



## **DRAFT MODEL LAW ON CONSUMER PROTECTION, 2007**

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A BILL

ENTITLED

An Act to provide for the promotion and protection of consumer interests, in relation to the supply of goods and the provision of services in order to ensure protection of life, health and safety of consumers and others[, the establishment of a Consumer Affairs Commission] and for connected purposes.

ENACTING CLAUSE

**PART I  
PRELIMINARY**

**Short title.** 1. This Act may be cited as the Consumer Protection Act, 2007.

**Interpretation and application.** 2. (1) In this Act –  
“acquire” in relation to –

(a) goods, includes obtaining by way of gift, purchase, or exchange, the taking on lease, hire or hire purchase;

(b) services, includes accepting the provision of services;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or services;

"business" includes a professional practice or any other undertaking that is carried on for gain or reward or in the course of which goods or services are supplied otherwise than free of charge;

"conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of such price is payable by installments and the title to the goods is to remain in the vendor, notwithstanding that the purchaser is to be in possession of the goods until the fulfilment of such conditions as to payment of installments or otherwise as may be specified in the agreement;

"consumer" in relation to -

- (a) goods, means any person who acquires or wishes to acquire goods for his own private use or consumption;
- (b) services, means any person who employs or wishes to be provided with the services otherwise than for the purposes of any business of that person;
- (c) any accommodation, means any person who wishes to occupy the accommodation otherwise than for the purposes of any business of that person;

“consumer agreement” means an agreement between a supplier and a consumer in which the supplier agrees to supply goods or services for payment;

"document" includes electronic records;

"goods" includes all kinds of property other than real/immovable property, securities, money or things in action;

"guarantor" in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier against any loss which he may incur in respect of the supply of the goods or provision of the services to or for that person;

"hire-purchase agreement" means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;

["negligence" includes the breach -

- (a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care to exercise reasonable skill in the performance of the contract;
- (b) of any common law duty to take reasonable care of a contract;]

["payment" means consideration of any kind, including an initiation fee;]

["services" does not include employment services or those related to the media;]

"supplier" means -

- (a) a seller of goods or services; or
  - (b) a person providing a service.
- (2) In this Act a reference to -
- (a) the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
  - (b) the supply or acquisition of goods or services includes a reference to –
    - (i) an agreement to supply or acquire goods or services; and
    - (ii) the supply or acquisition of goods or services together with other property or other services or both.
- (3) For the purposes of this Act-
- (a) it is immaterial whether a supplier has a place of business in [State];
  - (b) goods or services supplied wholly or partly outside [State], shall be treated as goods supplied to or services supplied for, persons in [State] if they are supplied in accordance with arrangements made in [State], whether orally or by delivery of documents in [State] or correspondence posted from or to an address in [State];
  - (c) in relation to the supply of goods under a hire purchase agreement or conditional sale agreement, the person conducting any antecedent negotiations and the owner or supplier shall be treated as a person supplying or seeking to supply the goods;
  - (d) a reference to -
    - (i) a person to or for whom goods or services are supplied shall be construed as including a reference to a guarantor of that person;
    - (ii) the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to

which a person undertakes to act as such a guarantor;

- (e) goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or required by law or otherwise, to be made.

(4) In this Act, "the supply of services" does not include the rendering of services under a contract of employment but, subject to that exception, includes -

- (a) the undertaking and performance for gain or reward of engagements for any matter other than the supply of goods; and
- (b) both the rendering of services to order and the provision of services by making them available to potential users.

**Purpose and application of Act.**

3. (1) The purpose of this Act is to promote and advance the social and economic welfare of consumers by –

- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible;
- (b) promoting fair business practices;
- (c) protecting consumers from –
  - (i) unfair, unconscionable or otherwise improper trade practices; and
  - (ii) deceptive, misleading, unfair or fraudulent conduct;
- (d) promoting social, economic and environmental responsibility in consumer markets;
- (e) improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour; and

(f) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

(2) Subject to subsection (4), this Act applies to all persons involved in trade or business whether through the purchasing or supplying of goods or services.

(3) In determining whether this Act applies to an entity or transaction, a court or tribunal shall consider the real substance of the entity or transaction and in so doing may disregard the outward form.

[(4) The Minister may by Order, subject to affirmative resolution, exempt categories of trade or business from the application of this Act.]

(5) Subject to section 75, this Act binds the [State/Crown]

**Consumer organisations.**

4. Any organization purporting to provide services for the protection of consumers must be a duly registered, non-profit organization the purpose of which is to -

- (a) promote and protect consumer rights;
- (b) represent the collective interests of consumers before judicial or administrative bodies;
- (c) represent consumers' interests to government and persons engaged in the business of producing, supplying or distributing goods or providing services; and
- (d) collect, process and disseminate objective information for the benefit of consumers.

**PART II  
ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION**

**[Establishment of Consumer Affairs Commission.**

5. (1) There shall be established for the purposes of this Act a Commission to be known as the Consumer Affairs Commission (the Commission) which shall be a body corporate.

**First Schedule.**

(2) The provisions of the First Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.]

**Functions of Commission.**

6. (1) The Commission shall –

- (a) investigate, in accordance with Part III, any complaint by a consumer in relation to the sale of goods or the provision of services as will enable it to determine whether the goods were sold or the services were provided in contravention of this Act and make such report and recommendations as it thinks fit to the Minister;
- (b) on its own initiative, carry out such other investigations in relation to the availability of goods of any class or description as it thinks fit and make such report and recommendations as it thinks fit to the Minister;
- (c) promote the development of organizations formed to provide services for the protection of consumers to ensure that they fulfill the criteria listed in section 4;
- (d) collect, compile and analyze information in relation to any trade or business;
- (e) provide information to consumers on their rights as consumers and to enable them to make informed choices;
- (f) implement education programmes for the benefit of consumers and suppliers;
- (g) seek to resolve disagreements between consumers and suppliers; and
- (h) carry out such other functions as the Minister may assign to the Commission from time to time.

(2) Subject to this Act, the Commission may, for the purpose of exercising or discharging any of its functions under this Act, do anything and enter into any transaction which, in the opinion of the Commission, is necessary to ensure the proper exercise or discharge of its functions.

(3) The Commission, in addition to its functions specifically set out in this Act, is responsible to take reasonable and practical measures, in a manner consistent with the purposes of this Act, to –

- (a) promote and support the development of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market generally, and in particular to meet the needs of persons contemplated in subsection (4); and

- (b) monitor and report each year to the Minister on the availability of goods and services to persons contemplated by subsection (4), including price and market conditions and the performance of public and private suppliers in ensuring the realisation and full enjoyment of their consumer rights by persons contemplated by subsection (4).

(4) For the purposes of subsection (3), the persons contemplated are -

- (i) minors, the elderly and other similarly vulnerable consumers; and
- (ii) consumers whose ability to read and comprehend advertisements, agreements, marks, instructions, labels, warnings or notices is limited by reason of low literacy, vision impairment or limited fluency in the language in which any such text is produced, published or presented.

### **PART III COMPLAINTS**

**Complaints  
made to the  
Commission.**

7. (1) Subject to subsection (2), a complaint to the Commission may be made by a person or body of persons, whether incorporated or not, who claims to have been adversely affected in relation to the acquisition of goods or services.

(2) Where the complainant –

- (a) is a minor, the complaint may be made by a parent or guardian;
- (b) is unable to act for himself by reason of infirmity or any other cause or has died, the complaint may be made by a parent or guardian or any other suitable person or his personal representative.

(3) A complaint to the Commission may be made orally or in writing.

(4) Where litigation is contemplated by the complainant in relation to a complaint that is not in writing, the Commission shall require the complainant to produce a written version of the complaint signed by the complainant.

(5) The Commission may, upon the request of a complainant, represent that complainant in the event that litigation is contemplated.

(6) Subsection (1) does not affect the right of a person to enforce in a court of law, a complaint referred to in that subsection except that the person shall not institute proceedings in both the Commission and a court in respect of the same complaint.

(7) For the purposes of this section the term "suitable person" includes the Commission.

**Discretion  
whether to  
conduct  
investigation.**

8. (1) The Commission may, in its absolute discretion, determine whether to conduct or continue an investigation under this Act.

(2) Without limiting the generality of subsection (1), the Commission may refuse to conduct or continue any investigation if it considers that –

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or not made in good faith;
- (c) the delay in making the complaint was too long;
- (d) the complainant does not have a sufficient interest in the subject-matter of the complaint;
- (e) the subject-matter of the complaint could more appropriately be dealt with by another body [or another forum]; or
- (f) having regard to all the circumstances of the case, it is not necessary to conduct or continue an investigation.

(3) Where the Commission decides not to conduct or continue an investigation, it shall, in writing, inform the complainant of that decision and the reasons for it.

(4) Where the Commission refuses to conduct or continue an investigation under subsection (2)(a) or (b), the complainant shall bear the costs related to the complaint.

**Power to investigate not precluded.**

9. (1) The Commission shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to a court or tribunal for redress under any other enactment.

(2) If a question arises as to whether the Commission has jurisdiction to investigate a case under this Act, the Commission may apply to the [High Court] for a declaration as to jurisdiction.

(3) Unless the court directs otherwise, the commencement of an action in court in connection with a matter under investigation by the Commission shall not preclude the investigation.

**Power to summon persons to give evidence.**

10. (1) The Commission may, in relation to an investigation being conducted by it, summon a person to –

- (a) attend and give evidence before the Commission; or
- (b) produce any document which is -
  - (i) in the possession or under the control of that person; and
  - (ii) relevant to the matter under investigation.

(2) A summons under this section –

**Second Schedule.**

- (a) shall be in the form set out in the Second Schedule; and
- (b) may be served by –
  - (i) a member of the [Police Force];
  - (ii) a bailiff; or
  - (iii) any other person authorised by the Commission so to do.

**Obligations of persons summoned.**

11. (1) A person summoned to attend and give evidence or to produce a document before the Commission shall be entitled –

(a) in respect of such attendance, the giving of evidence, the disclosure of any communication or the production of any document, to the same rights and privileges as a person summoned before a court of law; and

[(b) to be paid his expenses, including travelling expenses, at the rates prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from public fund.]

[(2) The Commission may, if it thinks fit, disallow the whole or any part of any expenses referred to in subsection (1)(b).]

(3) A person who without sufficient cause –

(a) fails or refuses to obey a summons issued by the Commission under section 10;

(b) being a witness before the Commission -

(i) leaves the Commission without its permission; or

(ii) refuses to answer any question put to him by or with the permission of the Commission; or

(c) [wilfully] obstructs or interrupts the proceedings of the Commission,

commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two years].

**Documents to be received as evidence.**

12. In all legal proceedings any document produced to the Commission pursuant to section 10 shall be received as *prima facie* evidence of the truth of the statements contained therein.

**PART IV  
CONSUMER RIGHTS**

**Rights reserved.**

13. Nothing in this Act shall be interpreted so as to limit any right or remedy that a consumer may have in law.

**No waiver of substantive and procedural rights.**

14. (1) The substantive and procedural rights given under this Act apply notwithstanding any agreement or waiver to the contrary.

(2) Without limiting the generality of subsection (1), any term or acknowledgement in a consumer agreement that requires or has the effect of requiring that disputes arising out of the consumer agreement be submitted to arbitration is invalid insofar as it purports to prevent a consumer from exercising a right given under this Act or to commence an action in Court.

(3) Notwithstanding subsections (1) and (2), where a dispute over which a consumer may commence an action in the Court arises, the consumer, the supplier and any other person involved in the dispute may agree to resolve the dispute using any procedure that is available in law.

(4) A settlement or decision that results from the procedure agreed to under subsection (3) is as binding on the parties as such a settlement or decision would be if it were reached in Court.

**Quality of services or goods.**

15. (1) A supplier is deemed to warrant that the goods or services supplied under a consumer agreement are of a reasonably acceptable quality.

**Cap. [ ]**

(2) The implied conditions and warranties applying to the sale of goods by virtue of the [Sale of Goods Act] are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement.

(3) A term or acknowledgement that purports to negate or vary any implied condition or warranty under the [Sale of Goods Act] or any deemed condition or warranty under this Act is void.

(4) A term or acknowledgement referenced in subsection (3) is severable from the agreement and shall not be evidence of circumstances showing an intent that the deemed or implied condition or warranty does not apply.

**Ambiguities to benefit consumer.**

16. In any matter brought before the Commission or a Court, the Commission or the Court, as the case may be, shall -

- (a) promote the spirit and purpose of this Act;
- [(b) develop the common law as necessary to improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 6(4);]
- (c) if a provision of this Act, read in context, can be reasonably construed to have more than one meaning, prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 6(4); and
- (d) strictly interpret information that is required to be disclosed under this Act and any document prepared or published by or on behalf of a supplier or required to be produced by a supplier, to the benefit of the consumer, that –
  - (i) any ambiguity that allows for more than one reasonable interpretation of a part of such information or document is resolved to the benefit of the consumer; and
  - (ii) any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to the content of the document, the manner and form in which it was prepared and presented, and the circumstances of the transaction or agreement.

**Charging consumers for assistance.**

17. A person shall not charge a consumer for assisting the consumer to obtain any benefit, right or protection to which the consumer is entitled under this Act, unless, before the consumer agrees to pay the charge, the person discloses the existence and direct availability of the entitlement to the consumer and the cost, if any, the consumer would be required to pay for the entitlement if the consumer obtained the entitlement directly.

**Unsolicited goods or services: relief from legal obligations.**

18. (1) A consumer is not required to pay a supplier for any goods or services supplied to the consumer unless the consumer –

- (a) has implicitly requested the supplier to supply those particular goods or services by –
  - (i) tendering payment for them; or
  - (ii) other conduct that could reasonably lend the supplier to believe that the consumer has requested the supplier to supply these particular goods or services;
- (b) has expressly requested the supplier to supply those particular goods or services before they are supplied to the consumer; or
- (c) is a party to an agreement with the supplier in terms of which the supplier has undertaken to supply goods or services of that particular class from time to time to the consumer without further approval or specific request.

(2) A supplier is not entitled to demand payment or make any representation that suggests that a consumer is required to make payment in respect of any unsolicited goods or services, despite their subsequent use, receipt, misuse, loss, damage or theft.

(3) The supplier is liable to pay to the recipient of unsolicited goods, such reasonable costs as are incurred in respect of the storage of the goods.

(4) Subsections (2) and (3) do not apply to or in relation to a recipient of unsolicited goods if -

- (a) the recipient has unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods;
- (b) the supplier or the owner of the goods has, within [ten business days/one month] of receipt by the recipient, taken possession of the goods; or
- (c) the goods were received in circumstances in which the recipient knew or might reasonably be expected to have known, that the goods were not intended for him.

(5) A request for goods or services shall not be inferred solely on the basis of payment, inaction or the passing of time.

(6) Where a consumer is a party to an agreement contemplated in subsection (1)(c) and, during the course of that agreement there is a material change in such goods or services, the goods or services shall be treated as unsolicited from the time of the material change unless the supplier is able to establish that the consumer consented to the material change.

(7) Where a consumer consents to a material change, whether orally, in writing or by other affirmative action, a supplier may rely on the consent but has the onus of proving such consent.

(8) Where a supplier has received payment from or on behalf of a consumer in respect of unsolicited goods or services, the consumer may demand a refund of the payment within one year after having made the payment.

(9) A supplier who receives a demand for a refund under subsection (8) shall refund the payment within the prescribed period of time.

(10) Where a consumer receives any unsolicited goods from a supplier, the consumer -

(a) may –

(i) subject to paragraph (b)(ii), retain the goods without payment; or

(iii) return the goods to the supplier at the supplier's risk and expense; and

(b) subject to subsection (4), is not liable for any -

(i) loss or damage to those goods while they are in transit, or at any time after they are received by the consumer, whether or not they remain in the consumer's possession; or

(ii) use or depletion of, or damage to those goods at anytime after [10 business days/one month] after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and has arranged to

recover them, at the supplier's risk and expense.

(11) In this section -

“unsolicited goods or services” means -

- (a) goods that are supplied to a consumer who did not request them, but does not include –
  - (i) goods that the recipient knows or ought to know are intended for another person;
  - (ii) a change to periodically supplied goods, if the change is not a material change; or
  - (iii) goods supplied under a written future performance agreement that provides for the periodic supply of goods to the recipient without further solicitation; or
- (b) services that are supplied to a consumer who did not request them, but does not include –
  - (i) services that were intended for another person from the time the recipient knew or ought to have known that they were so intended;
  - (ii) a change to ongoing or periodic services that are being supplied, if the change to the services is not a material change; or
  - (iii) services supplied under a written future performance agreement that provides for the ongoing or periodic supply of services to the recipient without further solicitation.

**Consumer's right to select suppliers and products.**

19. (1) A supplier shall not require, as a condition of offering to supply, or supplying, any goods or services, or as a condition of entering into a consumer agreement, that the consumer -

- (a) purchase any other goods or services from that supplier;
- (b) enter into an additional agreement or transaction with the same or another supplier; or

- (c) agree to purchase any goods or services from a designated third party,

unless the supplier can show financial or other efficiency benefits to the consumer.

(2) Without limiting the generality of subsection (1), a supplier requires a consumer to purchase additional goods or services if the supplier -

- (a) supplies the primary goods and any additional goods in a common package, and offers them for supply at a single price;
- (b) attaches to or inserts within, or in the packaging of, any primary goods a promotional coupon, credit slip, voucher or similar device to be used as full consideration for the purchase of any additional goods or services; or
- (c) installs within or encodes upon the primary goods, or any component of them, any additional goods but does not alternatively offer them for supply separately and at individual prices.

**Consumer's right to authorise services.**

20. (1) This section applies to any transaction or consumer agreement in terms of which a supplier supplies a repair or maintenance service to, or supplies or installs any replacement parts or components in, any property belonging to or in the control of the consumer, if –

- (a) the supplier has or takes possession of that property for the purpose contemplated in this subsection; or
- (b) in any other case, the consumer requests an estimate before any services are supplied.

(2) A supplier to whom this section applies is not entitled to charge a consumer for the supply of any goods or services contemplated in subsection (1) unless -

- (a) the supplier has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorised the work; or
- (b) the consumer has, in writing –

- (i) declined the offer of an estimate, and authorised the work; or
  - (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.
- (3) A supplier is not entitled to charge a consumer for -
- (a) an estimate required in terms of subsection (2)(a), unless the supplier has disclosed the price for preparing that estimate, and the consumer has approved it; or
  - (b) any diagnostic work, disassembly or re-assembly required in order to prepare an estimate, or for any damage to or loss of material or parts in the course of preparing an estimate, in addition to any estimate charge imposed in terms of paragraph (a).
- (4) The Minister, by regulation, may exempt from this section any transaction or consumer agreement referred to in subsection (1) that is below a prescribed threshold.

**Consumer's right to choose and examine goods.**

21. (1) If any goods are displayed in, or sold from, open stock, the consumer has the right to select or reject any particular item from that stock.

(2) If the consumer has agreed to purchase goods on the basis of a description or sample of the goods it is an implied condition of the agreement that -

- (a) the goods delivered to the consumer must correspond with the description or sample; and
- (b) the goods must be free from any defect that would not be apparent from the description or on reasonable examination of the sample.

(3) If the consumer has agreed to purchase or lease goods on the basis of a sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(4) Where the supplier delivers goods to a consumer under a consumer agreement, the supplier shall, on request, allow the consumer

a reasonable opportunity to examine the goods for the purpose of ascertaining whether they are in conformity with the consumer agreement.

(5) If goods are delivered to the consumer that the consumer has not previously examined, the consumer is deemed not to have accepted them until the consumer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the consumer agreement.

**Consumer's rights with respect to delivery of goods or supply of service.**

22. (1) Unless otherwise expressly provided or anticipated in a consumer agreement, it is an implied condition of every transaction for the supply of goods that –

- (a) the supplier is responsible to deliver the goods to the consumer –
  - (i) within a reasonable time;
  - (ii) at the agreed place of delivery; and
  - (iii) at the cost and risk of the supplier;
- (b) the agreed place of delivery is the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and
- (c) the goods remain at the supplier's risk until the consumer has accepted delivery.

(2) The consumer has the right to require -

- (a) delivery of any goods at the date, time and place of the consumer's choice, but the supplier may require the consumer to pay the costs of delivery at any location other than as contemplated in subsection (1); or
- (b) performance of any service at the time agreed with the supplier.

(3) If a consumer agreement does not provide a specific time for delivery of any goods or supply of any service, the supplier shall not require that the consumer accept delivery or performance of the services at an unreasonable time.

**Consumer's acceptance of goods or services.**

23. (1) A consumer is deemed to have accepted goods when –
- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted them;
  - (b) the goods have been delivered to the consumer, and the consumer does any act in relation to them that is inconsistent with the supplier's ownership of the goods; or
  - (c) after the lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected them.
- (2) Where a supplier delivers to a consumer a larger quantity of goods than the consumer agreed to buy, the consumer may accept the goods, and -
- (a) pay for the agreed quantity at the agreed rate; and
  - (b) treat the excess quantity as unsolicited goods in accordance with section 18.
- (3) Where a supplier delivers to a consumer some of the goods the supplier agreed to sell together with goods of a different description not contemplated in the consumer agreement, the consumer may -
- (a) accept the goods that are in accordance with the agreement and reject the remainder; or
  - (b) reject the whole.

**Right of consumer's estate to choose whether to uphold agreement.**

24. (1) If a consumer dies after entering into a consumer agreement for the supply of any goods or services, but before the delivery of those goods or the supply of those services, the administrator of the consumer's estate may give notice to the supplier –
- (a) requiring delivery of the goods or supply of the services, in accordance with the agreement; or
  - (b) terminating the agreement as from the death of the consumer, subject to subsections (2) to (4).

(2) Upon the death of a consumer as contemplated in subsection (1), any deposit paid by the consumer remains in trust for the benefit of the consumer's estate.

(3) If a consumer agreement that has been terminated in terms of subsection (1)(b) contemplated the supply of any special-order goods, the supplier, after receiving notice of the termination -

- (a) shall not order, procure or make anything not ordered, procured or made, and must ensure the diligent completion of anything that had been ordered, procured or begun to be made;
- (b) is entitled to reimbursement for any costs for such procurement or work, on the terms contemplated in the agreement; and
- (c) upon acquisition or completion of those special-order goods, holds them in trust for the benefit of the consumer's estate, subject to further direction by the administrator of that estate.

[(4) This section does not apply in respect of a consumer agreement for the supply of funeral or burial services.]

**Consumer's right to cancel reservation.**

25. (1) Subject to subsections (2) and (3), a consumer has the right to cancel any advance booking or reservation for a service to be supplied.

(2) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date -

- (a) may require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the goods or services that have been reserved; and
- (b) may impose a reasonable charge for cancellation of the order or reservation.

(3) For the purposes of this section, a cancellation charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to -

- (a) the nature of the service that was reserved or booked;
- (b) the length of notice of cancellation provided by the consumer; and
- (c) the reasonable potential for the supplier, acting diligently, to find an alternative consumer between the time of receiving the notice, and the time of the cancelled reservation.

(4) If a consumer is unable to carry out a reservation or advance booking by reason of the death of the consumer, the supplier -

- (a) may not impose any cancellation fee in respect of the reservation or booking; and
- (b) shall refund to the administrator of the consumer's estate any deposit paid by the consumer in respect of the reservation or booking.

(5) Section 24(3), read with the changes required by the context, applies in respect of a cancellation in terms of this section.

**Consumer's right to rescind or cancel agreement.**

26. (1) The provisions of this section are in addition to and not in substitution for any right to return goods and receive a refund that may otherwise exist in law between a supplier and consumer.

(2) A consumer may rescind a consumer agreement -

- (a) within [10] business days after delivery of goods to be supplied in terms of the agreement, if the agreement arises as a result of -
  - (i) direct, distance or electronic marketing by the supplier and contemplates the delivery of goods to the consumer; or –
  - (ii) any other marketing in circumstances in which the consumer is unable to choose or examine goods as contemplated in section 21;
- (b) within [5] business days after entering into the agreement, if the agreement arises as a result of direct, distance or electronic marketing by the supplier but does not contemplate the delivery of goods to the consumer.

(3) At any time, by giving [one] month notice to the supplier, a consumer may cancel without penalty, a consumer agreement -

- (a) for the supply of a continuous service;
- (b) to purchase goods or services on a periodic recurring basis by subscription; or
- (c) to make a donation on a periodic recurring basis.

(4) Notwithstanding the time limits set out in subsection (2), a consumer may rescind a consumer agreement as contemplated in that subsection within [1 year] after the agreement, if the supplier -

- (a) was required to be licensed or registered in terms of any public regulation, and was not so licensed or registered; or
- (b) contravened any provision of this Act in respect of the transaction.

(5) The expense and risk of return is borne by the supplier if goods are unacceptable and otherwise by the consumer.

(6) A supplier -

- (a) is obliged to return any payment received from a consumer within [5] business days after receiving notice of the rescission of a consumer agreement; and
- (b) is not entitled to collect any payment in terms of a rescinded agreement.

(7) This section does not apply with respect to a consumer agreement in terms of which goods have been delivered to the consumer, if -

- (a) any public regulation prohibits the return of those goods to the supplier once they have been supplied to, or at the direction of, a consumer; or
- (b) after having been supplied to, or at the direction of, the consumer, the goods have been -

- (i) partially or entirely eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying them; or
- (ii) partially or entirely disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

**Right to information in official language.**

27. A consumer has a right to receive any document required in terms of this Act in the official language.

**Right to information in plain and understandable language.**

28. (1) A document that is required to be delivered to a consumer in terms of this Act, must be provided –

- (a) in the prescribed form, if any, for that document, or;
- (b) in plain language, if no form has been prescribed for the document.

(2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the document without undue effort, having regard to -

- (a) the context, comprehensiveness and consistency of the document;
- (b) the organisation, form and style of the document;
- (c) the vocabulary, usage and sentence structure of the text; and
- (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.

(3) The Commission may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1)(b).

## **PART V DUTIES OF SUPPLIERS**

**Information to consumer.**

29. (1) At any time before payment is made for any goods (whether sold as used or unused) a supplier shall, in addition to the requirements of any other enactment relating to packaging, labelling or description of goods, provide to the consumer in [English] language, the information mentioned in subsection (2), concerning the goods being sold.

(2) The information referred to in subsection (1) is -

(a) where applicable, the origin, care, terms, components, hazards, proper use, weight, size and instructions for assembly and installation of the goods; and

(b) where chargeable, the professional fees of the supplier in respect of the goods.

(3) Where a supplier fails to comply with subsection (1) he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that can be directly attributed to the consumer's lack of information.

(4) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two] years.

**Disclosure of price of goods or services.**

30. (1) A supplier shall not display goods for sale, or offer to supply any prescribed services without displaying a price in relation to those goods or services, unless the display is -

(a) designed and intended predominantly as a form of advertisement of the supplier, or of goods or services; and

(b) in the case of goods, in an area within the supplier's premises to which the public does not ordinarily have access.

(2) For the purposes of this section, -

(a) a price is displayed in relation to particular goods if it is –

(i) annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;

(ii) published in relation to the goods in a catalogue available to the public if a time is specified in the catalogue as the time after which the goods may not be sold at that price, and that time has not yet passed or in any other case, the catalogue may reasonably be regarded as not out of date; or

(iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services; and

(b) a price is not displayed in relation to goods if -

(i) it is in relation to goods originating outside [ ], and is expressed in a currency other than the currency of [ ]; or

(ii) the display of that price is fully covered and obscured by a second displayed price.

(3) If a supplier displays goods or offers to supply any services in relation to which more than one price is concurrently displayed, section 54 applies.

[(4) Subsection (3) does not apply in respect of the price of goods or services if the price of those goods or services is determined by any public regulation.]

(5) Where a supplier has provided an estimate for any service, or goods and services, as contemplated in section 20, the price for that service, or goods and service, must not exceed the estimate unless -

- (a) the supplier has informed the consumer of the additional estimate charges; and
- (b) the consumer has authorised the work to continue.

(6) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars and in default of payment of the fine, to imprisonment for a terms not exceeding [two] years.

**Identification of supplier.**

31. (1) A person shall not carry on business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or consumer agreement with a consumer under any name except –

- (a) the person's name, as –
  - (i) recorded in an official identity document or any other recognised identification document, in the case of an individual; or
  - (ii) registered in terms of a public regulation, in the case of a juristic person; or
- (b) a name registered to, and for the use of, that person in terms of any other public regulation.

(2) A person doing anything contemplated in subsection (1) shall include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account issued -

- (a) the name, title or description under which the business is carried on;
- (b) a statement of the place at which, or from which, the business is carried on; and
- (c) if the activity is carried on under a name contemplated in subsection (1)(b), the name of the person to whom that name is registered.

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two] years.

**Product  
labelling and  
trade  
descriptions.**

32. (1) A supplier of goods must not display, offer to supply or supply any goods, other than goods that are exempt in terms of subsection (3), unless a trade description of those goods is -

- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
- (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
- (c) is contained in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.

(2) A supplier of goods shall -

- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that -
  - (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
  - (ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (4); and
- (b) with respect to any goods within that person's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).

(3) The minister, by regulation, may -

- (a) exempt particular goods or categories of goods from the application of subsection (1) if -

- (i) those goods, or that category of goods, are subject to regulation in terms of any public regulation other than this Act, and the Minister is satisfied that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section; or
  - (ii) the information required in terms of this section is self-evident given the nature of the goods, and the manner and circumstances in which they are customarily made available for supply to the public; or
- (b) prescribe circumstances of displaying or selling particular goods or categories of goods, which if satisfied, would exempt those goods from the application of this section.
- (4) It is an offence for a person to -
- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;
  - (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers; or with respect to any goods within that person's control; or
  - (c) fail to take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b).

**Disclosure of environmental facts affecting goods.**

33. (1) In addition to the requirements of section 32, a person who packages any prescribed goods, or imports any such goods, for supply to consumers shall display on or in association with that packaging or those goods, a notice in the prescribed manner and form that discloses

—

- (a) the presence, nature and extent of any –
  - (i) genetically modified ingredients or components of those goods; or
  - (ii) ingredients or components that have been determined to present a chemical or biological

hazard to humans, relative to their concentration in those goods;

- (b) the estimated energy requirements per hour of use, if the operation of the goods requires the utilisation of energy other than muscle power;
- (c) the nature and intensity of any potentially harmful energy radiation, if the goods, or any component of the goods, emit any such radiation; and
- (d) the need for special handling, or waste disposal, of the goods, any component of them or any material in which the goods were packaged, if such special handling or waste disposal is -
  - (i) required in terms of any public regulation; or
  - (ii) is advisable in the interests of personal or public health or safety.

(2) A person who, in connection with the supply of any services to a consumer, supplies to that consumer goods that are prescribed in terms of subsection (1), shall -

- (i) inform the consumer of any relevant information before supplying those goods; and
- (ii) after complying with subparagraph (i), obtain the consumer's express consent to install goods that are the subject of a notice required by subsection (1), before supplying those goods.

(3) Subsection (1) does not apply to goods or services in respect of which a substantially similar label or notice has been applied or provided in terms of any other public regulation.

(4) A supplier of goods shall –

- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that –
  - (i) a notice applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that notice; or

(ii) a notice applied to those goods has been altered as contemplated in subsection (5); and

(b) with respect to any goods within that person's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).

(5) It is an offence for a person to -

(a) knowingly apply to any goods a notice that is likely to mislead the consumer as to any matter implied or expressed in that notice;

(b) alter, deface, cover, remove or obscure a notice applied to any goods in a manner calculated to mislead consumers; or with respect to any goods within that person's control; or

(c) fail to take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b).

**Disclosure of re-conditioned goods.**

34. A person who offers or agrees to supply, or supplies, any goods that –

(a) have been re-conditioned, re-built or re-made; and

(b) that bear the trade mark of the original manufacturer or supplier,

shall apply a conspicuous notice to those goods stating clearly that they have been reconditioned, re-built or re-made.

**Sales records.**

35. (1) A supplier of goods or services shall provide a written record of each transaction to the consumer to whom the goods or services are supplied, including in that record, the following information -

(a) the supplier's name, or registered business name, [and VAT registration number, if any];

(b) the address of the premises at which or from which the goods or services were supplied;

(c) the date on which the transaction occurred;

- (d) a name or description of the goods or services supplied or to be supplied;
- (e) the unit price for each of the goods or services supplied or to be supplied;
- (f) the quantity of each of the goods or services supplied or to be supplied;
- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including any applicable taxes; and
- (j) such other information as may be prescribed under this or any other enactment.

[(2) The Minister, by notice, may exempt categories of goods or services, or circumstances of trade, from the application of subsection (1).]

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or to imprisonment for a term not exceeding [ ] or to both such fine and imprisonment.

**Utility of sales record.**

36. The sales record provided by the supplier –
- (a) shall be adequate proof of the purchase of the goods or services; and
  - (b) may be used for the purposes of refund in any of the circumstances specified in this Act.

**Measurement of goods.**

37. (1) A consumer is entitled to check the weight, volume or other measurement of the goods that he intends to purchase where the weight, volume or other measurement of the goods materially affects or determines the price of the goods.

(2) For the purposes of subsection (1), a supplier of any goods that is sold by reference to its weight, volume or other measurement shall provide, to the consumer at the time of purchase, appropriate

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measurement standards in accordance with [any applicable law in force for the time being.] [the Weights and Measures Act].

(3) A supplier who, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the consumer, a lesser quantity than that –

- (a) purported to be supplied; or
- (b) corresponding with the price charged,

commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars.

(4) No offence is committed under subsection (3) where the lesser quantity provided to the consumer by the supplier may reasonably be regarded as a trivial amount.

**Warranties.**

38. (1) Subject to the standard provision of warranties, a supplier shall issue explicit warranties in relation to his goods or services, as the case may be[, whether the goods are new or used, and whether the service offered is the repair of any appliance, furniture, equipment or other good].

(2) Where a warranty given by a manufacturer is attached to goods sold, or provided in the course of a service, the supplier shall –

- (a) be deemed to have issued to the customer, the manufacturer's warranty as an explicit warranty by the supplier; and
- (b) notwithstanding any geographical limitations in the warranty, be liable to the consumer under the warranty as if the supplier were the manufacturer.

(3) Where the service provided is the repair or replacement of defective goods –

- (a) there is implied, a warranty that the repair or replacement shall be carried out within a reasonable time; and
- (b) implied warranties applicable to a contract for sale of goods shall apply to the repaired or replacement goods.

[(4) Where a supplier is liable only for the free replacement of parts under a warranty agreement, the supplier shall not require the consumer to use the services of the supplier in effecting the repairs to the equipment as a condition for the free replacement.]

(5) Implied warranties in the absence of explicit warranties, shall apply to the sale and repair of all goods.

(6) In the absence of an explicit warranty, then, subject to the standard conditions of warranties, an implied warranty of six months on parts and labour shall attach to the transaction.

**Damage  
resulting from  
use of service  
or goods.**

39. (1) Subsection (2) applies in any case where a supplier –

- (a) undertakes to provide a consumer with goods or a service upon payment of a fee;
- (b) provides the declared benefit attached to the service or use of the goods; and
- (c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.

(2) A supplier shall, upon presentation by the consumer of a document from the Commission substantiating that, in its opinion, a complaint is valid and well founded –

- (a) undertake to pay the consumer all reasonable costs incurred or to be incurred in correcting the damage so caused; and
- (b) initiate payment of compensation within [seven] days after the complaint is received at the registered office of the supplier.

(3) A supplier shall not be relieved of liability if –

- (a) the consumer fails to avail himself of some other goods or service that may be recommended by the supplier as supplementary or complementary; or
- (b) he has provided complementary goods or services which fail to function well or cause damage or other loss.

**Sale of  
damaged  
goods to  
consumer.**

40. (1) Where –

- (a) within the warranty period, goods sold to a consumer fail to provide the benefit and uninterrupted enjoyment for which it was intended; and
- (b) the failure is determined by the Commission, after consultation with the supplier, not to be due to negligence or abuse by the consumer,

then the supplier shall be responsible for the replacement or repair of the goods, at no cost to the consumer.

(2) The supplier shall, in the event of repair of goods referred to in subsection (1) –

- (a) return the goods to the consumer in a fully repaired and functional state within such period, after receipt of the goods for repair or replacement, as the Commission, after consultation with the supplier, considers appropriate; and
- (b) if it is not returned to the consumer within the period, determined by the Commission, provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until the replacement or repair and return of the goods.

**Return of  
defective goods.**

41. (1) Subject to subsections (3) and (5), where a consumer is encouraged to acquire goods by the supplier's declaration and description of the goods and the consumer subsequently discovers that the goods are defective in a material particular from those declared or described, the consumer may return the goods to the supplier.

(2) Where goods are returned pursuant to subsection (1) the supplier shall, in exchange for the returned goods -

- (a) replace the goods within [ ] days of the return of the goods to the supplier; or
- (b) at the election of the consumer, immediately refund the value of the goods or such other amount as may be agreed between the consumer and supplier.

(3) A supplier is obliged to make refunds on goods returned to him pursuant to subsection (1) only where the goods are returned -

- (a) in the condition in which they were purchased; or
- (b) with minimal damage resulting from reasonable exposure in the normal course of use of the goods prior to discovery of the material difference between the goods received and the goods declared and described.

(4) Where there is a dispute as to the condition of the goods, the Commission may, upon request, examine the goods with a view to making a determination as to the condition of the goods.

(5) A consumer who acquires goods that in every way is similar or identical to the one requested or described and declared by the supplier shall not be entitled to a refund if, having left the place from which the supplier sold the goods, the consumer for any reason decides that he no longer wants it.

[(6) A supplier who fails -

- (a) to replace the goods within [ ] days of the return of the goods; or
- (a) where applicable, to immediately refund the value of the goods or such other amount as may be agreed between himself and the consumer,

commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars.]

**Return of electrical goods.**

42. (1) This section applies where –

- (a) a consumer purchases electrical goods, believing the goods to be fully functional and operational; and
- (b) upon attempting to use the goods, discovers that they are faulty or non-functional.

(2) Where subsection (1) applies, the consumer may return the goods.

(3) Unless the supplier is able to establish that the goods were damaged as a direct result of neglect or abuse by the consumer, the consumer shall, upon return of the goods to the supplier, be entitled to –

- (a) an exchange, of the faulty goods for goods that are new, similar and functional; or
- (b) a refund of the amount paid by the consumer for the goods.

**Approved and non-approved services.**

43. (1) A supplier shall –

- (a) only provide such services as are approved by the consumer; and
- (b) not require a consumer to commit to pay for services which, in addition to those contracted, may, in the opinion of the supplier, be necessary or appropriate.

(2) A consumer shall not be liable to pay for any service not approved by him.

**Businesses offering repair services.**

44. (1) A supplier who offers repair services to consumers shall keep records stating –

- (a) the name, address and telephone number of the consumer;
- (b) a reasonably accurate description of the goods to be repaired, including any identification number or mark;
- (c) the replacement value of the goods in its present state as agreed with the consumer;
- (d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected;
- (e) the date on which the goods –
  - (i) are received for repair; and
  - (ii) will be ready for delivery.

(2) A copy of the record shall be given to the consumer before the commencement of repairs.

(3) A supplier who offers a repair service shall –

(a) disclose to the consumer any additional related repairs that he deems necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired goods; and

(b) obtain a written indemnity from the consumer if the consumer chooses not to require the supplier to effect the recommended repairs.

(4) A supplier who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars.

**Advertised  
delivery date.**

45. (1) Where –

(a) a supplier has advertised a date or period for delivery of any goods, whether new, used or repaired; and

(b) a consumer has entered into a contract with, and given a deposit to the supplier to deliver the goods,

that date or period shall form part of the contract between the supplier and the consumer.

(2) If the goods are not delivered to the consumer by that date or within that period, the supplier shall, at the election of the consumer, either -

(a) refund the deposit, plus interest for the period beginning with the date of deposit and ending on the date of its refund, at an annual rate of [ten] percentage points above the [Treasury Bill] rate applicable at the former date; or

(b) deliver those goods by another date or within another period agreed with the consumer.

(3) A supplier who has advertised a completion or delivery date, and has obtained from the consumer a deposit in cash or kind or both, against the provision of the goods or service, may elect to terminate the contract within [seven] days after the receipt of the deposit and in such a case, shall refund the full value of the deposit received.

**Conditions of demanding and accepting payment, etc.**

46. (1) A person shall not demand or accept payment or other consideration for the supply of goods or services, if at the time of the demand or acceptance, that person –

- (a) does not intend to supply the goods or services;
- (b) intends to supply goods or services which are materially different from the goods or services in respect of which the payment or other consideration is demanded or accepted; or
- (c) does not have reasonable grounds to believe that the goods or services will be supplied within the period specified, or if no period is specified, within a reasonable time.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars [or imprisonment for a term not exceeding [ ] years or to both such fine and imprisonment.

**General standards for the promotion of good or services.**

47. A supplier of goods or services shall not promote any good or services -

- (a) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of -
  - (i) the nature, properties, advantages or uses of the goods or services;
  - (ii) the manner in or conditions on which those goods or services may be purchased, leased or otherwise acquired;
  - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, any previous price, or competitors price for comparable or similar goods or services;
  - (iv) the sponsoring of any event; or
  - (v) any other material aspect of the goods or services;

- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 48;
- (c) if those goods or services are unlawful, or if the supply, purchase, sale or possession of them is unlawful;
- (d) to be supplied in a manner that is inconsistent with any law; or
- (e) in a manner that –
  - (i) is degrading to the dignity of any person;
  - (ii) depicts, simulates, suggests, represents or reasonably appears to promote a use or application of those goods or services that is inconsistent with any law; or
  - (iii) implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a prohibited ground of unfair discrimination set out in the Constitution, except to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of the particular group of prospective consumers.

**PART VI  
UNFAIR PRACTICES**

**False, misleading or deceptive representations.**

48. (1) It is an unfair practice for a person in the course of trade or commerce to make a false, misleading or deceptive representation or to engage in conduct that is or is likely to be misleading or deceptive, particularly in relation to the nature, manufacturing process, characteristics, suitability for purpose or quality of goods or services as the case may be.

(2) With respect to any goods or services that are the subject of a consumer agreement or proposed consumer agreement, between a supplier and a consumer or prospective consumer, or in the marketing of any such goods or services, the supplier must not, by words or conduct, -

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a

consumer or prospective consumer;

- (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception;
- (c) knowingly permit a consumer or prospective consumer to believe a false, misleading or deceptive state of facts; or
- (d) fail to correct an apparent misapprehension on the part of a consumer or prospective consumer, amount to a false, misleading or deceptive representation or permit or require any other person to do so on behalf of the supplier.

(3) Without limiting the generality of subsection (1), it is a false, misleading or deceptive representation to falsely state or imply, or allow a consumer or prospective consumer to incorrectly believe, that -

- (a) the supplier has status, affiliation, connection, sponsorship or approval that he does not have;
- (b) goods or services –
  - (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that they do not have;
  - (ii) are of a particular standard, quality, grade, style or model;
  - (iii) are new or unused, if they are not or if they are re-conditioned or reclaimed, subject to subsection (4);
  - (iv) have been used for a period, to an extent, or in a manner that is materially different from the facts;
  - (v) have been supplied in accordance with a previous representation;
  - (vi) are available, or can be delivered or performed within a specified time;
- (c) land or other [real/immovable] property –
  - (i) has characteristics that it does not have;

- (ii) may lawfully be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable; or
- (iii) has or is proximate to any facilities, amenities or natural features that it does not have, or that are not available to it;
- (d) necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;
- (e) a service, part, replacement, maintenance or repair is needed or advisable;
- (f) a specific price advantage exists;
- (g) a charge or proposed charge is for a specific purpose;
- (h) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, a consumer agreement;
- (i) the transaction affects, or does not affect, any rights, remedies or obligations;
- (j) a particular solicitation of, or communication with, the consumer or prospective consumer is for a particular purpose; or
- (k) the consumer or prospective consumer will derive a particular benefit if they assist the supplier in obtaining a new or potential customer.

(4) A representation contemplated in subsection (3)(b)(iii) to the effect that goods are new is not false, misleading or deceptive if those goods have been used -

- (a) only by or on behalf of the manufacturer, importer, distributor or supplier; and
- (b) only for the purposes of reasonable testing, service, preparation or delivery.

(5) A consumer agreement concluded on the basis of a false, misleading or deceptive representation is unenforceable at the option of the consumer.

**Unreasonable transactions.**

49. (1) A supplier must not supply or agree to supply any particular goods or services to a consumer if the supplier knows, or reasonably ought to have known, or recognised from the interaction between the supplier and the consumer, -

- (a) that the goods or services are materially unsuitable for the purpose to which the consumer intends to apply them, irrespective of whether the goods are of good quality or are reasonably fit for their customary intended purpose; and
- (b) that the consumer is unlikely to be able to make such a determination, having regard to the nature of the goods or services, and the consumer's apparent age, education, experience, familiarity with such goods or services, and general consumer sophistication.

(2) An unreasonable transaction is unenforceable against a consumer.

**Unfair or unjust transactions.**

50. (1) A supplier must not -

- (a) offer to supply, supply, or enter into an agreement to supply, any goods or services at a price or on terms that are unfair or unjust; or
- (b) market any goods or services, or negotiate, enter into or administer an agreement for the supply of any goods or services, in a manner that is unfair or unjust, having regard to –
  - (i) the fair value of the goods or services;
  - (ii) the circumstances of the agreement;
  - (iii) the nature of the parties to that agreement;
  - (iv) the relationship of the parties to each other; and the relative capacity, education, experience, sophistication and bargaining position of the parties.

(2) Without limiting the generality of subsection (1), a transaction is unfair or unjust if -

- (a) the transaction is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
- (b) the terms of the transaction are so adverse to the consumer as to be inequitable; or
- (c) the consumer relied upon a false, misleading or deceptive representation, or statement of opinion, provided by or on behalf of the supplier, to the detriment of the consumer.

(3) An unfair or unjust transaction is unenforceable against a consumer.

**Unconscionable representation.**

51. (1) It is an unfair practice to make an unconscionable representation.

(2) A supplier must not use physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other conduct, in connection with the -

- (a) marketing of any goods or services;
- (b) supply of goods or services to a consumer;
- (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
- (d) demand for, or collection of, payment for goods or services by a consumer; or
- (e) recovery of goods from a consumer.

(3) In addition to any conduct contemplated in subsection (1), it is unconscionable for a supplier to take advantage of the fact that a potential consumer was substantially unable to protect his own interests because of disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

(4) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know that –

- (a) the consumer is not reasonably able to protect his interests due to disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (c) the consumer is unable to receive a substantial benefit from the subject matter of the representation;
- (d) there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
- (f) a statement of opinion is misleading and the consumer is likely to rely on it to his detriment; or
- (g) the consumer is being subjected to undue pressure to enter into a consumer transaction.

(5) A consumer agreement concluded on the basis of an unconscionable representation is unenforceable at the option of the consumer.

**Price renegotiation.**

52. (1) It is an unfair practice for a person to use his or its custody or control of a consumer's goods to pressure the consumer into renegotiating the terms of a consumer transaction.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or imprisonment for a term not exceeding [ ] or to both such fine and imprisonment.

**Bait advertising.**

53. (1) A person shall not, in the course of trade or commerce, advertise for supply, at a specified price, goods or services which that person –

- (a) does not intend to offer for supply; or
- (b) has no reasonable grounds for believing he can supply at that price, for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or imprisonment for a term not exceeding [ ] or to both such fine and imprisonment.

**Dual pricing.**

54. (1) A person shall not, in the course of trade or commerce, supply goods to which more than one price is appended at a price that is higher than the lower or lowest of the prices in question.

(2) In subsection (1), a reference to a price appended to goods includes a reference to a price that is -

- (a) annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any band, ticket, covering, label, reel or thing used in connection with the goods;
- (b) used in connection with the goods or anything on which the goods are mounted for display or exposed for sale;
- (c) determined on the basis of anything encoded on or in relation to the goods;
- (d) published in relation to the goods in a catalogue available to the public if –
  - (i) a time is specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed; or
  - (ii) in any other case, the catalogue may reasonably be regarded as not out-of-date; or
- (e) in any other way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods.

(3) Where a price appended to goods is written, stamped or located wholly or partly over another price, or other prices, appended to the goods, all the prices are, for the purposes of subsection (1), prices appended to the goods and the customer is entitled to pay the lower or lowest of the prices.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or imprisonment for a term not exceeding [ ] or to both such fine and imprisonment.

(5) It is a defence to a prosecution of a person for a contravention of this section that -

- (a) the contravention in respect of which the prosecution was instituted was due to –
  - (i) the act or default of another person (other than a director, employee or agent of the defendant); or
  - (ii) an accident or to some other cause beyond the defendant's control; and
- (b) the defendant had taken all reasonable precautions and exercised due diligence to avoid the contravention.

(6) A price shall be disregarded for the purposes of this section if the price was appended to the goods outside [ ] in relation to the supply of the goods outside [ ].

(7) In this section "price" includes any representation that may reasonably be inferred to be a representation of a price.

**Referral selling.**

55. (1) A person shall not, in trade or commerce as a supplier, induce a consumer to acquire goods or services under a consumer agreement by representing that the consumer will, after the agreement is made, receive a rebate, commission or other benefit in return for giving the first-mentioned person the names of prospective customers or otherwise assisting that person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after the agreement is made.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or imprisonment for a term not exceeding [ ] or to both such fine and imprisonment.

**Pyramid selling.**

56. (1) A person shall not promote or operate a pyramid selling scheme.

(2) For the purposes of this section, the term “pyramid selling scheme” means a scheme that -

- (a) provides for the supply of goods or services or both for reward;
- (b) to many participants, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and
- (c) is unfair, or is likely to be unfair, to many of the participants in that –
  - (i) the financial rewards of many of the participants are dependent on the recruitment of additional participants; and
  - (ii) the number of additional participants that must be recruited to produce reasonable rewards to participants is either not attainable, or is not likely to be attained, by many of the participants.

(3) In subsection (2) “participants” means participants in the scheme.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or imprisonment for a term not exceeding [ ] or to both such fine and imprisonment.

**Exception.**

57. It is not an unfair practice for a person, on behalf of another, to print, publish, distribute, broadcast or telecast a representation which the first mentioned person accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business.

**Rescission.**

58. (1) An agreement, whether written, oral or implied, entered into by a consumer after or while the supplier has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law.

(2) Where rescission of the agreement under subsection (1) is not possible because -

- (a) the return or restitution of the goods or services is no longer possible; or
- (b) recession would deprive a third party of a right in the subject-matter of the agreement which the third party acquired in good faith and for value,

the consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the reasonable value of the goods or services or to recover damages, or both.

**Contravention of this Part.**

59. (1) Subject to subsection (2) in a prosecution under this section it is a defence if the defendant proves –

- (a) that the contravention in respect of which the proceeding was instituted was due to –
  - (i) a mistake;
  - (ii) reliance on information supplied by another person;
  - (iii) the act or default of another person;
  - (iv) an accident; or
  - (v) some other cause beyond his control; and
- (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

(2) If a defence provided by subsection (1) involves an allegation that a contravention was due to –

- (a) reliance on information supplied by another person;  
or
- (b) the act or default of another person,

the defendant is not, without leave of the court, entitled to rely on that

defence unless he has, not later than [7 days] before the day on which the hearing of the proceeding commenced, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

(3) In a proceeding under this section in relation to a contravention of a provision of this Part committed by the publication of an advertisement, it is a defence if the defendant proves that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part.

**Court may order payment of damages or costs.**

60. Upon the conviction of a supplier of an offence under this Part, the Court may order the supplier to –

- (a) make to the consumer, restitution of any deposit made by the consumer;
- (b) pay to the consumer, by way of damages, a sum representing the costs reasonably incurred by that consumer as a result of the offence; and
- (c) pay to the Commission such sum as represents the reasonable costs incurred in relation to the prosecution of the offence.

## **PART VII UNFAIR TERMS**

**Unfair terms.**

61. (1) A term in a consumer agreement is unfair if, to the detriment to the consumer, it causes a significant imbalance in the rights of the supplier and the consumer.

(2) In determining whether a term is unfair a Court must have regard to all the circumstances of the case and in particular to the following -

- (a) the bargaining strength of the parties to the agreement relative to each other, taking into account -
  - (i) the availability of equivalent goods or services; and

- (ii) suitable alternative sources of supply;
- (b) whether the consumer received an inducement to agree to the term, or, in agreeing to the term, had an opportunity of -
  - (i) acquiring the goods or services, from any source of supply under a contract that did not include that term;
  - (ii) equivalent goods or services, from any source of supply under a contract that did not include that term;
- (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to any custom of trade and any previous dealings between the parties;
- (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer;
- (e) the nature of the goods or services for which the agreement was concluded;
- (f) the interests of the supplier;
- (g) the other terms of the agreement or of another agreement on which it is dependent;
- (h) the interests of the particular class of consumers who are likely to adhere to the agreement; and
- (i) the circumstances attending the conclusion of the agreement at the time of its conclusion.

(3) An unfair term in a consumer agreement is unenforceable against the consumer.

(4) Where it is asserted that a term in a consumer agreement is unfair, it is for the supplier to show that the term is not unfair.

(5) If a Court, after having considered all the circumstances contemplated in subsection (2), is of the opinion that a term is unfair, it may –

- (a) rescind or amend the agreement or a term of the agreement; or
- (b) make any other order as may be necessary to prevent the effect of the agreement being unfair or unreasonable to any of the parties, notwithstanding the principle that effect must be given to the contractual terms agreed upon by the parties.

**Third Schedule** (6) Without prejudice to the generality of subsection (1), a term which is described in the Third Schedule is unfair, if not individually negotiated.

**Written terms to be plain and intelligible.** 62. (1) A supplier shall ensure that a written term in a consumer agreement is expressed in plain, intelligible language.

(2) If there is doubt about the meaning of a written term, the interpretation that is most favourable to the consumer shall prevail.

(3) In so far as a term is plain and intelligible, the assessment of its fairness shall not relate to -

- (a) the definition of the main subject-matter of the agreement; or
- (b) the adequacy of the price or remuneration as against the goods or services supplied in exchange.

**Excluding restricting or modifying liability.** 63. (1) A term of a consumer agreement, including a term that is incorporated in the agreement by a term of the agreement, is void if it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying -

- (a) the application of any provision of this Part to the agreement; or
- (b) the exercise of a right conferred by this Part.

(2) A term of a consumer agreement is not to be taken as purporting to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

**Indemnity subject to reasonableness.**

64. A consumer shall not by reference to any term of a consumer agreement be made to indemnify another person (whether a party to the agreement or not) in respect of liability that may be incurred by the other person for negligence or breach of contract, except in so far as the term of the agreement satisfies the requirement of reasonableness.

**Loss or damage from defective goods or negligence of manufacturer.**

65. (1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage –

- (a) arises from the goods proving defective while in consumer use; and
- (b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for the loss or damage shall not be excluded or restricted by reference to any term or notice contained in or operating by reference to, a guarantee of the goods.

(2) For the purposes of this section –

- (a) goods are to be regarded as being in consumer use when a person is using them, or is in possession of them for use, otherwise than exclusively for the purposes of a business; and
- (b) anything in writing is a guarantee if it contains or purports to contain a promise or assurance (however worded) or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

**Effect of obligation.**

66. Liability for breach of the obligations arising from any provision in an enactment relating to any implied condition or implied warranty in relation to goods shall not be excluded or restricted by reference to any term in a consumer agreement.

**Satisfying reasonableness where agreement terminated.**

67. (1) Where, for the purpose of reliance upon it, a term of a consumer agreement has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the agreement has been terminated either by breach or by a party electing to treat it as repudiated.

(2) Where on a breach, the agreement is nevertheless affirmed

by a party entitled to treat it as repudiated, such affirmation does not of itself exclude the requirement of reasonableness in relation to any term of a consumer agreement.

**Reasonableness** 68. (1) For the purposes of this Part a term of a consumer agreement satisfies the condition of reasonableness only if the term is a fair and reasonable one to be included in the agreement, having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of, the parties when the contract was made.

(2) Where a person seeks to restrict liability to a specified sum of money by reference to a notice of a term of the agreement, and the question arises (under this or any other Act) as to whether the term or notice satisfies the requirement of reasonableness, then, without limiting the generality of subsection (1) regard shall be had in particular to –

- (a) the resources which the person could expect to be available to him for the purpose of meeting the liability if it arises; and
- (b) the extent to which it was open to that person to cover himself by insurance.

(3) The onus of proving that a contract term or notice satisfies the requirement of reasonableness lies on the person who claims that it does.

## **PART VIII PRODUCT LIABILITY**

**Interpretation of this Part.** 69. (1) In this Part,  
“agricultural produce” means any produce, whether of the soil or otherwise of stock-farming or of fisheries;  
“to manufacture”, in relation to animals or agricultural produce, includes to rear or grow;  
“producer”, in relation to a product, means –

- (a) the person who manufactured the product;

- (b) in the case of a substance which has been won or

abstracted, the person who won or abstracted the substance;

- (c) in the case of a product which has not been won or abstracted but initial characteristics of which are attributable to an industrial or other process having been carried out, for example, in relation to agricultural produce, the person who carried out that process;

“product” means any goods, including animals or agricultural produce reared or grown for supply, and, subject to subsection (2), includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise.

(2) For the purposes of this Part, a person who supplies a product in which other products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as supplying any of the other products so comprised.

**Liability for defects.**

70. (1) Subject to this Part, where damage is caused wholly or partly by a defect in a product, -

(a) the following persons are liable for the damage -

- (i) the producer of the product;
- (ii) a person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and
- (iii) a person who has imported the product into [country] in order, in the course of any business of his, to supply it to another.

(b) a person who supplied the product, whether to the person who suffered the damage, to the producer of a product in which the product in question is comprised or to any other person, is liable for the damage if -

- (i) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom paragraph (a) applies in relation to the product;

- (ii) that request is made within a reasonable time after the damage occurs; and
- (iii) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

(2) Where two or more persons are liable by virtue of this Part for the same damage, their liability is joint and several.

(3) This section is without prejudice to any liability arising otherwise than by virtue of this Part.

**Defect inferred.**

71. (1) There is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes “safety”, in relation to a product, includes safety with respect to products comprised in that product and safety in the context of risks of damage to property as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of subsection (1) what persons generally are entitled to expect in relation to a product, all the circumstances shall be taken into account, including -

- (a) the manner in which and the purposes for which the product has been marketed, its get-up, the use of any mark in relation to the product and any instructions, for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;
- (b) what might reasonably be expected to be done with or in relation to the product; and
- (c) the time when the product was supplied by its producer to another,

and nothing in this section requires a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

**Damage giving rise to liability.**

72. (1) In this Part “damage” means death or personal injury to any person or any loss of or damage to any property, including land.

(2) A person is not liable under section 70 for any damage to any property which, at the time of the damage, is not -

- (a) of a description of property ordinarily intended for private use, occupation or consumption; and
- (b) intended by the person suffering the damage mainly for his own private use, occupation or consumption.

(3) In determining for the purposes of this Part who has suffered damage to property and when any such damage occurred, the damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the damage.

(4) For the purposes of subsection (3) –

- (a) the material facts about any damage to property are such facts about the damage as would lead a reasonable person with an interest in the property to consider the damage sufficiently serious to justify instituting proceedings for damages against a defendant [who did not dispute liability and was able to satisfy a judgment.];
- (b) a person's knowledge includes knowledge which he might reasonably have been expected to acquire -
  - (i) from facts observable or ascertainable by him; or
  - (ii) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek,

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

**Prohibition on exclusions from liability.**

73. The liability of a person by virtue of this Part to a person who has suffered damage caused wholly or partly by a defect in a product, or to a dependant or relative of such a person, shall not be limited or excluded by any contract term, by any notice or by any other provision.

**Defences in**

74. In any proceedings under this Part in respect of a defect in a

**civil  
proceedings.**

product it is a defence to show that -

- (a) the defect is attributable to compliance with a requirement imposed by or under any enactment;
- (b) the product was not at any time supplied by the defendant;
- (c) the following conditions are satisfied, that is to say -
  - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
  - (ii) that section 70(1)(a) does not apply to the supplier, or applies to him by virtue only of things done otherwise than with a view to profit;
- (d) the defect did not exist in the product at the relevant time;
- (e) the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it has existed in his products while they were under his control; or
- (f) the defect -
  - (i) constituted a defect in a product, in this paragraph referred to as “the subsequent product”, in which the product in question has been comprised; and
  - (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

**Application to  
[Crown]/[State].**

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75. The [Crown]/[State] shall not, as regards the [Crown’s]/[State’s] liability by virtue of this Part, be bound by this part further than the [Crown]/[State] is made liable in tort or in reparation under the [Crown Proceedings Act/State Liability Act.]

## **PART IX CONSUMER SAFETY**

**Interpretation** 76. (1) In this Part –

of this Part.

“safe”, in relation to any goods, means such that there is no risk, or no risk, apart from one reduced to a minimum, that any of the following will (whether immediately or after a definite or indefinite period) cause the death of, or any personal injury to, any person whatsoever, that is to say -

- (a) the goods;
- (b) the keeping, use or consumption of the goods;
- (c) the assembly of any of the goods which are, or are to be supplied unassembled;
- (d) the emission or leakage from the goods or, as a result of the keeping, use or consumption of the goods, from anything else;
- (e) the reliance on the accuracy of any measurement, calculation or other reading made by, or by means of, the goods.

(2) In the definition of “safe” in subsection (1) references to the keeping, use or consumption of any goods are references to –

- (a) the keeping, use or consumption of the goods by the persons by whom, and in all or any of the ways or circumstances in which, they might reasonably be expected to be kept, used or consumed; and
- (b) the keeping, use or consumption of the goods either along or in conjunction with other goods in conjunction with which they might reasonably be expected to be kept, used or consumed.

**General safety requirement.**

77. (1) A person shall not -
- (a) supply any goods which fail to comply with the general safety requirement;
  - (b) offer or agree to supply any such goods; or
  - (c) expose or possess any such goods for supply.

(2) For the purposes of this section, goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances, including -

- (a) the manner in which, and purposes for which, the goods are being or would be marketed, the get-up of the goods, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
- (b) any standards of safety published by any person or authority, and having legal effect as published, either for goods of a description which applies to the goods in question or for matters relating to goods of that description; and
- (c) the existence of any means by which it would have been reasonable for the goods to have been made safer.

(3) For the purposes of this section, goods shall not be regarded as failing to comply with the general safety requirement in respect of -

- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any enactment; or
- (b) any failure to do more in relation to any matter than is required by –
  - (i) any safety regulations imposing requirements with respect to that matter;
  - (ii) any standards of safety prescribed for the purposes of this section and imposing requirements with respect to that matter; or

(iii) any provision of any enactment imposing such requirements with respect to that matter as are designated for the purposes of this subsection by any such enactment.

(4) In any proceedings against a person for an offence under this section in respect of any goods it is a defence for him to show -

(a) that he reasonably believed that the goods would not be used or consumed in [ ];

(b) that both of the following conditions are satisfied -

(i) that he supplied the goods, offered or agreed to supply them or, as the case may be, exposed or possessed them for supply in the course of carrying on a retail business;

(ii) that, at the time he supplied the goods or agreed or offered to supply them, or exposed or possessed them for supply, he neither knew nor had reasonable ground for believing that the goods failed to comply with the general safety requirements; or

(c) that the terms on which he supplied the goods or agreed or offered to supply them or, in the case of goods which he exposed or possessed for supply, the terms on which he intended to supply them provided for, or contemplated, the acquisition of an interest in the goods by the persons supplied or to be supplied.

(5) For the purposes of subsection (4)(b), goods are supplied in the course of carrying on a retail business if -

(a) whether or not they are themselves acquired for a person's private use or consumption, they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption; and

(b) the descriptions of goods the supply of which is made available in the course of that business do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in [ ] which have not previously been supplied in [ ].

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars and in default of the payment of the fine, to imprisonment for a term not exceeding [ ] years.

**Safety regulations.**

78. (1) The Minister may, after consulting the [Bureau of Standards], by regulations, make such provisions as he considers appropriate for the purposes of section 77(3) and for the purposes of ensuring that -

- (a) goods to which this section applies are safe;
- (b) goods to which this section applies which are unsafe, or would be unsafe in the hands of persons of a particular description, are not made available to persons generally or, as the case may be, to persons of that description; and
- (c) appropriate information is, and inappropriate information is not, provided in relation to goods to which this section applies.

(2) Without prejudice to the generality of subsection (1), safety regulations may contain provision -

- (a) with respect to the performance, composition or contents, design, construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to such goods;
- (b) with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of descriptions of such goods or of standards for such goods;
- (c) with respect to the conditions that may be attached to any approval given under the regulations;
- (d) prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;
- (e) with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;

- (f) for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
  - (g) with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
  - (h) with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
  - (i) requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;
  - (j) prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
  - (k) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him by the regulations.
- (3) Without prejudice as aforesaid, safety regulations may –
- (a) contain different provisions for different cases;
  - (b) provide for exemptions from any provisions of the regulations;
  - (c) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.

**Contravention  
of safety  
regulations.**

79. (1) Where safety regulations prohibit a person from supplying or offering or agreeing to supply any goods or from exposing or possessing any goods for supply, that person commits an offence if he contravenes the prohibition.

(2) Where safety regulations require a person who makes or processes any goods in the course of carrying on a business -

- (a) to carry out a particular test or use a particular procedure in connection with the making or processing of the goods with a view to ascertaining whether the goods satisfy any requirements of such regulations; or
- (b) to deal or not to deal in a particular way with a quantity of the goods of which the whole or part does not satisfy such a test or does not satisfy standards connected with such a procedure,

that person commits an offence if he does not comply with the requirement.

(3) A person who contravenes a provision of safety regulations which prohibits or require the provision, by means of a mark or otherwise, of information of a particular kind in relation to goods, commits an offence.

(4) Where safety regulations require any person to give information to another for the purpose of enabling that other to exercise any function, that person commits an offence if -

- (a) he fails without reasonable cause to comply with the requirement; or
- (b) in giving the information which is required of him -
  - (i) he makes any statement which he knows is false in a material particular; or
  - (ii) he recklessly makes any statement which is false in a material particular.

(5) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding [ ] dollars and in default of the payment of the fine, to imprisonment for [ ] years.

## PART X RECALL OF GOODS

### Compulsory recall of goods.

80. (1) Subject to sections 83 and 85, where goods are supplied on or after the commencement date and it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person and 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* and at least two newspapers in general circulation in [ ], require the supplier to do one or more of the following –

- (a) take action within the period specified in the notice to recall the goods;
- (b) 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 specified in the notice;
  - (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
  - (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) The Minister may by notice in writing published in the *Gazette* and at least two newspapers of general circulation in [ ], give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

- (3) Where the supplier under subsection (1) undertakes to –
- (a) repair goods, the supplier shall cause the goods to be repaired so that any defect in the goods specified in the notice under subsection (1) is remedied;
  - (b) replace goods, the supplier shall replace the goods with like goods which, if a defect in, or a dangerous

characteristic of, the first-mentioned goods was specified in the notice under subsection (1), do not have that defect or characteristic;

- (c) repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(4) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under subsection (1), a person who has supplied or supplies any of the recalled goods to another person outside [ ] 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; and
- (b) if the goods contain a defect or have a dangerous characteristic, setting out the nature of that defect or characteristic.

(5) Where a person is required under subsection (4) 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.

(6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or imprisonment for a term not exceeding [ ].

**Compliance with goods recall notice.**

81. Where a notice under section 80(1) is in force in relation to a person, that person -

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

**Loss or damage caused by contravention of goods recall notice.**

82. Where –

- (a) a person contravenes section 81 by –
  - (i) supplying goods of a kind in relation to which a notice under section 80(1) is in force; or
  - (ii) failing to comply with the requirements of such a notice; and
- (b) another 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,

that other 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 first-mentioned person to comply with the notice, as the case may be.

**Conference to be held in certain cases.**

83. (1) Subject to section 85, where the Minister proposes to publish a notice under section 80(1) in relation to goods of a particular kind, the Minister shall prepare –

- (a) a draft of the notice that the proposes to publish; and
- (b) a summary of his reasons,

and shall, by notice in writing published in the *Gazette* and at least two newspapers in general circulation in [ ], invite any person, in this section referred to as a “supplier”, who supplied or proposes to supply goods of that kind to notify the Minister, 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 Minister to hold a conference in relation to the proposed publication of the first-mentioned notice.

(2) A notice published under subsection (1) shall set out a copy of the draft notice under section 80(1) and a copy of the summary of the reasons for the proposed publication of the notice.

(3) If no supplier notified the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the supplier wishes the Minister to hold a conference in relation to the

proposed publication of the notice under section 80(1), the Minister shall proceed to take such action under section 80 as he thinks fit.

(4) If a supplier notifies the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the supplier wishes the Minister to hold a conference in relation to the proposed publication of the notice under section 80(1), the Minister 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 each supplier who so notified the Minister.

(5) At a conference under this section –

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

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

(7) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (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 case and, in particular, to inspect any documents which the Minister proposes to consider for the purpose of making a decision 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.

**Action after conclusion of conference.**

84. As soon as is practicable after the conclusion of a conference in relation to the proposed publication of a notice under section 80(1), the Minister shall proceed to consider what action he should take under section 80.

**Exception in case of danger to public.**

85. (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 shall, without delay, publish in the *Gazette* and in at least two newspapers in general circulation in [ ], a notice under section 80(1) in relation to the goods.

(2) Where the Minister publishes a notice under subsection (1) –

- (a) in a case where the notice is published before the Minister takes any action under section 83(1) in relation to goods of a particular kind, section 83 does not apply in relation to the action that the Minister may take under section 80 in relation to goods of that kind; or
- (b) in any other case, any action taken by the Minister under section 83(1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 83, been arranged or had commenced, the Minister may publish the notice under section 80(1) without regard to the action taken under section 83.

**Power to obtain information, documents and evidence.**

86. (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 person who, in trade or commerce, supplies consumer goods of a particular kind 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 that person, require him -

- (a) to furnish to the Minister or to an authorised officer, and within such reasonable time as is 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) in person or by his representative to appear before the Minister or an 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) Subject to subsection (3), where an authorised officer has reason to believe that goods will or may cause injury to a consumer, he may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any consumer, enter any premises in or from which he has reason to believe that a person supplies goods of that kind in trade or commerce and -

- (a) inspect goods of that kind;
- (b) take samples of goods of that kind;
- (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 subsection (2) shall not be exercised except -

- (a) pursuant to a warrant issued under subsection (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 magistrate for the issue, under subsection (5), of a warrant to exercise the powers of an authorised officer under subsection (2).

(5) Where an application is made to a magistrate under subsection (4), he 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 subsection (2) in relation to those premises.

(6) A magistrate shall not issue a warrant under subsection (5) unless -

- (a) an affidavit has been furnished to the magistrate 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 magistrate such further information (if any) as he may

require concerning the grounds on which the issue of the warrant is being sought; and

(c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(7) A warrant issued under subsection (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 [seven] days after the day on which the warrant is issued, at the end of which the warrant ceases to have effect.

(8) An authorised officer or a person assisting such officer shall, before entering the premises under a warrant under subsection (5) -

(a) announce that he is authorised to enter the premises; and

(b) afford a reasonable opportunity to be allowed entry to the premises.

(9) An authorised officer or a person assisting such officer is not required to comply with subsection (8) if he believes on reasonable grounds that immediate entry to the premises is required to ensure -

(a) the safety of any person, including the authorised officer or the person assisting the officer; or

(b) that the effective execution of the warrant is not frustrated.

[(10) Where an authorised officer takes samples under subsection (2)(b), he shall pay a reasonable price for the goods sampled.]

(11) A person who -

(a) refuses or fails to comply with a notice under this section to the extent that he is capable of complying with it; or

- (b) in purported compliance with such a notice furnishes information or gives evidence that, to his knowledge, is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars.

(12) A person who refuses or fails to provide an authorised officer acting in accordance with subsection (2) with all reasonable facilities and assistance for the effective exercise of the authorised officer's powers under that subsection commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars.

(13) 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 that person -

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

**Voluntary recall.**

87. (1) Where a supplier voluntarily takes action to recall goods because the goods will or may cause injury to any person, he shall, within two 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 subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars.

**Suppliers to be given notice in certain cases.**

88. Where the Minister publishes a notice under section 83(1) or 85(1), he shall, within two days after the publication of that notice, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, 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.

**Certain action not to affect insurance contracts.**

89. The liability of an insurer under a contract of insurance with a supplier, being a contract relating to -

- (a) the recall of goods supplied or proposed to be supplied by that supplier; or
- (b) that supplier's liability with respect to possible defects in goods supplied or proposed to be supplied by that supplier,

shall not be affected by reason only that the supplier gives to the, Commission, the Minister or to a public officer information relating to any goods supplied or proposed to be supplied by that supplier.

## **PART XI MISCELLANEOUS**

**Unlawful provisions of consumer agreements.**

90. (1) A consumer agreement for the supply of any goods or services, whether or not it is in writing, must not contain an unlawful provision or be subject to an unlawful condition.

(2) A provision of a consumer agreement, or a condition to which an agreement is subject, is unlawful if -

- (a) its general purpose or effect is to –
  - (i) defeat the purpose and policy of this Act;
  - (ii) mislead or deceive the consumer; or
  - (iii) subject the consumer to fraudulent conduct;
- (b) it directly or indirectly purports to –
  - (i) waive or deprive a consumer of a right set out in this Act;
  - (ii) avoid a supplier's obligation or duty in terms of this Act;
  - (iii) set aside or override the effect of any provision of this Act;

- (iv) authorise the supplier to do anything that is unlawful in terms of this Act or fail to do anything that is required in terms of this Act;
- (c) it expresses an acknowledgement by the consumer that -
- (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or
  - (ii) the consumer has received any goods or services, or a document that is required by this Act to be delivered to the consumer that has not in fact been delivered or rendered to the consumer;
- (d) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer –
- (i) exercises the right of rescission in terms of section 26;
  - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;
- (e) it expresses, on behalf of the consumer –
- [(i) an authorisation for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the agreement relates;]
  - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed; or
  - (iii) a consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act;
- (f) it expresses an agreement by the consumer to -
- (i) deposit with the supplier, or with any other person at

the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or

(ii) provide a personal identification code or number to be used to access an account.

(3) In any matter before it respecting an agreement that contains a provision contemplated in subsection (2), a court or tribunal shall -

(a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or

(b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect; and

(c) make any further order that is just and reasonable in the circumstances with respect to that unlawful provision, or entire agreement, as the case may be.

(4) A supplier must not –

(a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be unlawful if it were included in a primary agreement;

(b) request or demand a consumer to -

(i) give the supplier temporary or permanent possession of an instrument referred to in subsection (2)(g)(i) other than for the purpose of identification, or to make a copy of the instrument;

(ii) reveal any personal identification code or number contemplated in subsection 2(h)(ii); or

(c) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the supplier.

(5) A supplier who contravenes any provision of subsection (4)(b) commits an offence and is liable on summary conviction to a fine not exceeding [ ] dollars or to imprisonment for a term of [ ] years.

**Goods or services acquired by installment.**

91. (1) This section applies to any case where a supplier contracts to provide a consumer with goods or services over an extended period of time, and to receive periodic payments from the consumer for the goods or services.

(2) The supplier, shall –

- (a) present a claim for the exact amount of, or the exact percentage of, the total value of the goods or services actually received to date by the consumer; and
- (b) upon presentation of such claim, be entitled to terminate the consumer agreement if payment in full is not made within a reasonable time after the presentation of the claim, or by a pre-determined payment date which forms part of the consumer agreement.

(3) In the event that the supplier is unable to present a claim as mentioned in subsection (2), the supplier may -

- (a) present the consumer with an estimated claim; and
- (b) if the estimated claim is reasonably accurate, request that the consumer pays the estimated amount on the conditions specified in subsection (4).

(4) The conditions referred to in subsection (3) are that –

- (a) the amount paid will be credited to the amount owing at the next time that an accurate claim is presented; and
- (b) the supplier shall under no circumstances, be able to terminate the agreement or impose any penalty therein contained in the event of breach by the consumer, solely on the ground that the consumer has not paid the estimated amount, either in full or in part.

(5) A supplier who presents an estimated claim for goods or service shall present an accurate claim no later than [90] days after presentation of the estimate.

(6) Subsection (5) shall apply notwithstanding that the consumer of the goods or service does not pay the estimated amount claimed or pays it in full or in part.

**Apportionment  
of payments  
where service  
not received.**

92. (1) Where a service is provided to a consumer –

(a) the supplier is deemed to be providing the consumer with a benefit under the relevant agreement; and

(b) subsection (2) shall apply where a fee is collected from the consumer for that service.

(2) A supplier shall –

(a) be liable to make a full refund to the consumer, if for reasons not attributable to the consumer, the benefit is not received by the consumer; or

(b) where the benefit is received only in part –

(i) refund a proportionate part of the fees collected; or

(ii) subject to subsection (3), be entitled to receive a similar proportionate part of any unpaid fees.

(3) Subsection (2) shall not apply in any case where the consumer agrees to pay the supplier the prescribed fee regardless of whether the consumer receives the benefit.

(4) A supplier who offers a service to the consumer shall –

(a) stipulate the extent of the benefit that shall be deemed to be attached to the service; and

(b) provide the consumer with an appropriate warranty that –

(i) the benefit shall be enjoyed for a reasonable time, subject to the fulfilment of such conditions attached by the supplier as may be reasonable to the consumer's enjoyment of that benefit; and

(ii) if the benefit is not so enjoyed, the supplier shall again provide the service free of cost to the consumer.

**Supplier  
purporting to  
act on Bill of  
Sale.**

93. (1) A supplier commits an offence if he –
- (a) acts on the powers contained in a Bill of Sale of chattels pledged by a consumer; and
  - (b) employs any person other than a Bailiff to recover any or all of the chattels pledged in the Bill of Sale to the supplier in the event of default in repayment of a loan.
- (2) A supplier who commits an offence under subsection (1) shall, upon summary conviction be liable to a fine not exceeding [ ] dollars and in default of payment to imprisonment for a term not exceeding [ ].
- (3) A supplier commits an offence if, in taking action to recover any or all of the chattels pledged by the consumer in the Bill of Sale to the vendor in the event of default in repayment of a loan, he carries out an act of seizure although the consumer's indebtedness to the supplier has already been discharged or is currently being serviced in accordance with existing contractual provisions.
- (4) A supplier who commits an offence under subsection (3) shall, on summary conviction be liable to a fine not exceeding [ ] dollars and in default of payment to imprisonment for a term not exceeding [ ].
- (5) The court may order a supplier convicted of an offence under subsection (3) to pay to the consumer an amount equal to [ten] times the market value of the chattels seized plus an amount of [ ] dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.
- (6) A Bailiff or person, who not being a Bailiff, purports to be a Bailiff, who wrongfully seizes the chattels of a consumer, notwithstanding any other charge that may be brought against him, commits an offence under this Act and is liable on summary conviction to a fine not exceeding [ ] dollars.
- (7) A person who commits an offence under subsection (6) shall, upon summary conviction be liable to a fine not exceeding [ ] dollars and in default of payment to imprisonment for a term not exceeding [ ].
- (8) The Court may order a person convicted of an offence under subsection (7) to pay to the consumer an amount equal to ten times the market value of the chattels seized plus an amount of [ ] dollars per day for every day that the consumer has been deprived of the use and

enjoyment of those chattels.

(9) Any bailiff or person purporting to be a Bailiff who –

- (a) threatens to seize a consumer's chattels under the powers contained in a Bill of Sale although the consumer's indebtedness to the vendor has already been discharged; or
- (b) recklessly damages the consumer's chattels while exercising distraint, shall be guilty of an offence and shall, upon summary conviction, be liable to a fine not exceeding [ ] dollars and in default of payment to imprisonment for a term not exceeding [ ].

(10) The court may order a supplier convicted of an offence to compensate the consumer for all expenses reasonably incurred as a result of the breach and the legal action.

**Trade coupons and similar promotions.**

94. (1) A person shall not offer any prize with the intention of not providing it, or providing it other than as offered.

(2) A document setting out an offer contemplated in subsection (1) must fully and clearly state -

- (a) the nature of the prize being offered;
- (b) the goods or services to which the offer relates;
- (c) the steps required by a prospective consumer to accept the offer or to receive the benefit of the offer; and
- (d) any person from whom, any place where, and any date and time on or at which the prospective consumer may receive the benefit.

**Promotional competitions.**

95. (1) In this section -

- (a) “promoter” means a person who directly or indirectly promotes, sponsors, organises or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organised or conducted;
- (b) “participant” means a person who expressly or implicitly

enters into a promotional competition.

(2) A person must not directly or indirectly inform a consumer, or prospective consumer that the consumer or prospective consumer -

- (a) has won a competition, if -
  - (i) no competition has in fact been conducted;
  - (ii) the consumer has not expressly or implicitly entered into such a competition, or has not in fact won the competition;
  - (iv) the prize for that competition is subject to a previously undisclosed condition; or
  - (iv) the consumer is required to offer further consideration for the prize, after the results of the competition have been announced; or
- (b) has a right to a prize or benefit -
  - (i) that the consumer has not solicited or to which the consumer does not in fact have a right;
  - (ii) if the prize or benefit was generally available or offered to all similar prospective consumers or class of prospective consumers;
  - (iii) if, before becoming eligible to receive the prize or benefit, the consumer is required to offer further consideration for the prize or to purchase any particular goods or services.

(3) The promoter of a promotional competition shall -

- (a) not require any consideration to be paid by or on behalf of any participant in the promotional competition;
- (b) file an abstract of the competition rules in the prescribed manner and form with the Commission no later than the date on which consumers are first able to participate in the competition;
- (c) make the competition rules available on request and without cost to any participant;

- (d) not award a prize in a competition to –
  - (i) a winner of the competition if it is absolutely unlawful to supply those goods or services to the prize winner, but this sub-paragraph does not preclude a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, any public regulation; or
  - (ii) any person who is a director, member, partner, employee or agent of, or consultant to the promoter, or any other person who directly or indirectly controls, or is controlled by, the promoter, or to a supplier of goods or services in connection with that competition.

(4) For greater certainty in applying subsection (3)(a), a promoter shall be regarded as having required or received consideration in respect of a promotional competition if -

- (a) the participant is required to pay any consideration, directly or indirectly for the opportunity to participate in the promotional competition, for access to the competition, or for any device by which a person may participate in the competition;
- (b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition.

(5) An offer to participate in a promotional competition must be in writing, and must fully and clearly state -

- (a) the benefit or competition to which the offer relates;
- (b) the steps required by a person to accept the offer or to participate in the competition;
- (c) the basis on which the results of the competition will be determined;

- (d) the maximum number of potential participants in the competition, and the odds of winning any particular prize in that competition;
  - (e) the medium through or by which the results of the competition will be made known, if any; and
  - (f) any person from whom, any place where, and any date and time on or at which the successful participant may receive any prize.
- (6) The requirements of subsection (5) may be satisfied either-
- (a) directly on any medium through which a person participates in a promotional competition;
  - (b) on a document accompanying any medium contemplated in paragraph (a); or
  - (c) in any advertisement that -
    - (i) is published during the time and throughout the area in which the promotional competition is conducted; and
    - (ii) draws attention to and is clearly associated with the promotional competition.
- (7) The right to participate in a promotional competition is fully vested in a person immediately upon -
- (a) complying with any conditions that are required to earn that right; and
  - (b) acquiring possession or control of any medium through which a person may participate in that promotional competition.
- (8) The right to any benefit or right conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately upon the determination of the results of the competition.

- (9) A right contemplated in subsection (7) or (8) must not be -
- (a) made subject to any further condition; or
  - (b) contingent upon a person –
    - (i) paying any consideration to the promoter for the prize; or
    - (ii) satisfying any further requirements than those stipulated in terms of subsection (5).

- (10) The Minister may prescribe -
- (a) a monetary threshold for the purpose of excluding competitions with low value prizes from the definition of “promotional competition”;
  - (b) minimum odds for prizes or categories of prizes offered in terms of any promotional competition;
  - (c) minimum standards and forms for keeping records associated with promotional competitions; and
  - (d) audit and reporting requirements in respect of promotional competitions.

**Over-selling  
and over-  
booking.**

96. (1) A supplier shall not accept payment or other consideration for any goods or services if the supplier -

- (a) has no reasonable basis to assert an intention to supply those goods or provide those services;
- (b) intends to supply goods or services that are materially different from the goods or services in respect of which the payment or consideration was accepted.

(2) If a supplier makes a commitment or accepts a reservation to supply goods or services on specified date or at a specified time, and on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier shall -

- (a) refund to the consumer any amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of re-imburement; and
- (b) in addition, compensate the consumer for –
  - (i) breach of contract in an amount equal to the full contemplated price of the goods or services that were committed or reserved; and
  - (ii) consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use or enjoyment, sustained by the consumer as a consequence of the supplier's breach of the contract.

**Lay-aways.**

97. (1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic instalments, and to hold those goods until the consumer has paid the full price for the goods, -

- (a) each amount paid by the consumer is held by the supplier in trust for the benefit of the consumer; and
- (b) the particular goods remain at the risk of the supplier until the consumer takes possession of them.

(2) If a supplier is unable to deliver possession of any of the goods contemplated in subsection (1) when the consumer has paid the full price for the goods, the supplier shall, at the option of the consumer -

- (a) supply the consumer with an equivalent quantity of goods that are comparable [or superior] in description, design and quality; or
- (b) refund to the consumer –
  - (i) the money paid by the consumer, with interest at a legal rate, if the inability to supply the goods is due to circumstances beyond the supplier's control; or
  - (ii) double the amount paid by the consumer, as compensation for breach of contract.

- (3) If a consumer contemplated in subsection (1) -
- (a) terminates or rescinds the agreement before fully paying for the goods, the supplier may charge a cancellation penalty before refunding the amount paid by the consumer towards the full price; or
  - (b) fails to complete the payment for the goods within [60] business days after the anticipated date of completion, the supplier –
    - (i) may regard the consumer as having rescinded the agreement; and
    - (ii) may charge a cancellation penalty in respect of the goods before refunding the amount paid by the consumer towards the full price.

(4) A cancellation penalty under this section may not be charged unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-away agreement.

(5) The Minister may prescribe a maximum amount for a cancellation penalty contemplated in subsection (3).

**Protection of  
consumer  
rights.**

98. (1) Where a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement with the supplier, a supplier who, in response -

- (a) discriminates directly or indirectly against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;
- (b) penalises the consumer;
- (c) alters, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
- (d) takes any action to accelerate, enforce, suspend or terminate an agreement with the consumer,

commits an offence and is liable on summary conviction to a fine not exceeding [ ].

(2) If a consumer agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful, or is severed from the agreement, the supplier who is a party to that agreement shall not, in response to that decision -

- (a) alter the terms or conditions of any other transaction or consumer agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (b) take any action to accelerate, enforce, suspend or terminate another agreement with another party to the impugned agreement.

**Written  
consumer  
agreements.**

99. (1) This section applies only to a continuous service agreement or other prescribed categories of agreements.

(2) A supplier shall deliver, without charge to the consumer, a copy of a document that records an agreement, transmitted to the consumer in a paper form, or in a printable electronic medium.

(3) The Minister may prescribe -

- (a) categories of additional agreements to which this section applies; and
- (b) any specific wording to be included in such an agreement to give full effect to the purposes of this Act.

(4) Irrespective of whether or not a particular written agreement is required in terms of this section -

- (a) a written agreement between a supplier and consumer must satisfy the requirements of sections 27 and 28;
- (b) a change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless –
  - (i) the change reduces the consumer's obligations or liabilities under the agreement; or

(ii) after the change is made, the consumer signs or initials in the margin opposite the change; and

(c) if the parties to a written agreement agree to change its terms, the supplier must deliver to the consumer a document that reflects their amended agreement within [20] business days after the date of the agreement to amend.

**Regulations.** 100. The Minister may make regulations for the purposes of giving effect to the provisions of this Act.

**[Minister to make Orders.**

101. (1) The Minister may, by Order –

(a) regulate the distribution, purchase or sale of goods or any class or description of goods;

(b) provide for the recall of certain goods and services which are dangerous or hazardous to safety and the refund or remission by the vendor of the purchase price paid;

(c) require persons carrying on or employed in connection with any trade or business to furnish information concerning all or any of the elements of the cost or sale price of goods or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;

(d) require the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby prospective purchasers of any of those goods may ascertain the weight or measurement thereof.

(3) Nothing in subsection (1) shall be deemed to authorize the Minister to make any Order in relation any goods if the exportation, distribution, purchase, sale or price thereof is or may be, regulated under or by virtue of the provisions of any other enactment].

## FIRST SCHEDULE (Section 5)

### THE CONSUMER AFFAIRS COMMISSION

**Constitution.** 1. The Commission shall consist of such number of members, not [being less than seven nor more than fifteen] as the Minister may from time to time determine.

**Appointment of members.** 2. (1) The members of the Commission shall be appointed by the Minister by instrument in writing and, subject to the provisions of this Schedule, shall hold office for a period not exceeding three years, and shall be eligible for reappointment.

(2) The Minister shall appoint one of the members of the Commission to be the Chairperson and another to be Deputy Chairperson.

(3) The Minister shall not appoint a person as Chairperson of the Commission, unless the Minister is satisfied that the person qualifies for the appointment because of that person's knowledge of or experience in, industry, commerce, law, public administration or consumer protection.

**Acting members.** 3. If the Chairperson or any other member of the Commission is absent or unable to act, the Minister may appoint any person to act temporarily in the place of the Chairperson or such member.

**Resignations.** 4. (1) A member of the Commission, other than the Chairperson, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairperson, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Commission.

(2) The Chairperson may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.

**Revocation.** 5. The Minister may at any time revoke the appointment of any member of the Commission if that member –

- (a) becomes unable to perform his functions by reason of mental or physical incapacity;
- (b) becomes bankrupt;
- (c) is convicted and sentenced to a term of imprisonment or to death;
- (d) is convicted of any offence involving dishonesty; or
- (e) fails to carry out any of the functions conferred or imposed on him under this Act.

**Publication of names of members.**

6. The names of the members of the Commission as first constituted and every change in the membership thereof, shall be published in the *Gazette*.

**Procedure for meetings.**

7. (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Commission may determine.

(2) The Chairperson, or in his absence the Deputy Chairperson, shall preside at meetings of the Commission, and in the absence of both the Chairperson and the Deputy Chairperson from any meeting, the members present at that meeting shall elect one of their number to preside thereat.

(3) The quorum of the Commission shall be five, including the Chairperson or other member presiding at the meeting.

(4) The decisions of the Commission shall be by a majority of votes and, in any case in which the voting is equal, the Chairperson or other member presiding at the meeting shall have a casting vote in addition to an original vote.

(5) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairperson or other member presiding as soon as practicable thereafter at a subsequent meeting.

(6) The acts of the Commission shall be authenticated by the signature of the Chairperson or the Secretary of the Commission.

(7) Subject to the provisions of this paragraph the Commission shall have power to regulate its own proceedings.

(8) The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

**Officers and servants.**

8. (1) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a Secretary and such other officers, servants and agents as it thinks necessary for the proper performance of its functions.

(2) The [Minister; Service Commission] may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of the Government to any office with the Commission and any public officer so appointed shall, in relation to pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

**Seal of the Commission.**

9. (1) The seal of the Commission shall be kept in the custody of the chairman or the Secretary and shall be affixed to instruments pursuant to a resolution of the Commission in the presence of the Chairperson, or any other member of the Commission, and the secretary.

(2) The seal of the Commission shall be authenticated by the signatures of the Chairperson, or any other member authorized to act in that behalf, and the Secretary.

(3) All documents other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the Chairperson, or any other member authorized to act in that behalf, or the Secretary.

**Protection of members.**

10. (1) Members of the Commission shall not be personally liable for any act or default of the Commission done or omitted to be done in good faith in the course of the operations of the Commission.

(2) Where any member of the Commission is exempt from liability by reason only of the provisions of sub-paragraph, (1) the Commission shall be liable to the extent that it would be if such member were a servant or agent of the Commission.

**Disclosure of interest.**

11. A member of the Commission who is in any way interested in a company or undertaking which is in any proceedings before the Commission shall disclose to the Commission the fact and nature of his

interest and shall not take part in any deliberation or any decision of the Commission relating to such matter, and such a disclosure shall forthwith be recorded in the records of the Commission.

**Remuneration of members.**

12. There shall be paid to the members of the Commission, such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

**Funds and resources of Commission.**

13. The funds and resources of the Commission shall consist of –

- (a) such moneys as may from time to time be placed at its disposition for the purposes of this Act by Parliament;
- (b) all other moneys and other property which may in any manner become payable to, or vested in the Commission in respect of any matter incidental to its functions.

**Expenses of Commission.**

14. The expenses of the Commission, including the remuneration of the members and staff thereof, shall be defrayed out of the funds of the Commission.

**Keeping of accounts and records.**

15. (1) The Commission shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

(2) The accounts of the Commission shall be audited annually by an auditor or auditors appointed annually by the Commission and approved by the Minister.

(3) The Auditor-General shall be entitled at all reasonable times to examine the accounts and other records in relation to the business of the Commission.

**Annual reports and estimates.**

16. (1) The commission shall –

- (a) within [ ] months of the end of each financial year, submit to the Minister a report of its activities during the preceding year, including a statement of its accounts audited in accordance with the provisions of paragraph 15;
- (b) at least [ ] months before the end of each financial year, submit to the Minister for approval its estimates of revenue and expenditure for the following financial year.

(2) The Minister shall cause copies of reports submitted pursuant to subparagraph (1)(a) together with the annual statement of accounts and auditor's report thereon to be tabled in Parliament [and to be published in the *Gazette*].

**Exemption  
from income  
tax.**

17. The income of the Commission shall be exempt from income tax.

**SECOND SCHEDULE (Section 10)**

**SUMMONS TO WITNESS**

To: (name of person summoned and his calling and address, if known)

You are hereby summoned to appear before the Consumer Affairs Commission at (place) upon the        day of        at        o'clock and to give evidence respecting (state the matter). (If the person summoned is to produce any documents, add):

And you are required to bring with you (specify the papers, books, records and documents required).

Therefore fail not at your peril.

Given under the hand of (Chairman or other member of the Commission) this [     ] day of [     ] 20

### THIRD SCHEDULE

(Section 61)

#### CONTRACT TERMS WHICH ARE UNFAIR IF NOT INDIVIDULLY NEGOTIATED

- The terms.**
1. A term of a consumer agreement which has the object or effect of -
    - (a) excluding or limiting the legal liability of a supplier in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of that supplier;
    - (b) inappropriately excluding or limiting the legal rights of the consumer *vis-a-vis* the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against him;
    - (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition whose realisation depends on his own will alone;
    - (d) permitting the supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier where the latter is the party cancelling the contract;
    - (e) requiring the consumer to pay a disproportionately high sum in compensation if he fails to fulfill his obligation;
    - (f) authorising the supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the supplier to retain the sums paid for services not yet supplied by him where it is the supplier himself who dissolves the contract;
    - (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
    - (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early;

- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the agreement;
- (j) enabling the supplier to alter the terms of the agreement unilaterally without a valid reason which is specified in the agreement;
- (k) enabling the supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) providing for the price of goods to be determined at the time of delivery or allowing a supplier to increase their price without in both cases giving the consumer the corresponding right to cancel the agreement if the final price is too high in relation to the price agreed when the contract was concluded;
- (m) giving the supplier the right to determine whether the goods or services supplied by the supplier are in conformity with the agreement, or giving him the exclusive right to interpret any term of the agreement;
- (n) limiting the supplier's obligation to respect commitments undertaken by his agents, or making his commitments subject to compliance with a particular formality;
- (o) obliging the consumer to fulfill all his obligations where the supplier does not perform his;
- (p) giving the supplier the possibility of transferring his rights and obligations under the agreement, where this may serve to reduce the guarantees for the consumer, without the latter's consent;
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

**Exception to paragraph 1(g).**

2. Paragraph 1(g) does not apply to a term by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other party or parties immediately.

- Exception to paragraph 1(j).** 3. Paragraph 1(j) does not apply to a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties at the earliest opportunity and that the latter are free to dissolve the contract immediately.
- Exception to paragraph 1(j).** 4. Paragraph 1(j) does not apply to a term under which a supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.
- Exceptions to paragraph 1(g), (j) and (l).** 5. Sub-paragraphs (g), (j) and (l) of paragraph 1 do not apply to-
- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the supplier does not control; or
  - (b) agreements for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.
- Exception to paragraph 1(l).** 6. Paragraph 1(l) does not apply to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.