

Tonga

CONSUMER PROTECTION ACT 2025

Act 39 of 2025

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CONSUMER PROTECTION ACT 2025

Act 39 of 2025

AN ACT FOR THE PROTECTION OF CONSUMERS AND PROMOTION OF FAIR TRADE PRACTICES AND FOR OTHER MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

I assent,
TUPOU VI,
16th December 2025.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short title and Commencement

(1) This Act may be cited as the Consumer Protection Act 2025.

(2) This Act shall come into force on a day to be proclaimed by Cabinet.

2 Interpretation

(1) In this Act, unless the context otherwise requires —

"**acquire**" includes –

(a) in relation to goods means to obtain by purchase, exchange, taking on a lease, or hire; or

(b) in relation to services means to accept;

"**advertisement**" means any representation which is written, pictorial, visual or otherwise, made for the purpose of promoting directly or indirectly the sale or disposal of any good or service;

"**approved standard**" means any standard that is in force under this Act;

"**Authority**" means the Competent Authority established under the Price and Wage Control Act;

"**business**" for the purposes of this Act includes a trade or profession or vocation, and "in the course of business" has a corresponding meaning;

"**CEO**" means the Chief Executive Officer of the Ministry that is responsible for consumer affairs;

"Court" means the Magistrate Court unless specifically stated;

"**conduct**" for the purposes of this Act includes, without limitation, actions and statements such as –

(a) advertisements;

(b) promotions;

(c) quotations;

(d) statements; or

(e) any representation made by a person;

"**consumer**" means a person who –

(a) acquires from a supplier, goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; and

(b) does not acquire the goods or services, or hold himself out as acquiring the goods or services, for the purposes of –

(i) resupplying them in trade;

(ii) consuming them in the course of a process of production or manufacture; or

(iii) in the case of goods, repairing or treating in trade other goods or fixtures on land, provided that a person who acquires goods or services of a value being equal to or less than the amount prescribed in Regulations, for use in a business of primary production for the purposes of this Act;

"**days**" for the purposes of this Act means calendar days;

"**defective goods**" means goods that do not comply with applicable approved standards under this Act and includes unsafe goods;

"**Director**" means the Director of the Consumer Affairs Division;

"**Division**" means the Division responsible for consumer affairs under the Ministry;

"**expired goods**" means goods that are offered for sale, in trade, on a date that is subsequent to the expiry date marked on those goods;

"**expiry date**" means the date on which perishable or semi-perishable goods expire;

"**Food Authority**" means the National Food Authority established under the Food Act;

"**goods**" means a consumer good of whatever nature, sold for valuable consideration and includes gas, electricity, fuel, water, and communications;

"**importer**" means a person who brings into Tonga, or causes to be brought into Tonga, any good for the purposes of trade;

"**inspector**" means a person designated as an inspector under section 82 of this Act;

"**label**" means any tag, brand, mark, pictorial or other descriptive matter written, printed, stencilled, marked, embossed or impressed on, or attached to, a good or its package;

"**manufacturer**" means a person that carries on the business of assembling, producing or processing goods, and includes —

(a) a person or entity that holds itself out to the public as the manufacturer of goods;

(b) a person or entity that attaches its brand or mark or causes or permits his brand or mark to be attached to the goods; or

(c) where goods are manufactured outside Tonga and the foreign manufacturer of the goods does not have an ordinary place of business in Tonga, a person that imports or distributes those goods;

"**Minister**" means the Minister responsible for consumer affairs;

"**Ministry**" means the Ministry responsible for consumer affairs;

"**person**" for the purposes of this Act includes a body corporate, or unincorporated;

"**premises**" includes —

(a) a place, whether a building or in the open air where any business, industry, production or trade is carried on by a person whether by himself or through an agent;

(b) a place where any books of account or other documents pertaining to any trade or transaction are kept;

(c) a dwelling house, if any part thereof is used for the purpose of carrying on any business, industry, production or trade; or

(d) a vehicle or vessel or any other mobile device with the help of which any trade is carried on;

"**price**" includes a charge of any description and the cost of obtaining credit as well as any price for the sale of goods, being prices in the course of business;

"**recognised standard**" means a standard that is recognised as being in force under the laws of another country;

"**record**" includes any record of information however compiled, recorded, or stored and any books, documents, electronic files, or writings;

"**retail**" when used in relation to any sale, means a sale by a retailer to a consumer;

"**sell**" includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or to dispose of to any person in any manner whether for a consideration or otherwise, and "sold", "selling", and "sale" have corresponding meanings;

"**service**" includes a right (including right in relation to, and interest in, real or personal property), benefit, privilege, accommodation or facility that is, or is to be, provided, granted or conferred in trade, and without limiting the generality of the foregoing, includes the right, benefit, privilege and facility that is, or is to be, provided, granted or conferred under –

(a) a contract for or in relation to –

(i) the performance of work (including building work and work of a professional nature), whether with or without the supply of goods;

(ii) to avoid doubt, the supply of electricity, gas, telecommunications, or water, or the removal of waste water;

(iii) the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or

(iv) the conferring of a right, benefit or privilege for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

(b) a contract of insurance;

(c) a contract between a banker and a customer of the bank;

(d) a contract for or in relation to the lending of money or granting of credit;

(e) a service supplied or carried on for hire or reward by any person engaged in trade; or

(f) a right under an agreement for the provision of accommodation,

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

"**substantially to control**" for the purposes of Schedule 1 means to own 80 percent or more of the market share of that business or industry;

"**supply**" –

(a) in relation to goods, means to supply or resupply by way of gift, sale, exchange, lease, hire or hire purchase;

(b) in relation to services, means to provide, grant or confer; and

(c) "supplier" has a corresponding meaning;

"**trade**" means any business, industry, profession, occupation, activity of commerce, or undertaking in relation to the supply or acquisition of goods or services, regardless of whether or not it is carried on wholly or in part on the internet, and "trader" has a corresponding meaning;

"**unsafe goods**" means goods that have been declared unsafe under section 24; and

"**wholesale**" means the sale or supply of goods to a person for the purpose of resale or for use by such person in his trade or business.

(2) Where it is necessary under this Act to determine the time at which a guarantee commences to apply –

(a) goods shall be treated as supplied at the time when the consumer acquires the right to possess the goods; and

(b) services shall be treated as supplied at the time when they are provided, granted or conferred.

3 Scope of the Act

(1) This Act shall bind the Crown, to the extent that the Crown engages in trade.

(2) Nothing in this Act renders the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

4 Objects of the Act

The objects of this Act are –

(a) to enhance the welfare of the people of Tonga through the promotion of fair trading and protection of consumers' rights;

(b) to protect the long-term interests of the people of Tonga with regard to the availability, price, quality and reliability of goods and services; and

(c) to promote and encourage fair trading practices in markets in Tonga.

5 Consumers' rights

(1) Any person, in their capacity as consumers, shall have the following rights –

(a) right to safety;

(b) right to choice;

(c) right to consumer education;

(d) right to information;

(e) right to representation; and

(f) right to redress.

(2) Recognition of the rights under subsection (1) does not confer or imply any liability on the Crown in respect of those rights or their enforcement.

PART II – GENERAL ADMINISTRATION

6 Administration of the Act

The Minister shall be responsible for the effective administration of this Act.

DIVISION 1 – FUNCTIONS OF THE DIVISION

7 Establishment of the Consumer Affairs Division

(1) There shall be established a Consumer Affairs Division, which shall consist of —

(a) a Director; and

(b) such other officers as may be appointed under subsection (2).

(2) The CEO may appoint suitably qualified persons as officers of the Division.

(3) Any appointment made under subsection (1) shall be in accordance with the Public Service Act.

8 Functions of the Division

(1) The Consumer Affairs Division has the following functions –

(a) to support the Authority in the performance of its functions and the exercise of its powers under this Act;

(b) to inform consumers and traders about their rights and responsibilities under this Act;

(c) to make available to consumers generally information affecting the interests of consumers and promote public understanding of consumer protection;

(d) to establish appropriate systems for receiving, registering, and responding to consumers' complaints;

(e) to receive and respond to complaints from consumers on matters relating to the supply in trade of goods and services;

(f) to take appropriate action in relation to complaints received;

(g) to liaise with businesses, commercial and professional bodies and associations to promote compliance with this Act;

(h) to promote the use of internal controls and risk management measures by traders to ensure compliance with this Act;

(i) to research issues affecting consumers and propose appropriate measures to address those issues;

(j) to advise the Minister on consumer protection in Tonga;

(k) to formulate and submit to the Minister policies in the interests of consumers;

(l) to consider and, where necessary, advise the Minister on the updating of this Act;

(m) to liaise with relevant Ministries and statutory bodies on matters relating to consumer protection;

(n) to liaise with consumer organisations, consumer affairs authorities, and consumer protection groups overseas and to exchange information on consumer affairs with those bodies;

(o) to take other steps necessary or expedient for consumer protection; and

(p) to perform any other functions conferred by this Act or any other statute.

(2) In an appropriate case, the Division may refer a complaint to another Ministry or statutory body, regardless of whether or not the Division has commenced an investigation into it.

(3) The Division may negotiate and agree with other relevant Ministries or statutory bodies on the principles of cooperation between them in relation to consumers' complaints or other matters affecting the interests of consumers.

9 Consumer Education and Awareness Initiatives

(1) Subject to the availability of resources, the Division shall carry out consumer advocacy activities in order to –

(a) disseminate relevant information to consumers and traders regarding their rights and obligations under this Act;

(b) provide information to and consult with consumers and traders regarding proposed changes to this Act;

(c) support awareness and knowledge of consumer protection; and

(d) establish partnerships with the private sector, district and town officers, and the community.

(2) The Division shall endeavour to ensure that information disseminated under subsection (1) shall be available in the English and Tongan languages.

(3) Information disseminated under this Act shall be published and made accessible to the public on the official website of the Ministry.

10 Guiding matters

In the performance of its functions under this Act, the Division shall have particular regard to the following matters —

(a) the protection of the interests of consumers;

(b) the responsibility of manufacturers and traders to ensure that goods offered to consumers meet reasonable standards of durability, utility and reliability and are suited for the purposes for which they are intended;

(c) the efficient operation of any person or body engaged in the production of goods or the provision of services or in any activity

connected with or incidental to the production of goods or the provision of services;

(d) the ability of consumers to obtain redress through procedures that are expeditious, fair, inexpensive and accessible;

(e) the need to develop, strengthen and maintain a strong consumer policy for the protection of consumers in accordance with the economic and social circumstances of Tonga; and

(f) other objectives of economic and social policy of the Government.

11 Staff protected

(1) No proceedings, civil or criminal, may be brought against any person to whom this section applies for anything he may do or report or say in the course of the exercise or intended exercise of his duties under this Act, unless it is shown that he acted in bad faith.

(2) This section applies to the staff of the Division, and any former staff of the Division, and to every person engaged or employed in connection with the work of the Division.

DIVISION 2 – FUNCTIONS OF THE AUTHORITY

12 Functions and powers of the Authority

(1) The Authority has, in addition to its functions under the Price and Wage Control Act and any other legislation, the following functions –

(a) to perform the functions and exercise the powers vested in the Authority under this Act;

(b) to promote and participate in consumer education activities; and

(c) to encourage the development in Tonga of organisations and associations established to further the interests of consumers, and to liaise and consult with them on the development of consumer policy and on issues of consumer interest.

(2) The Authority has all the powers necessary for carrying out its functions.

13 Disclosure of interests

(1) Each member of the Authority shall disclose in writing to the Minister, as soon as practicable after the member becomes aware of the interest, any material interests that the member has that could conflict with the proper performance of the functions of his office under this Act.

(2) If a member has an interest in a particular matter that could conflict with the proper performance of the functions of his, the member shall not perform those functions unless –

(a) the member has complied with subsection (1) in relation to the interest; and

(b) the Minister has approved in writing the member performing those functions in relation to the matter despite the possible conflict of interest.

(3) The Authority shall take reasonable steps to ensure that inspectors, persons otherwise engaged by the Authority and other persons performing or exercising functions or powers of the Authority make proper and adequate disclosure of their interests.

(4) The Authority shall record, and maintain a register of, all disclosures under this section.

14 Delegations

(1) The Authority may, by writing, delegate any of its functions or powers either generally or specifically to —

(a) a specified person; or

(b) the holder for the time being of a specified office or appointment.

(2) The Authority shall not delegate the power of delegation in subsection (1).

(3) A person who appears to act under a delegation under subsection (1) is, in the absence of evidence to the contrary, presumed to be acting in accordance with the terms of the delegation.

(4) A delegation under subsection (1) —

(a) continues in effect until it is revoked;

(b) is revocable at will, with effect on communication to the delegate;

(c) does not prevent the Authority from performing the functions or exercising the powers; and

(d) does not affect the responsibility of the Authority for the actions of any delegate acting under delegation.

15 Guidelines

(1) The Authority may issue guidelines in relation to any of the Authority's functions or powers under this Act.

(2) Without limiting subsection (1), guidelines may set out –

(a) the Authority's approach to interpreting and applying this Act;

(b) the Authority's approach to exercising any powers under this Act, including powers in relation to –

(i) consumer information and safety under Part III;

(ii) consumer guarantees under Part IV and V;

(iii) fair trading under Part VI;

(iv) complaints, investigations and searches under Part X;

(v) remedies and enforcement under Parts XI, XII, and XIII; and

(vi) the Authority's enforcement priorities.

16 Protection of members of Authority

(1) This section applies to the members of the Authority, and any former members of the Authority, and to every person engaged or employed in connection with the work of the Authority.

(2) No proceedings, civil or criminal, may be brought against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his duties under this Act, unless it is shown that he acted in bad faith.

17 Annual Report of Authority

The Authority shall in each year report to the CEO on the performance of the Authority's functions under this Act, including —

(a) the number and types of complaints received during the year;

(b) the number of complaints outstanding;

(c) the outcomes of complaints or references to the Authority;

(d) the decisions and determinations made by the Authority;

(e) any legal proceedings in which the Authority has been involved; and

(f) such other information as the Ministry may reasonably require for the purpose of providing its Annual Report under this Act.

PART III — CONSUMER INFORMATION AND SAFETY

DIVISION 1 – CONSUMER INFORMATION

18 Consumer Information standard

(1) The Minister may make regulations prescribing a consumer information standard that complies with subsection (2).

(2) A consumer information standard may –

(a) require the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of goods or services;

(b) specify how that information shall be obtained or verified before it is disclosed;

(c) specify the form and manner in which that information shall be disclosed on or in relation to –

(i) the supply or possible supply of the goods or services;

(ii) the resupply or possible resupply of the goods or services; or

(iii) the promotion by any means of one or more of the matters described in subparagraphs (i) and (ii); and

(d) incorporate, by reference or otherwise and with any additions or variations as are specified, part or all of a recognised standard or two or more recognised standards.

(3) Before making Regulations under subsection (1), the Minister shall –

(a) consult with persons (or their representatives) who the Minister considers will be substantially affected by the Regulations; and

(b) consider any comments those persons may make in relation to the proposed Regulations.

(4) A failure to comply with subsection (3) does not affect the validity of the Regulations.

19 Breach of consumer information standards

(1) A person shall not in trade supply goods or services in Tonga if the supply does not comply with an applicable consumer information standard.

(2) A person who breaches subsection (1) is liable to a pecuniary penalty.

(3) It is a defence to a proceeding under subsection (2) if the defendant –

(a) made all reasonable inquiries to determine whether the supply complied with the applicable consumer information standard; and

(b) believed on reasonable grounds that the supply did comply.

20 Labelling of particular kinds of goods

(1) Requirements for the labelling of goods which are imported into or sold in Tonga shall be as follows –

(a) in relation to food items, as set out in the Food Act;

(b) in relation to tobacco and tobacco products, as set out in the Tobacco Control Act;

(c) in relation to therapeutic goods, as set out in the Therapeutic Goods Act; and

(d) in relation to other kinds of consumer goods, as set out in section 21.

(2) Requirements under this Act shall be in addition to and not a replacement of labelling requirements under any other Act.

(3) The Ministry shall cooperate with the Food Authority in relation to the enforcement of labelling requirements for food items.

21 Labelling of goods generally

(1) The Minister may make Regulations providing for —

(a) goods or classes or kinds of goods to which this section applies; and

(b) the information with which those goods must be labelled, which may include the expiry date or best before date of those goods or such other information as the Minister considers appropriate.

(2) The Division shall cause any notice made under subsection (1) to be made available to the public on an internet website.

(3) The information shall be given in the Tongan language or English language or both.

(4) A person shall not, in trade, offer for sale in Tonga any good of a kind that is the subject of a notice under subsection (1) that does not have –

(a) attached to it a label that sets out the information in relation to the good; or

(b) displayed adjacent to it a written notice that sets out the information in relation to the good.

(5) A person shall not, in trade, offer for sale in Tonga any good of a kind that is the subject of a notice under subsection (1) that has attached to it a label that has been tampered with in such a way as to obscure or alter any of the information.

(6) A person who contravenes subsection (4) or (5) is liable to a pecuniary penalty.

DIVISION 2 – SAFETY OF GOODS

22 Product safety standard for goods

(1) The Minister may make Regulations prescribing for the supply of specified goods or a specified class of goods a product safety standard (or two or more product safety standards) that –

(a) has the purpose of preventing or reducing the risk of injury to any person; and

(b) complies with subsection (2).

(2) A product safety standard may provide for any of the following –

(a) the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;

(b) the testing of the goods during or after manufacture or processing; and

(c) the form and content of markings, warnings or instructions to accompany the goods.

(3) A product safety standard may incorporate, by reference or otherwise and with any additions or variations as are specified, part or all of a recognised standard or two or more recognised standards.

(4) Before making Regulations under subsection (1), the Minister shall –

(a) consult with persons (or their representatives) who the Minister considers will be substantially affected by the regulations; and

(b) consider any relevant comments those persons may make within the relevant timeframe in relation to the proposed regulations.

(5) A failure to comply with subsection (4) does not affect the validity of the regulations.

23 Breach of product safety standard

(1) A person shall not in trade supply goods in Tonga if the supply does not comply with an applicable product safety standard.

(2) A person who breaches subsection (1) is liable to a pecuniary penalty.

(3) It is a defence to a proceeding under subsection (2) if the defendant –

(a) made all reasonable inquiries to determine whether the supply complied with the applicable product safety standard; and

(b) believed on reasonable grounds that the supply did comply.

24 Unsafe goods

(1) The Authority may publish on the Ministry's website or any other form of communication, declare goods (or a class or classes of goods) to be unsafe goods if –

(a) there is no product safety standard in force for the goods; and

(b) the Authority determines that –

(i) the goods will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including misuse) of the goods will or may cause injury to any person.

(2) In deciding whether to make a declaration under subsection (1)(b)(ii), the Authority shall have regard to all the circumstances, including the following –

(a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods;

(b) the seriousness of the injury likely to be suffered by the user of the goods or any other person;

(c) whether such injury is likely to recur;

(d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury; and

(e) whether, taking into account the ordinary and intended use of the goods, the public interest favours making a declaration.

25 Penalty for supplying unsafe goods or expired goods

(1) A person shall not supply goods in trade that are the subject of an unsafe goods notice under section 24.

(2) A person shall not supply expired goods in trade.

(3) A person who breaches subsection (1) or (2) is liable to a pecuniary penalty.

26 Compulsory product recall

(1) The Authority may issue a notice under subsection (2) if satisfied that –

(a) a person has, in trade, supplied in Tonga any of the following –

(i) goods that do not comply with a product safety standard prescribed for the supply of the goods; or

(ii) goods that have been declared to be unsafe goods under section 24; and

(b) the supplier has not recalled the goods or taken satisfactory action to recall the goods.

(2) The Authority may by notice to the supplier require the supplier, in a manner and within a period specified and at the supplier's own expense, to do one or more of the following –

(a) recall the goods;

(b) disclose to the public information relating to –

(i) the characteristics of the goods which render them unsafe;

(ii) the circumstances in which use of the goods is unsafe; or

(iii) any other matters relating to the goods or the use of the goods as may be specified;

(c) repair or replace the goods;

(d) refund to any person to whom the goods were supplied or resupplied –

(i) the price paid for the goods; or

(ii) any lesser amount as may be reasonable having regard to the use that person has had of the goods.

(3) A person who fails to comply with a notice under subsection (2) is liable to a pecuniary penalty.

DIVISION 3 – SAFETY OF SERVICES

27 Meaning of services

In this Division, "services" means the performance of work by way of –

(a) the maintenance, repair, treatment, processing, installation, assembling, cleaning or alteration of goods;

(b) the construction, maintenance, repair, cleaning or alteration of any building or other fixture on land;

(c) the development of land; or

(d) the transportation of goods.

28 Services safety standard

(1) The Minister may make Regulations prescribing for the supply of specified services or a class of services, a services safety standard (or more services safety standards) that has the purpose of preventing or reducing the risk of injury to any person.

(2) A services safety standard may incorporate, by reference or otherwise and with any additions or variations as are specified, part or all of one or more recognised standards.

(3) Before recommending regulations under subsection (1), the Minister shall –

(a) consult with persons (or their representatives) who the Minister considers will be substantially affected by the regulations; and

(b) consider any relevant comments those persons may make within the relevant timeframe in relation to the proposed regulations.

(4) A failure to comply with subsection (3) does not affect the validity of the regulations.

29 Breach of services safety standard

(1) A person shall not in trade supply services in Tonga if the supply does not comply with an applicable services safety standard.

(2) A person who breaches subsection (1) is liable to a pecuniary penalty.

(3) It is a defence to a proceeding under subsection (2) if the defendant –

(a) made all reasonable inquiries to determine whether the supply complied with the applicable consumer information standard; and

(b) believed on reasonable grounds that the supply did comply.

PART IV – GUARANTEES IN RESPECT OF GOODS

30 Guarantees provided under the Act

A consumer has the following guarantees in respect of goods supplied in trade –

(a) the trader or manufacturer can give good title to the goods;

(b) goods when delivered shall arrive on time and in an acceptable condition;

(c) goods shall be of an acceptable quality;

(d) goods shall be fit for a particular purpose;

(e) goods shall match the description given to the consumer;

(f) goods shall be a reasonable price (when the price is not set); and

(g) goods shall have spare parts and repair facilities available.

31 Goods covered by this Part

(1) Guarantees under this Part shall apply to all goods except those referred to in subsection (3).

(2) Guarantees under this Part shall apply despite any provision to the contrary in any agreement.

(3) Guarantees under this Part shall not apply to –

(a) commercial goods the value of which is higher than the value prescribed in Regulations;

(b) goods supplied otherwise than in trade;

(c) goods bought at auction or by competitive tender; or

(d) goods supplied by a charitable organisation for the principal purpose of benefitting the person to whom the supply is made.

32 Guarantees as to title

Where goods are supplied in trade to a consumer the following guarantees apply –

(a) that the supplier has a right to sell the goods;

(b) that the goods are free from any undisclosed security; and

(c) that the consumer has the right to undisturbed possession of the goods, except in so far as that right is varied pursuant to —

(i) a term of the agreement for supply, where that agreement is a hire purchase agreement; or

(ii) a security, or a term of the agreement for supply, in respect of which the consumer has received —

(A) verbal advice, acknowledged in writing by the consumer, as to the way in which the consumer's right to undisturbed possession of the goods could be affected, sufficient to enable a reasonable consumer to understand the general nature and effect of the variation; and

(B) a written copy of the part thereof which provides for the variation.

33 Guarantees as to delivery

Where a supplier is responsible for delivering, or for arranging for the delivery of, goods to a consumer, in trade, there is a guarantee that the goods shall be received by the consumer —

(a) at a time, or within a period, agreed between the supplier and the consumer; or

(b) if no time or period has been agreed, within a reasonable time.

34 Guarantee as to acceptable quality

(1) Where goods are supplied in trade to a consumer there is a guarantee that the goods are of acceptable quality.

(2) For the purposes of subsection (1), goods are of acceptable quality if, according to the reasonable consumer standard, they are —

(a) fit for all the purposes for which goods of the type in question are commonly supplied;

(b) acceptable in appearance and finish;

(c) free from major and minor defects;

(d) safe; and

(e) durable.

(3) In subsection (2), the reasonable consumer standard means the standard that would be applied by a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, having regard to —

(a) the nature of the goods;

(b) the price (where relevant);

(c) any statements made about the goods on any packaging or label on the goods;

(d) the nature of the supplier and the context in which the supplier supplies the goods;

(e) any representation made about the goods by the supplier or the manufacturer; and

(f) all other relevant circumstances of the supply of the goods.

(4) Where any defects in goods have been specifically drawn to the consumer's attention before the consumer agreed to the supply, then notwithstanding that a reasonable consumer may not have regarded the goods as acceptable with those defects, the goods shall comply with the guarantee as to acceptable quality by reason only of those defects.

(5) Where goods are displayed for sale or hire, the defects that are to be treated as having been specifically drawn to the consumer's attention for the purposes of subsection (4) are those disclosed on a written notice displayed with the goods.

(6) Goods shall not fail to comply with the guarantee of acceptable quality if —

(a) the goods have been used in a manner, or to an extent which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods; and

(b) the goods would have complied with the guarantee of acceptable quality if they had not been used in that manner or to that extent.

(7) A reference in subsections (4) and (5) to a defect means any failure of the goods to comply with the guarantee of acceptable quality.

35 Guarantees as to fitness for particular purpose

(1) Where goods are supplied in trade to a consumer, there is a guarantee that –

(a) the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and

(b) that the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.

(2) The guarantee does not apply where the circumstances show that —

(a) the consumer does not rely on the supplier's skill or judgment; or

(b) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

(3) This section applies whether or not the purpose is a purpose for which the goods are commonly supplied.

36 Guarantee that goods comply with description

(1) Where goods are supplied in trade to a consumer by description, there is a guarantee that the goods correspond with the description.

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

(3) If the goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in this section and in section 37 both apply.

37 Guarantee that goods comply with sample

(1) Where goods are supplied in trade to a consumer by reference to a sample or demonstration model, there is a guarantee that –

(a) the goods correspond with the sample or demonstration model in quality; and

(b) the consumer will have a reasonable opportunity to compare the goods with the sample.

(2) If the goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in this section and in section 36 both apply.

38 Guarantee as to price

(1) Where goods are supplied in trade to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the goods in any case where the price for the goods is not —

(a) determined by the contract;

(b) left to be determined in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

(2) Where there is a failure to comply with the guarantee in this section, the consumer is not obliged to pay more than a reasonable price.

(3) Sections 42 to 45 do not apply to breach of a guarantee under this section.

39 Guarantee as to repairs and spare parts

Where goods are first supplied in trade to a consumer in Tonga (whether or not that supply is the first-ever supply of the goods), there is a guarantee that the supplier will either —

(a) take reasonable action to ensure that facilities for repair of the goods and supply of parts for the goods are reasonably available for a reasonable period after the goods are so supplied; or

(b) notify consumers that facilities for repair of the goods and supply of parts for the goods are not assured.

40 Manufacturers' express guarantees

(1) Where goods are supplied in trade to a consumer, these sections apply to any express guarantee given by a manufacturer of the goods that is expressed to be binding on the manufacturer.

(2) An express guarantee given by a manufacturer in a document relating to goods binds the importer or supplier of those goods if the document is given to a consumer –

(a) with the actual or apparent authority of the importer or supplier; and

(b) in connection with the supply of those goods to the consumer.

(3) An express guarantee which is included in a document relating to goods and which appears to have been made by the manufacturer of the goods shall in the absence of proof to the contrary be presumed to have been made by the manufacturer.

(4) Unless the contrary is shown, authority for the purpose of subsection (2)(a) is presumed if the document was given to the consumer in connection with the supply of the goods.

(5) Nothing in subsection (2) limits other ways in which a manufacturer's express guarantee is binding.

41 Contracts of work and materials

The guarantees in this Part apply whether or not the goods are supplied in connection with a service.

42 Notice of Remedy

(1) If a guarantee under this Part (excluding section 36) is breached, the consumer may give the supplier notice to remedy the breach.

(2) Notice to remedy –

(a) may be oral or written;

(b) shall sufficiently describe the nature of the breach; and

(c) shall be given within 28 days after the consumer becomes aware of the breach or ought reasonably to have become aware of it.

(3) On receiving notice under subsection (1), the supplier shall remedy the breach by doing one of the following, at the supplier's election –

(a) repairing the goods;

(b) reimbursing the consumer the reasonable costs of procuring the repair of the goods by a third party;

(c) if the breach relates to a defect in title to the goods, remedying that defect;

(d) replacing the goods with goods of an identical type; or

(e) refunding the money paid and any other value given by the consumer as the purchase price of the goods.

(4) A consumer may not give notice to remedy if –

(a) the consumer has disposed of the goods;

(b) the goods have been lost or destroyed while in the possession of a person other than the supplier or the supplier's agent;

(c) the breach occurred after delivery of the goods to the consumer for reasons not related to their state or condition at the time of supply; or

(d) the goods have been attached to or incorporated in other property and cannot be detached or isolated without damage to the goods or the other property.

(5) Nothing in this section limits any other remedy that a consumer may have under the general law for breach of a guarantee (including a right to damages).

43 Act applies to replacement goods

(1) This section applies if a supplier remedies a breach of a guarantee by replacing the goods.

(2) For the purposes of this Act, the replacement goods are treated as supplied by the supplier and the Act applies to the replacement goods as if they were the first supply of the goods to the consumer.

44 Notice of rejection

(1) A consumer may reject goods by giving the supplier notice of rejection if –

(a) the consumer has given notice to remedy under section 42; and

(b) the supplier has failed to remedy the breach –

(i) within 28 days after the notice to remedy is given; or

(ii) if the consumer and supplier agree on a longer period for remedying the breach, within the agreed period.

(2) Notice of rejection –

(a) may be oral or in writing; and

(b) shall be given within 28 days after the period for remedying the breach has expired.

(3) A consumer who gives notice of rejection shall return the goods to the supplier unless –

(a) the goods are already in the supplier's possession; or

(b) the return of the goods is impractical or involves the consumer in unreasonable expense.

(4) If the consumer has already acquired ownership of the goods, ownership re-vests in the supplier on notice of rejection.

45 Supplier shall refund purchase price

(1) On the exercise by a consumer of the right of rejection, the supplier shall refund the money paid and any other value given by the consumer as the purchase price of the goods.

(2) The supplier shall pay the refund –

(a) within 28 days after the consumer returns the goods; or

(b) if section 44(3)(a) or (b) applies, within 28 days after the date on which notice of rejection is given.

(3) A refund shall be paid in cash, by deposit to a bank account or by credit to a credit card or other bank card.

(4) A supplier does not comply with the obligation to refund by –

(a) permitting the consumer to acquire goods from the supplier; or

(b) crediting a payment card issued by or on behalf of the supplier.

PART V – GUARANTEES IN RESPECT OF SERVICES

46 Guarantees provided under this Part

A consumer has the following guarantees in respect of the provision of services in trade –

(a) guarantee of reasonable care and skill;

(b) guarantee of fitness for a known particular purpose;

(c) guarantee of completion of work within a reasonable time; and

(d) guarantee as to reasonableness of price (when the price is not fixed).

47 Services covered by this Part

(1) Guarantees under this Part shall apply despite any provision to the contrary in any agreement.

(2) Guarantees under this Part shall not apply to —

(a) services supplied otherwise than in trade; or

(b) services supplied by a charitable organisation for the principal purpose of benefitting the person to whom the supply is made.

48 Guarantee as to reasonable care and skill

Where services are supplied in trade to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.

49 Guarantee as to fitness for particular purpose

(1) Where services are supplied in trade to a consumer there is a guarantee that the service, and any product resulting from the service, will be —

(a) reasonably fit for any known particular purpose; and

(b) of such a nature and quality that it can reasonably be expected to achieve any known particular result.

(2) A particular purpose or result is known to the supplier, if it is made known to the supplier by the consumer before or at the time of the making of the contract for the supply of the service, as the particular purpose for which the service is required or the result that the consumer desires to achieve, as the case may be, except where the circumstances show that —

(a) the consumer does not rely on the supplier's skill or judgment; or

(b) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

50 Guarantee as to completion within reasonable time

Where services are supplied in trade to a consumer there is a guarantee that the service shall be completed within a reasonable time in any case where the time for the service to be carried out is not —

(a) fixed by the contract;

(b) left to be fixed in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

51 Guarantee as to reasonableness of price

(1) Where services are supplied in trade to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the service in any case where the price for the service is not —

(a) determined by the contract;

(b) left to be determined in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

(2) Where there is a failure to comply with the guarantee in this section, the consumer is not obliged to pay more than a reasonable price.

(3) Sections 52 to 55 do not apply to breach of a guarantee under this section.

52 Notice to Remedy

(1) If a guarantee under this Part (excluding section 51) is breached but is capable of remedy, the consumer may give the supplier notice to remedy.

(2) Notice to remedy –

(a) may be oral or written;

(b) shall sufficiently describe the nature of the breach; and

(c) shall be given within 28 days after the consumer becomes aware of the breach or ought reasonably to have become aware of it.

(3) On receiving notice under subsection (1), the supplier shall remedy the breach by doing one of the following –

(a) re-supplying the service to the extent necessary; or

(b) refunding the money paid and any other value given by the consumer as the price of the service.

(4) Nothing in this section limits any other remedy that a consumer may have under the general law for breach of a guarantee (including a right to damages).

53 Cancellation

(1) A consumer may cancel an agreement for the supply of services by giving the supplier notice of cancellation if –

(a) the consumer has given the supplier a notice to remedy under section 52 and the supplier has failed to remedy the breach within 28 days after the notice is given; or

(b) a guarantee under this Part (excluding section 51) is breached and the breach is not capable of remedy or is substantial.

(2) Notice of cancellation –

(a) may be oral or in writing; and

(b) shall be given –

(i) if subsection (1)(a) applies, within 28 days after the period for remedying the breach has expired; or

(ii) if subsection (1)(b) applies, within 28 days after the consumer becomes aware of the breach or ought reasonably to have become aware of it.

(3) For the purposes of subsection (1)(b), breach of a guarantee is substantial if –

(a) a reasonable person in the position of the consumer would not have contracted for the service had the nature and extent of the breach been foreseen; or

(b) the product of the service is unsafe.

54 Effect of Cancellation

(1) If an agreement for the supply of a service is cancelled under section 53 –

(a) the supplier shall refund the money paid and any other value given by the consumer as the price of the service; and

(b) without affecting the supplier's liability to refund, –

(i) each party retains any money or property already paid or transferred under the agreement; and

(ii) neither party is obliged or entitled to take any further step in the performance of the agreement.

(2) Nothing in this section limits any other remedy that a consumer may have under the general law for breach of a guarantee (including a right to damages).

(3) The effect of cancellation under subsection (1) may be adjusted by a Court if it considers that in a particular case the outcome under subsection (1) is disproportionately unfair to a party.

PART VI – FAIR TRADING

DIVISION 1 - UNCONSCIONABLE CONDUCT AND UNFAIR CONTRACTS

55 Application of this Part

This Part –

(a) applies in addition to any other law;

(b) applies despite any provision to the contrary in any agreement; and

(c) does not apply to the supply of goods or services by a charitable organisation for the principal purpose of benefitting the person to whom the supply is made.

56 Unconscionable conduct

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

(2) Without limiting the matters to which regard may be had for determining whether a supplier has contravened subsection (1), regard may be had to the following –

(a) the relative strengths of the bargaining positions of the supplier and the consumer;

(b) whether as a result of the conduct engaged in by the supplier, the consumer was required to comply with a condition that was not reasonably necessary for the protection of the legitimate interests of the supplier;

(c) whether the consumer was able to understand a document relating to the supply or possible supply of the good or service;

(d) whether any undue influence or pressure was exerted on, or an unfair tactic were used against the consumer (or person acting on behalf of the consumer) by the supplier or a person acting on behalf of the supplier, in relation to the supply or possible supply of the good or service; and

(e) the amount for which the consumer could have acquired an identical or equivalent good or service from a person other than the supplier.

(3) A supplier shall not be taken to engage in unconscionable conduct in connection with the supply or possible supply of a good or service to a

consumer solely because the supplier institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim supply to mediation or a decision making body under this Act.

(4) For the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services to a consumer –

(a) regard shall not be had to a circumstance that was not reasonably foreseeable at the time of the alleged contravention; and

(b) regard may be had to conduct engaged in, or circumstances existing, before the commencement of this Act.

(5) A person who contravenes subsection (1) is liable to a pecuniary penalty.

57 Unfair contract term void

(1) The Court may, on application by the Authority, declare that a term in a consumer contract or a small business contract is an unfair contract term.

(2) Any person may ask the Authority to apply to the Court for a declaration under this section in relation to a contract to which the person is a party.

(3) The Court may make the declaration only if it is satisfied that –

(a) the term is a term in a contract that is a consumer contract or a small business contract;

(b) the contract is a consumer contract or small business contract (as determined in accordance with section 58);

(c) the contract is a standard form contract (as determined in accordance with section 59); and

(d) the term is unfair in the sense described in section 60.

(4) A term of a consumer contract or a small business contract that is an unfair contract term is void.

(5) The contract continues to bind the parties if it is capable of operating without the unfair contract term.

58 Consumer and small business contracts

(1) A consumer contract is a contract for the supply in trade of goods or services to a consumer.

(2) A contract is a small business contract if –

(a) the contract is for the supply in trade of goods or services;

(b) at the time the contract is entered into, at least one party to the contract does not have any employees; and

(c) either of the following applies –

(i) the upfront price payable under the contract does not exceed $2,000; or

(ii) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed $5,000.

(3) For the purposes of subsection (2)(c)(i), "upfront price" –

(a) means the price disclosed at or before the time the contract is entered into; and

(b) does not include any increase in the price payable on the occurrence or non-occurrence of a particular event.

59 Standard form contract

(1) If in a proceeding under this Division it is disputed that a contract is a standard form contract, the contract is presumed to be a standard form contract unless the contrary is established.

(2) For the purpose of determining whether a contract is a standard form contract, the Court shall take into account –

(a) whether one of the parties has all or most of the bargaining power relating to the transaction;

(b) whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;

(c) whether another party had no choice in rejecting or accepting the terms of the contract (other than the price) in the form in which they were presented;

(d) whether another party had an effective opportunity to negotiate the terms of the contract (other than the price);

(e) whether the terms of the contract (other than the price) take into account the specific characteristics of another party or the particular transaction;

(f) any other matter that the Court considers relevant; and

(g) any other prescribed matter.

60 When contract term is unfair

(1) A term of a consumer contract or a small business contract is unfair if –

(a) it would cause a significant imbalance in the parties' rights and obligations under the contract;

(b) it is not reasonably necessary for protecting the legitimate interests of the party who would be advantaged by the term; and

(c) it would cause financial or other detriment to a party if it were to be applied or relied on.

(2) Despite subsection (1), a term setting the upfront price shall not be determined to be unfair.

(3) In determining whether a term is unfair, the Court shall take into account –

(a) the extent to which the term is transparent;

(b) the contract as a whole; and

(c) any other matter that the Court considers relevant.

(4) A term is transparent if it is –

(a) expressed in reasonably plain language;

(b) legible;

(c) presented clearly; and

(d) readily available to any party affected by the term.

(5) For the purposes of subsection (1)(b), a term of a contract is presumed not to be reasonably necessary for protecting the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

DIVISION 2 — MISLEADING CONDUCT

61 Misleading or deceptive conduct

(1) A person shall not, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in this Act limits, by implication, subsection (1).

(3) A person who contravenes subsection (1) is liable to a pecuniary penalty.

62 Unsubstantiated representation

(1) A person shall not, in trade and in connection with the supply or possible supply of goods or services, make an unsubstantiated representation about those goods or services.

(2) A representation is unsubstantiated if the person making the representation does not, when the representation is made, have

reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

(3) This section does not apply to a representation that a reasonable person would not expect to be substantiated.

(4) In proceedings concerning a contravention of this section, and in assessing whether a person had reasonable grounds for a representation, a Court shall have regard to all of the circumstances, including –

(a) the nature of the goods or services in respect of which the representation was made;

(b) the nature of the representation whether it was a representation about quality or quantity;

(c) any research or other steps taken by or on behalf of the person before making the representation;

(d) the nature and source of any information that the person relied on to make the representation;

(e) the extent to which the person complied with the requirements of any standard, code of practice, or industry practice relating to the grounds on which such a representation may be made, and the nature of those requirements; and

(f) the actual or potential effects of the representation on any person.

(5) A person who contravenes subsection (1) is liable to a pecuniary penalty.

63 False or misleading representation

(1) A person shall not, in trade, in connection with the supply or possible supply of a good or service or with the promotion or use of a good or service –

(a) falsely represent that a good is of a particular standard, quality, grade, composition, style or model or has had a particular history or particular previous use which it does not have;

(b) represent that a service is of a particular standard, quality or grade it does not have;

(c) represent that a good is new or unused, if it is not or is reconditioned or reclaimed;

(d) represent that a particular person has agreed to acquire a good or service when that other person has not;

(e) represent that a good or service has sponsorship, approval, performance characteristics, accessories, uses or benefits that it does not have;

(f) represent that the person has a sponsorship, approval, or affiliation that the person does not have;

(g) represent that after sales service is available for the particular goods, unless the person has in place suitable facilities for the provision of such services;

(h) make a false or misleading representation concerning a price advantage;

(i) make a representation concerning the availability of facilities for the repair of goods or of spare parts for goods when they are not;

(j) make a false or misleading representation concerning the place of origin of a good;

(k) make a false or misleading representation concerning the need for any good or service;

(l) make a false or misleading representation as to the nature, manufacturing process, characteristics, suitability for their purpose, or the quality of any goods; or

(m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy that the person does not have.

(2) A person who contravenes subsection (1) is liable to a pecuniary penalty.

(3) For the purposes of this Part, where a person makes a representation with respect to any future matter, including the doing of or the refusing to do any act, and such person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

(4) The onus of establishing that a person had reasonable grounds for making a representation in subsection (1) is on the person who made the representation.

(5) Subsection (1) shall not be taken to limit by implication the meaning of a reference in this Part to a misleading representation, a representation that is misleading in a material particular, or conduct that is misleading or deceptive or likely to mislead or deceive.

64 Misleading statements about certain business activities

(1) A person shall not, in trade, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of a business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a place of residence.

(2) Where a person in trade invites, whether by advertisement or otherwise, other persons to engage or participate in a business activity requiring the

performance by the persons concerned of work, or the investment of money by the other persons and the performance by them of work associated with the investment, the inviter shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

(3) A person who contravenes this section is liable to a pecuniary penalty.

DIVISION 3 — DISHONEST PRACTICES

65 Misuse of trade mark

(1) A person shall not, in trade –

(a) forge any trade mark; or

(b) falsely apply or use in supplying goods or services a trade mark or sign that so nearly resembles a trade mark as to be likely to mislead or deceive.

(2) For the purposes of this section, a person is taken to forge a trade mark if that person –

(a) without the consent of the proprietor of the trade mark, makes that trade mark or a sign so nearly resembling that trade mark as to be likely to mislead or deceive; or

(b) falsifies any genuine trade mark, whether by alteration, effacement or otherwise.

(3) A person who contravenes subsection (1) is liable to a pecuniary penalty.

66 Offering gifts and prizes

(1) A person shall not, in trade, unfairly offer a gift, prize or other free item in connection with —

(a) the supply or possible supply of goods or services; or

(b) the promotion by any means of the supply or use of goods or services.

(2) A person unfairly offers a gift, prize or other free item if the person—

(a) does not intend to provide it or does not intend to provide it as offered; or

(b) does not have reasonable grounds to believe that the person will be able to provide it, or to provide it as offered.

(3) A person who contravenes subsection (1) is liable to a pecuniary penalty.

67 Bait advertising

(1) A person shall not, in trade, advertise a good or service for supply at a specified price if there are reasonable grounds, of which the person is aware, for believing that the person shall not be able to offer for supply such good and service at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person who has, in trade, advertised a good or service for supply at a specific price shall offer the good or service for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(3) In a proceeding for a pecuniary penalty in relation to a failure to offer a good or service to a consumer in accordance with subsection (2), it is a defence if it is established that -

(a) the defendant offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or

(b) the defendant offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised, and in either case, where the offer was accepted by the customer, the defendant has so supplied, or procured another person to supply, goods or services.

(4) A person who contravenes this section is liable to a pecuniary penalty.

68 Harassment and coercion

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

(2) A person who contravenes subsection (1) is liable to a pecuniary penalty.

69 Pyramid selling

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

(2) For the purposes of this section, "pyramid selling scheme" means –

(a) a scheme –

(i) that provides for the supply of goods or services or both for reward;

(ii) that, to the participants in the scheme, constitutes primarily an opportunity to buy or sell an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or supply goods or services; and

(iii) that is or is likely to be unfair to many of the participants in the scheme in that –

(A) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and

(B) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme; or

(b) a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that –

(i) the financial rewards of many of those participants are dependent on the recruitment of additional participants; and

(ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

(3) A person who contravenes subsection (1) is liable to a pecuniary penalty.

70 Cash price to be displayed

(1) Where a person, in trade, offers goods for sale —

(a) the price shall be displayed by labelling the price on the goods or on the shelf or stand on which the goods are displayed; and

(b) the displayed price shall be the total price payable, inclusive of any tax or other charges; and

(c) the trader shall not charge a price that is higher than the displayed price.

(2) A person who contravenes this section is liable to a pecuniary penalty.

71 Trader to issue receipts for purchases

(1) A person who, in trade, sells any good or service shall issue to the purchaser a receipt setting out —

(a) the date of the sale;

(b) the name of the trader;

(c) the address of the trader's place of business;

(d) the quantity of goods sold or nature of services provided; and

(e) the price paid for such goods or service.

(2) A person who contravenes subsection (1) is liable to a pecuniary penalty.

72 Trader to display notices

(1) Every trader shall provide in a place clearly visible to the public in the trader's place of business a notice board for the display of any notice, direction, or warning issued under this Act.

(2) Every trader shall affix or cause to be affixed on such notice board any notice, direction, or warning issued to such trader under this Act.

(3) No person may remove, alter, obliterate, erase or deface such notice, direction or warning without the authority of the Director.

(4) A person who contravenes this section is liable to a pecuniary penalty.

73 Internet disclosure of trader status

(1) This section applies when –

(a) goods or services are offered for sale to consumers on the internet; and

(b) the offer is able to be accepted via the internet.

(2) If the vendor of the goods or services is in trade, the person making the offer shall make it clear to potential purchasers that the vendor is a person in trade.

(3) If the offer and any resulting sale are managed by an intermediary that is not a party to the sale (such as an intermediary that operates an online bidding process), the intermediary shall take reasonable steps to ensure that the person offering the goods or services for sale complies with subsection (2).

(4) A person who contravenes subsection (2) or (3) is liable to a pecuniary penalty.

PART VII – POWERS IN RELATION TO DEFECTIVE AND EXPIRED GOODS

74 Inquiry by the Director

(1) The Director may, on receipt of a complaint or on his own initiative, inquire into a matter regarding the importation, manufacture, offer for sale, or sale in Tonga of a good which the Director considers —

(a) might not conform to an applicable approved standard;

(b) might be an unsafe good; or

(c) might be an expired good.

(2) The Director shall, where he inquires into a matter under subsection (1) –

(a) give notice of the inquiry by means of the internet and in any other manner the Director considers appropriate to bring the matter to the attention of those whom the Director considers are likely to be affected by it;

(b) give persons who are or who are likely to be affected by the decision an opportunity to provide comments and be heard; and

(c) have regard to all relevant comments received.

(3) The Director shall, on completion of an inquiry under this section, report to the Authority his findings in writing with reasons.

75 Powers in relation to defective goods

(1) The Authority may make an order under subsection (2) if satisfied that –

(a) a person has, in trade, imported, manufactured, offered for sale, or sold in Tonga –

(i) goods that do not comply with an applicable approved standard; or

(ii) goods that have been declared to be unsafe goods under section 24; and

(b) the importer, manufacturer, or trader, has without reasonable excuse, not recalled the goods or taken other remedial action satisfactory to the Authority.

(2) The Authority may, by order in writing, require an importer, manufacturer, or trader to do one or more of the following –

(a) recall the goods;

(b) disclose to the public information relating to –

(i) the characteristics of the goods which render them unsafe;

(ii) the circumstances in which use of the goods is unsafe; or

(iii) any other matters relating to the goods or the use of the goods as may be specified;

(c) repair or replace the goods;

(d) refund to any person to whom the goods were supplied or resupplied –

(i) the price paid for the goods; or

(ii) any lesser amount as may be reasonable having regard to the use that person has had of the goods; or

(e) export the relevant goods from Tonga to their country of origin before a specified date.

(3) An order made under subsection (2) shall be —

(a) promptly communicated by the Authority to the importer, manufacturer, or trader concerned; and

(b) published by the Authority by such means as he considers appropriate in the circumstances.

(4) A person who, without reasonable excuse, fails to comply with an order made under subsection (2) is liable to a pecuniary penalty.

76 Powers in relation to expired goods

(1) An Inspector may take custody of expired goods and remove them from a trader's premises where –

(a) a second Inspector is present at the same time and confirms that the goods are expired goods; and

(b) the trader is given a written receipt, which –

(i) identifies the relevant goods;

(ii) states the location the relevant goods will be taken to;

(iii) states that the goods may be destroyed or disposed of unless the trader can show reason why they should not be;

(iv) sets out how and where the trader can contact the Authority to challenge the removal, destruction, or disposal of the goods; and

(v) is signed and dated by both Inspectors; and

(c) the goods are transferred as soon as reasonably practicable to storage space at offices of the Ministry.

(2) The Authority may, by order in writing, require an importer, manufacturer, or trader to deliver expired goods to an office of the Ministry, by a specified date.

(3) A person who, without reasonable excuse, fails to comply with an order made under subsection (2) is liable to a pecuniary penalty.

(4) Where goods have been removed from a trader under subsection (1) or delivered under subsection (2) –

(a) the Director shall ensure the goods are held in a space reasonably suitable for their storage for not less than one month;

(b) the trader shall have a reasonable opportunity to make representations regarding the status of the goods and what should be done with them; and

(c) the Director shall not less than one month after taking custody of the goods, and after having regard to any representations made by the trader, give directions for the return, destruction, or disposal of the goods and shall notify the trader in writing accordingly.

(5) None of the Ministry, the Authority, the Director, or any Inspector shall be liable to the trader or the owner of the goods for any loss or damage arising from the exercise of any power under this section.

PART VIII – COOPERATION

DIVISION 1 - COOPERATION AGREEMENTS

77 Arrangements for interagency cooperation

(1) The Division may enter into arrangements with any other Ministry or agency of the Government of Tonga, or other body or person (whether in the public or the private sector), for the purposes of cooperation, or for the provision of assistance to the Division in connection with the performance of its functions under this Act.

(2) For the purposes of giving effect to subsection (1), the Division may enter into a Memorandum of Agreement with the other party, which may, among other matters –

(a) identify the line of authority within and between parties;

(b) identify an appropriate communication protocol and channel of communication between the parties for the efficient discharge of each party's statutory responsibilities;

(c) identify joint protocols and agreed processes for the implementation and enforcement of statutory responsibilities of each party;

(d) identify opportunities for joint training of staff of each party; and

(e) provide for funding arrangements between the parties.

(3) Subject to the approval of the appropriate Minister or the head of the relevant Ministry or agency, the Division may request and arrange for the use of the services of any staff or facilities of another government Ministry or agency.

DIVISION 2 — INTERNATIONAL COOPERATION

78 Power to exchange information

(1) The Division may provide to an overseas agency any information, or a copy of any document, that the Division holds, but only if the Director –

(a) considers that to do so will assist the overseas agency in performing those functions of the overseas agency that correspond to functions of the Division; and

(b) is satisfied that appropriate protections are or will be in place to maintain the confidentiality of anything provided.

(2) The Division may request that an overseas agency provide any information which the Director considers will assist the Division in performing its functions.

(3) When carrying out its functions, the Division may use any information, or a copy of any document, provided to it by an overseas agency.

(4) Despite the other provisions of this Part or any cooperation arrangement, the Division may provide any information to an overseas agency with the consent of the person to whom the information relates.

79 Power to assist overseas agencies

(1) If the Division receives a request from an overseas agency to investigate a matter related to the functions of the overseas agency and to provide the overseas agency with information or documents resulting from the investigation (a "cooperation request"), the Division may comply with the request, but only if the Director is satisfied that —

(a) compliance will not substantially affect the performance of the Division's other functions;

(b) appropriate protections are or will be in place to maintain the confidentiality of anything provided; and

(c) it is appropriate to do so.

(2) The matters to be considered in deciding whether it is appropriate to comply with a cooperation request include —

(a) the terms of any relevant cooperation arrangement;

(b) whether the Division is likely to be able to comply with the request;

(c) the cost to the Government of complying with the request;

(d) whether another source could more conveniently satisfy the request;

(e) the extent to which the functions of the overseas agency correspond with the functions of the Division;

(f) whether the overseas agency would be likely to comply with a similar request made by the Division; and

(g) whether it would be more appropriate for the request to be dealt with under Tonga's legislation on mutual assistance in criminal matters.

(3) The Division may, in complying with a cooperation request, impose conditions relating to any of the following –

(a) maintaining the confidentiality of information and documents provided to the overseas agency;

(b) the storage or use of, or access to, that information and those documents;

(c) copying, returning or disposing of any of that information and those documents; or

(d) the costs incurred by the Government in complying with the request.

(4) The Division may exercise powers under Part X in complying with a cooperation request.

(5) If the Division exercises a power under Part X in complying with a cooperation request, any notice given for the purpose of exercising the power shall state that the power is exercised to comply with such a request.

(6) The Division shall not, unless subsection (7) applies, provide a copy of a statement to an overseas agency if the statement —

(a) was made to the Division or an inspector in the course of an investigation (whether or not the investigation was conducted under a request); and

(b) might tend to incriminate the person or make the person liable to a pecuniary penalty under the law of another country.

(7) This subsection applies if the overseas agency gives the Division a written undertaking —

(a) that it will not use the statement in a prosecution of the person, or a proceeding for a pecuniary penalty or like proceedings; and

(b) that, to the extent that it is within the ability of the overseas agency to do so, it will ensure that those statements are not so used by any other agency of the foreign country.

80 Power to enter cooperation arrangement

(1) The Minister may, on behalf of the Government, enter into an arrangement (a "cooperation arrangement") in respect of an overseas agency with –

(a) the government of the country in which an overseas agency is established; or

(b) if an overseas agency is established by an international body, the governing body of that international body.

(2) Without limiting what a cooperation arrangement may contain, a cooperation arrangement –

(a) shall identify the overseas agency to which it relates;

(b) shall identify the written laws in connection with which the overseas agency may seek information or documents from the Division;

(c) shall set out how information or documents provided to the overseas agency under the arrangement may be used by the overseas agency, and how they are to be kept secure; and

(d) may provide for the reimbursement of the Government of Tonga for costs incurred in complying with requests to which the cooperation arrangement applies.

(3) Before entering into a cooperation arrangement, the Minister shall consider –

(a) the legal framework relating to the use of compulsorily acquired information in the overseas country;

(b) the potential consequences for consumers and businesses in Tonga of providing information or documents to the overseas agency; and

(c) any privacy issues arising from the proposed arrangement.

(4) The Minister shall not enter into a cooperation arrangement unless satisfied that entering into the arrangement is consistent with Tonga's international obligations.

(5) If a cooperation arrangement is entered into or amended, then, as soon as practicable, notice of the fact shall be published in the Gazette and a copy of the terms of the arrangement placed on the Ministry's website.

PART IX — INSPECTORATE

81 Establishment of the Enforcement Unit

(1) The Enforcement Unit of the Consumer Affairs Division is hereby established.

(2) The Enforcement Unit is headed by the Director and comprised of persons designated by the Minister from time to time as inspectors under section 82.

(3) The Director is deemed to be an inspector under this Act.

(4) The Ministry shall ensure that inspectors designated under this Part receive appropriate staff development, capacity building, or training opportunities on matters including, but not limited to, establishing and maintaining registers, the administration and enforcement of appropriate standards, and other enforcement issues generally.

82 Designation of Inspectors

(1) The Minister may designate any public servant as an inspector for the purposes of this Act.

(2) A designation under subsection (1) shall be made in writing, with the instrument of designation clearly stating the duration and the powers provided to the inspector.

(3) An inspector shall be provided with an identity card identifying him as a duly authorised inspector.

(4) The Minister may revoke the designation of an inspector by notice in writing setting out –

(a) the effective date of the revocation; and

(b) the reasons for the revocation.

(5) A person whose designation has been revoked under subsection (4) –

(a) shall not identify himself as an inspector; and

(b) shall deliver his identity card to the Director as soon as reasonably practicable.

(6) A person who, without reasonable excuse, contravenes subsection (5) commits an offence and is liable on conviction to a fine not exceeding $5000 or imprisonment for up to 6 months, or both.

(7) A person may continue in employment as a staff member of the Ministry notwithstanding the revocation of his designation as an inspector, unless the Public Service Commission otherwise directs.

PART X — COMPLAINTS, INVESTIGATIONS AND SEARCHES

DIVISION 1 — INVESTIGATIVE POWERS

83 Complaints

(1) A person may make a complaint with the Division that a person has contravened, is contravening or is about to contravene this Act.

(2) The Division shall, if asked, assist a person to make a complaint.

84 Investigations

(1) The Director may, on his own initiative, commence an investigation into any conduct that constitutes or may constitute a contravention of this Act.

(2) If a complaint is made under section 83, the Division shall carry out an investigation into the conduct to determine whether it constitutes or may constitute a contravention of a regulatory enactment.

(3) The Division does not have to carry out an investigation if the Director does not consider it reasonable to do so and may, in particular, refuse to investigate a complaint under section 83 if the Director is satisfied that –

(a) the complaint is trivial, frivolous, or vexatious;

(b) the complaint is misconceived or lacking in substance; or

(c) the Act does not apply in relation to the complaint.

85 Inspection during business hours

(1) An inspector may enter any part of a trader's premises to which the public has access, during such time as those premises are open for trade, and may —

(a) make reasonable enquiries about any goods that are displayed for sale or any services that are offered to be supplied;

(b) purchase any goods that are displayed for sale or any services that are offered to be supplied; or

(c) make written or photographic records.

(2) A trader or any other person is not obliged to respond to any enquiry made under paragraph (1)(a).

(3) An inspector shall leave a trader's premises promptly if asked to do so by the trader or any person apparently in control of those premises.

86 Evidentiary warnings

(1) This section applies if an inspector suspects, or ought to reasonably suspect, that a person (a "relevant person") is engaging or has engaged in conduct that is an offence against this Act, or that would make the relevant person liable to a pecuniary penalty under this Act.

(2) The inspector shall not exercise a power to question the relevant person about the conduct unless the inspector, or another inspector, has warned the relevant person that the relevant person does not have to answer a question, or do anything else in response to a question, about the conduct, but that anything that the relevant person does say or do may be evidence.

(3) Subsection (4) applies in —

(a) a prosecution of the relevant person for an offence against this Act; or

(b) a proceeding against the relevant person for a pecuniary penalty under this Act.

(4) Evidence of what the relevant person said or did when questioned in circumstances set out in subsection (1) is not admissible unless it is established that, before the question was asked, the warning required by subsection (2) was given.

(5) This section does not limit the grounds on which the evidence may be inadmissible.

87 Self-incrimination

(1) A person is not excused from producing a document or thing as required by section 88, or from answering a question as required by section 89, on the ground that the contents of the document, or the thing, or the answer, may tend to incriminate the person or make the person liable to a fine or pecuniary penalty.

(2) Subsection (3) applies if —

(a) a person is required to produce a document or thing, or answer a question, under sections 88 or 89; and

(b) when so required, the person objected on the ground that the document, or the thing, or the answer, may tend to incriminate the person or make the person liable to a pecuniary penalty.

(3) If this subsection applies the contents of the document, the thing, or the answer is not admissible in evidence in a prosecution of the person for an offence against this Act, or in proceedings against the person for a pecuniary penalty.

(4) Subsection (3) does not apply to a prosecution of the person for false or misleading answers (including in respect of an offence against section 88 or 89).

88 Requirement to produce documents and things

(1) Where an inspector considers it necessary or desirable for the purposes of carrying out a function or exercising a power under this Act, the inspector may, by notice in writing, require a person to produce any document or thing relevant to an investigation at a time and place specified in the notice.

(2) The notice shall indicate the subject matter and purpose of the investigation, and draw attention to the penalties under this Act for —

(a) failing to comply with the requirement;

(b) providing false or misleading documents; and

(c) destroying or falsifying documents.

(3) If a person produces a document or thing as required under subsection (1), an inspector may do either or both of the following –

(a) make copies of it or take extracts or samples from it; or

(b) require the person to give an explanation of or further particulars about the document or thing.

(4) If an inspector makes a requirement under subsection (3)(b) in writing, the inspector may require the explanation and particulars to be provided in writing.

(5) A person who fails or refuses to comply with a requirement under subsection (1) or (3)(b) commits an offence and is liable on conviction to –

(a) in the case of an individual, a fine not exceeding $5,000, or imprisonment for a term not exceeding 2 years, or both; and

(b) in any other case, a fine not exceeding $10,000.

(6) It is a defense to an offence under subsection (5) that the defendant had a reasonable excuse for failing or refusing to comply.

(7) A person who is required under subsection (3)(b) to give an explanation of, or further particulars about, a document or thing commits an offence if the person —

(a) gives an explanation that is, or particulars that are, inaccurate or incomplete; and

(b) knew that the explanation or further particulars were inaccurate or incomplete, or was reckless whether they were accurate or complete.

(8) A person who commits an offence against subsection (7) is liable on conviction —

(a) in the case of an individual, to a fine not exceeding $5,000, or to imprisonment for a term not exceeding 2 years, or both; and

(b) in any other case, to a fine not exceeding $10,000.

89 Requirement to answer or respond

(1) An inspector may, by notice in writing, require a person to do either or both of the following –

(a) attend before an inspector, at a time and place specified in the notice, to answer questions relevant to the investigation; or

(b) provide written responses to questions set out in the notice that are relevant to the investigation.

(2) The notice shall indicate the subject matter and purpose of the investigation, and draw attention to the penalties under this Act for failing to comply with the requirement.

(3) A person who fails or refuses to comply with a requirement under subsection (1) commits an offence and is liable on conviction to a fine not exceeding $500, or imprisonment for a term not exceeding 1 year, or both.

(4) It is a defence to an offence against subsection (3) that the defendant had a reasonable excuse for failing or refusing to comply.

(5) A person who attends as required by a notice under subsection (1) and answers a question put to the person by an inspector, or who provides a written response to a question set out in a notice under subsection (1), commits an offence if —

(a) the answer given by the person is inaccurate or incomplete; and

(b) the person knew that the answer was inaccurate or incomplete, or was reckless whether it was accurate or complete.

(6) A person who commits an offence against subsection (5) is liable on conviction to a fine not exceeding $5,000, or imprisonment for a term not exceeding 2 years, or both.

90 Inspector may administer oath or affirmation

(1) An inspector may —

(a) require a person to verify on oath or affirmation the accuracy and completeness of the answers the person gives to a question put by an inspector under section 89; and

(b) administer the oath or affirmation for the purpose of paragraph (a).

(2) A person who fails or refuses to comply with a requirement under subsection (1) commits an offence and is liable on conviction to a fine not exceeding $5,000 or imprisonment for a term not exceeding 2 years, or both.

(3) It is a defence to an offence against subsection (2) that the defendant had a reasonable excuse for failing or refusing to comply.

91 Director may require statutory declaration

(1) The Director may require a person giving any explanation, further particulars, answer, or statement to an inspector under this Part to verify the truth of the explanation, particulars, answer or statement, by statutory declaration.

(2) If a person fails to comply with a requirement made under this Part to give any explanation, further particulars, answer, or statement to the inspector, the Director may require that person to state, by statutory declaration, the reasons for the failure.

(3) For the purpose of subsection (1) or (2), the Director or an inspector may administer an oath or affirmation.

92 False or misleading statements

(1) A person commits an offence if —

(a) the person makes a statement (whether orally, in a document or in any other way) to the Director or an inspector in relation to the exercise by the Director or inspector of his powers under this Act or any other enactment; and

(b) the statement is false or misleading in a material particular.

(2) If a person commits an offence against subsection (1), the person is liable on conviction to —

(a) in the case of an individual, a fine not exceeding $5,000 or imprisonment for a term not exceeding 2 years, or both; and

(b) in any other case, a fine not exceeding $10,000.

(3) It is a defence to an offence against subsection (1) that the defendant did not know, and could not reasonably be expected to have known, that the statement was false or misleading.

(4) A person commits an offence if —

(a) the person makes a statement (whether orally, in a document or in any other way) to an inspector in relation to the exercise by the inspector of his powers under this Act or any other enactment;

(b) the statement is false or misleading in a material particular; and

(c) the person knows or believes that the statement is false or misleading in a material particular.

(5) If a person commits an offence against subsection (4), the person is liable on conviction to —

(a) in the case of an individual, a fine not exceeding $5,000 or imprisonment for a term not exceeding 2 years, or both; and

(b) in any other case, a fine not exceeding $10,000.

(6) For the purposes of subsections (1) and (4), and without limiting when a statement may be false or misleading, a statement may be false or misleading because it does not include some relevant matter.

93 Immunity agreements

(1) The Authority may, in exchange for a person's cooperation in an investigation or in proceedings under this Act, agree with the person, on any terms it considers appropriate, that it will not take enforcement action against that person or any officer, director, employee or agent of that person in respect of a possible contravention of this Act.

(2) The Authority shall not, while an immunity agreement is in force, take enforcement action in relation to a possible contravention of the law to which the immunity agreement applies.

(3) The Authority may terminate an immunity agreement if —

(a) the other party to the agreement agrees to the termination;

(b) the Authority has reasonable cause to believe that the information on which it based its decision to make the agreement was incomplete, false, or misleading in any material particular; or

(c) the Authority is satisfied that the other party to the agreement, or a director, officer, employee or agent of that party, has failed to a material extent to comply with the terms of the agreement.

(4) Before terminating an immunity agreement, the Authority shall give notice in writing to the other party to the agreement and consider any representations about the proposed termination that are made by that party to the Authority.

DIVISION 2 — SEARCHES

94 Search warrants

(1) For the purpose of conducting an investigation, an inspector may enter a place and search it for documents and things relevant to the investigation.

(2) An inspector may do so only—

(a) with the consent of the occupier of the place;

(b) if authorised by a warrant issued under section 95; or

(c) if the inspector or some other inspector believes on reasonable grounds that it is necessary to enter the place urgently to prevent the loss or destruction of a document or other thing that may afford evidence of a contravention of a competition or consumer law.

95 Issue of warrants

(1) A Magistrate may, on application, issue a warrant for the purpose of this Act.

(2) The application shall —

(a) be made by an inspector;

(b) be made under the rules of the court; and

(c) be accompanied by oral or written information (given on oath or affirmation) in support of the application.

(3) The Magistrate may require further information.

(4) A warrant under this Act is made pursuant to section 51 of the Magistrate's Court Act, to enter or search a place which authorises the inspector named in the warrant, and any other inspector, to execute the warrant with any assistance that is necessary.

96 Search powers

Every search warrant authorises the inspector executing it –

(a) to enter and search the place, vehicle, or other thing that the person is authorised to enter and search, and any item or items found in that place or vehicle or thing, at any time that is reasonable;

(b) to request any person to assist with the entry and search;

(c) to use any force in respect of any property that is reasonable for the purposes of carrying out the search and any lawful seizure;

(d) to seize anything that is the subject of the search or anything else that may be lawfully seized;

(e) to bring and use in or on the place, vehicle, or other thing searched any equipment, to use any equipment found on the place, vehicle, or other thing, and to extract any electricity from the place, vehicle, or other thing to operate the equipment that is reasonable to use in the circumstances, for the purposes of carrying out the entry and search;

(f) to copy any document, or part of a document, that may lawfully be seized;

(g) to use any reasonable measures to access a computer system or other data storage device located (in whole or in part) at the place, vehicle, or other thing if any intangible material that is the subject of the search may be in that computer system or other device;

(h) if any intangible material accessed under paragraph (g) is the subject of the search or may otherwise be lawfully seized, to copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination); and

(i) to take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing searched, and of anything found in or on that place, vehicle, or other thing, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search.

97 Powers of persons called to assist

(1) Every person called on to assist an inspector executing a search warrant is subject to the control of the inspector with overall responsibility for executing that warrant.

(2) The person executing a search warrant shall —

(a) accompany any assistant on the first occasion when the assistant enters the place, vehicle, or other thing to be searched; and

(b) provide such other supervision of any assistant as is reasonable in the circumstances.

(3) Subsection (2) does not apply if the assistant is a Police officer.

(4) If a Police officer is assisting an inspector executing a search warrant, that Police officer may, without any direction or supervision by the person he is assisting, exercise any power ordinarily exercisable by that Police officer.

98 Obstruction of search

(1) It is an offence for a person to obstruct or interfere with any person exercising a power under a warrant issued under section 95.

(2) A person who commits an offence against subsection (1) is liable on conviction to —

(a) in the case of an individual, a fine not exceeding $5,000 or imprisonment for a term not exceeding 2 years, or both; and

(b) in any other case, a fine not exceeding $10,000.

99 Destroying or falsifying documents

(1) A person commits an offence if, having been required to produce a document under section 88 or under a warrant issued under section 95, the person —

(a) intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it; or

(b) causes or permits its destruction, disposal, falsification or concealment.

(2) A person who commits an offence against subsection (1) is liable on conviction to —

(a) in the case of an individual, a fine not exceeding $5,000 or imprisonment for a term not exceeding 2 years, or both; and

(b) in any other case, a fine not exceeding $10,000.

100 Food unfit for consumption and hazardous goods

(1) An inspector may exercise the powers of an enforcement officer under section 65 of the Food Act where subsection (2) has effect.

(2) This section applies where an inspector considers on reasonable grounds that –

(a) any food, food item, or product intended for human consumption —

(i) is being offered for sale or has been sold in trade; and

(ii) is unfit for human consumption or is likely to cause danger to human health; or

(b) any non-food item –

(i) is being offered for sale or has been sold in trade; and

(ii) is likely to cause danger to human health.

PART XI — REMEDIES

DIVISION 1 – PRELIMINARY

101 Categories of breach

This Part applies if there occurs any of the following breaches –

(a) a breach of this Act; or

(b) a breach of a requirement, obligation, or duty imposed by Regulations made under this Act.

102 Orders of Court

(1) The Court may make such orders as it sees fit if it is satisfied that a person has engaged, is engaging, or is intending to engage in conduct that constitutes or is likely to constitute a breach to which this Part applies.

(2) Without limiting subsection (1), the Court may make the following orders –

(a) an order requiring a person to cease or refrain from engaging in specified conduct;

(b) an order requiring the provision of corrective information or other information to the public, or to classes of persons, about relevant services or service charges;

(c) an order requiring that money paid by customers for goods or services be refunded to them;

(d) an order requiring the repair or replacement of goods, the re-provision of services, or the provision of services to correct the effects of the breach;

(e) an order varying any agreement for the supply of goods or services; or

(f) an order that the defendant pay all or part of the costs incurred by the Authority in investigating the breach or offence and bringing the proceedings.

103 Warnings to be privileged

(1) The Director may cause to be published a statement warning the public about repeated infringements of this Act by a particular person where –

(a) that person has been convicted of an offence under this Act or held liable to a pecuniary penalty under this Act on 2 or more occasions in any 3 year period; and

(b) the Director is satisfied that publication of such a warning is consistent with the objects set out in section 4.

(2) The Director may cause to be published a statement warning the public about repeated complaints under this Act concerning a particular person where the Director is satisfied that –

(a) the conduct of that person has been the subject of not less than 3 complaints made under this Act in any 12 month period;

(b) the complaints are not frivolous or vexatious or made in bad faith; and

(c) publication of such a warning is consistent with the objects set out in section 4.

(3) Every statement made under subsection (1) or (2) shall be privileged unless the publication is proved to be made with malice.

(4) The privilege conferred by this section is in addition to and not in substitution for or derogation of any other privilege, whether absolute or qualified, that applies, by virtue of any other enactment or rule of law.

104 Court may give advisory opinions

(1) The Court may, on application by the Authority, make an order as to the interpretation, operation, or effect of a provision of this Act.

(2) If it appears to the Court that a person has or may have an interest of any kind that may be affected by a proposed order, the Court shall make any

orders it considers appropriate for the person to be notified of the application and to be joined in the proceeding.

(3) The Authority shall give effect to any final order under this section.

DIVISION 2 – COMPENSATION

105 Compensation for breach

(1) A person who suffers loss or damage as a result of a breach to which this Part applies may recover the amount of the loss or damage from –

(a) in the case of the supply of goods, any of the supplier or the manufacturer or the importer;

(b) in the case of the supply of services, the supplier; or

(c) in either case, a person who was knowingly involved in the breach.

(2) Nothing in this section limits or affects any other remedy that a person may have under this Act or through civil proceedings.

106 Representative proceeding by Authority

(1) The Authority may bring a claim for compensation as the representative of one or more persons who claim or could claim to have suffered loss or damage as the result of a breach to which this Part applies.

(2) The Court may make any appropriate order for the conduct of the proceeding.

(3) The Court shall exclude a claimant if –

(a) the claimant does not wish to pursue the claim through the representative proceeding; or

(b) the claimant commences or has commenced a separate compensation proceeding for the same breach.

107 Conduct of representative proceeding

(1) The Authority –

(a) controls and undertakes the conduct of a representative proceeding to the exclusion of the claimants; and

(b) may withdraw, abandon or compromise the proceeding, but the Court shall approve withdrawal, abandonment or compromise.

(2) The Court's judgment in a representative proceeding binds all claimants other than those excluded under section 106(3).

(3) The Court may make such orders for the conduct and outcome of the proceeding as it considers necessary or expedient, including orders as to –

(a) the distribution to claimants of any recovery under the proceeding; and

(b) reimbursement out of any recovery of the costs of the Authority in bringing the proceeding.

DIVISION 3 – WARNING NOTICES

108 Warning notice

(1) The Authority may issue a warning notice to a person if the Authority believes on reasonable grounds that the person has engaged, is engaging, or proposes to engage, in conduct that is, or is likely to be, a breach to which this Part applies.

(2) A warning notice shall –

(a) identify the conduct;

(b) state the material facts that the Authority relies on;

(c) require the person to cease the conduct and not to repeat it;

(d) specify a reasonable warning period for ceasing to engage in the conduct; and

(e) state that, if the person does not comply with the notice, the Authority may bring proceedings against the person in respect of the conduct.

(3) The Authority may extend a warning period and may do so after the period has ended.

(4) The Authority shall not bring proceedings against the person for the conduct before the end of the warning period unless the Authority believes on reasonable grounds that to do so is necessary for public safety.

DIVISION 4 – ENFORCEABLE UNDERTAKINGS

109 Authority may accept enforceable undertaking

(1) The Authority may accept a written undertaking from a person in connection with any matter relating to the enforcement of this Act.

(2) The person may withdraw or vary the undertaking with the Authority's consent.

110 Content of undertaking

(1) In this section, "breach" means any of the following –

(a) an actual breach;

(b) aiding, abetting, counselling, or procuring a breach;

(c) inducing a breach, whether by threats, promises or otherwise;

(d) being in any way, directly or indirectly, knowingly concerned in, or party to, a breach; or

(e) conspiring with any other person in a breach.

(2) An undertaking under section 109 may, without limitation, include any or all of the following –

(a) an undertaking to pay compensation to any person;

(b) an undertaking to take action to avoid, remedy or mitigate any actual or likely adverse effects arising from a breach, or possible breach, to which this Part applies; or

(c) an undertaking to pay to the Government's consolidated account all or part of the Ministry's costs incurred in investigating, or bringing proceedings in relation to, a breach, or possible breach, to which this Part applies.

(3) If the Authority accepts an undertaking that involves payment of compensation to any person, or payment of the Ministry's costs, the Authority shall make the following information publicly available –

(a) the amount of the compensation, or of the Ministry's costs, that has been undertaken to be paid; and

(b) a brief description of the circumstances and nature of the contravention or possible contravention of this Act to which the undertaking relates.

111 Enforcement of undertaking

(1) If the Authority considers that the person has breached an undertaking accepted by the Authority, the Authority may apply to the Court for an order under subsection (2).

(2) The Court may make any one or more of the following orders if it is satisfied that the person has breached a term of the undertaking –

(a) an order directing the person to comply with the term;

(b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach of the undertaking;

(c) an order that the person compensate, as specified in the order, any person who has suffered loss or damage as a result of the breach of the undertaking; or

(d) an order directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes –

(i) to remedy the effects of the breach of the Act or the undertaking;

(ii) to ensure that the person does not breach the undertaking again; and

(iii) any other incidental order.

DIVISION 5 – CEASE AND DESIST NOTICE

112 Cease and desist notice

(1) The Authority may, if satisfied that a person has engaged, or is engaging or is proposing to engage in conduct that is, or is likely to be, a breach to which this Part applies, by notice in writing, require the person to cease and desist from engaging in the conduct.

(2) Breach of a requirement in a cease and desist notice is not an offence but may be a ground for an injunction under section 116.

DIVISION 6 – INJUNCTIONS

113 Injunction

(1) The Court may grant an injunction if it is satisfied that a person has engaged, or is engaging or is proposing to engage in conduct that is, or is likely to be, a breach to which this Part applies.

(2) The Authority or any other person may apply to the Court for an injunction.

(3) The Court may grant an injunction restraining a person from engaging in conduct –

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

114 Interim Injunction

On an application for an injunction under section 113, the Court –

(a) may grant an interim injunction pending the determination of the application; and

(b) if the application is made by or on behalf of the Authority, shall not require an undertaking as to damages as a condition of granting the injunction.

115 Terms of injunction

The Court may, if it grants an injunction –

(a) require the provision of corrective information or other information to the public, or to classes of persons, about relevant goods or services;

(b) require the refunding of money paid by purchasers of relevant goods or services;

(c) require the return of property;

(d) require the repair or replacement of goods, the re-provision of services or the provision of corrective services;

(e) declare any relevant agreement in relation to relevant goods or services –

(i) void;

(ii) voidable at the election of the person who has been supplied relevant goods or services; or

(iii) to have terminated at a specified time; or

(f) vary the agreement.

PART XII — INFRINGEMENT NOTICES AND SPOT FINES

116 Inspector may issue spot fine notice

(1) An inspector may issue a notice imposing a spot fine to a trader or person having apparent authority over a place of business where the inspector believes on reasonable grounds that the trader or person has committed a breach of a kind referred to in subsection (2).

(2) A spot fine notice may be issued in relation to infringement of the following provisions –

(a) section 21;

(b) section 25(2);

(c) section 70;

(d) section 71.

(3) A spot fine notice shall –

(a) state that it is a spot fine notice issued by the Ministry;

(b) state the date on which it is issued;

(c) state the name and office address of the Inspector issuing it;

(d) give details of the infringement including –

(i) the section or sections that have been infringed;

(ii) the address of the place at which the infringement occurred; and

(iii) the amount of the spot fine, which shall be $1,000;

(e) state that the spot fine shall be paid within 28 days;

(f) state that the spot fine notice may be challenged by writing to the Director, within 7 days of issuance of the notice, setting out reasons;

(g) state that the spot fine can be paid only at an office of the Ministry; and

(h) be recorded in a register maintained by the Ministry.

(4) An inspector who requests or accepts payment of a spot fine otherwise than at an office of the Ministry commits an offence and is liable on conviction to a fine of $5,000, or imprisonment for not more than 2 years, or both.

117 Payment of spot fine

(1) A spot fine shall be paid only at an office of the Ministry.

(2) A spot fine shall be paid within 28 days after the date of the issue of the spot fine notice.

(3) The Director may, if he considers it appropriate to do so, extend the deadline by a maximum period of 28 days.

(4) An extension under subsection (3) –

(a) shall be made by notice in writing to the infringer; and

(b) shall not be made more than once.

(5) A person who without reasonable excuse fails to pay a spot fine before the date payment is due is liable –

(a) to a pecuniary penalty not exceeding $5,000; and

(b) to prosecution for the infringement in relation to which the spot fine notice was issued.

118 Authority may issue infringement notice

The Authority may issue an infringement notice to a person if the Authority believes on reasonable grounds that the person has committed or has been knowingly involved in –

(a) a breach of this Act; or

(b) a breach of a requirement, obligation, or duty imposed by Regulations made under this Act.

119 Requirements for infringement notice

(1) An infringement notice shall not be issued more than 28 days after the infringement.

(2) An infringement notice shall –

(a) be clearly identified as an infringement notice issued by the Authority;

(b) state the date it is issued;

(c) state the office address and contact information of the Authority;

(d) give details of the infringement including –

(i) the date of the infringement;

(ii) the breach or offence believed to have been committed;

(iii) the address of the place at which the infringement occurred;

(iv) the name of the infringer (unless it has not been ascertained after reasonable enquiries);

(v) in the case of a breach for which a pecuniary penalty may be imposed, the maximum pecuniary penalty that the Court could order; and

(vi) in the case of an offence under this Act, the maximum penalty that the Court could impose;

(e) state that the Authority will not bring an enforcement proceeding against the infringer for the conduct that is the subject of the notice if the infringer takes specified actions, within a specified period, to stop the infringement and prevent it from occurring in future;

(f) state that the Authority may bring an enforcement proceeding against the infringer for the conduct that is the subject of the notice if the infringer fails to take the specified actions within the specified period; and

(g) be recorded in a register maintained by the Division.

120 Authority may withdraw infringement notice

(1) On application by the infringer, the Authority may, if it considers it appropriate to do so, withdraw an infringement notice by notice in writing to the infringer.

(2) The infringer may make written representations to the Authority in support of the application.

(3) Any evidence or information included in representations made under subsection (2) is not admissible in evidence in proceedings against the infringer (other than a proceeding for an offence relating to the provision of false or misleading information).

(4) The Authority may withdraw an infringement notice whether or not the infringer has made representations under subsection (2).

121 Compliance with infringement notice

(1) If an infringer complies with an infringement notice, the Authority shall not bring an enforcement proceeding under this Act against the infringer for the conduct that is the subject of the notice.

(2) If an infringer fails to comply with an infringement notice, the Authority may bring an enforcement proceeding under this Act against the infringer for the conduct that is the subject of the notice.

(3) It is a condition of immunity under this section that the person provides full cooperation to the Division and the Authority in the conduct of the relevant investigation or proceeding.

(4) Immunity under this section may be expressed to apply also to –

(a) specified employees or agents of the person;

(b) if the person is a body corporate, specified officers of the person; or

(c) if the person is a partner in a partnership, specified partners of the person.

122 Orders made by consent

(1) For the purposes of this section, "order" includes any finding, determination, or decision.

(2) If the Authority and any other person have agreed on the terms of an order to be made by the Court in any proceedings under this Act, the agreed terms, signed by or on behalf of both parties, may be submitted to the Court for approval.

(3) The Court may make an order by consent in those proceedings with or without a hearing, having regard to –

(a) the agreed terms; and

(b) any information submitted by the parties in support of those terms.

PART XIII – COMPETITION PROVISIONS

123 Monopolisation

(1) A trader who, either by himself or with any other person, is in a position substantially to control a market for goods or services shall not do any act by virtue of being in that position with the intent —

(a) to eliminate or to substantially lessen competition in that market or in another market;

(b) to prevent the entry of a person into that market or into another market; or

(c) to deter or prevent a person from engaging in competitive behaviour in that market or in another market.

(2) For the purposes of this section, reference to a trader being in a position to substantially control a market for goods and services includes a reference to a trader who, by reason of his share of the market combined

with availability of technical knowledge, raw materials or capital, has power to determine the prices or control the production or distribution, of a substantial part of the goods or services in the market.

(3) A person who contravenes subsection (1) is liable to a pecuniary penalty.

124 Exclusive Dealing

(1) A trader who, in the course of a trade or business, except in accordance with the terms of an authorisation, engages in the practice of exclusive dealing, is liable to a pecuniary penalty.

(2) A trader engages in the practice of exclusive dealing if such trader —

(a) supplies any goods or services;

(b) charges a price for the supply of any goods or services; or

(c) gives or allows a discount, allowance, rebate or credit in relation to the supply of any goods or services, on the condition, or subject to a contract, arrangement or understanding, that the person to whom such trader supplies goods or services —

(i) shall not, or shall to a limited extent only, acquire goods or services from a competitor of such trader; or

(ii) in the case where such trader supplies goods

(A) shall not, or shall to a limited extent only, supply any of the goods to particular persons or to persons included in a particular class of persons; or

(B) shall not, or shall to a limited extent only, in particular places supply any of the goods to other persons; or

(d) requires, as the condition of the supply to a person of goods or services of a kind that he could not lawfully supply but for the issue or grant to the trade of a licence, permit, authority or registration under any written law, that the person acquire all or part of his requirements of other goods or services directly or indirectly from such trader; or

(e) requires, as a condition of the supply to a person of goods or services, that the person acquire all or a part of his requirements of other goods or services directly or indirectly from a second person.

125 Price discrimination

(1) A trader who, in a trade or business, discriminates between purchasers of goods of like grade and quality in relation to —

(a) the prices charged for the goods;

(b) any discounts, allowances, rebates or credits given in relation to the supply of the goods;

(c) the provision of services or facilities in respect of the goods; or

(d) the making of payments for services or facilities provided in respect of the goods,

if the discrimination is of such magnitude or is of such a recurring or systematic character that it is likely to have the effect of substantially lessening competition in a market for goods, being a market in which the trader supplies goods, is liable to a pecuniary penalty.

(2) The provisions of subsection (1) shall not apply if —

(a) only reasonable allowance is made for differences in the cost or likely cost of manufacture, distribution, sale or delivery resulting from the different places to which, methods by which or quantities in which goods are supplied to the purchasers; or

(b) the act was done in good faith to meet a price or benefit offered by a competitor of the trader.

(3) In any proceeding for the contravention of the provisions of subsection (1), the burden of proving that the subsection does not apply is on the party asserting it.

(4) A person who, in a trade or business —

(a) knowingly induces or attempts to induce a trader to discriminate in a manner prohibited by subsection (1); or

(b) enters into any transaction that to his knowledge would result in his receiving the benefit of a discrimination that is prohibited by that subsection,

is liable to a pecuniary penalty.

(5) In any proceeding against a person under subsection (4), it shall be sufficient defence for a person to establish that he reasonably believed, by reason of subsection (2), the discrimination concerned was not prohibited.

126 Bundling

(1) A person shall not, in trade –

(a) offer to sell goods or services only on the condition that other goods or services are also purchased from that person or from any other person; or

(b) attempt to impose any such condition.

(2) A person who contravenes subsection (1) is liable to a pecuniary penalty.

127 Hoarding of goods

(1) A person who is in possession of goods for mercantile purposes shall not destroy or hoard the goods, or refuse to sell the goods or make them available for sale, if the destruction, hoarding or refusal –

(a) raises or tends to raise, the cost of other similar goods, or maintains the market price of the goods; or

(b) is done in order to charge a price higher than the price it is normally sold, at a time convenient to the person or immediately before a price is fixed in accordance with the Price and Wages Control Act.

(2) A person who contravenes subsection (1) is liable to a pecuniary penalty.

128 Black marketing

(1) Subject to subsection (2), a person shall not, whether as principal or agent, sell any goods for the purposes of resale unless the person is satisfied –

(a) that the goods are required by the buyer in good faith for the legitimate purpose of his business; and

(b) that the effect of the transaction whether by itself or taken in conjunction with transactions of the same or of a similar nature, shall not be to increase or tend to increase the price to the ultimate buyer of the goods above a fair and reasonable price.

(2) This section shall not apply to the sale of goods to a retailer for the purposes of retail sale.

(3) A person who contravenes subsection (1) is liable to a pecuniary penalty.

129 Exemption pursuant to authorisation

(1) The Authority may, by written determination, grant an authorisation to a particular person or class of persons in respect of specified conduct where the Authority –

(a) has received an application for authorisation, including supporting information;

(b) has had regard to any relevant submissions made to it within the notified timeframe; and

(c) is satisfied that the proposed conduct will result or is likely to result in a benefit to the public that would outweigh the adverse effects that would result or are likely to result from the conduct.

(2) Conduct is exempt from this Schedule where –

(a) it is engaged in during the period that the authorisation is in force;

(b) it is engaged in by a person named in the authorisation; and

(c) it complies with any conditions set out in the authorisation.

(3) The Authority may at any time revoke an authorisation with immediate effect where –

(a) the Authority has notified the persons named in the authorisation that it will consider revocation of the authorisation and has had regard to any submissions made by those persons within the timeframes specified; and

(b) the Authority is satisfied on reasonable grounds that –

(i) information provided in support of the application was incomplete, false or misleading in a material particular; or

(ii) a condition of the authorisation has not been complied with.

(4) To avoid doubt, an authorisation cannot exempt conduct that took place prior to the date on which the authorisation is made.

130 Exemption of conduct required by law

(1) For the purposes of this section, a "statutory obligation" means a specific requirement imposed by an Act of Parliament

(2) Conduct does not breach a provision of this Schedule to the extent that it is engaged in for the purpose of complying with a statutory obligation under the laws of Tonga.

(3) An Act does not impose a specific requirement for any act, matter, or thing if it provides in general terms for that act, matter, or thing, notwithstanding that the act, matter, or thing requires or may be subject to approval or authorisation by a Minister, statutory body, or a person holding any particular office, or approval or authorisation by Order in Council.

131 Exemption for compliance with international obligations

(1) The Minister may exempt specified conduct from this Schedule if the Minister considers that the application of this Schedule to the conduct would breach an international obligation of the State.

(2) The exemption shall be —

(a) made by notice published in the Gazette; and

(b) published on the Ministry's internet site as soon as practicable after it has been made.

(3) The exemption may be —

(a) subject to terms and conditions; and

(b) varied or revoked in the same way that the exemption is made.

(4) The exemption is automatically revoked if the international obligation ceases to apply to Tonga.

PART XIV — OFFENCES AND PECUNIARY PENALTIES

DIVISION 1 – PAYMENT OF FEES, FINES, AND PECUNIARY PENALTIES

132 Fees, fines and pecuniary penalties

(1) Spot fines, fees, and charges collected by the Ministry under this Act shall be paid into the General Revenue account of the Kingdom.

(2) Fines and pecuniary penalties under this Act shall be paid to the Court by which they are imposed and subsequently deposited into the General Revenue account of the Kingdom.

DIVISION 2 — PECUNIARY PENALTIES

133 Pecuniary penalty

(1) The Authority may apply to the Court for a pecuniary penalty against a person who is liable under this Act for a pecuniary penalty.

(2) In a proceeding for a pecuniary penalty –

(a) the standard of proof is the standard of proof applying in civil proceedings; and

(b) the rules of court and rules of evidence and procedure for civil proceedings apply.

(3) A person on whom a pecuniary penalty is imposed shall not be convicted of an offence and is not liable to be fined or imprisoned under this or any enactment in respect of the same conduct.

(4) An application for a pecuniary penalty shall be stayed if a criminal proceeding in respect of the same conduct is commenced or has already commenced before the application is determined.

134 Factors in determining amount of fine or pecuniary penalty

In determining an appropriate fine or pecuniary penalty, the Court shall have regard to all relevant matters, including –

(a) the purposes of this Act;

(b) the nature and extent of the breach or involvement in the breach;

(c) the nature and extent of any loss or damage suffered by any person;

(d) the extent to which the breach enabled the defendant to make a gain or avoid a loss;

(e) whether or not the defendant has paid an amount of compensation, reparation or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of the breach;

(f) the circumstances in which the breach, or involvement in the breach, took place; and

(g) whether or not the defendant has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

135 Amount of pecuniary penalty

(1) For a breach to which this Part applies, the amount of any pecuniary penalty shall be –

(a) in the case of a pecuniary penalty imposed on an individual, not less than $500 and not more than $5,000; and

(b) in the case of a pecuniary penalty imposed on a body corporate, not less than $5,000 and not more than the greater of –

(i) $20,000; and

(ii) 15 percent of turnover calculated under subsection (2).

(2) For the purposes of subsection (1)(b)(ii), turnover is the aggregate of the revenue that –

(a) is received by the body corporate and its related bodies corporate in the financial year immediately preceding the financial year in which the breach occurs; and

(b) is attributable to their business activities in Tonga.

(3) A Court in imposing a pecuniary penalty may also order the defendant to pay all or part of the costs incurred by the Director or the Authority (or both of them) in investigating the breach or offence and in bringing the application for imposition of a pecuniary penalty.

136 No indemnity for liability to pay pecuniary penalty

(1) A person shall not indemnify or agree to indemnify another person for liability to pay a pecuniary penalty or for costs and expenses incurred in defending or settling that liability.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the greater of –

(a) $5,000; and

(b) double the amount of the indemnity.

(3) An indemnity in contravention of subsection (1) is void and of no effect.

DIVISION 3 — OFFENCES

137 Imputed conduct and state of mind

(1) For the purposes of this Act, if the conduct of an individual is within the individual's actual or apparent authority as a director, employee or agent of the body corporate, then it is imputed to the body corporate –

(a) the individual's conduct; and

(b) the individual's state of mind in relation to that conduct.

(2) For the purposes of this Act, if the conduct of an employee or agent of an individual is within the employee or agent's actual or apparent authority, then it is imputed to the individual –

(a) the conduct of the employee or agent; and

(b) the state of mind of the employee or agent in relation to that conduct.

(3) There is no imputation under subsection (1) or (2) if the body corporate or individual, as the case may be, establishes that the body corporate or individual took reasonable precautions and exercised due diligence to avoid the conduct.

138 Person knowingly concerned in offence

If a person commits an offence under this Act, each other person who is knowingly concerned in the offence also commits the offence.

139 Authority may bring proceeding

The Authority may commence and continue any proceeding for or in relation to –

(a) any breach of this Act; or

(b) any offence under this Act.

140 Indemnity

No action shall be taken against any member of the Authority, or Director, or inspector appointed under this Act for any act or omission which is done in good faith by that person in the performance of his duties or in the discharge of his functions under this Act.

PART XV – MISCELLANEOUS

141 Registers to be established

(1) The Division is responsible for establishing and maintaining the following registers –

(a) complaints received by the Division;

(b) consumer information standards;

(c) product recall notices;

(d) product safety notices;

(e) prescribed standards;

(f) warning notices;

(g) cease and desist notices;

(h) enforceable undertakings;

(i) immunity agreements;

(j) spot fine notices; and

(k) infringement notices.

(2) A register required under this Act —

(a) may be kept in any way that the Division thinks appropriate, including, either wholly or partly, in electronic form; and

(b) may omit confidential information from the information that is publicly accessible, in which case the relevant entry shall indicate that information has been omitted.

(3) Confidential information may be omitted from any entry made in the register under this section and if confidential information has been omitted, that fact shall be disclosed on the register.

(4) A register shall be made available for inspection by any person, free of charge —

(a) at the offices of the Division during ordinary business hours; and

(b) by means of the internet or a similar electronic network.

142 No contracting out

(1) The provisions of this Act have effect despite anything to the contrary in any agreement.

(2) A provision of an agreement that has the effect of overriding a provision of this Act (whether or not it is directly or indirectly) is unenforceable.

(3) Nothing in subsection (1) or (2) applies in respect of a provision that –

(a) imposes a stricter duty on the supplier than would be imposed under this Act; or

(b) provides a more advantageous remedy against a supplier than would be provided under this Act.

143 Notices by Authority

A notice given by the Authority under this Act is sufficiently given if it is –

(a) signed by the chair of the Authority or any person purporting to act by direction of the Authority; and

(b) it is served in accordance with section 142 on the person or persons primarily concerned or on any person or organisation considered by the Authority to represent the person or persons primarily concerned.

144 Service of documents

Where the Authority or the Director intends to serve documents on a person, proper service is deemed to have taken place if –

(a) the document is delivered to the last known address of the person as recorded on the files of the Ministry;

(b) the document is physically delivered to the person to whom the document is intended to be served, or sent directly by email; or

(c) the document is delivered to the notified legal representative of the person to whom the document is intended to be served.

145 Annual report

The Minister shall present the Annual Report of the Ministry to Cabinet, which shall cover the activities of the Division and the Authority under this Act for the preceding year.

146 Confidentiality

(1) Except as provided by subsection (2), a person engaged in the administration of this Act shall not disclose to any person any information or evidence given, or the contents of any document produced, without the written permission of the Minister given in relation to the disclosure.

(2) The Minister shall only grant the permission referred to in subsection (1) after –

(a) the trader or manufacturer has been given an opportunity to make any representations; and

(b) the Minister is satisfied (after due consideration) that the disclosure would be in the public interest.

(3) It is not a contravention of subsection (1) if, in any legal proceedings a person discloses any information, evidence or contents referred to in that subsection in answering a question that a person is compelled to answer in those proceedings.

147 Regulations

(1) The Minister may, with the consent of Cabinet, make Regulations for giving effect to and carrying out the purposes of this Act.

(2) Regulations may provide for any or all of the following —

(a) fees, forms, and any other matter related to this Act;

(b) the manner in which complaints may be made and investigations conducted;

(c) information that a trader or manufacturer or a service provider is required to provide to a consumer in relation to charges for services;

(d) information that a trader or manufacturer is required to provide to the Ministry prior to or after the importation or supply of goods;

(e) prescribed standards; and

(f) any other thing required by this Act to be prescribed.

148 Repeal and savings

(1) The Consumer Protection Act [Cap. 17.04] is repealed.

(2) Notwithstanding subsection (1), the Consumer Protection (Product Safety & Labelling Standards) Regulations continue in force (with such modifications as are necessary) as if made under this Act.

Passed by the Legislative Assembly on this **18th** day of **September** 2025.