-sections 65J (5), (6) and (7) apply in relation to a conference held under this section.

Recommendation after conclusion of conference

“65N. As soon as is practicable after the conclusion of a conference in relation to a notice that has been published under sub-section 65C (5), the Commission shall—

- (a) by notice in writing given to the Minister, recommend that the notice under sub-section 65C (5)—
 - (i) remain in force;

- (ii) be varied; or
 - (iii) be revoked; and
- (b) cause a copy of the notice in writing given to the Minister to be given to each supplier who was present or represented at the conference.

Minister to have regard to recommendation of Commission

“65P. Where the Commission, under section 65K or 65N, makes a recommendation to the Minister in relation to the proposed publication of a notice under sub-section 65C (5) or (7) or 65F (1) or in relation to a notice that has been published under sub-section 65C (5)—

- (a) the Minister shall have regard to the recommendation; and
- (b) where the Minister decides to act otherwise than in accordance with the recommendation, the Minister shall, by notice in writing published in the *Gazette*, set out the reasons for the Minister’s decision.

Power to obtain information, documents and evidence

“65Q. (1) Where the Minister or an officer authorised by the Minister for the purposes of this section (in this section referred to as an ‘authorised officer’) has reason to believe that a corporation which, in trade or commerce, supplies goods of a particular kind which are intended to be used or are of a kind likely to be used by a consumer and which will or may cause injury to any person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Minister or the authorised officer may, by notice in writing served on the corporation, require the corporation—

- (a) to furnish to the Minister, by writing signed by a competent officer of the corporation, in the manner, and within such reasonable time, as are specified in the notice, any such information;
- (b) to produce to the Minister, or to the authorised officer, in accordance with such reasonable requirements as are specified in the notice, any such documents; or
- (c) to cause a competent officer of the corporation to appear before the Minister or the authorised officer at such reasonable time and place as are specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

“(2) Where an authorised officer has reason to believe that goods of a particular kind which are intended to be used or are of a kind likely to be used by a consumer will or may cause injury to a person, an authorised officer may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any person, enter any premises in or from which the authorised officer has reason to believe a corporation supplies goods of that kind in trade or commerce and—

- (a) inspect goods of that kind;
- (b) take samples of goods of that kind;

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- (c) inspect any documents relating to goods of that kind and make copies of, or take extracts from, those documents; or
- (d) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

“(3) The powers of an authorised officer under sub-section (2) shall not be exercised except—

- (a) pursuant to a warrant issued under sub-section (5); or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

“(4) An authorised officer may apply to a person who is a judge of the Court or of the Supreme Court of a State or territory for the issue under sub-section (5) of a warrant to exercise the powers of an authorised officer under sub-section (2) in relation to premises.

“(5) Where an application under sub-section (4) is made to a person who is a judge of such a court, the person may issue a warrant authorising an authorised officer named in the warrant, with such assistance as the officer thinks necessary and if necessary by force, to enter the premises specified in the warrant and to exercise the powers of an authorised officer under sub-section (2) in relation to those premises.

“(6) A person who is a judge of such a court shall not issue a warrant under sub-section (5) unless—

- (a) an affidavit has been furnished to the person setting out the grounds on which the issue of the warrant is being sought;
- (b) the applicant or some other person has given to the first-mentioned person such further information (if any) as the first-mentioned person requires concerning the grounds on which the issue of the warrant is being sought; and
- (c) the first-mentioned person is satisfied that there are reasonable grounds for issuing the warrant.

“(7) A warrant issued under sub-section (5) shall—

- (a) specify the purpose for which the warrant is issued;
- (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) include a description of the kind of goods authorised to be inspected or sampled; and
- (d) specify a day, not being later than 7 days after the day on which the warrant is issued, at the end of which the warrant ceases to have effect.

“(8) Where an authorised officer takes samples under paragraph (2) (b), the officer shall pay a reasonable price for the goods sampled.

“(9) A person who—

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- (a) refuses or fails to comply with a notice under this section to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, furnishes information or gives evidence that, to the knowledge of the person, is false or misleading in a material particular,

is guilty of an offence punishable on conviction—

- (c) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months; or
- (d) in the case of a person being a body corporate—by a fine not exceeding \$10,000.

“(10) A person who refuses or fails to provide an authorised officer acting in accordance with sub-section (2) with all reasonable facilities and assistance for the effective exercise of the authorised officer’s powers under that sub-section is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.

“(11) Any information furnished or evidence given by a person under this section, any document produced by a person under this section, and any information, evidence or document obtained under this section, is not admissible in evidence against the person—

- (a) in any proceedings instituted by the person; or
- (b) in any other proceedings, other than proceedings against the person for a contravention of a provision of this section.

Notification of voluntary recall

“65R. (1) Where a corporation voluntarily takes action to recall goods because the goods will or may cause injury to any person, the corporation shall, within 2 days after taking that action, give a notice in writing to the Minister—

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

“(2) A person who contravenes sub-section (1) is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.

Copies of certain notices to be given to suppliers or published in certain newspapers

“65S. (1) Where the Minister publishes a notice in writing in the *Gazette* under sub-section 65B (1), 65J (1), 65L (1) or 65M (1), the Minister shall, within 2 days after the publication of that notice in the *Gazette*, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, either—

- (a) cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies goods of the kind to which the notice relates; or
- (b) cause a copy of the notice to be published in a newspaper circulating in each part of Australia where goods of the kind to which the notice relates are, to the knowledge of the Minister, supplied.

“(2) Any failure to comply with sub-section (1) in relation to a notice does not invalidate the notice.

Certain action not to affect insurance contracts

“65T. The liability of an insurer under a contract of insurance with a corporation, being a contract relating to the recall of goods supplied or proposed to be supplied by the corporation or to the liability of the corporation with respect to possible defects in goods supplied or proposed to be supplied by the corporation, shall not be affected by reason only that the corporation gives to the Minister, to the Commission, to an officer of the Australian Public Service or to an officer of an authority of the Commonwealth information relating to any goods supplied or proposed to be supplied by the corporation.

Cessation of Division in respect of foods and drinks

“65U. At the expiration of 2 years after the day on which this Division comes into operation, this Division shall cease to have effect in respect of goods which are foods and drinks intended for human consumption.”.

Application of provisions not to be excluded or modified

36. Section 68 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “for the supply by a corporation of goods or services to a consumer”; and
- (b) by omitting from paragraph (1) (a) “in relation to that contract”.

37. Section 73 of the Principal Act is repealed and the following sections are substituted:

Liability for loss or damage from breach of certain contracts

“73. (1) Where—

- (a) a corporation (in this section referred to as the ‘supplier’) supplies goods, or causes goods to be supplied, to a linked credit provider of the supplier and a consumer enters into a contract with the linked credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer; or
- (b) a consumer enters into a contract with a linked credit provider of a corporation (in this section also referred to as the ‘supplier’) for the provision of credit in respect of the supply by the supplier of goods or services, or goods and services, to the consumer,

and the consumer suffers loss or damage as a result of misrepresentation, breach of contract, or failure of consideration in relation to the contract, or as a result of a breach of a condition that is implied in the contract by virtue of section 70, 71 or 72 or of a warranty that is implied in the contract by virtue of section 74, the supplier and the linked credit provider are, subject to this section, jointly and severally liable to the consumer for the amount of the loss or damage, and the consumer may recover that amount by action in accordance with this section in a court of competent jurisdiction.

“(2) Where—

- (a) a corporation (in this section also referred to as the ‘supplier’) supplies goods, or causes goods to be supplied, to a credit provider who is not a linked credit provider of the supplier;
- (b) a consumer enters into a contract with the credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer;
- (c) antecedent negotiations in relation to the contract were conducted with the consumer by or on behalf of the supplier; and
- (d) the credit provider did not take physical possession of the goods before they were delivered to the consumer,

or where a consumer enters into a contract with a credit provider for the provision of credit in respect of the supply of services to the consumer by a corporation (in this section also referred to as the ‘supplier’) of which the credit provider is not a linked credit provider, and the consumer suffers loss or damage as a result of a breach of a condition that is implied in the contract by virtue of section 70, 71 or 72 or of a warranty that is implied in the contract by virtue of section 74, the credit provider is not under any liability to the consumer for the amount of the loss or damage, but the consumer may recover that amount by action in a court of competent jurisdiction against the supplier.

“(3) A linked credit provider of a particular supplier is not liable to a consumer by virtue of sub-section (1) in proceedings arising under that sub-section if the credit provider establishes—

- (a) that the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer that was not induced by the supplier;
- (b) where the proceedings relate to the supply by way of lease, hire or hire-purchase of goods by the linked credit provider to the consumer, that—
 - (i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier’s financial standing and business conduct was good; and
 - (ii) after becoming a linked credit provider of the supplier, the credit provider had not had cause to suspect that—
 - (A) the consumer might be entitled to recover an amount of loss or damage suffered as a result of misrepresentation or breach of a condition or warranty referred to in sub-section (1); and
 - (B) the supplier might be unable to meet the supplier’s liabilities as and when they fall due;
- (c) where the proceedings relate to a contract of sale with respect to which a tied loan contract applies, that—
 - (i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier’s financial standing and business conduct was good; and
 - (ii) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that—
 - (A) the consumer might, if the contract was entered into, be entitled to recover an amount of loss or damage suffered as a result of misrepresentation, breach of contract or failure of consideration in relation to the contract or as a result of a breach of a condition or warranty referred to in sub-section (1); and
 - (B) the supplier might be unable to meet the supplier’s liabilities as and when they fall due; or
- (d) where the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider applies, that, having regard to—
 - (i) the nature and volume of business carried on by the linked credit provider; and
 - (ii) such other matters as appear to be relevant in the circumstances of the case,

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

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

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

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

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

“(6) Sub-section (5) and paragraphs (8) (a) and (9) (a) do not apply in relation to proceedings where—

- (a) the supplier has been dissolved or is commenced to be wound up; or
- (b) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied and the court has, on the application of the consumer, declared that sub-section (5) and paragraphs (8) (a) and (9) (a) do not apply in relation to the proceedings.

“(7) The liability of a linked credit provider to a consumer for damages or a sum of money in respect of a contract referred to in sub-section (1) does not exceed the sum of—

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

- (c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.

“(8) Where in proceedings arising under sub-section (1), judgment is given against a supplier and a linked credit provider, the judgment—

- (a) shall not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days; and
- (b) may be enforced against the linked credit provider only to the extent of—
 - (i) the amount calculated in accordance with sub-section (7);
or
 - (ii) so much of the judgment debt as has not been satisfied by the supplier,whichever is the lesser.

“(9) Where in proceedings arising under sub-section (1), a right conferred by sub-section (4) is established against a linked credit provider, the consumer—

- (a) shall not receive the benefit of the right unless judgment has been given against the supplier and linked credit provider, a written demand has been made on the supplier for satisfaction of the judgment and the demand has remained unsatisfied for not less than 30 days; and
- (b) may receive the benefit only to the extent of—
 - (i) the amount calculated in accordance with sub-section (7);
or
 - (ii) so much of the judgment debt as has not been satisfied by the supplier,whichever is the lesser.

“(10) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of the linked credit provider’s liability under sub-section (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the proceedings by reason of which the liability was incurred.

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

until the date on which the judgment is given, at whichever of the following rates is the greater:

- (a) where the amount payable by the consumer to the credit provider for the obtaining of credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum—that rate or, if more than one such rate may be calculated, the lower or lowest of those rates;
- (b) 8% or such other rate as is prescribed.

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

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

“(14) In this section—

‘credit provider’ means a corporation providing, or proposing to provide, in the course of a business carried on by the corporation, credit to consumers in relation to the acquisition of goods or services;

‘linked credit provider’, in relation to a supplier, means a credit provider—

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

‘tied continuing credit contract’ means a continuing credit contract under which a credit provider provides credit in respect of the payment

by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider;

'tied loan contract' means a loan contract entered into between a credit provider and a consumer where—

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

Continuing credit contract

"73A. (1) For the purposes of this section—

- (a) a reference to an agreement includes a reference to an arrangement, understanding or course of dealing; and
- (b) a person shall be deemed to agree with another person with respect to a matter if the first-mentioned person has an agreement, arrangement or understanding with the other person, or is engaged in a course of dealing with the other person, with respect to the matter.

"(2) Where—

- (a) a person (in this section referred to as 'the creditor'), in the course of a business carried on by the creditor, agrees with a consumer to provide credit to the consumer in respect of—
 - (i) payment for goods or services or cash supplied by the creditor to the consumer from time to time; or
 - (ii) payment by the creditor to a third person in respect of goods or services or cash supplied by that third person to the consumer from time to time; and
- (b) the amounts owing to the creditor from time to time under the agreement are or are to be calculated on the basis that all amounts owing, and all payments made, by the consumer under or in respect of the agreement are entered in one or more accounts kept for the purpose of the agreement,

the agreement is, for the purposes of section 73, a continuing credit contract.

"(3) Where the creditor agrees to make payments to a third person in respect of goods or services or cash supplied by that third person to the consumer, as mentioned in sub-paragraph (2) (a) (ii), then, for the purposes of this section, the creditor shall, in respect of any goods or services or cash so supplied, be deemed to have provided credit to the consumer to the extent of any payments made or to be made by the creditor to that third person.

Loan contract

"73B. For the purposes of section 73, 'loan contract' means a contract

under which a person in the course of a business carried on by that person provides or agrees to provide, whether on one or more occasions, credit to a consumer in one or more of the following ways:

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

Warranties in relation to the supply of services

38. Section 74 of the Principal Act is amended—

- (a) by inserting in sub-section (2) “(other than services of a professional nature provided by a qualified architect or engineer)” after “services” (first occurring); and
- (b) by omitting sub-section (3) and substituting the following sub-section:

“(3) A reference in this section to services does not include a reference to services that are, or are to be, provided, granted or conferred under—

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance.”.

Interpretation

39. Section 74A of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “express warranty” and substituting the following definition:

“‘express warranty’, in relation to goods, means an undertaking, assertion or representation in relation to—

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

- goods in relation to which the undertaking, assertion or representation is given or made form part,
given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods, the natural tendency of which is to induce persons to acquire the goods;” and
- (b) by inserting after paragraph (2) (a) the following paragraph:
“(aa) a reference to a person who acquires goods from a consumer does not include a reference to a person who acquires goods for the purpose of re-supply;”.

Actions in respect of unsuitable goods

40. Section 74B of the Principal Act is amended—

- (a) by inserting in paragraph (1) (e) “or a person who acquires the goods from, or derives title to the goods through or under, the consumer” after “the consumer”; and
- (b) by omitting from sub-section (1) “the consumer for the loss or damage and the consumer” and substituting “the consumer or that other person for the loss or damage and the consumer or that other person”.

Actions in respect of false descriptions

41. Section 74C of the Principal Act is amended—

- (a) by inserting in paragraph (1) (d) “or a person who acquires the goods from, or derives title to the goods through or under, the consumer” after “the consumer”; and
- (b) by omitting from sub-section (1) “the consumer for the loss or damage and the consumer” and substituting “the consumer or that other person for the loss or damage and the consumer or that other person”; and
- (c) by omitting from sub-section (3) “consumer” (wherever occurring) and substituting “person”.

Actions in respect of goods of unmerchantable quality

42. Section 74D of the Principal Act is amended—

- (a) by omitting from paragraph (1) (d) “any person who derives title to the goods through or under” and substituting “a person who acquires the goods from, or derives title to the goods through or under,”; and
- (b) by omitting from sub-section (1) “person who so derives title to the goods” (wherever occurring) and substituting “or that other person”.

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

43. Section 74E of the Principal Act is amended—

- (a) by inserting in paragraph (1) (e) “or a person who acquires the goods from, or derives title to the goods through or under, the consumer” after “the consumer”; and
- (b) by omitting from sub-section (1) “the consumer for the loss or damage and the consumer” and substituting “the consumer or that other person for the loss or damage and the consumer or that other person”.

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

44. Section 74F of the Principal Act is amended—

- (a) by omitting all the words preceding paragraph (1) (c) and substituting the following:

“(1) Where—

- (a) a corporation, in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the corporation to a consumer; or

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

and—”;

- (b) by inserting in sub-paragraphs (1) (c) (i) and (ii) “or a person who acquires the goods from, or derives title to the goods through or under, the consumer” after “the consumer”;
- (c) by inserting in paragraphs (1) (d) and (e) “or that other person” after “consumer” (wherever occurring);
- (d) by omitting from sub-section (1) “the consumer for the loss or damage and the consumer” and substituting “the consumer or that other person for the loss or damage and the consumer or that other person”;
- (e) by omitting from sub-section (3) “the consumer for loss or damage suffered by the consumer” and substituting “the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer for loss or damage suffered by the consumer or that other person”; and
- (f) by omitting from sub-section (4) “the consumer” and substituting “a person”.

Actions in respect of non-compliance with express warranty

45. Section 74G of the Principal Act is amended—

- (a) by omitting all the words before paragraph (1) (c) and substituting the following:

“(1) Where—

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

and—”;

- (b) by inserting in paragraph (1) (d) “or a person who acquires the goods from, or derives title to the goods through or under, the consumer” after “the consumer”;
- (c) by omitting from sub-section (1) “the consumer for the loss or damage and the consumer” and substituting “the consumer or that other person for the loss or damage and the consumer or that other person”;
- (d) by omitting from sub-section (2) “consumer” and substituting “person”;
- (e) by omitting paragraph (2) (a) and substituting the following paragraph:
 - “(a) an undertaking, assertion or representation was given or made in connection with the supply of goods or in connection with the promotion by any means of the supply or use of goods; and”;
- (f) by omitting from sub-section (2) (other than from paragraph (2) (a)) “statement” (wherever occurring) and substituting “representation”.

Time for commencing actions

46. Section 74J of the Principal Act is amended—

- (a) by inserting in paragraph (2) (a) “or a person who acquired the goods from, or derived title to the goods through or under, the consumer” after “the consumer”; and
- (b) by inserting in paragraph (2) (b) “or that other person” after “consumer” (wherever occurring).

Offences against Part V

47. (1) Section 79 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:
 - “(1) A person who—
 - (a) contravenes;
 - (b) aids, abets, counsels or procures a person to contravene;

- (c) induces, or attempts to induce, a person whether by threats or promises or otherwise, to contravene;
 - (d) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
 - (e) conspires with others to contravene,
- a provision of Part V other than section 52, 52A, 65Q or 65R or sub-section 65F (9) is guilty of an offence punishable on conviction—
- (f) in the case of a person not being a body corporate—by a fine not exceeding \$20,000; or
 - (g) in the case of a person being a body corporate—by a fine not exceeding \$100,000.”; and
- (b) by adding at the end the following sub-sections:

“(4) In proceedings under this section against a person for contravening a provision of Part V, the Court may—

- (a) grant an injunction under section 80 against the person in relation to—
 - (i) the conduct that constitutes, or is alleged to constitute, the contravention; or
 - (ii) other conduct of that kind; or
- (b) make an order under section 80A in relation to the contravention.

“(5) Sections 5, 7 and 7A of the *Crimes Act 1914* do not apply in relation to an offence against sub-section (1).

“(6) A prosecution for an offence against sub-section (1) may be commenced within 3 years after the commission of the offence.”.

(2) Notwithstanding the amendment made by paragraph (1) (a), the provisions of section 79 of the Principal Act continue to apply, after the commencement of this section, to and in relation to offences committed before that commencement as if that amendment had not been made.

48. After section 79 of the Principal Act the following section is inserted:

Enforcement and recovery of certain fines

“79A. (1) Where a person on whom a fine has been imposed for an offence against section 65Q, 65R, 79 or 155 or sub-section 65F (9) or 87A (5) defaults in payment of the fine, a Court may—

- (a) exercise any power that the Court has apart from this section with respect to the enforcement and recovery of fines imposed by the Court; or
- (b) make an order, on the application of the Minister or the Commission, declaring that the fine is to have effect, and may be enforced, as if it were a judgment debt under a judgment of the Court.

“(2) Where a person in relation to whom an order is made under sub-section (1) in respect of a fine gives security for the payment of the fine, the Court shall cancel the order in respect of the fine.

“(3) Where the Court makes an order in relation to a person in respect of a fine, the Court may, at any time before the order is executed in respect of the fine, allow the person a specified time in which to pay the fine or allow the person to pay the fine by specified instalments, and, in that case—

- (a) the order shall not be executed unless the person fails to pay the fine within that time or fails to pay an instalment at or before the time when it becomes payable, as the case may be; and
- (b) if the person pays the fine within that time or pays all the instalments, as the case may be, the order shall be deemed to have been discharged in respect of the fine.

“(4) Subject to sub-section (7), an order under sub-section (1) in respect of a fine ceases to have effect—

- (a) on payment of the fine; or
- (b) if the fine is not paid—on full compliance with the order.

“(5) The term of a sentence of imprisonment imposed by an order under a law of a State or Territory applied by section 18A of the *Crimes Act 1914* in respect of a fine shall be calculated at the rate of one day's imprisonment for each \$25 of the amount of the fine that is from time to time unpaid.

“(6) Subject to sub-section (7), where a person is required to serve periods of imprisonment by virtue of an order or orders under sub-section (1) in respect of 2 or more fines, those periods of imprisonment shall be served consecutively.

“(7) Subject to sub-section (8), where—

- (a) a person would, but for this sub-section, be required by virtue of an order or orders under sub-section (1) in respect of 3 or more fines to serve periods of imprisonment in respect of those fines exceeding in the aggregate 3 years; and
- (b) those fines were imposed (whether or not in the same proceedings) for offences constituted by contraventions that occurred within a period of 2 years, being contraventions that appear to the Court to have been of the same nature or a substantially similar nature,

the Court shall, by order, declare that the order or orders shall cease to have effect in respect of those fines after the person has served an aggregate of 3 years' imprisonment in respect of those fines.

“(8) Where sub-section (7) would, but for this sub-section, apply to a person with respect to offences committed by the person within 2 or more overlapping periods of 2 years, the Court shall make an order under that sub-section with respect to one only of those periods, being whichever period would give the person the maximum benefit from the application of that sub-section.

“(9) For the purposes of sub-section (8), the Court may vary or revoke an order made under sub-section (7).

“(10) Paragraphs 18A (1) (b), (c) and (d) of the *Crimes Act 1914* do not apply with respect to fines referred to in sub-section (1).

“(11) This section applies only in relation to fines imposed for offences committed after the commencement of this section.”.

Injunctions

49. (1) Section 80 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1AA) Where an application for an injunction under sub-section (1) has been made, whether before or after the commencement of this sub-section, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in sub-section (1).

(2) Section 80 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “sub-section (1A)” and substituting “sub-sections (1A) and (1B)”; and
- (b) by omitting from sub-section (1A) “A person” and substituting “Subject to sub-section (1B), a person”; and
- (c) by inserting in sub-section (1A) “or 50A” after “section 50”; and
- (d) by inserting after sub-section (1A) the following sub-section:

“(1B) Where the Tribunal has, on the application of a person (in this sub-section referred to as the ‘applicant’) other than the Minister or the Commission, made a declaration under sub-section 50A (1) in relation to the acquisition by a person of a controlling interest in a corporation, the applicant is entitled to make an application under sub-section (1) for an injunction by reason that the corporation has contravened or attempted to contravene or is proposing to contravene sub-section 50A (6) in relation to that declaration.”.

Order to disclose information or publish advertisement

50. (1) Section 80A of the Principal Act is amended—

- (a) by inserting in sub-section (1) “other than section 52A” after “Part V”; and
- (b) by omitting sub-sections (2), (3) and (4).

(2) Notwithstanding the amendment made by paragraph (1) (b), the provisions of section 80A of the Principal Act continue to apply, after the commencement of this section, to and in relation to conduct engaged in before that commencement as if that amendment had not been made.

Divestiture

51. (1) Section 81 of the Principal Act is amended by adding at the end the following sub-section:

“(3) Where an application for directions under sub-section (1) or for a declaration under sub-section (1A) has been made, whether before or after the commencement of this sub-section, the Court may, if the Court determines it to be appropriate, give directions or make a declaration by consent of all the parties to the proceedings, whether or not the Court has made the findings referred to in sub-sections (1) and (1A).”.

(2) Section 81 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “corporation” (wherever occurring) and substituting “person”;
- (b) by inserting after sub-section (1) the following sub-sections:

“(1A) Where—

- (a) the Court finds, in a proceeding instituted under this Part, that a person (in this sub-section referred to as the ‘acquirer’) has acquired shares in the capital, or any assets, of a body corporate in contravention of section 50;
- (b) the Court finds, whether in that proceeding or any other proceeding instituted under this Part, that the person (in this section referred to as the ‘vendor’) from whom the acquirer acquired those shares or those assets, as the case may be, was involved in the contravention; and
- (c) at the time when the finding referred to in paragraph (b) is made, any of those shares or those assets, as the case may be, are vested in the acquirer or, if the acquirer is a body corporate, in any body corporate that is related to the acquirer,

the Court may, on the application of the Minister or the Commission, declare that the acquisition, in so far as it relates to the shares or assets referred to in paragraph (c), is void as from the day on which it took place and, where the Court makes such a declaration—

- (d) the shares or the assets to which the declaration relates shall be deemed not to have been disposed of by the vendor; and
- (e) the vendor shall refund to the acquirer any amount paid to the vendor in respect of the acquisition of the shares or assets to which the declaration relates.

“(1B) Where a declaration has been made under sub-section 50A (1) in relation to the obtaining of a controlling interest in a corporation, or in each of 2 or more corporations, the Court may, on the application of the Minister or the Commission, if it finds, or has in a proceeding instituted under section 80 found, that that corporation, or any of those corporations, as the case may be (in this sub-section referred to as the ‘relevant corporation’), has contravened sub-section 50A (6), by order, for the purpose of

ensuring that the obtaining of that controlling interest ceases to have the result referred to in paragraph 50A (1) (a) or (b), direct the relevant corporation to dispose of such of its assets as are specified in the order within such period as is so specified.

“(1C) Where an application is made to the Court for an order under sub-section (1) or a declaration under sub-section (1A), the Court may, instead of making an order under sub-section (1) for the purpose of securing the disposal by a person of shares or assets or an order under sub-section (1A) that the acquisition by a person of shares or assets is void, accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of other shares or assets owned by the person.”; and

- (c) by inserting in sub-section (2) “,(1A) or (1B)” after “sub-section (1)”.

Actions for damages

52. Section 82 of the Principal Act is amended by adding at the end the following sub-section:

“(3) Sub-section (1) does not apply in relation to conduct done in contravention of section 52A.”.

53. Section 84 of the Principal Act is repealed and the following section is substituted:

Conduct by directors, servants or agents

“84. (1) Where, in a proceeding under this Part in respect of conduct engaged in by a body corporate, being conduct in relation to which section 46 or Part V applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of the person’s actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of the person’s actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

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

“(3) Where, in a proceeding under this Part in respect of conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of Part V applies, it is necessary to establish

the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.

“(4) Conduct engaged in on behalf of a person other than a body corporate—

- (a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

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

Defences

54. Section 85 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) In paragraphs (1) (b) and (c), ‘another person’ does not include a person who was—

- (a) a servant or agent of the defendant; or
- (b) in the case of a defendant being a body corporate, a director, servant or agent of the defendant,

at the time when the contravention occurred.”.

Other orders

55. Section 87 of the Principal Act is amended—

- (a) by omitting sub-section (1A) and substituting the following sub-sections:

“(1A) Without limiting the generality of section 80, the Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in (whether before or after the commencement of this sub-section) in contravention of a provision of Part V or on the application of the Commission in accordance with sub-section (1B) on behalf of such a person or 2 or more such persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in sub-section (2)) if the Court considers that the order or orders concerned

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will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage, or will prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.

“(1B) Where, in a proceeding instituted for an offence against section 79 or instituted by the Commission or the Minister under section 80, a person is found to have engaged (whether before or after the commencement of this sub-section) in conduct in contravention of a provision of Part V, the Commission may make an application under sub-section (1A) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but the Commission shall not make such an application except with the consent in writing given before the application is made by the person, or by each of the persons, on whose behalf the application is made.

“(1C) An application under this section in relation to a contravention of section 52A may be made at any time within 2 years after the alleged contravention occurred.

“(1D) For the purpose of determining whether to make an order under this section in relation to a contravention of section 52A, the Court may have regard to the conduct of parties to the proceeding since the contravention occurred.

“(1E) The Court shall not make an order under this section in relation to a contravention of section 52A in relation to a contract of insurance to which the *Insurance Contracts Act 1984* applies.”;

- (b) by inserting after paragraph (2) (b) the following paragraph:
 - “(ba) an order refusing to enforce any or all of the provisions of such a contract;”;
- (c) by omitting from paragraph (2) (e) “and”;
- (d) by adding at the end of sub-section (2) the following word and paragraph:
 - ”; and (g) an order, in relation to an instrument creating or transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that—
 - (i) varies, or has the effect of varying, the first-mentioned instrument; or
 - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.”; and

(e) by adding at the end the following sub-section:

“(6) In sub-section (2), ‘interest’, in relation to land, has the same meaning as in section 53A.”.

56. After section 87 of the Principal Act the following section is inserted in Part VI:

Power of Court to prohibit payment or transfer of moneys or other property

“87A. (1) Where—

- (a) proceedings have been commenced against a person for an offence against section 79;
- (b) an application has been made under section 80 for an injunction against a person in relation to a contravention of a provision of Part V;
- (c) an action has been commenced under sub-section 82 (1) against a person in relation to a contravention of a provision of Part V; or
- (d) an application for an order under sub-section 87 (1A) or (1B) has been or may be made against a person in relation to a contravention of a provision of Part V,

the Court may, on the application of the Minister or the Commission, make an order or orders mentioned in sub-section (2) if the Court is satisfied that—

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

“(2) The orders referred to in sub-section (1) are—

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

of an associate of the relevant person to a place outside the State or Territory in which the money is held;

- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the relevant person or of an associate of the relevant person to a place outside the State or Territory in which the other property is located; and
- (e) an order appointing, where the relevant person is a natural person, a receiver or trustee of the property or of part of the property of the relevant person with such powers as are specified in the order.

“(3) Subject to sub-section (4), an order under this section may be expressed to operate—

- (a) for a period specified in the order; or
- (b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.

“(4) An order under this section made on an application *ex parte* shall not be expressed to operate for a period exceeding 30 days.

“(5) A person who contravenes or fails to comply with an order by the Court under this section that is applicable to the person is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$20,000; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$100,000.

“(6) Nothing in this section affects the powers that the Court has apart from this section.

“(7) This section has effect subject to the *Bankruptcy Act 1966*.

“(8) A reference in this section to a person who is an associate of a relevant person is a reference to—

- (a) a person holding money or other property on behalf of the relevant person; or
- (b) if the relevant person is a body corporate—a wholly owned subsidiary of the relevant person.”.

Power of Commission to grant authorisations

57. Section 88 of the Principal Act is amended—

- (a) by omitting sub-section (9) and substituting the following sub-section:

“(9) Subject to this Part, the Commission may, upon application by a person—

- (a) grant an authorisation to the person to acquire shares in the capital, or to acquire assets, of a body corporate; or

- (b) grant an authorisation to the person to acquire a controlling interest in a body corporate within the meaning of section 50A,

and, while such an authorisation remains in force—

- (c) in the case of an authorisation under paragraph (a)—section 50 does not prevent the person from acquiring shares in the capital, or from acquiring assets, of the body corporate in accordance with the authorisation; or

- (d) in the case of an authorisation under paragraph (b)—section 50A does not, to the extent specified in the authorisation, apply in relation to the acquisition of that controlling interest.”; and

- (b) by omitting sub-section (16) and substituting the following sub-section:

“(16) A corporation that has made an application to the Commission for an authorisation, or a person other than a corporation who has made an application to the Commission for an authorisation under sub-section (9), may at any time, by notice in writing to the Commission, withdraw the application.”.

Procedure for applications

58. Section 89 of the Principal Act is amended by inserting after paragraph (4) (aa) the following paragraph:

“(aaa) any document relating to—

- (i) the revocation by the Commission of an authorisation; or
- (ii) the substitution of an authorisation for an authorisation previously in force;”.

Determination of applications for authorisations

59. (1) Section 90 of the Principal Act is amended by inserting in sub-section (9) “or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A” after “body corporate”.

(2) Section 90 of the Principal Act is amended by omitting sub-section (11) and substituting the following sub-section:

“(11) Subject to sub-sections (12), (13) and (15), if the Commission does not determine an application for an authorisation under sub-section 88 (9) within—

- (a) 45 days from the day on which the application is received by the Commission; or
- (b) if the Commission, before the end of that period of 45 days, gives to the applicant a notice in writing requesting the applicant to give to the Commission additional information relevant to the determination of the application—the period consisting of 45 days from the day on which the application is received by the Commission increased by the number of days in the period commencing on the

day on which the notice is given to the applicant and ending on the day on which the applicant gives to the Commission such of the additional information as the applicant is able to provide, the Commission shall be deemed to have granted, at the end of that period, the authorisation applied for.”.

(3) Sub-section 90 (11) of the Principal Act as amended by this Act applies only in respect of applications made to the Commission after the commencement of this sub-section.

Commission to afford opportunity for conference before determining application for authorisation

60. Section 90A of the Principal Act is amended by inserting in sub-section (1) “(other than an application for an authorisation under sub-section 88 (9))” after “authorization”.

Grant, revocation and variation of authorisations

61. Section 91 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) An authorisation, other than an authorisation deemed to have been granted under sub-section 90 (10) or (11), comes into force on the day specified for the purpose in the authorisation, not being a day earlier than, and an authorisation deemed to have been granted under sub-section 90 (10) or (11) comes into force on—

- (a) where paragraph (b) or (c) does not apply—the end of the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the authorisation;
- (b) if such an application is made to the Tribunal and the application is not withdrawn—the day on which the Tribunal makes a determination on the review;
- (c) if such an application is made to the Tribunal and the application is withdrawn—the day on which the application is withdrawn.”.

Notification of exclusive dealing

62. Section 93 of the Principal Act is amended by omitting from paragraph (7) (b) “to have the effect” and substituting “to have the purpose, or to have or be likely to have the effect,”.

Public register

63. Section 95 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (f) “and”;
- (b) by adding at the end of sub-section (1) the following paragraphs:
 - “; (h) records of proceedings at conferences held under section 65J or 65M; and

- (j) particulars of recommendations made to the Minister by the Commission under section 65K or 65N.”;
- (c) by omitting from sub-section (2) all the words from and including “Where a person” to and including “such a notice”, and substituting the following:
 - “(2) Where a person furnishes a document to the Commission—
 - (a) in relation to a notice given to the Commission under section 93; or
 - (b) in relation to a conference held under section 65J or 65M, or makes an oral submission to the Commission in relation to the notice or the conference”; and
- (d) by omitting from sub-section (5) “Commission in pursuance of a notice under section 155” and substituting “Minister or the Commission in pursuance of a notice under section 65Q or 155”.

Applications for review

64. (1) Section 101 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Where a person has, whether before or after the commencement of this sub-section, made an application under sub-section (1) for a review of a determination, the Tribunal may, if the Tribunal determines it to be appropriate, make a determination by consent of the applicant, the Commission, and all persons who have been permitted under sub-section 109 (2) to intervene in the proceedings for review, whether or not the Tribunal is satisfied of the matters referred to in sub-section 90 (6), (7), (8) or (9).”.

(2) Section 101 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or under sub-section (1B), as the case may be” after “regulations”; and
- (b) by inserting before sub-section (2) the following sub-section:

“(1B) A presidential member may, on the application of a person concerned in an application for an authorisation under sub-section 88 (9), shorten the time allowed by or under the regulations within which an application under sub-section (1) may be made for a review of the determination by the Commission of the application for the authorisation if the member is satisfied that special circumstances exist and that in all the circumstances it would not be unfair to do so.”.

Power to obtain information, documents and evidence

65. (1) Section 155 of the Principal Act is amended—

- (a) by omitting from sub-sections (5) and (6) “Penalty: \$1,000 or imprisonment for 3 months.”; and

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(b) by inserting after sub-section (6) the following sub-section:

“(6A) A person who contravenes sub-section (5) or (6) is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for 12 months; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.”.

(2) Notwithstanding the amendments made by sub-section (1), the provisions of section 155 of the Principal Act continue to apply, after the commencement of this section, to and in relation to offences committed before that commencement as if those amendments had not been made.

Disclosure of documents by Commission

66. Section 157 of the Principal Act is amended by inserting in paragraph (1) (d) “or 87A (1)” after “87 (1A)”.

Failure of witness to attend

67. Section 160 of the Principal Act is amended—

- (a) by omitting “Penalty: \$1,000 or imprisonment for 3 months.”; and
- (b) by adding at the end the following sub-section:

“(2) A person who contravenes sub-section (1) is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for 12 months; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.”.

Refusal to be sworn or to answer questions

68. Section 161 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Penalty: \$1,000 or imprisonment for 3 months.”; and
- (b) by adding at the end the following sub-section:

“(3) A person who contravenes sub-section (1) is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for 12 months; or
- (b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.”.

Contempt

69. Section 162 of the Principal Act is amended—

- (a) by inserting in paragraph (b) “65J, 65M,” before “90A”;
- (b) by omitting “Penalty: \$1,000 or imprisonment for 3 months.”; and

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(c) by adding at the end the following sub-section:

“(2) A person who contravenes sub-section (1) is guilty of an offence punishable on conviction—

(a) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for 12 months; or

(b) in the case of a person being a body corporate—by a fine not exceeding \$10,000.”.

70. After section 162 of the Principal Act the following section is inserted:

Intimidation, &c.

“162A. A person who—

(a) threatens, intimidates or coerces another person; or

(b) causes or procures damage, loss or disadvantage to another person, for or on account of that other person proposing to furnish or having furnished information, or proposing to produce or having produced documents, to the Commission or to the Tribunal or for or on account of the other person proposing to appear or having appeared as a witness before the Tribunal is guilty of an offence punishable on conviction—

(c) in the case of a person not being a body corporate—by a fine not exceeding \$2,000 or imprisonment for 12 months; and

(d) in the case of a person being a body corporate—by a fine not exceeding \$10,000.”.

Prosecutions

71. Section 163 of the Principal Act is amended—

(a) by omitting sub-section (4) and substituting the following sub-section:

“(4) Proceedings before the Court in accordance with this section, other than proceedings instituted by the Commission or by a person authorised in writing by the Commission, shall not be instituted except with the consent in writing of the Minister or of a person authorised by the Minister, by writing, to give such consents.”; and

(b) by inserting in sub-section (5) “or 155” after “section 118”.

Inspection of, furnishing of copies of, and evidence of, documents

72. Section 165 of the Principal Act is amended—

(a) by inserting in paragraph (2) (a) “a declaration under section 50A or” before “a determination”; and

(b) by omitting sub-section (6) and substituting the following sub-section:

“(6) A copy of a declaration under section 50A or a determination of, or undertaking given to, the Tribunal, certified to be a true copy under the hand of the Registrar or of a Deputy Registrar, shall be

received in all courts as evidence of the declaration, determination or undertaking.”.

Legal and financial assistance

73. Section 170 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “or section 163A” after “Part VI”;
- (b) by inserting in paragraph (1) (c) “or section 163A” after “Part VI”;
- and
- (c) by inserting in paragraph (3) (b) “a declaration under sub-section 50A (1) or for” after “for”.

**PART III—AMENDMENT OF STATUTE LAW
(MISCELLANEOUS PROVISIONS) ACT (No. 2) 1984**

Principal Act

74. The *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*² is in this Part referred to as the Principal Act.

Commencement

75. Section 2 of the Principal Act is amended by omitting sub-section (28) and substituting the following sub-section:

“(28) The amendment of the *Trade Practices Act 1974* made by this Act shall come into operation on the day on which this Act receives the Royal Assent.”.

Schedule 1

76. Schedule 1 to the Principal Act is amended by omitting the proposed new section 79A of the *Trade Practices Act 1974*.

NOTES

1. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; and No. 65, 1985.
2. No. 165, 1984, as amended. For previous amendment, see No. 65, 1985.

[*Minister's second reading speech made in—
House of Representatives on 19 March 1986
Senate on 9 April 1986*]