

Draft Model Consumer Protection Bill, 2015

**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; to ensure the protection of life, health and safety of consumers; to establish the Consumer Affairs Commission; to establish the Complaints and Investigations Division; to establish the Consumer Affairs Tribunal and for connected purposes.

BE it enacted

PART I. Preliminary

- Short title.** 1. This Act may be cited as the Consumer Protection Act, 2015.
- Interpretation.** 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;
- “appropriate laboratory” means [a laboratory that is –
- (a) staffed with trained personnel;
 - (b) certified by [] and
 - (c) equipped to undertake the testing of goods];
- "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;
- [“commercial purpose”, in relation to the definition of “consumer”, does not include use by a person of a good bought and used or a service availed exclusively for the

purpose of earning a livelihood by means of self-employment;]

“Commission” means the Consumer Affairs Commission established by section 6;

“Community” means the Caribbean Community established by Article 2 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy and includes the CSME (hereinafter referred to as the “Treaty”);

“complainant” means—

- (a) a consumer;
- (b) any voluntary consumer association registered under any law for the time being in force;
- (c) the State;
- (d) one or more consumers, where there are numerous consumers having the same interest; or
- (e) in case of the death of a consumer, his legal heir or representative,

who makes a complaint;

“complaint” means any allegation made by a complainant that—

- (a) an unfair trade practice or an unfair term has been adopted by a supplier under [Part VII and Part VIII];
- (b) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (c) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (d) the supplier has charged, for the goods or for the service mentioned in the complaint, a price in excess of the price –
 - (i) fixed by or under any law for the time being in force;
 - (ii) displayed on the goods or any package containing such goods;
 - (iii) displayed on the price list

exhibited by him by or under any law for the time being in force;

(iv) agreed between the parties;

(e) goods, which are hazardous to life and safety when used, are being offered for sale to the public -

(i) in contravention of any standards relating to safety of such goods as required to be complied with by or under any law for the time being in force; and

(ii) under circumstances where the supplier could have known, with due diligence, that the goods so offered are unsafe to the public;

(f) services which are hazardous or likely to be hazardous to life and safety of the public, when used, are being offered by the supplier where such person could have known, with due diligence, that the service is hazardous to life and safety;

(g) the supplier has contravened any of the provisions of this Act, which are not included in the proceeding paragraphs;

"conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of such price is payable by instalments 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 fulfillment of such conditions as to payment of installments or otherwise as may be specified in the agreement;

“consumer” -

(a) means a person who-

(i) buys any goods under an agreement or transaction and includes any other user of the goods, when such use is made with the consent of the person who buys the goods; or

(ii) hires or avails himself of a services under an agreement or

transaction and includes any other beneficiary of such services, when such services is availed of with the consent of the hirer;

(b) does not include a person who -

(i) obtains a good for resale or for any commercial purpose; or

(ii) hires or avails himself of service under an agreement or transaction for any commercial purpose.

“consumer agreement” means any written, oral or implied agreement between a supplier and a consumer in which the supplier agrees to supply goods or services for payment;

"document" includes electronic records;

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the supplier in any manner whatsoever in relation to any goods;

"goods" includes all types of property other than [real] or [immovable] property, securities, money or chose in action;

“Member State” means a Member State of the Community excluding an Associate Member State within the meaning of Article 231 of the Treaty;

“Minister” means the Minister [of] [with responsibility for Consumer Affairs];

“negligence” includes the breach of -

(a) 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; and

(b) any common law duty to take reasonable care;

“payment” means consideration of any kind, including a deposit fee;

“price” includes any representation that may reasonably be

inferred to be a representation of a price;

“services” –

(a) means a service of any description which is made available to users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging (or both), housing construction, entertainment, amusement or the purveying of news or other information;

(b) does not include the rendering of any service free of charge or under a contract of personal service or employment services ;

“supplier” includes a person who -

(a) sells goods or services;

(b) provides a service; or

(c) who is responsible for the provision of goods or services including a manufacturer, producer, distributor or agent;

“Tribunal” means the Consumer Affairs Tribunal established by section 18.

(2) In this Act -

“acquisition of goods” includes a reference to the acquisition of property or rights in relation to, goods, in pursuance of a supply of goods;

“supply of services” -

(a) includes -

(i) the undertaking and performance, for gain or reward, of engagements for any matter other than the supply of goods; and

(ii) both the rendering of services to order and the provision of services by making them available to potential users;

(b) does not include the rendering of [personal services] services under a contract of employment.

Purpose.

3. 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.

Application of the Act.

4. (1) Subject to subsection (3), this Act applies to all persons involved in trade or business whether through the purchasing, acquisition or supplying of goods or services.

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

(3) The Minister may by order, subject to affirmative resolution, exempt categories of trade or business from the application of this Act.

(4) Subject to section 96, this Act binds the [State] [Crown].

Consumer Organizations.

5. Any organization purporting to provide services for the protection of consumers shall 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. *Consumer Affairs Commission*

Establishment of Consumer Affairs Commission.

6. (1) There is established a Commission to be known as the Consumer Affairs 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.

(3) The Commission shall be responsible for and oversee, generally, the operation of the following divisions-

(a) the Complaints and Investigations Division; and

(b) the Consumer Affairs Tribunal.

First Schedule.

4. In relation to the Composition of the staff of each division, paragraph 8 of the First Schedule shall apply.

Functions of the Commission.

7. (1) The Commission shall –

(a) through the Complaints and Investigations Division-

(i) investigate, in accordance with Part III, consumer complaints in relation to the supply of goods or services and make such report and recommendations, where appropriate, to the Consumer Affairs Tribunal and;

(ii) on its own initiative and as it thinks fit, carry out investigations other than those to which paragraph (a) refers and make reports and recommendations as it thinks fit to the Minister;

(b) monitor the operations of organizations formed to provide services for the protection of

consumers to ensure that they fulfill the criteria set out in section 5 and ensure that the consumer's interests receive due consideration at those forums;

(c) collect, compile and analyze information in relation to any trade or business and the marketing of goods and services;

(d) provide information to consumers on their rights and obligations as consumers thereby enabling them to make informed choices about goods and services;

(e) conduct education programmes for the benefit of consumers and suppliers;

(f) through the Consumer Affairs Tribunal-

(i) hear and resolve consumer complaints or other disagreements between consumers and suppliers; and

(ii) provide redress against violations of this Act;

(g) carry out such other functions as the Minister may assign to the Commission from time to time; and

(h) report each year to the Minister on the availability of goods and services to persons referred to in subsection (3), including price and market conditions and the performance of public and private suppliers in ensuring the realization and full enjoyment of their consumer rights by categories of persons to whom that subsection refers.

(2) Subject to this Act, the Commission may, for the purpose of exercising or discharging any of its functions under this Act, do such other things pursuant to section (1) which, in the opinion of the Commission, are necessary to ensure the proper exercise or discharge of its functions.

(3) The Commission, shall take reasonable and practical measures, in a manner consistent with the purposes of this Act, to promote and support the development of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market generally, and in particular, shall ~~to~~ meet the needs of the following persons –

(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.

[(4) The Commission, in addition to its functions, may provide guidelines on the concept of sustainable consumption with respect to the provision of goods and services so that the present and future generations may be able to use goods and services in an equitable and just manner.]

PART III. *Complaints and Investigations*

[Establishment and functions of Complaints and Investigations Division.

8. (1) There is established a division of the Commission to be known as Complaints and Investigations Division (hereinafter referred to in as “the Division”).

(2) The Division is responsible, generally, for –

- (a) receiving consumer complaints and supplier responses;
- (b) determining whether complaints are accepted for investigation or rejected on any of the grounds set out in section 14 ;
- (c) determining, upon investigation, whether a complaint shall be recommended for hearing and resolution by the Consumer Affairs Tribunal.

Appointment and functions of Commissioner of Complaints and Investigations.

9. (1) The Minister, after consultation with the Commission shall [every two years] appoint, from among [its members] [the Commissioners] a Commissioner of Complaints and Investigations, (hereinafter referred to as “the Commissioner”).

(2) The Commissioner of Complaints and Investigations shall be responsible for the day-to-day management of the Division.

(3) The Commissioner of Complaints and Investigations shall be a Commissioner other than the Chairperson of the Commission.

(4) In relation to a particular complaint submitted to the Commission, no [member of the Commission] [commissioner]

shall, simultaneously, be the Commissioner of Complaints and Investigations and a member of the Consumer Affairs Tribunal deliberating on the particular complaint.

(5) The Commissioner may, except where otherwise provided, delegate his responsibilities under this part to an officer to whom paragraph 8 of the First Schedule applies.

First Schedule.

Who may lodge a complaint.

10. (1) Subject to subsection (2), a person who alleges that he has been adversely affected in relation to the acquisition of goods or services may lodge a complaint to the Division in accordance with the procedure set out in section 11.

(2) Without limiting the generality of subsection (1), in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, the following persons may lodge a complaint to the Division –

- (a) a consumer to whom subsection (1) applies;
- (b) a recognized consumer organization, irrespective of whether the consumer to whom this subsection applies is a member of the consumer organization;
- (c) subject to subsection (3), one or more consumers [jointly] where a number of consumers have the same interest and the lodging of the complaint would be for the benefit of all consumers with that interest;
- (d) the State, either in its individual capacity or as a representative of the interest of consumers in general.

(3) A complaint may be lodged under subsection (2) (c) only upon the complainant's receipt of the [written] permission of the Commission.

(4) Where the complainant is –

- (a) a minor, a complaint may be made by the complainant's parent or legal guardian; or
- (b) unable to lodge a complaint himself by reason of infirmity, death or any other cause, the complaint may be lodged by the complainant's parent, legal guardian or any other person suitable to be his personal representative.

(5) Where a person lodges a complaint under any of the circumstances set out in subsection (4), the person who lodges the complaint shall be referred to as the "complainant".

(6) Subsection (1) does not affect a person's right to file a complaint in a court of law, except that a person shall not institute proceedings in both the Consumer Affairs Tribunal and a court in respect of the same complaint.

(7) For the purposes of this section, the Commission shall be construed to be a person suitable to be the personal representative of a complainant.

Complaints procedure.

11. (1) Subject to subsection (2), a complainant may lodge a complaint to the Division orally or in writing.

(2) Where a person referred to in subsection (1) is contemplating litigation or any further action in relation to the complaint, the complaint shall be made in writing.

(3) A person who lodges a complaint under section 8 shall pay such fees as may be prescribed in the manner prescribed.

(4) Upon receipt of the complaint and payment of the prescribed fee by the complainant, an officer of the Division shall –

(a) register the complaint in the prescribed manner; and

(b) forward the complaint and any supporting material and documents for the attention of the Commissioner, or his delegate, so that he may determine whether the complaint is an appropriate complaint for investigation and, where appropriate, adjudication by the Consumer Affairs Tribunal.

Investigative powers of the Division.

12. (1) The Commissioner or his delegate may, in his absolute discretion, determine whether to –

(a) conduct or discontinue an investigation under this Act; or

(b) recommend that a complaint be put before the Consumer Affairs Tribunal for hearing and resolution.

(2) The Division 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 for redress under any other enactment.

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

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

Complaints to be admitted for investigation or rejected.

13. (1) Subject to the provisions of this section, upon receipt of a complaint and any supporting materials or documents, the Commissioner or his delegate shall, by order –

- (a) admit the complaint for investigation; or
- (b) reject the complaint.

(2) Where the Commissioner or his delegate intends to reject a complaint, he shall issue an interim order –

- (a) informing the complainant that the Division intends to reject the complaint; and
- (b) specifying the date, time and place at which the complainant is to appear before the Commissioner, or his delegate, to give the reasons for which the complaint should be admitted for investigation.

(3) Where –

- (a) under subsection (2), a complainant –
 - (i) appears before the Commissioner, or his delegate; and
 - (ii) gives reasons for which the complaint should be admitted for investigation; and
- (b) the Commissioner or his delegate is satisfied, based on the reasons given, that the complaint is appropriate for investigation,

the Commissioner or his delegate shall by, order issued under subsection (1), admit the complaint for investigation.

(4) Where a complainant -

- (a) appears before the Commissioner, or his delegate, to give reasons for which the complaint should be admitted for investigation and the complainant fails to satisfy him that the complaint is appropriate for investigation; or
- (b) to whom an interim order was issued under subsection (2), fails to appear before the Commissioner or his delegate, in accordance with the terms set out in

the interim order,

the Commissioner shall, on grounds specified in section 14, issue an order, under subsection (1), rejecting the complaint.

(5) Where the Commissioner, or his delegate, decides –

(a) not to conduct an investigation and rejects a complaint; or

(b) to discontinue an investigation,

he shall issue an order under subsection (1) informing the complainant that the complaint has been rejected and stating the reasons for the rejection.

(6) Where the Commissioner decides [to discontinue] an investigation, the complainant shall bear the costs related to [the incomplete investigation of] the complaint.

Grounds for rejection of complaints.

14. (1) Subject to subsection (2), a complaint may be rejected on any of the following grounds –

(a) the subject matter of the complaint is trivial;

(b) the complaint is frivolous, vexatious or not made in good faith;

(c) the complaint was filed more than two years from the date on which the cause of action arose;

(d) the complainant does not have a sufficient interest in the subject matter of the complaint;

(e) the subject matter of the complaint could be dealt with more appropriately by another body or in another forum; or

(f) having regard to all the circumstances surrounding the complaint, it is not necessary to admit the complaint.

(2) Notwithstanding subsection (1) (c), a complaint may be admitted where the complaint was filed more than two years from the date on which the cause of action arose if the complainant satisfies the Commission that he had sufficient cause for not filing the complaint within the period specified in subsection (1) (c).

(3) Where, notwithstanding subsection (1) (c), the Commissioner, or his delegate, accepts a complaint which was filed more than two years from the date on which the cause of action arose, the Commissioner, or his delegate shall, in the order admitting the complaint for investigation, state the

reasons for condoning the delay.

Notice to opposite party that complaint admitted for investigation.

15. (1) Where a complaint made in relation to goods is admitted for investigation, the Commissioner or his delegate shall –

(a) refer a copy of the admitted complaint and the order issued under section 13 (1) to the opposite party mentioned in the complaint; and

(b) in writing, direct the opposite party to submit to the Commissioner a written response to the complaint.

(2) A written response submitted under subsection (1) (b) shall –

(a) set out the opposite party's version of the case; and

(b) be returned to the Division for the attention of the Commissioner within thirty days of the opposite party's receipt of the documents referred to in subsection (1) or such extended period, not exceeding fifteen days, as may be specified by the Commissioner or his delegate.

Commissioner to examine complaint and response.

16. (1) Upon receipt of the response of the opposite party, the Commissioner, or his delegate, shall –

(a) examine the complaint and supporting materials or documents;

(b) examine the response of the opposite party and any supporting materials and documents; and

(c) conduct any further investigations that the Commissioner or his delegate considers necessary.

(2) After the examinations and investigations referred to in subsection (1) are conducted, the Commissioner shall, by order–

(a) recommend that the complaint be heard by the Consumer Affairs Tribunal; or

(b) reject the complaint, stating the grounds on which the complaint is rejected.

Failure of opposite party to respond.

17. (1) If the opposite party fails to make a written response in accordance with the procedure set out in subsection (2), the Commissioner or his delegate shall make a determination based solely on the complaint and any supporting materials or documents submitted by the complainant.

(2) In circumstances to which subsection (1) applies, the Commissioner shall, by order –

(a) recommend that the complaint be submitted to the Consumer Affairs Tribunal so that the Tribunal may exercise its discretion under section 26 (1); or

(b) discontinue the investigation where the Commissioner, or his delegate, is satisfied that the complaint and any supporting materials or documents do not indicate that the opposite party breached any of the provisions of this Act.

PART IV. *Resolution or Dismissal of Consumer Complaints*

Consumer Affairs Tribunal: Composition,

Functions, Powers and Findings

Establishment and composition of Consumer Affairs Tribunal.

18. (1) There is established a tribunal from among the members of the Commission to be known as the Consumer Affairs Tribunal (hereinafter referred to as “the Tribunal”).

(2) The Tribunal shall consist of the Chairperson of the Commission and two other members of the Commission.

Appointment of members of the Tribunal.

19. (1) Subject to subsection (2), the Minister, after consultation with the Commission, shall appoint from among [the members of the Commission] [the commissioners] two [members] [commissioners] as members of the Tribunal.

(2) The Commissioner of Complaints and Investigations shall not be appointed as a member of the Tribunal during the period in which he serves as the Commissioner of Complaints and Investigations.

Functions and powers of Tribunal.

20. (1) The functions of the Tribunal shall be to –

(a) hear and deliberate upon complaints submitted to the Tribunal on the recommendation of the Commissioner of Complaints and Investigations;

(b) resolve disputes between consumers and suppliers in relation to goods or services;

(c) provide redress against violations of this Act; and

(d) where appropriate, dismiss complaints.

- (2) For the purposes of this part, the Tribunal may –
- (a) issue a summons and enforce the attendance of any party or witness and examine the party or witness on oath;
 - (b) order the discovery and production of any document or other material object producible as evidence;
 - (c) receive evidence on affidavits;
 - (d) requisition the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
 - (e) issue any commission for the examination of any witness; and
 - [(f) any other matter which may be prescribed].

(3) Where a summons is issued under subsection (2) (a), the summons shall be –

- (a) in the form set out in the Second Schedule.
- (b) served by-
 - (i) a member of the [Police Force];
 - (ii) a bailiff; or
 - (iii) any other person authorized by the Tribunal.

Proceedings of Tribunal.

21. (1) Subject to subsection (2) and section 19, every proceeding of the Tribunal shall be conducted by the Chairperson of the Commission and at least [two] other commissioners sitting together.

[(2) Where a member of the tribunal, other than the Chairperson, is unable to conduct proceedings to completion, the Chairperson and the other member shall continue the proceedings from the stage at which it was last heard by the previous member.]

[(3) Where the Chairperson is unable to conduct proceedings to completion, the Deputy Chairperson shall continue the proceeding from the stage at which it was last heard by the Chairperson.]

Recommendation

22. Where the Commissioner of Complaints and Investigations

**of admitted
complaint for
hearing.**

recommends a complaint to the Tribunal under section 16 or 17, the Commissioner or his delegate shall –

(a) furnish the Tribunal with –

(i) the complaint and any supporting materials or documents;

(ii) the response of the opposite party and any supporting materials and documents, where available; and

(iii) a copy of the order issued under section 16 or 17 [and any other orders issued under Part III]; and

(b) in writing, notify the complainant and the opposite party -

(i) that the complaint has been recommended for hearing by the Tribunal; and

(ii) of the date, time and place at which they are to appear before the Tribunal.

**Request for legal
representation for
complainant.**

23. Upon the request of the complainant, the Commission may make arrangements for the appointment of a legal representative for the complainant at a hearing before the Tribunal.

**Rights and
obligations of
person
summoned.**

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

(a) in respect of his 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 the public fund.

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

(3) A person who –

(a) without sufficient cause, fails or refuses to obey a summons issued by the

Tribunal;

- (b) being a witness before the Tribunal, without sufficient cause –
 - (i) leaves the Tribunal without its permission; or
 - (ii) refuses to answer any question put to him by or with the permission of the Tribunal; or
- (c) without sufficient cause, obstructs or interrupts the proceedings of the Tribunal,

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.

25. In all legal proceedings, any document submitted to the Tribunal pursuant to section 24 shall be received as *prima facie* evidence of the truth of the statements contained therein.

Findings of the Commission.

26. (1) If the Tribunal is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, the Tribunal shall issue an order directing the opposite party to do one or more of the following —

- (a) to remove the defect from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by the Tribunal as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party, provided that the Tribunal shall have the power to grant punitive damages in such circumstances

as it deems fit;

(e) to remove the deficiencies in the services in question;

(f) to desist and discontinue the unfair trade practice or the restrictive trade practice;

(g) to refrain from offering the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(i) to cease the manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(j) to pay such sum as may be determined by the Tribunal if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not conveniently identifiable provided that the minimum amount of the sum so payable shall not be less than twenty- five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers and provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(k) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement; or

(l) to provide for adequate costs to parties in addition to the fees, if any paid to the laboratory for analysis or testing of goods.

(2) Where the Tribunal finds a complaint to be **false, [frivolous or vexatious]** it shall, issue an order –

(a) dismissing the complaint;

(b) stating the reasons for the dismissal of the complaint;

(c) instructing the **complainant to pay to the opposite party such cost, not exceeding [] dollars, as may**

be specified in the order.

(3) Every order made by the Tribunal under this part shall be signed by its Chairperson and [the member] [each of the members] who conducted the proceeding provided that where any of the members differ on any point, they shall state the point on which they differ and refer the same to the other members for hearing on that point and the opinion of the majority shall be the order of the Tribunal.

(4) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the Tribunal, its sittings and other matters shall be such as may be prescribed.

Failure to comply with order of the Tribunal.

27. (1) Where an order made under this Part is not complied with, the Tribunal may order the property of the noncompliant person not to be attached.

(2) No attachment made under this section shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the Tribunal may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the person entitled thereto.

(3) Where an amount is due from any person under an order made by the Tribunal, the person entitled to the amount may make an application to the Tribunal and the Tribunal may issue a certificate for the said amount to the [police officer or administrative head] (by whatever name called) and he shall proceed to recover the amount in the same manner as arrears due to the State.

Appeal.

28. (1) Any person aggrieved by an order made by the Tribunal may prefer an appeal against such order to the High Court within a period of [thirty] days from the date of the order, in such form and manner as may be prescribed.

(2) The High Court may entertain an appeal after the expiry of the said period of [thirty] days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) No appeal by a person who is required to pay any amount in terms of an order of the Tribunal shall be entertained by the High Court.

Complaints and Disputes Regarding Goods

General procedure for resolving complaints and disputes in relation to goods.

29. (1) Subject to subsection (4), where –
- (a) on a recommendation made under section 16 or 17, the Tribunal admits, for hearing, a complaint in relation to goods;
 - (b) the Tribunal is satisfied that the parties have been notified in accordance with section 22 (b); and
 - (c) the opposite party –
 - (i) denies or disputes the allegations contained in the complaint; or
 - (ii) omits or fails to take any action to represent his case within the time given under section 15 (2),

the Tribunal shall, subject to subsection (2), proceed to resolve the complaint.

[(2) Where either the complainant or the opposite party fails to appear on before the Tribunal in accordance with section 22, the Tribunal may in the absence of the missing party, by majority vote, either dismiss the case or decide the matter on its merits.]

(3) To resolve a complaint the Tribunal shall make a decision on the basis of evidence brought to its attention, which shall include any reports issued by an appropriate laboratory.

(4) Where a complaint in relation to goods is recommended to be heard and determined by the Tribunal but the procedure set out in sections [30 to 32] cannot be followed, the procedure set out in relation to complaints and disputes regarding services shall be followed.

Alleged defects requiring proper analysis and laboratory report.

30. (1) Where the complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the Tribunal shall, in the prescribed manner –
- (a), obtain a sample of the goods from the complainant;
 - (b) seal the sample and authenticate it; and
 - (c) subject to subsection (2), refer the sealed sample to the appropriate laboratory along with a direction to the laboratory to –

- (i) make an analysis or test of the goods, whichever may be necessary;
- (ii) determine whether the goods suffer from any defect alleged in the complaint, from any other defect [or pose any health risk]; and
- (iii) report its findings to the Tribunal within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the Tribunal.

(2) Before any sample of the goods is referred to an appropriate laboratory, the Tribunal may require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question.

(3) The Tribunal shall remit the amount deposited to its credit under subsection (2) to the appropriate laboratory to enable the laboratory to carry out the necessary analysis or tests.

(4) Upon completion of the requisite analysis or tests, the appropriate laboratory shall submit its report to the tribunal [in the prescribed form].

Receipt and distribution of laboratory report.

31. (1) Upon receipt of the report from the appropriate laboratory, the Tribunal shall forward to [both parties] a copy of the report along with such remarks as the Tribunal considers appropriate.

(2) If any party disputes the accuracy of the findings of the appropriate laboratory or the accuracy of the methods of analysis or test adopted by the appropriate laboratory, the Tribunal shall require the opposite party or the complainant to submit in writing the grounds and nature of his dispute with regard to the report made by the appropriate laboratory.

(3) Upon receipt of a written submission under subsection (2), the Tribunal shall give reasonable opportunity to the complainant and the opposite party to be heard as to the accuracy or otherwise of the report made by the appropriate laboratory.

Procedure subsequent to receipt of

32. (1) Upon receipt of the responses of the parties, the Tribunal shall, in its deliberations, examine the laboratory report, the parties' responses and all other evidence to which

laboratory reports and responses.

sections 24 to 25 apply.

(2) The Tribunal, after considering all the evidence shall, by order, perform its functions under section 20 (1).

Complaints and Disputes Regarding Services

General procedure for resolving complaints and disputes in relation to services.

33. (1) Where –

(a) on a recommendation made under section 16 or 17, the Tribunal admits, for hearing, a complaint in relation to services;

(b) the Tribunal is satisfied that the parties have been notified in accordance with section 22 (b); and

(c) the opposite party –

(i) denies or disputes the allegations contained in the complaint; or

(ii) omits or fails to take any action to represent his case within the time given under section 15 (2),

the Tribunal shall proceed to resolve the complaint in accordance with subsection (2).

(2) The Tribunal shall resolve each complaint –

(a) on the basis of evidence brought to its attention by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint; or

(b) ex parte, on the basis of evidence brought to its attention by the complainant where the opposite party omits or fails to take any action to represent his case within the time and manner specified by the Tribunal.

(3) Where the complainant fails to appear on the date of hearing before the Tribunal, the Tribunal may either dismiss the complaint for default or decide the matter on its merits.

(4) No proceedings complying with the procedure laid down in this part shall be called in question on the ground that the principles of natural justice have not been complied with.

(5) The Tribunal shall hear and determine every recommended complaint as expeditiously as possible and decide the complaint no later three months from the date of receipt of notice by the opposite party where the complaint does not require analysis or testing of commodities and within five months if the complaint requires analysis or testing of commodities.

(6) No adjournment shall be ordinarily granted by the Tribunal unless sufficient cause is shown and the reasons for a grant of adjournment have been recorded in writing by the Tribunal.

(7) The Tribunal shall make such orders as to the costs occasioned by the adjournment as may be prescribed.

(8) In the event of a complaint being disposed of after the period so specified, the Commission shall at the time of disposal of the complaint record, in writing, the reasons for the disposal.

(9) Where during the pendency of any proceeding before the Tribunal, an interim order appears to the Tribunal to be necessary, just and proper, given the facts and circumstances of the case, the Tribunal may pass the interim order.

Findings of Tribunal regarding complaints and disputes in relation to services.

34. The Tribunal, after considering all the evidence shall, by order, perform its functions under section 20 (1).

PART V. Consumer Rights

Ambiguities to benefit consumer.

35. In any complaint brought before the Tribunal or a court, the Tribunal or the court, as the case may be, shall -

- (a) 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

referred to in section 7(3); and

(b) 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, in such a manner 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.

Unsolicited goods or services: relief from legal obligations.

36. (1) A consumer is not required to pay a supplier for any goods or services supplied to the consumer under a consumer agreement unless the -

- (a) consumer has implicitly requested the supplier to supply those goods or services by –
 - (i) tendering payment for them; or
 - (ii) conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply those goods or services;
- (b) consumer has expressly requested the supplier to supply those particular goods or services before they are supplied to the consumer; or
- (c) supplier has undertaken to supply those goods or services from time to time to the consumer

without further approval or specific request.

(2) Subject to subsection (4), 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; or

(b) the goods were received in circumstances in which the recipient knew or ought reasonably 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 referred to in subsection (1) (c) and, during the course of that agreement there is a material change in the 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 conduct, 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
 - (ii) 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 any time 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) Subject to subsection (12), “unsolicited goods or services” means goods or services that are supplied to a consumer who did not request the goods or services.

(12) Goods or services will not be regarded as unsolicited if –

- (i) the goods or services were intended for another person and the recipient knew or ought to have known that the goods or services were intended for another person;
- (ii) there is a non-material change to periodically supplied goods or services; or
- (iii) the goods or services are supplied under a written future performance agreement that provides for the periodic supply of goods or services to the recipient without further solicitation.

Consumer’s right to select suppliers and products.

37. (1) A supplier shall not require, as a condition of –

- (a) offering to supply, or supplying, any goods or services; or

(b) entering into a consumer agreement, that the consumer –

(i) purchase any other additional goods or services from that supplier, whether of the same or a different type;

(ii) enter into an additional agreement or transaction with the same or another supplier;

(iii) agree to purchase any goods or services from a designated third party;
or

(iv) purchase additional goods or services,

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 goods, 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.

38. (1) This section applies to any transaction or consumer agreement under 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 under 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 under paragraph (a).

(4) The Minister may, by regulation, 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.

39. (1) Where 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) Where 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 the goods delivered to the consumer -

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

(3) Where 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) Where 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 services.

40. (1) Unless otherwise expressly provided or anticipated by reason of a course of dealing or trade practice 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) subject to subsection (2)(a), at the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and
 - (iii) at the cost and risk of the supplier; and
- (b) 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 –
 - (i) date and time agreed; and
 - (ii) place of the consumer’s choice, but the supplier may require the consumer to pay the costs of delivery at any location other than a location referred to in subsection (1); and
- (b) performance of any service at the time agreed with the supplier.

(3) Where 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.

[(4) In determining whether delivery or performance was conducted at an unreasonable time the Tribunal or court shall bear in mind the nature of the goods or services and the common practices and standards associated with the goods or services.]

Consumer’s acceptance of goods or services.

41. (1) A consumer is deemed to have accepted goods or the provision of services where –

- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted the goods or the services;
- (b) the goods or services 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, required for examining the goods to ascertain its conformity with the transaction, 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 36.

(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.

Consumer's right to cancel reservation.

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

(2) A supplier who makes a commitment or accepts a reservation to supply goods or services on a ~~later~~ date later in time than the date originally agreed upon between the consumer and the supplier may -

- (a) 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) 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 [good or] 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) shall 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 41 (2), 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.

43. (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) Subject to subsection (3), 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 referred to in [section 115];

(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) A consumer may rescind a consumer agreement referred to in subsection (2) within [12 months] 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.

(4) Subject to subsection (5), a consumer may cancel a consumer agreement at any time, without a penalty, by giving [one] month's notice to the supplier.

(5) Subsection (4) applies to consumer agreements –

- (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.

(6) The expense and risk of return shall be borne by –

- (a) the supplier, if the goods are unacceptable; or
- (b) the consumer, in circumstances other than those specified in paragraph (a).

(7) Where a consumer exercises his right to cancel or rescind an agreement, the supplier is -

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

(8) 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.

44. A consumer has a right to receive any document required under this Act in [the official language of the Member State in which the good or service [will be utilized] [is ordered]].

Right to information in plain and understandable language.

45. (1) A document that is required to be delivered to a consumer under this Act, shall be provided in –

- (a) the prescribed form or;
- (b) 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).

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

46. (1) Where a consumer enters into a consumer agreement for the supply of any goods or services, but dies before the supply of those goods or services –

- (a) the personal representative of the consumer's estate may give notice to the

supplier –

(i) requiring delivery of the goods or supply of the services, in accordance with the agreement; or

(ii) terminating the agreement as from the date of the death of the consumer; and

(b) any deposit paid by the consumer remains in trust for the benefit of the consumer's estate.

(2) Where a consumer agreement that has been terminated pursuant to subsection (1)(a)(ii) relates to 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.

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

PART VI. *Duties of Suppliers*

Information to consumer.

47. (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, labeling or description of goods, provide to the consumer in [the official] 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 supplier's failure to comply with subsection (1).

(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.

48. (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, 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) appended, 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 shall not be regarded as being displayed in relation to goods if -

(i) the price was appended to the goods outside [] in relation to the supply of the goods outside []; or

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

(3) Where a supplier displays goods for sale or offers to supply any services in relation to which more than one price is concurrently displayed, section 49 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 an enactment.

(5) Where a supplier has provided an estimate for any service, or goods and services, in accordance with ~~in~~ section 38, the price for that service, or goods and service, shall 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 term not exceeding [two] years.

Dual pricing.

49. (1) Where, subject to section 51, more than one price is displayed on goods –

- (a) the customer is entitled to pay the lowest of the prices that are displayed on the goods; and
- (b) a supplier shall not in the course of trade supply the goods at a price that is higher than the lowest price displayed on the goods.

(2) A supplier who contravenes subsection (1)(b) 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.

(3) It is a defence to the 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.

Identification of supplier.

50. (1) A person shall not carry on a 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 pursuant to any enactment, in the case of a juristic person; or
- (b) a name registered to, and for the use of,

that person pursuant to any enactment.

(2) A person referred to 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 referred to 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
labeling and
trade
descriptions.**

51. (1) A supplier of goods shall 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) 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] [ought reasonably to have known], 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 the goods has been altered in contravention of 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 referred to 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) the goods, or the category of goods, are subject to regulation under any other enactment, 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 under 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 referred to in paragraph (a) or (b).

(5) A supplier who contravenes this section 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.

(6) For the purposes of this section trade description means –

(a) any description, standard, statement or other direct or indirect indication, except a trade mark, as to –

- (i) the size, number, quantity, measure, weight or gauge of any goods;
- (ii) the name of the producer or producers of any goods;
- (iii) the ingredients of any goods, or material of which any goods are made;
- (iv) the place or country of origin of any goods;
- (v) the mode of manufacturing or producing any goods; or
- (vi) any goods being the subject of any patent, privilege or copyright; or

(b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a).

Disclosure of environmental facts affecting

52. (1) In addition to the requirements of section 51, a person who packages any prescribed goods, or imports any such goods, for supply to consumers shall display on or in

goods.

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] [manpower];
- (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 under any enactment; 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 pursuant to subsection (1), shall -

- (a) inform the consumer of any relevant information before supplying those goods; and
- (b) 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, could reasonably have known, or reasonably had 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).

(6) A supplier who contravenes this section 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 re-conditioned goods.

53. 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) 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.

54. (1) A supplier of goods or services shall provide a written durable 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.

55. 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 a refund in any of the circumstances specified in this Act.

Measurement of

56. (1) A consumer is entitled to check the weight, volume or

goods.

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 good that is sold by reference to its weight, volume or other measurement shall provide, to the consumer at the time of purchase, appropriate 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) An offence is not committed under subsection (3) where the lesser quantity provided to the consumer by the supplier may reasonably be regarded as a minimal amount.

Warranties.

57. (1) 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 replaced 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 supply and repair of all goods.

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

[(7) Penalties for breach of warranty include repairs, replacement, partial or full refund, allocation of damages and, if necessary, imposition of criminal sanctions.]

Quality of services or goods.

58. (1) Where goods or services are supplied under a consumer agreement there is an implied warranty by the supplier that the goods or services are of a reasonably acceptable quality.

(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.

Damage resulting from use of services or goods.

59. (1) A supplier shall, upon presentation by the consumer of an order from the Tribunal 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 order is received at the registered office of the supplier.

(2) Subsection (1) 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.

(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.

Supply of damaged goods to consumer.

60. (1) Where –

(a) within the warranty period, goods supplied to a consumer fail to provide the benefit and uninterrupted enjoyment for which it was intended; and

(b) the failure is not due to negligence or abuse by the consumer,

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) 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.

(3) If the supplier does not return the goods to the consumer within the period determined by the Tribunal, the supplier shall 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.

61. (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 within a reasonable time 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 replace or make refunds on goods returned 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) A supplier who fails –

(a) to replace the goods within [] days of the return of the goods; or

(b) 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
materially
different goods.**

62. (1) 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 acquired are different in a material particular from that intended to be acquired, subject to subsection (2) and (3) –

(a) the consumer may return the goods acquired to the supplier;

(b) the supplier shall be afforded a reasonable opportunity to inspect the goods;

(c) the supplier shall give to the consumer, in exchange for the returned goods, monetary

compensation to the value of the goods or another amount agreed between the consumer and the supplier if the defect is not fixed after a reasonable time;

(d) the supplier in these instances shall not charge the consumer a restocking fee for goods returned.

(2) Subsection (1) shall not apply unless the goods are returned to the supplier in the condition in which they were purchased or with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods before discovery of the material difference between the goods received and the goods that the consumer requested.

(3) A consumer who acquires goods that, in every way, are similar to or identical to the goods 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 the goods.

Approved and non-approved services.

63. (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.

64. (1) A supplier who offers repair services to a consumer shall keep a record 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) an estimate of the replacement value of the goods in its present state [as agreed upon] [or as declared] by 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; and

- (e) the date on which the goods –
 - (i) are received for repair; and
 - (ii) shall 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.**

65. (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 consumer agreement with, and given a deposit to, the supplier to deliver the goods,

the advertised 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 the advertised date or within advertised 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 on terms to be agreed with the consumer.

(3) A supplier who has advertised a completion or delivery

date, and has obtained from the consumer a deposit 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.

66. (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 goods or services.

67. (1) A supplier shall not promote goods 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 which 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 68;
- (c) if the supply, purchase, sale or possession of them is unlawful;
- (d) where the supply of the goods or services would be in a manner that is inconsistent with any law; or
- (e) in a manner that is degrading to the dignity of any person;
- (f) in a manner that 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
- (g) in a manner that 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.

(2) [Subject to subsection (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.

[(3) In relation to subsection (1) (c), subsection (2) shall apply only where there is no penalty in law provided for the supply, purchase, sale or possession of the good in issue.]

***PART VII. Unfair Trade Practices
and Transactions***

**False,
misleading or**

68. (1) It is an unfair trade practice for a person in the course of trade or commerce to make a false, misleading or deceptive

deceptive representations.

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.

(2) With respect to any goods or services that are the subject of a consumer agreement or in the marketing of any such goods or services, the supplier shall 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;
- (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 to believe a false, misleading or deceptive state of facts to be true; or
- (d) fail to correct an apparent misapprehension on the part of a consumer amounting 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 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 reconditioned 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) necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;

(d) a service, part, replacement, maintenance or repair is needed or advisable;

(e) a specific price advantage exists;

(f) a charge or proposed charge is for a specific purpose;

(g) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, a consumer agreement;

(h) the transaction affects, or does not affect, any rights, remedies or obligations;

(i) a particular solicitation of or communication with the consumer or prospective consumer is for a particular purpose; or

(j) the consumer or prospective consumer will derive a particular benefit if ~~they~~ **he** assists 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) by or on behalf of the manufacturer, importer, distributor or supplier; and

(b) 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.

Prohibition on restrictive trade practices.

69. (1) No supplier shall adopt or indulge in a trade practice-

(a) which tends to bring about manipulation of

price or conditions of delivery or affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions;

(b) in which delay beyond the period agreed to by a supplier in supply of goods or in providing the services has led or is likely to lead to rise in the price;

(c) which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services.

(2) A supplier who adopts or indulges in the restrictive trade practice commits an offence and is liable on summary conviction to a fine not exceeding [] dollars and with imprisonment for a term which may extend to [] years.

Prohibition on unfair trade practice.

70. (1) No supplier shall adopt or indulge in any unfair trade practice.

(2) For the purposes of this section, any trade practice which, for the purpose of promoting the sale, use or supply of goods or for the provision of any service, adopts unfair method or unfair or deceptive practice construed as an unfair trade practice.

(3) Without limiting the generality of subsection (2), it is an unfair trade practice to make a statement, whether orally or in writing or by visible representation which —

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(e) represents that the supplier has a sponsorship or approval or affiliation which such supplier does not

have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defense shall lie on the person raising such defense;

(h) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(j) gives false or misleading facts disparaging the goods, services or trade of another supplier.

(4) Without limiting the generality of subsection (2) and in addition to subsection (3), it is an unfair trade practice—

(a) to permit the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are –

(i) not intended to be offered for sale or supply at the bargain price; or

(ii) for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement;

(b) to permit -

(i) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(ii) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(c) subject to subsection (8), withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme;

(d) to permit the sale or supply of goods that are intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to

prevent or reduce the risk of injury to the person using the goods;

(e) to permits the hoarding or destruction of goods, or to refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the price of those or similar goods or services; or

(f) to manufacture spurious goods or offer such goods for sale or adopts deceptive practices in the provision of services.

(5) For the purposes of subsection (3), a statement that is —

(i) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(ii) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(iii) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(6) For the purpose of subsection (4) (a), “bargain price” means -

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like

products are ordinarily sold;

(7) For the purposes of subsection (4) (c), the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are, within a reasonable time, published prominently in the same newspapers in which the scheme was originally advertised.

(8) A supplier who adopts or indulges in an unfair trade practice commits an offence and is liable on summary conviction to a fine not exceeding [] dollars and with imprisonment for a term not exceeding [] years.

Unreasonable transactions.

71. (1) A supplier shall 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 that the -

(a) goods or services are materially unsuitable for the purpose to which the consumer intends to apply them, irrespective of whether the goods or services are of good quality or are reasonably fit for their customary intended purpose; and

(b) 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 and familiarity with such goods or services.

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

Unfair or unjust transactions.

72. (1) A supplier shall 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 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 conduct.

73. (1) It is an unfair practice to engage in unconscionable conduct.

(2) For the purposes of this part, “unconscionable conduct” means the use of physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other similar 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 referred to in subsection (2), 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 conduct on the part of or a representation by a person is unconscionable, there may be taken into account that the person or the person's employer or principal knows or ought to have known 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) 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 or unconscionable conduct is unenforceable, at the option of the consumer.

Renegotiation of terms.

74. (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 agreement.

(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.

75. (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 provide in reasonable quantities; or

(b) has no reasonable grounds for believing he can supply, immediately, or within a reasonable time,

at the specified price for a period that is, or in quantities that are, unreasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

To print etc. in good faith.

[76. It is not an unfair practice for a person, on behalf of another, to print, publish, distribute, broadcast or telecast a representation which that person accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business, although the content of such activity constitutes an unfair practice.]

Referral selling.

77. (1) A supplier shall not 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 consumers 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.

78. (1) A person shall not promote, operate or participate in a pyramid selling scheme.

(2) A person who contravenes sub-section (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.

(3) This section is subject to existing financial services legislation dealing with the pyramid selling of services which shall take precedence.

(4) The Commission shall cooperate and share information with the [Financial Services Commission) in the identification and investigation of pyramid selling activity.]

Rescission.

79. (1) Where a consumer has entered into a consumer agreement in the course of which transaction the supplier has engaged in an unfair practice, the consumer agreement 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) rescission 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.

Defences for contravention of this Part.

80. (1) Subject to subsection (2), it is a defence to a charge under this Part, if the defendant proves –

- (a) that the contravention in respect of which the proceeding was instituted was due to–
 - (i) a mistake [of fact];
 - (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 or the Tribunal, entitled to rely on that defence unless he has, not later than [seven 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 proceedings 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 –

(a) 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;

(b) received the advertisement for publication in the ordinary course of business; and

(c) 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.

81. Upon the conviction of a supplier of an offence under this part, the court or Tribunal 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 court or Tribunal such sum as represents the reasonable costs incurred in relation to the prosecution of the offence.

PART VIII. Unfair Terms

Unfair terms.

82. (1) A term in a consumer agreement is unfair if, to the detriment of the consumer, it causes an imbalance in the

rights of the supplier and the consumer.

(2) In determining whether a term is unfair the Tribunal or court shall have regard to all the circumstances of the case and in particular to the following -

- (a) the bargaining strengths 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 acquiring the goods or services or equivalent goods or services, from any source of supply under a contract that did not include that term;
- (c) whether the 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 consumer;
- (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 the Tribunal or 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.

Written terms to be plain and intelligible.

83. (1) A supplier shall ensure that a written term in a consumer agreement is expressed in plain and 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.

Non-exclusion of this Part.

84. (1) A term of a consumer agreement, including a term that is incorporated in the agreement by reference to another 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

85. A consumer shall not by reference to any term of a consumer agreement be made to indemnify another person,

reasonableness. 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.

86. (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; or

(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.

87. 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.

88. (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.

89. (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 the term or notice satisfies the requirement.

PART IX. *Product Liability*

Interpretation of this part.

90. (1) In this Part -

“agricultural produce” means any produce, whether of the soil or otherwise, of stock-farming or of fisheries;

“damage” means death or personal injury to any person or any loss of or damage to any property, including land;

“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; and

“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.

91. (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 [name of country] in the course of business, to supply it to another person.
- (b) the 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) the request referred to in subparagraph (i) 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.**

92. (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 are generally entitled to expect.

(2) For the purposes of subsection (1), “safety” in relation to a product, includes safety -

(a) with respect to products comprised in that product; and

(b) in the context of the risk of damage to property and in the context of the risk of death or personal injury.

(3) 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 assembly, 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.

(4) Notwithstanding subsections (1) to (3), a defect shall not be inferred from the fact alone that the safety of a product which is supplied after is greater than the safety of the product in question.

Damage giving rise to liability.

93. (1) A person is not liable under section 91 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.

(2) 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.

(3) For the purposes of subsection (2) –

(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.

(4) A person shall not be taken by virtue of subsection (3) 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.

94. The liability of a person under this part for damage caused wholly or partly by a defect in a product shall not be limited or excluded by any contract term, notice or other provision.

Defences in civil proceedings.

95. In any proceedings under this part in respect of a defect in a 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 -
 - (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 91 (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].

96. 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 or State Liability Act.]

PART X. Consumer Safety

Definition of "consumer safety".

97. [In this part, "consumer safety" means -

- (a) the reduction of risks to consumers in the provision of goods and services;
- (b) the provision of information or instructions regarding the storage, use or consumption of goods;
- (c) the reduction of harm or damage to the consumer by taking preventive and proactive measures.]

General safety requirements.

98. (1) A person shall not -

- (a) supply any goods which fail to meet the general safety requirements;
- (b) offer or agree to supply goods which fail to meet general safety requirements; or
- (c) expose or possess goods which fail to meet general safety requirements for supply.

(2) For the purposes of this section, goods fail to meet general safety requirements if they are not 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;
- (b) the packaging and presentation of the goods;
- (c) the use of any mark in relation to the goods;
- (d) any instructions or warnings which are given

or would be given with respect to the keeping, use or consumption of the goods;

(e) any applicable safety standards [established under any other enactment]; and

(f) 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 meet general safety requirements 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 that -

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

(b) 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 neither knowing nor having reasonable ground for knowing that the goods failed to comply with the general safety requirements; or

(c) 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 [].

(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.

Information regarding goods with inherent risks.

99. (1) The supplier shall provide consumers with the relevant information -

(a) to assess the risks inherent in goods or where such risks are not immediately obvious without adequate warning, and

(b) to take precautions against inherent risks.

(2) The supplier shall adopt measures to enable the consumer to -

(a) be informed of the risks which the goods may pose; and

(b) take appropriate action to avoid inherent risks by warning the consumer as to the risks.

(3) Subject to subsection (4), the measures referred to in subsection (2) include an indication, by means of the product or its packaging, of-

(a) the name and address of the producer, and

(b) the product reference or, where applicable, the batch of products to which the goods belong.

(4) The measures specified in subsection (3) shall not apply where it is not reasonable for such measures to apply.

(5) The supplier shall, within the limits of his activities, monitor the safety of such goods.

[Agreement to exchange information.]

100. (1) [Member States may enter into an agreement to exchange information by way of a rapid alert system regarding dangerous non-food goods in the CARICOM region.]

(2) If Member States enter into an agreement pursuant to subsection (1), the Minister may, by order published in the *Gazette*, give legal effect to the agreement.

(3) If Member States amend an agreement made pursuant to subsection (1), the Minister may amend an order published under subsection (2) accordingly.

(4) Every order made under this section shall be subject to an affirmative resolution.]

Safety regulations.

101. (1) The Minister may, after consulting the [Bureau of Standards or any other regulatory agency], make safety regulations 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 particular 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 provisions -

(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~~ ensuring 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) In addition to the provisions set out in subsection (2) and without prejudice to the generality of subsection (1), 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.

(4) This section applies to all goods other than (aircraft).

Contravention of safety regulations.

102. (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 the safety regulations which prohibit or require the giving, 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 he makes a statement, whether recklessly or otherwise, which he knows 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 XI. *Recall of Goods*

Compulsory recall of goods.

103. (1) Subject to sections 106 and 107, where goods are supplied on or after the commencement date of this Act and it appears to the Minister that the goods are of a kind which may cause injury, loss or damage to any person and that the supplier has not taken satisfactory action to prevent the goods causing injury loss or damage 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 the 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 the 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; or

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

(4) Where goods are recalled pursuant to a requirement made by the Minister under subsection (1), a supplier or a person who has supplied any of the recalled goods 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 the notice, provide the Minister with a copy of the 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 [].

goods recall notice.

relation to a supplier, the supplier -

(a) shall comply with the requirements of 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.

105. Where a person (A) fails to comply with a notice under section 103 and another person (B) suffers injury, 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, person (B) shall be deemed for the purposes of this Act to have suffered the injury, loss or damage by the failure of person (A) to comply with the notice.

Conference to be held in certain cases.

106. (1) Subject to section 107, where the Minister proposes to publish a notice under section 103 (1) the Minister shall by notice in writing published in the *Gazette* and at least [two] newspapers in general circulation in [], invite any person, who supplied or proposes to supply goods of the kind referred to in the draft notice to notify the Minister whether that person wishes the Minister to hold a conference in relation to the proposed notice.

(2) A notice published under subsection (1) shall set out a draft of the notice the Minister proposes to publish under section 103 (1) and a summary of the reasons for the proposed notice.

(3) Where the Minister is not requested in accordance with subsection (1) to hold a conference, the Minister shall proceed to take such action under section 103 as he thinks fit.

(4) Where the Minister is required pursuant to subsection (1) to hold a conference, the Minister shall hold the conference within 14 days of receipt of the notification under subsection (1), and shall give notice of the day, time and place for the conference to each person concerned.

(5) At a conference held pursuant to subsection (1) –

(a) the Minister or a person nominated, in writing, by the Minister is 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 his representative is given a reasonable opportunity at the conference -

(a) to present his case; and

(b) subject to subsection (8), to inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the conference.

(8) Notwithstanding subsection (7)(b), there is no obligation to afford an opportunity to inspect any document that contains particulars of a secret formula or process, and to make submissions in relation to those documents.

Exception in case of danger to public.

107. (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, without regard to any action of a supplier of the goods shall, without delay, publish in the *Gazette* and in at least [two] newspapers in general circulation in [], a notice under section 103 (1) in relation to the goods.

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

(a) in a case where the notice is published before the Minister takes any action under section 106 (1) in relation to goods of a particular kind,

section 106 shall not apply in relation to the action that the Minister may take under section 103 in relation to goods of that kind; or

(b) in any other case, any action taken by the Minister under section 106 (1) in relation to goods of a particular kind ceases to have effect and if a conference had, under section 106, been arranged or had commenced, the Minister may publish the notice under section 103 (1) without regard to the action taken under section 106.

Power to obtain information, documents and evidence.

108. (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 sub-section (2) shall not be exercised except -

(a) pursuant to a warrant issued under section 109; 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 of a warrant to exercise the powers of an authorised officer under subsection (2).

**Power of
magistrate to
issue warrant.**

109. (1) Where an application is made to a magistrate under section 108 (4), the magistrate 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 –

(a) enter the premises specified in the warrant; and

(b) exercise the powers of an authorised officer under subsection 108 (1) in relation to those premises.

(2) A magistrate shall not issue a warrant under subsection (1) 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.

(3) A warrant issued under subsection (1) 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.

(4) An authorised officer or a person assisting such officer shall, before entering the premises under a warrant under subsection (1) -

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

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

(5) An authorised officer or a person assisting such officer is not required to comply with subsection (4) 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.

[(6) Where an authorised officer takes samples under section 108 (2) (b), he shall pay a reasonable price for the goods sampled.]

(7) 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.

(8) 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 [and duties] under subsection (2) commits an offence and is liable, on summary conviction, to a fine not exceeding [] dollars.

(9) 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. 110. (1) Where a supplier voluntarily takes action to recall goods because the goods will or may cause injury, loss or damage 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. 111. Where the Minister publishes a notice under section 106 (1) or pursuant to section 107 (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 actions not to affect insurance contracts. 112. 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 XII. *Distance Selling*

Interpretation.

113. (1) In this part “distance contract” means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.

(2) A contract involving distance communication includes electronic mail and electronic commerce by way of letters, catalogues, by facsimile machine, telephone and television.

Agreement regarding distance selling contracts.

114. (1) [Member States may enter into an agreement to provide assistance regarding the distance selling contracts by way of information, redress or sanctions.]

(2) If Member States enter into an agreement pursuant to subsection (1), the Minister may, by order published in the *Gazette*, give legal effect to the agreement.

(3) An order made under this section may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving legal effect to an agreement made pursuant to subsection (1).

(4) If Member States amend an agreement made pursuant to subsection (1), the Minister may amend an order published under subsection (2) accordingly.

(5) Every order made under this section shall be subject to affirmative resolution.

Application of part.

115. This part does not apply to a –

- (a) contract relating to a financial service;
- (b) contract concluded by means of automatic vending machines or automated commercial premises;

- (c) contract concluded with a telecommunication operator through the use of payphones; or
- (d) contract concluded at auction.

Prior information requirements.

116. (1) Subject to subsection (2), prior to the conclusion of any distance contract, the supplier shall provide the consumer with the following information -

- (a) the identity of the supplier and, in the case of a consumer agreement requiring payment in advance, his address;
- (b) a description of the main characteristics of the good or service;
- (c) the price of the good or service including all [applicable] taxes;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of cancellation, except in certain cases where this right does not exist;
- (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate such as premium phone lines;
- (h) the period for which the offer or the price remains valid; and
- (i) where appropriate, the minimum duration of the consumer agreement in the case of a consumer agreement for the supply of a good or service to be performed permanently or recurrently.

(2) The information in subsection (1) is to be provided in a clear and comprehensible manner and in good time before the conclusion of any distance contract.

(3) In a distance contract for the sale of a good, the consumer is to receive confirmation of the information in subsection (1) in a durable medium available and accessible by him or her.

Acceptance or decline of internet

117. A supplier shall provide the consumer with an express authority to accept or decline the internet consumer agreement and to correct errors immediately before entering

consumer agreement.

into the agreement.

Payment by credit card.

118. (1) A consumer may request cancellation of a payment where fraudulent use is made of his or her payment card.

(2) Where fraudulent use has been made of a consumer's payment card, the consumer shall be re-credited with the sums paid.

Performance.

119. (1) Unless the parties have agreed otherwise, the supplier shall execute a consumer's order within [thirty days] from the day following the day on which the consumer forwarded his order to the supplier.

(2) Where a supplier is unable to perform a contract because the good or service is not available, the supplier shall inform the consumer within [thirty days] and refund any sums received.

Burden of proof.

120. In the case of a dispute, the burden of proof concerning information, confirmation and time limits is on the supplier.

PART XIII. Miscellaneous

Void provisions of consumer agreements.

121. (1) A provision of a consumer agreement, or a condition to which an agreement is subject, is void 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 provided for in this Act;
 - (iii) set aside or override the effect of any provision of this Act; or

- (iv) authorise the supplier to do anything that is prohibited by this Act or fail to do anything that is required under 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 under section 79;
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services pursuant to 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) consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act; or

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

(2) In any matter before it respecting a consumer agreement that contains a provision referred to in subsection (1), a court or tribunal shall -

- (a) sever the void 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 void as from the date that the agreement, or amended agreement, took effect,

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

(3) A supplier shall 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 void if it were included in a primary agreement;
- (b) request or demand a consumer to -
 - (i) give the supplier possession of an instrument referred to in subsection (1)(f)(i) other than for the purpose of identification, or to make a copy of the instrument;
 - (ii) reveal any personal identification code or number referred to in subsection 1(f)(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.

(4) A supplier who contravenes any provision of subsection (3)(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 instalment.

122. (1) This section applies to any case where a supplier contracts to –

(a) provide a consumer with goods or services over an extended period of time; and

(b) 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 a claim under paragraph (a), be entitled to terminate the consumer agreement if payment in full is not made

(i) within a reasonable time after the presentation of the claim; or

(ii) 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 in the manner set out 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 subject to 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 on the next occasion 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 services shall present an accurate claim no later than [ninety] 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.

123. (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 by the supplier 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 a 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 fulfillment 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.**

124. (1) A supplier commits an offence if he –

(a) acts on the powers contained in a Bill of Sale of moveable or personal property pledged by a consumer; and

(b) employs any person other than an authorized person under the [Bill of Sale] to recover any or all of the property pledged in the Bill of Sale in the event of default in repayment of a loan.

(2) A supplier who commits an offence under subsection (1) shall, on 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 property pledged by the consumer in the Bill of Sale 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 -

(a) has already been discharged; or

(b) 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 property 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 person, who wrongfully seizes the property 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, on 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 property seized plus an amount of [] dollars per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(9) Any person who –

(a) threatens to seize a consumer's property 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 property while exercising distraint,

commits an offence and is liable, upon summary conviction, 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.**

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

(2) A document setting out an offer contemplated in subsection (1) shall 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 on which and time at which the prospective consumer may receive the benefit.

Promotional competitions.

126. (1) In this section –

“participant” means a person who expressly or implicitly enters into a promotional competition;

“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.

(2) A person shall not directly or indirectly inform a consumer that the 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;

(iii) 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 a copy 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 shall 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; and
- (f) any person from whom, any place at which, and any date on which and time at which the successful participant may receive a 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 [or broadcasted] 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 the 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 a 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) shall 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) auditing and reporting requirements in respect of promotional competitions.

Over-selling and over-booking.

127. (1) A supplier shall not accept payment 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; or
- (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 a 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 reimbursement; and

(b) 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.

128. (1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic installments, 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 may –

- (i) regard the consumer as having rescinded the agreement; and
- (ii) subject to subsection (4), 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.**

129. (1) Where –

(a) a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement with a supplier;

(b) a supplier who -

- (i) 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;

(ii) penalises the consumer;

(iii) alters, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or

(iv) takes any action to accelerate, enforce, suspend or terminate an agreement with the consumer,

the supplier 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.

130. (1) This section applies only to a continuous service agreement which is not regulated by any other enactment.

(2) A supplier shall –

(a) deliver, without charge to the consumer, a copy of a document that records an agreement; and

(b) transmit the agreement 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 set out in sections 44 and 45;

(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 shall deliver to the consumer a document that reflects their amended agreement within [20] business days after the date of the agreement to amend.

Rights reserved.

131. 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.

132. (1) Notwithstanding any agreement or waiver to the contrary, the substantive and procedural rights given under this Act apply.

(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) 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.

General penal provision.

133. Unless, otherwise provided in this Act, a person who contravenes any provision of this Act or omits or fails to comply with any Regulations made by [the Minister or] the Commission under this Act, commits an offence and shall be liable on, summary conviction, to a fine not exceeding [] dollars or imprisonment for a term not exceeding [two years or both].

Regulations.

134. (1) The Minister may make regulations for the purposes of giving effect to the provisions of this Act.

(2) In particular, the Minister may make regulations to:-

- (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 of devices which provide a prospective purchaser of goods, which are offered for sale by retail, the means to ascertain the weight or measurement of such goods.

(3) Nothing in subsection (2) shall be deemed to authorize the Minister to make any Regulation in relation to 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.

CONSTITUTION OF 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 has knowledge of or experience in, industry, commerce, law, public administration or consumer protection.
- Acting members.** [3. If a member of the Commission is absent or is unable to perform his duties, the Minister may appoint another person who possesses the expertise specified in paragraph 2 (3) to act temporarily in the place of the 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 **the** 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) A member of the Commission shall not be personally liable for anything done or omitted to be done by that member in good faith in the course of the operations of the Commission.

(2) Where a 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 matter which is being dealt with 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 disposal by Parliament for the purposes of this Act;
 - (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 14)

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):

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 his delegated member of the Commission)
this [] day of [] 20