

**SAINT VINCENT AND THE GRENADINES
CONSUMER PROTECTION BILL 2019
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SAINT VINCENT AND THE GRENADINES

BILL FOR

ACT NO. OF 2019

I ASSENT

Governor - General

[]

AN ACT to provide for the promotion and protection of consumer interests, in relation to the supply of goods and services; to ensure protection of life, health and safety of consumers; to provide for the establishment of a Consumer Department; and for connected purposes.

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

Short title and commencement

1. (1) This Act may be cited as the Consumer Protection Act 2019.
- (2) This Act commences on a day to be appointed by the Governor-General by Proclamation published in the *Gazette* and the Governor-General may appoint different days for different provisions of this Act.
- (3) If any of the provisions of this Act do not commence within the period of twenty-four months beginning on the day this Act receives the Governor-General's assent, this Act commences on the day after the end of that period.

Interpretation

2. (1) In this Act –
 - “acquire” in relation to –
 - (a) goods, includes obtaining by way of gift, purchase, or exchange, the taking on lease, hire or hire purchase; and
 - (b) services, includes accepting the provision of services;
 - “advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or services;
 - “appropriate laboratory” means a laboratory that is –
 - (a) staffed with trained personnel;
 - (b) accredited by an accreditation body; and

(c) equipped to undertake the testing of goods;

“authorised officer” means a public officer authorised by the Director for the purposes of the relevant section;

“business” includes a professional practice or any other undertaking –

(a) that is carried on for gain or reward; or

(b) in the course of which goods or services are supplied otherwise than free of charge;

“business day” does not include a Sunday, Saturday or a public holiday;

“business enterprise” means a person or type of organisation, other than a non-profit organisation, involved in the production or the trade in goods, or the provision of services, except a person who works under a contract of employment, or holds office as a director or secretary of a company;

“Bureau of Standards” means the Bureau of Standards established under the Standards Act or a written law replacing that Act;

“CARICOM” means the Caribbean Community established under section 2 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, signed at Nassau, The Bahamas on July 5, 2001;

“CARICOM Member State” means a State that is a member of CARICOM in accordance with Article 3 of the Revised Treaty of Chaguaramas;

“commercial purpose”, in relation to a consumer, does not include use, by the consumer, of goods bought and used or services availed exclusively for the purposes of earning a livelihood by means of self-employment;

“complainant” means a person who makes a complaint under section 10;

“complaint” means an oral or written statement alleging one or more grounds under section 11 –

“consumer” in relation to –

(a) goods, means a person –

(i) who buys goods under a consumer agreement and includes any other user of the goods, when the use is made with the consent of the person who buys the goods, but does not include a person who obtains the good for resale or for any other commercial purpose; or

(ii) to whom goods are intended to be supplied in the course of business carried on by a supplier or potential supplier but does not include a person who seeks to receive goods or services in the course of a business carried on by him;

(b) services, means a person –

(i) who hires or avails of services under a consumer agreement and includes any other beneficiary of the services, when the services is availed of with the consent of the hirer, but does not include a person who hires or avails of the services for any commercial purpose; or

(ii) for whom services is supplied in the course of a business carried on by the supplier or potential supplier but does not include a person who seeks to receive goods or services in the course of a business carried on by him;

(c) in relation to an unfair contract term, means a natural person,

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

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

“Department” means the Consumer Department established under section 8;

“Director” means the public officer holding or acting in the post of Director of Trade within the Ministry;

“document” includes electronic records;

“electronic signature”, in relation to a document required to be signed or initialled, means an electronic method used to identify a person and to indicate the intention of that person in respect of the information contained in the document;

“goods” includes all kinds of property, other than real property, securities, money or choses in action;

“hire-purchase agreement” means an agreement under which –

- (a) goods are bailed in return for periodical payments by the person to whom they are bailed;
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs –
 - (i) the exercise of an option to purchase by that person;
 - (ii) the doing of any other specified act by a party to the agreement; or
 - (iii) the happening of any other specified event;

“mediation agreement” means an agreement referred to in section 28 (1);

“Minister” means the Minister charged with responsibility for consumer affairs and “Ministry” shall be construed accordingly;

“minor” means a person under the age of eighteen years;

“negligence” includes –

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

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

“price” includes a representation that may reasonably be inferred to be a representation of a price;

“public utility” has the meaning assigned by subsection (3);

“recognised consumer organisation” means an organisation referred to in section 6;

“real property” means immovable property;

“regulations” means regulations made under this Act;

“services” include a service of any description which is made available to users, but does not include a service rendered free of charge or under a contract of personal service or employment services;

“settlement agreement” means an agreement referred to in section 30 (1);

“supplier” includes –

- (a) a seller of goods or services;
- (b) a person providing a service; or
- (c) a person responsible for the provision of goods or services including a manufacturer, producer or distributor or an agent;

“Tribunal” means the Consumer Protection Tribunal established under section 31;

(2) In this Act, a reference to –

- (a) “acquisition of goods” includes the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- (b) “supply of goods” includes –
 - (i) the bailment of goods under a hire-purchase agreement;
 - (ii) the exchange of goods for any consideration other than money; and
 - (iii) the giving of goods to another person, either as a prize or otherwise;
- (c) “supply of services” includes –
 - (i) the undertaking and performance for gain or reward of engagements for any matter other than the supply of goods; and
 - (ii) the rendering of services to order and the provision of services by making them available to potential users,but does not include the rendering of services under a contract of employment.

(3) In this Act, “public utility” means a person, including a lessee, trustee, receiver or liquidator of the person, who owns or provides the following services –

- (a) the production, generation, storage, transmission, sale, delivery, furnishing or supplying, directly or indirectly to or for the public, of electricity;
- (b) the conveyance or transmission or oral, written, digital or any other form of messages or communications by telephone, wireless telephony, telegraphy, satellites, cable television, telecom service providers, pay telephone service providers, telecom resellers, internet and other telecom network service providers, radio common carriers, cellular mobile service providers or any other method of transmission, currently offered to the public or offered as common carriage in the future; and
- (c) water supply services, except retail deliveries.

(4) Notwithstanding anything contained in subsection (3), a person, not otherwise a public utility, who or which provides a service only to himself or itself or his employees or tenants, is not a public utility where the service is not resold to or used by others.

(5) If a provision of this Act requires a document to be signed or initialed by a party to a transaction, that signing or initialing may be effected in any manner recognised by law, including by use of an electronic signature.

Purpose of Act

3. The purpose of this Act is to promote and advance the social and economic welfare of consumers in Saint Vincent and the Grenadines by –

- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
- (b) reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers;
- (c) promoting fair and ethical business practices and social, economic and environmental responsibility in consumer markets;
- (d) protecting consumers from all forms and means of unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices including deceptive, misleading, unfair or fraudulent conduct;
- (e) improving consumer awareness and information;
- (f) encouraging responsible and informed consumer choice and behaviour;
- (g) promoting consumer confidence, empowerment and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;

- (h) providing a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer agreements; and
- (i) providing for an accessible, consistent, harmonized, effective and efficient system of redress for consumers.

Application of Act

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

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

(3) Subject to negative resolution of the House of Assembly, the Minister may by order published in the *Gazette* exempt categories of trade or business from the application of this Act.

(4) Subject to subsection (3), nothing in this Act shall apply to a contract made before the date on which this Act comes into operation.

Application of Act to public utility

5. (1) Notwithstanding any other provision of this Act, a consumer is entitled to the rights conferred by this Act, in relation to the supply of a public utility, to both existing and future consumers.

(2) The Department may exercise a function under this Act in relation to a public utility after consultation with the relevant body regulating the supplier of the public utility, if any.

(3) For the purposes of this section, “consultation” means that the Department shall –

- (a) identify the relevant body to be consulted and specify to them in writing the subject matter of the consultation; and
- (b) ensure that the relevant body is afforded a reasonable opportunity to express a considered opinion on the subject of the consultation.

Consumer organisation

6. An organisation is a consumer organisation if it –

- (a) is registered as a non-profit organisation under the Companies Act; and
- (b) provides services for the protection of consumers by –
 - (i) promoting and protecting consumer rights;
 - (ii) representing the collective interests of consumers before judicial or administrative bodies;
 - (iii) representing consumer interests to the Government and persons engaged in the business of producing, supplying or distributing goods or providing services; and
 - (iv) collecting, processing and disseminating objective information for the benefit of consumers.

Act binds the Crown

7. Subject to section 105, this Act binds the Crown.

PART II

CONSUMER DEPARTMENT

Consumer Department

8. (1) For the purposes of this Act, there shall continue to be established a Department of Government responsible for consumer affairs (by whatever name called).

(2) The Department shall perform functions prescribed by this Act.

- (3) The staff of the Department includes –
 - (a) the Director who is the head of the Department; and
 - (b) other public officers appointed to the Department.
- (4) Public officers appointed to the Department shall perform functions as authorised and directed by the Director.

Functions of Department

- 9. (1) The Department is responsible for implementing the policy established by the Ministry.
- (2) Without limiting subsection (1), the Department shall –
 - (a) carry out in accordance with Part III, on its own initiative or at the request of a person, investigations in relation to the conduct of business or a complaint by a consumer in relation to the supply of goods or services that will enable the Department to determine whether –
 - (i) a person is engaged in practices that are in contravention of this Act; or
 - (ii) goods or services are supplied in contravention of this Act;
 - (b) make reports and recommendations as it thinks fit to the Minister in respect of investigations made under paragraph (a);
 - (c) monitor the operations of organisations formed to provide services for the protection of consumers to ensure that they fulfill the criteria listed in section 6 and ensure that the consumer's interests receive due consideration at those forums;
 - (d) collect, compile and analyze information in relation to any trade or business and the marketing of goods and services;
 - (e) provide information to consumers respecting their rights and obligations as consumers to enable them to make informed choices about goods and services at competitive prices;
 - (f) provide information and guidelines to the public on the functions of the Department and obligations of consumers and business enterprises under this Act;
 - (g) receive and evaluate complaints and take appropriate action in relation thereto;
 - (h) promote fair and honest trade policies including promoting compliance with the provisions of this Act;
 - (i) conduct education programmes for the benefit of consumers and suppliers including educating and assisting consumers generally in resolving complaints;
 - (j) make arrangements for the resolution of disagreements between consumers and suppliers;
 - (k) monitor and report to the Minister each year on the availability of goods and services including –
 - (i) price and market conditions;
 - (ii) the performance of public and private suppliers;
 - (iii) conduct and trends affecting consumer rights;
 - (iv) any other matter relating to the supply of goods and services.
 - (l) conduct research, and collect and collate information in respect of consumer affairs;
 - (m) liaise with other regional and international consumer agencies to facilitate redress in cross-border disputes;
 - (n) act as Saint Vincent and the Grenadines' competent authority for consumer affairs in CARICOM;
 - (o) advise the Minister generally on consumer affairs; and

(p) perform any other function imposed or assigned to the Department under this Act or any other written law.

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

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

PART III COMPLAINTS

Making a complaint

10. (1) Subject to subsections (2) and (4), a consumer who alleges that he has been adversely affected in relation to goods or services he has acquired or agreed to acquire may lodge a complaint to the Department in accordance with the procedure prescribed by section 12.

(2) Notwithstanding subsection (1), in relation to goods or services acquired or agreed to be acquired, the following persons may lodge a complaint to the Department –

- (a) a recognised consumer organisation;
- (b) subject to subsection (3), two or more consumers jointly where a number of consumers have the same interest and the lodging of the complaint would be for the benefit of all consumers with that interest; or
- (c) the Crown, either in its individual capacity or as a representative of the interests of consumers in general.

(3) Consumers referred to in subsection (2) (b) may lodge a complaint only on the receipt of written permission to lodge the complaint from the Department.

(4) Where a consumer is –

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

(5) For the purposes of subsection 4 (b), the Department is to be construed to be a person suitable to be the personal representative of a consumer.

(6) Where a person lodges a complaint under any of the circumstances referred to in this section, the person who lodges the complaint shall, for the purpose of lodging and resolving the complaint, be referred to as the “complainant”.

(7) This section does not affect a person’s right to lodge a complaint in a court, except that proceedings shall not be instituted before both the Tribunal and a court in respect of the same complaint.

(8) In this section –

“parent” in relation to a consumer, means a natural or adoptive parent of the consumer;

“legal guardian” in relation to a consumer, means –

- (a) an individual having custody of the consumer;
- (b) an individual residing with and having care of the consumer;

- (c) an individual who, under a written agreement or court order, is required to provide support for the consumer or has a right of access to the consumer; or
- (d) a foster caregiver of the consumer.

Grounds for complaint

11. A complainant may lodge a complaint on any of the following grounds –
- (a) an unfair trade practice, unfair transaction or an unfair term has been adopted by a supplier under Part VII and Part VIII;
 - (b) the goods bought by him or agreed to be bought by him suffer from one or more defects;
 - (c) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
 - (d) the supplier has charged, for the goods or the services mentioned in the complaint, a price in excess of the price –
 - (i) fixed by or under a written law;
 - (ii) displayed on the goods or any package containing the goods;
 - (iii) displayed on the price list exhibited by him by or under a written law; or
 - (iv) agreed between the parties;
 - (e) goods which will be hazardous to life and safety when used, are being offered for sale to the public –
 - (i) in contravention of any standards relating to safety of the goods as required to be complied with, by or under a written law; and
 - (ii) the supplier could have known with due diligence that the goods so offered are unsafe to the public or are hazardous to life and safety;
 - (f) the supplier offers services which are hazardous or likely to be hazardous to life and safety of the public when used, which the supplier could, with due diligence, have known to be injurious to life and safety; or
 - (g) the supplier has contravened any of the provisions of this Act, which are not included in paragraphs (a) to (f).

Procedure for making complaint

12. (1) Subject to subsection (2), a complainant may lodge a complaint to the Department orally or in writing, including by telephone or electronic means.

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

(3) On receipt of a complaint and receipt of payment of the prescribed fee, the Department shall –

- (a) record the complaint in writing; and
- (b) direct the complainant to read and sign the written record.

(4) Where the complainant is visually impaired, unable to read or unable to write, an officer of the Department shall read the written record in the complainant's hearing and request that the complainant affix his mark to the written record.

(5) A complaint made under this section shall –

- (a) set out any alleged act or omission on the part of the supplier who has contravened this Act; and
- (b) be accompanied by any evidence or supporting materials or documents the complainant may have in his possession.

Discretion to investigate

13. (1) The Department shall only investigate a complaint made against a supplier where the complainant satisfies the Department that he has submitted a complaint to the supplier and has failed to obtain reasonable redress.

(2) The Department may refuse to undertake an investigation if the Department is satisfied that –

- (a) the subject matter of the complaint is trivial;
- (b) the complaint is frivolous, vexatious or not made in good faith;
- (c) the complaint was filed more than two years from the date on which the cause of action arose;
- (d) the complainant does not have a sufficient interest in the subject matter of the complaint;
- (e) the subject matter of the complaint could be dealt with more appropriately by another body or in another forum; or
- (f) having regard to all the circumstances surrounding the complaint, it is not necessary to admit the complaint.

(3) Where the Department refuses to undertake an investigation, the Department shall, in writing, inform the complainant of the decision and state the reasons for the decision.

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

(5) Where the Director accepts a complaint which was filed more than two years from the date on which the cause of action arose, the Director shall, in writing, admit the complaint for investigation and state the reasons for condoning the delay.

Power to investigate not precluded

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

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

(3) If a question arises as to whether the Department has jurisdiction to investigate a complaint the Department may apply to the High Court for a declaration as to jurisdiction.

Power to investigate on own initiative

15. The Department may, on its own initiative, carry out an investigation that it considers necessary and desirable in connection with matters falling under this Act.

Duty to notify opposite party of investigation

16. (1) Where the Department decides to investigate a complaint, the Department shall –

- (a) refer a copy of the complaint to the opposite party mentioned in the complaint; and
- (b) in writing, direct the opposite party to submit to the Department a written response to the complaint.

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

- (a) set out the opposite party's version of events;
- (b) be accompanied by any evidence or supporting materials or documents the opposite party may have in its possession; and

- (c) be returned to the Department within thirty days of the opposite party's receipt of the documents referred to in subsection (1) or any extended period, not exceeding fifteen days, as may be specified by the Department.

Failure of opposite party to respond

17. If the opposite party fails to make a written response in accordance with section 16 (2), the Department shall complete its investigation based solely on the complaint and any other evidence or supporting materials or documents submitted by the complainant.

Department to examine complaint and response

18. On receipt of the response of the opposite party, the Department shall –
- (a) examine the complaint and any evidence or supporting materials or documents;
 - (b) examine the response of the opposite party and any evidence or supporting materials or documents; and
 - (c) conduct any further investigations that the Department considers necessary.

Power to summon persons to give evidence

19. (1) The Department may, in relation to any proceedings before it, summon a person to –
- (a) attend and give evidence before the Department; and
 - (b) produce any document which is –
 - (i) in the possession or under the control of the person summoned under paragraph (a); and
 - (ii) relevant to the matter under investigation.
- (2) A summons under this section –
- (a) shall be in the form set out in the Schedule 1; and
 - (b) may be served by –
 - (i) a police officer;
 - (ii) a bailiff; or
 - (iii) any other person authorised by the Department.

Rights and liabilities of persons summoned

20. (1) A person summoned to attend and give evidence or to produce a document before the Department is entitled –

- (a) in respect of the attendance, the giving of evidence, the disclosure of any communication or the production of a document, to the same protection and is in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings before a court; and
- (b) to be paid his expenses, including travelling expenses, at the rates prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from the public fund.

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

(3) Where under subsection (2), the Department decides to disallow the whole or part of any expenses, the Department shall give written reasons for its decisions.

(4) A person commits an offence and is liable on summary conviction to a fine of five thousand dollars and in default of payment of fine, to imprisonment for two years if the person without sufficient cause [without lawful excuse] –

- (a) fails or refuses to obey a summons issued by the Department under section 19;

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

Power to discontinue investigation

21. (1) The Department may, in its absolute discretion, discontinue an investigation where the Department is of the opinion that the matter being investigated does not justify further investigation.

(2) Where the Department decides to discontinue an investigation, the Department shall in writing, inform the complainant of the decision and the reasons for the decision.

Power to enter premises

22. (1) Subject to subsection (2), where the Department is carrying out an investigation, the Director or an authorised officer may, for the purpose of the investigation and accompanied by police officers, enter a premises and may –

- (a) inspect the premises;
- (b) take samples of goods;
- (c) inspect documents relating to the investigation and make copies of, or take extracts from, those documents; or
- (d) inspect equipment used in the manufacturing, processing or storage of goods.

(2) The powers under subsection (1) shall not be exercised except under a warrant issued under subsection (4).

(3) The Director or an authorised officer may apply to a magistrate for the issue of a warrant to exercise the powers under subsection (1).

(4) Where an application is made to a magistrate under subsection (3), the magistrate may issue a warrant authorising the Director or authorised officer named in the warrant, with any assistance as the Director or authorized officer thinks necessary and if necessary by force, to –

- (a) enter the premises specified in the warrant; and
- (b) exercise the powers under subsection (1) in relation to those premises.

(5) A magistrate shall not issue a warrant under subsection (4) unless –

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

(6) A warrant issued under subsection (4) shall –

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

(7) The Director or authorised officer or a person assisting the Director or authorised officer shall, before entering the premises under a warrant –

- (a) announce that he is authorised to enter the premises;
- (b) give a person at the premises a reasonable opportunity to allow entry to the premises; and
- (c) give a copy of the warrant to the supplier or a competent officer, or in the absence of such a person on the premises, to a person on the premises who appears to be employed by the supplier.

(8) Where the Director or an authorised officer takes samples under subsection (1), the Department shall pay a reasonable price for the goods sampled.

(9) A person commits an offence who –

- (a) interferes with the Director or an authorised officer in the execution of a warrant under this section; or
- (b) refuses or fails to provide the Director or an authorised officer acting in accordance with subsection (1) with all reasonable facilities and assistance for the effective exercise of the Director's or authorised officer's powers under that subsection

(10) A person who commits an offence under subsection (9) is liable on summary conviction to a fine of five thousand dollars.

(11) Any information, evidence or document obtained under this section may only be used in proceedings against the supplier for a contravention of this Act.

Alleged defects requiring testing

23. (1) Where a complainant alleges a defect in goods which cannot be determined without a proper test or analysis of the goods, the Department shall, in the prescribed manner –

- (a) obtain a sample of the goods from the complainant;
- (b) seal the sample and authenticate it;
- (c) subject to subsection (2), refer the sealed sample to the appropriate laboratory along with a direction to the laboratory to –
 - (i) test or make an analysis of the goods;
 - (ii) determine whether the goods suffers from any defect alleged in the complaint, from any other defect or pose any health risk; and
 - (iii) report its findings to the Department.

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

(3) On completion of the requisite testing or analysis, the appropriate laboratory shall submit its report to the Department.

Receipt and distribution of lab report

24. (1) On receipt of a laboratory report from an appropriate laboratory under section 23 (3), the Department shall forward to both the complainant and the opposite party, a copy of the report.

(2) If a party disputes the accuracy of the findings of the appropriate laboratory or the accuracy of the methods of test or analysis adopted by the appropriate laboratory, the Department shall require the disputing party to submit in writing the grounds and nature of the party's dispute with regards to the report.

(3) The Department shall include the laboratory report and any written submissions received by the Department under subsection (2) in its report to the Tribunal.

Service of outcome of investigation on parties

25. On the conclusion of an investigation by the Department, where the Department determines that there may be a contravention of this Act, the Department shall in a timely manner serve –

- (a) a copy of its findings of its investigation on the supplier; and
- (b) a notice requiring the supplier to, within the reasonable time as may be specified in the notice –
 - (i) satisfy the findings; or
 - (ii) respond to the findings in writing,

Referral to Tribunal

26. (1) The Department may refer a complaint to the Tribunal where –

- (a) a supplier who is in receipt of a notice under section 25, fails to satisfy or respond to the findings made under that section; or
- (b) a complaint is not settled through mediation under Part IV.

(2) For the purposes of proceedings before the Tribunal, the Department shall prepare a full report of the relevant investigation, together with its findings and recommendations, and submit a copy to the Tribunal.

(3) The Director shall review all reports prepared under subsection (2) before submission to the Tribunal.

PART IV

SETTLEMENT OF COMPLAINTS

Alternative dispute resolution

Mediation

27. (1) A supplier and a consumer singularly or as a class, may elect to settle a complaint through mediation arranged by the Department before taking the matter to the Tribunal or a court.

(2) A party to a complaint may request that the Department refer a complaint not settled through mediation to the Tribunal.

Procedure for mediation

28. (1) A mediator and the parties, shall, within twenty business days after the mediator has been agreed on by the parties, agree on the procedure for the mediation, which may include agreements on the following matters –

- (a) who has the authority to represent and bind the parties;
- (b) who may attend the mediation, including legal counsel and experts;
- (c) requirements as to confidentiality and privilege in relation to the mediator, the parties, and other persons attending the mediation, including who may be informed about any confidential matter;
- (d) how the costs of the mediation are to be met;
- (e) whether the mediator may engage an expert assessor for a stated or any other purpose;
- (f) exclusion of liability for the mediator;
- (g) disclosure of conflict of interest by the mediator;
- (h) how the mediation agreement may be terminated; and
- (i) any other matter that, having regard to the nature of the dispute, the mediator and the parties agree is appropriate to best meet the needs and interest of the parties.

(2) A mediation of a complaint shall not proceed if –

- (a) a mediation agreement is not agreed to under subsection (1); or
 - (b) at any time, in relation to one party to the complaint, that party withdraws from the mediation.
- (3) Where one party to a mediation withdraws, the other parties may enter into a new mediation agreement.

Resolution of complaint

29. (1) Except as required by law or unless agreed in the mediation agreement, the matters discussed, raised, agreed, admitted or determined in, or in the course of, a mediation –
- (a) must not be disclosed by the parties, the mediator, or persons attending the mediation; and
 - (b) are not admissible in a court, tribunal, or other forum or before a person acting judicially, unless for the purpose of enforcing a settlement agreement.
- (2) A breach of subsection (1) (a) is a breach of an essential term of the settlement agreement.
- (3) The parties shall –
- (a) meet their own costs and expenses in relation to the mediation; and
 - (b) pay on an equally shared basis the fees and expenses of the mediator.

Resolution of complaint

30. (1) If a resolution is reached on the whole or part of a complaint as a result of, or in the course of, a mediation, the terms of the settlement shall be recorded in a settlement agreement.
- (2) A settlement is binding on the parties.
 - (3) A party may enforce the settlement agreement in a court.

Consumer Protection Tribunal

Consumer Protection Tribunal

31. (1) There is established a tribunal to be known as the Consumer Protection Tribunal.
- (2) Schedule 2 has effect as to the constitution and procedure of the Tribunal.

Functions of Tribunal

32. The functions of the Tribunal are –
- (a) to hear and determine complaints referred to it by the Department;
 - (b) to provide redress against contraventions of this Act; and
 - (c) to perform any other function –
 - (i) conferred on the Tribunal by this Act or the regulations; or
 - (ii) incidental to the proper discharge of its functions under this Act.

Powers of Tribunal

33. (1) For the purpose of discharging its functions under section 32, the Tribunal may –
- (a) issue summons to compel the attendance of witnesses;
 - (b) examine witnesses on oath, affirmation or otherwise;
 - (c) compel the production of a document or other object the Tribunal thinks necessary or proper for a hearing held by the Tribunal and examine the document or object produced;
 - (d) require that a document submitted to the Tribunal be verified by affidavit;

- (e) dismiss complaints and discontinue hearings; and
 - (f) make orders, including interim orders.
- (2) Where the Tribunal issues a summons under subsection (1) (a), the summons shall be –
- (a) in the form set out in Schedule 3; and
 - (b) served by –
 - (i) a police officer;
 - (ii) a bailiff; or
 - (iii) any other person authorised by the Tribunal.

(3) In all proceedings, a document produced to the Tribunal under this section, shall be received as *prima facie* evidence of the truth of the statement contained in the document.

Rights and obligations of person summoned

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

- (a) in respect of his attendance, the giving of evidence, the disclosure of any communication or the production of a document, to the same protection and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings before a court; and
- (b) to be paid expenses, including travelling expenses, at the rates prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from the public fund.

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

(3) Where, under subsection (2), the Tribunal decides to disallow the whole or any part of any expenses, the Tribunal shall give written reasons for its decision.

Right to be heard

35. (1) At a hearing before the Tribunal, both the complainant and the opposite party are entitled to –

- (a) appear at the hearing; or
- (b) be represented by an agent or attorney-at law.

(2) Hearings of the Tribunal shall take place in public but the Tribunal may conduct hearings in private where –

- (a) the circumstances so warrant; or
- (b) the Tribunal considers it appropriate.

Failure of party to attend hearing

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

(2) Where a supplier fails to appear before the Tribunal on the date of the hearing, the Tribunal shall decide the matter on its merits.

Duration of hearing

37. The Tribunal shall hear and determine every complaint as expeditiously as possible.

Order of the Tribunal

38. (1) Subject to subsection (2), in relation to a matter before the Tribunal, the Tribunal may –
- (a) after hearing the evidence, make an order which shall state its decision;
 - (b) dismiss a matter or part of a matter or discontinue hearing a matter or part of the matter if the matter does not justify further hearing;
 - (c) order a party to pay costs and expenses, including expenses of witnesses, as are specified in the order; or
 - (d) generally give directions and do all things as are necessary or expedient for the expeditious and just hearing and determination of the matter.
- (2) Where a complainant is seeking damages, the Tribunal may only award compensatory damages.
- (3) A person who fails to comply with an order of the Tribunal commits an offence and is liable on summary conviction –
- (a) to a fine of ten thousand dollars or to imprisonment for two years; and
 - (b) in the case of a continuing offence, to a further fine of one hundred dollars for each day or part of a day during which the offence continues.

Appeal

39. (1) Subject to subsection (2), a person aggrieved by an order of the Tribunal may appeal against the order to the High Court within a period of twenty one days from the date of the order.

(2) In accordance with rules of court, the appellant shall give notice of the appeal to the Tribunal and to the adverse party interested and the Tribunal and the adverse party shall be entitled to be represented by counsel at the hearing of the appeal.

Stay of proceedings pending appeal

40. No appeal shall, of itself, stay or suspend the operation of a decision or order of the Tribunal but a judge may stay or suspend, in whole or in part, the operation of the decision or order of the Tribunal pending the appeal, on terms the judge may think fit.

False or misleading evidence

41. A person commits an offence who appears as a witness before the Tribunal and gives evidence that, to the best of his knowledge, is false or misleading and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

Contempt of Tribunal

42. (1) A person commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years, if the person without sufficient cause [without lawful excuse] –

- (a) fails or refuses to obey a summons issued by the Tribunal under section 33 (1);
- (b) being a witness before the Tribunal –
 - (i) leaves a proceeding of the Tribunal, without its permission; or
 - (ii) refuses or fails to answer a question put to him by or with the permission of the Tribunal; or
- (c) obstructs or interrupts the proceedings of the Tribunal.

(2) A person who does any other act that would, if the Tribunal were a court, constitute a contempt of court, commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

PART V
CONSUMER RIGHTS

Ambiguities to benefit consumer

43. (1) The Tribunal or a court shall, when –
- (a) interpreting or applying a provision of this Act, if a provision of this Act, read in context, can be reasonably construed to have more than one meaning, prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally and in particular by persons referred to in section 9 (3); and
 - (b) interpreting information that is required to be disclosed under this Act and any document prepared or published by or on behalf of a supplier or required to be produced by a supplier, strictly interpret the information and the document to the benefit of the consumer, in a manner that –
 - (i) any ambiguity that allows for more than one reasonable interpretation of a part of the information or document is resolved to the benefit of the consumer; and
 - (ii) any restriction, limitation, exclusion or deprivation of a consumer’s legal rights set out in the information or document is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to the content of the information or document, the manner and form in which it was prepared and presented, and the circumstances of the transaction or agreement.

Unsolicited goods or services: relief from legal obligations

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

(2) Where a consumer is a party to a consumer agreement referred to in subsection (4) (c) and, during the course of that agreement there is a material change in the goods or services, the goods or services shall be treated as unsolicited from the time of the material change unless the supplier is able to establish that the consumer consented to the material change.

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

(4) A consumer is not required to pay a supplier for any goods or services supplied to the consumer under a consumer agreement unless –

- (a) the consumer has implicitly requested the supplier to supply the goods or services by–
 - (i) tendering payment for them; or
 - (ii) conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply the goods or services
 - (b) before they are supplied to the consumer, the consumer has expressly requested the supplier to supply those particular goods or services; or
 - (c) the supplier has entered into a consumer agreement to supply the goods or services, from time to time, to the consumer without further approval or specific request.
- (5) Subject to subsection (6), a supplier—
- (a) is not entitled to demand payment or make any representation that suggests that a consumer is required to make payment in respect of any unsolicited goods or services, despite their subsequent use, receipt, misuse, loss, damage or theft; and
 - (b) is liable to pay to the recipient of unsolicited goods referred to in paragraph (a), the reasonable costs as are incurred in respect of the storage of the goods.

- (6) Subsections (5) and 9 (b) do not apply to or in relation to a recipient of unsolicited goods if –
- (a) the recipient has unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods; or
 - (b) the goods were received in circumstances in which the recipient knew or might reasonably be expected to have known, that the goods were not intended for him.

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

(8) A supplier who receives a demand for a refund under subsection (7) shall refund the payment within ten days of the receipt of the written demand.

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

- (a) may–
 - (i) subject to paragraph (b) (ii), retain the goods without payment; or
 - (ii) return the goods to the supplier at the supplier's risk and expense; and
- (b) subject to subsection (6), is not liable for any –
 - (i) loss or damage to those goods while they are in transit, or at any time after they are received by the consumer, whether or not they remain in the consumer's possession; or
 - (ii) use or depletion of, or damage to those goods at any time after ten business days after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and has arranged to recover them, at the supplier's risk and expense.

(10) Subject to subsection (11), goods or services are unsolicited if the goods or services are supplied to a consumer who did not request them.

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

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

Right to select supplier, goods and services products

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

- (a) purchases any other goods or services from that supplier;
- (b) enters into an additional agreement or transaction with the same or another supplier;
- (c) agrees to purchase any goods or services from a designated third party; or
- (d) purchases additional goods or services.

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

- (a) supplies the primary goods and any additional goods in a common package, and offers them for supply at a single price;

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

Right to authorise services

46. (1) This section applies to a transaction or consumer agreement under which a supplier supplies a repair or maintenance service to, or supplies or installs a replacement part or component in, property belonging to or in the control of the consumer, if –

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

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

- (a) subject to subsection (3) (a), the supplier has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorised the work; or
- (b) the consumer has, in writing –
 - (i) declined the offer of an estimate, and authorised the work; or
 - (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.

(3) A supplier is not entitled to charge a consumer for –

- (a) an estimate required under subsection (2) (a), unless the supplier has disclosed the price for preparing that estimate, and the consumer has approved it; or
- (b) any diagnostic work, disassembly or re-assembly required in order to prepare an estimate, or for any damage to or loss of material or parts in the course of preparing an estimate, in addition to any estimate charge imposed under paragraph (a).

(4) The Minister may, by regulations, exempt from this section any transaction or consumer agreement referred to in subsection (1) that is below a prescribed threshold.

Right to choose and examine goods

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

(2) Where a supplier delivers goods to a consumer under a consumer agreement, the supplier shall, on request, allow the consumer a reasonable opportunity to examine the goods for the purpose of ascertaining whether they are in conformity with the consumer agreement.

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

Right with respect to delivery of goods or supply of services

48. (1) Unless otherwise expressly provided or anticipated by reason of a course of dealing or trade practice in a consumer agreement, it is an implied condition of every transaction for the supply of goods that –

- (a) the supplier is responsible for delivering the goods to the consumer –
 - (i) within a reasonable time;
 - (ii) subject to subsection (2) (a) (ii), at the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and

- (iii) at the cost and risk of the supplier; and
 - (b) the goods remain at the supplier's risk until the consumer has accepted delivery.
- (2) The consumer has the right to require –
- (a) delivery of any goods at the –
 - (i) date and time agreed; and
 - (ii) place of the consumer's choice, but the supplier may require the consumer to pay the costs of delivery at any location other than a location referred to in subsection (1) (a) (ii); and
 - (b) performance of a service at the time agreed with the supplier.
- (3) Where a consumer agreement does not provide a specific time for delivery of goods or supply of any service, the supplier shall not require the consumer to accept delivery or performance of the goods or services at an unreasonable time.

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

Acceptance of goods or services

49. (1) A consumer is deemed to have accepted goods when –
- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted them;
 - (b) the goods have been delivered to the consumer, and the consumer does any act in relation to them that is inconsistent with the supplier's ownership of the goods; or
 - (c) after the lapse of a reasonable time required for examining the goods to ascertain its conformity with the transaction, the consumer retains the goods without intimating to the supplier that the consumer has rejected them.
- (2) Where a supplier delivers to a consumer a quantity of goods larger than the quantity of goods that the consumer agreed to buy, the consumer may—
- (a) accept the goods and pay for the agreed quantity at the agreed rate; and
 - (b) treat the excess quantity of goods as unsolicited goods in accordance with section 44.
- (3) Where a supplier delivers to a consumer some of the goods the supplier agreed to sell together with goods of a different description not contemplated in the consumer agreement, the consumer may –
- (a) accept the goods that are in accordance with the agreement and reject the remainder; or
 - (b) reject the whole.

Right to cancel reservation

50. (1) Subject to subsections (2) and (3), a consumer has the right to cancel any advance booking or reservation for a service to be supplied.
- (2) Where a supplier makes a commitment or accepts a reservation to supply goods or services on a later date, the supplier may –
- (a) require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the goods or services that have been reserved; and
 - (b) impose a reasonable charge for cancellation of the order or reservation.
- (3) For the purposes of this section, a cancellation charge is not reasonable if it exceeds a fair amount in the circumstances, having regard to –

- (a) the nature of the good or the service that was reserved or booked;
 - (b) the length of notice of cancellation provided by the consumer; and
 - (c) the reasonable potential for the supplier, acting diligently, to find an alternative consumer between the time of receiving the notice, and the time of the cancelled reservation.
- (4) If a consumer is unable to carry out a reservation or advance booking by reason of the death of the consumer, the supplier –
- (a) may not impose any cancellation fee in respect of the reservation or booking; and
 - (b) shall refund to the administrator of the consumer's estate any deposit paid by the consumer in respect of the reservation or booking.
- (5) Section 49 (2) read with the changes required by the context, applies in respect of a cancellation in terms of this section.

Right to rescind or cancel agreement

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

- (2) Subject to subsection (3), a consumer may rescind a consumer agreement –
- (a) no later than fourteen business days after delivery of goods to be supplied in terms of the agreement, if the agreement arises as a result of –
 - (i) direct, distance or electronic marketing by the supplier and contemplates the delivery of goods to the consumer; or
 - (ii) any other marketing in circumstances in which the consumer is unable to choose or examine goods delivered under a consumer agreement of a type referred to in section 125;
 - (b) no later than five business days after entering into the agreement, if the agreement arises as a result of direct, distance or electronic marketing by the supplier but does not contemplate the delivery of goods to the consumer.
- (3) A consumer may rescind a consumer agreement referred to in subsection (2) no later than six months after the agreement, if the supplier –
- (a) being required to be licensed or registered in terms of any written law, is not so licensed or registered; or
 - (b) contravenes this Act in respect of the transaction.
- (4) A consumer may, at any time by giving in writing thirty days notice to a supplier, cancel without penalty, a consumer agreement –
- (a) for the supply of a continuous service;
 - (b) to purchase goods or services on a periodic recurring basis by subscription; or
 - (c) to make a donation on a periodic recurring basis.
- (5) The expense and risk of return are borne by the supplier if goods are unacceptable.
- (6) A supplier –
- (a) is not entitled to collect any payment in terms of a rescinded agreement; and
 - (b) is obliged to return any payment received from a consumer within five business days after receiving notice of the rescission of a consumer agreement.
- (7) This section does not apply with respect to a consumer agreement in terms of which goods have been delivered to the consumer, if –

- (a) any written law prohibits the return of those goods to the supplier once they have been supplied to, or at the direction of, a consumer; or
- (b) after having been supplied to, or at the direction of, the consumer, the goods have been partially or entirely—
 - (i) eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying them; or
 - (ii) disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

Right to information in official language

52. A consumer has a right to receive any document required under this Act in the English language.

Right to information in plain and user-friendly language

53. (1) Where a document is required to be delivered to a consumer under this Act, the document shall be provided –

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

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

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

(3) After consultation with the Bureau of Standards, the Department may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1) (b).

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

54. (1) Where a consumer who enters into a consumer agreement for the supply of any goods or services dies before the goods or services are supplied –

- (a) the personal representative of the consumer's estate may give notice to the supplier –
 - (i) requiring delivery of the goods or supply of the services, in accordance with the agreement; or
 - (ii) terminating the agreement as from the date of the death of the consumer; and
- (b) any deposit paid by the consumer remains in trust for the benefit of the consumer's estate.

(2) Where a consumer agreement that has been terminated under subsection (1) (a) (ii) relates to the supply of any special-order goods, the supplier, after receiving notice of the termination –

- (a) shall not order, procure or make anything not ordered, procured or made;
- (b) shall ensure the diligent completion of anything that had been ordered, procured or begun to be made;
- (c) is entitled to reimbursement for any costs for procurement or work referred to in paragraphs (a) and (b), on the terms contemplated in the agreement; and

- (d) on acquisition or completion of those special-order goods, holds them in trust for the benefit of the consumer's estate, subject to further direction by the administrator of that estate.
- (3) This section does not apply in respect of a consumer agreement for the supply of funeral or burial services.

PART VI

DUTIES OF SUPPLIERS

Information to consumer

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

- (2) The information referred to in subsection (1) is –
 - (a) where applicable, the origin, care, terms, components, hazards, proper use, weight, size and instructions for assembly and installation of the goods; and
 - (b) where chargeable, the professional fees of the supplier in respect of the goods.

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars, and in default of payment of the fine, to imprisonment for two years.

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

Display of price of goods or services

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

- (a) designed and intended predominantly as a form of advertisement of the supplier, goods or services; and
 - (b) in the case of goods, in an area within the supplier's premises to which the public does not ordinarily have access.
- (2) For the purposes of this section –
- (a) a price is displayed in relation to particular goods or services if it is –
 - (i) appended, annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - (ii) published in relation to the goods in a catalogue available to the public if a time is specified in the catalogue as the time after which the goods may not be sold at that price, and that time has not yet passed or in any other case, the catalogue may reasonably be regarded as not out of date; or
 - (iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services; and
 - (b) a price shall not be regarded as being displayed in relation to goods if –
 - (i) the price was appended to the goods outside Saint Vincent and the Grenadines in relation to the supply of the goods outside Saint Vincent and the Grenadines; or
 - (ii) the display of that price is fully covered and obscured by a second displayed price.

(3) Subject to subsection (4), where a supplier displays goods for sale or offers to supply any services in relation to which more than one price is concurrently displayed, section 57 applies.

(4) Subsection (3) does not apply in respect of the price of goods or services if the price of those goods or services is determined by a written law.

(5) Where a supplier has provided an estimate for any goods or services, in accordance with section 46, the price for that service, or goods and service, shall not exceed the estimate unless –

- (a) the supplier has informed the consumer of the additional estimate charges; and
- (b) the consumer has authorised the continued provision of goods or services in relation to the repair, maintenance or installation.

(6) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars, and in default of payment of the fine, to imprisonment for two years.

Dual pricing

57. (1) Subject to section 59, where more than one price is displayed on goods –

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

(2) A supplier who contravenes subsection (1) (b) commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.

(3) It is a defence to the prosecution of a person for a contravention of this section that –

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

Identification of supplier

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

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

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

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

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars, and in default of payment of the fine, to imprisonment for two years.

Labelling of goods and trade descriptions

59. (1) A supplier shall not display, offer to supply or supply any goods, other than goods that are exempted in terms of subsection (3), unless a trade description of the goods is –

- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
 - (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
 - (c) contained in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) A supplier shall –
- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that –
 - (i) a trade description applied to the goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (ii) a trade description or trade mark applied to the goods has been altered in contravention of subsection (4); and
 - (b) with respect to any goods within the supplier’s control, take reasonable steps to prevent any other person from doing anything referred to in paragraph (a).
- (3) The Minister may, by regulations–
- (a) exempt particular goods or categories of goods from the application of subsection (1) if –
 - (i) the goods, or that category of goods, are subject to regulation under any other written law, and the Minister is satisfied that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section; or
 - (ii) the information required under this section is self-evident, given the nature of the goods, and the manner and circumstances in which they are customarily made available for supply to the public; or
 - (b) prescribe circumstances of displaying or selling particular goods or categories of goods, which if satisfied, would exempt those goods from the application of this section.
- (4) A supplier shall not –
- (a) apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;
 - (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers; or
 - (c) with respect to goods within the supplier’s control, fail to take reasonable steps to prevent any other person from doing anything referred to in paragraph (a) or (b).
- (5) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine of five thousand dollars, and in default of payment of the fine, to imprisonment for two years.
- (6) For the purposes of this section, “trade description” means –
- (a) any description, standard, statement or other direct or indirect indication, except a trade mark, as to –
 - (i) the size, number, quantity, measure, weight or gauge of any goods;
 - (ii) the name of the producer or producers of any goods;

- (iii) the ingredients of any goods, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or
 - (vi) any goods being the subject of any patent, privilege or copyright; or
- (b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a).

Disclosure of environmental facts affecting goods

60. (1) Subject to subsection (3), a person who packages prescribed goods, or imports prescribed goods, for supply to consumers shall, in addition to the requirements of section 59, display on or in association with that packaging or the goods, a notice in the prescribed manner and form that discloses –

- (a) the presence, nature and extent of –
 - (i) any genetically modified ingredients or components of the goods; or
 - (ii) any ingredients or components that have been determined to present a chemical or biological hazard to humans, relative to their concentration in the goods;
- (b) the estimated energy requirements per hour of use, if the operation of the goods requires the utilisation of energy other than muscle power;
- (c) the nature and intensity of any potentially harmful energy radiation, if the goods, or any component of the goods, emit any such radiation; and
- (d) the need for special handling, or waste disposal, of the goods, any component of them or any material in which the goods were packaged, if the special handling or waste disposal—
 - (i) is required under a written law; or
 - (ii) is advisable in the interests of personal or public health or safety.

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

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

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

(4) A supplier shall –

- (a) not display, supply or offer to supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that a notice applied to the goods –
 - (i) is likely to mislead the consumer as to any matter implied or expressed in that notice; or
 - (ii) has been altered as contemplated in subsection (5); and
- (b) with respect to any goods within that person's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).

(5) A supplier shall not –

- (a) apply to any goods a notice that is likely to mislead the consumer as to any matter implied or expressed in that notice;
- (b) alter, deface, cover, remove or obscure a notice applied to any goods in a manner calculated to mislead consumers; or

- (c) with respect to goods within the supplier's control, fail to take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b).

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of five thousand dollars, and in default of payment of the fine, to imprisonment for two years.

Disclosure of re-conditioned goods

61. (1) A person who offers or agrees to supply, or supplies, any goods that –
- (a) have been re-conditioned, re-built or re-made; and
 - (b) bear the trade mark of the original manufacturer or supplier,

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

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of five thousand dollars and to imprisonment for two years.

Supply by description and sample

62. (1) Where there is a contract for the sale or supply of goods on the basis of a description, the goods sold shall correspond with the description.

(2) A contract for the supply of goods is not prevented from being a contract for supply of goods on the basis of a description for the purpose of subsection (1) if the goods when exposed for sale or hire are selected by the consumer.

(3) Where the supply of goods is on the basis of a sample, the bulk of goods supplied shall correspond with the sample.

(4) Where a consumer has agreed to purchase or lease goods on the basis of a description or sample of the goods, it is an implied condition of the consumer agreement that the goods delivered to the consumer –

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

(5) Where a consumer has agreed to purchase or lease goods on the basis of a description and sample of the goods, the goods shall correspond with the sample and description.

(6) A consumer of the goods referred to in subsection (3), (4), and (5) shall be given a reasonable opportunity by the supplier to compare the goods supplied with the sample before accepting the goods.

(7) The provisions of this section shall not apply to a sale by auction or competitive tender.

Sales records

63. (1) A supplier of goods or services shall provide a written durable record or an electronic record if available and accepted by the consumer of each transaction to the consumer to whom the goods or services are supplied.

- (2) The record under subsection (1) shall include the following information –
- (a) the supplier's name, or registered business name, and VAT registration number, if any;
 - (b) the address of the premises at which or from which the goods or services were supplied;
 - (c) the date on which the transaction occurred;
 - (d) a name or description of the goods or services supplied or to be supplied;
 - (e) the unit price for each of the goods or services supplied or to be supplied;
 - (f) the quantity of each of the goods or services supplied or to be supplied;

- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including any applicable taxes; and
- (j) such other information as may be prescribed under this Act or any other written law.

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

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.

(4) In this section, “VAT registration” means the registration under the Value Added Tax Act.

Utility of sales record

64. The sales record provided under section 63 by a supplier –

- (a) shall be adequate proof of the purchase of the goods or services; and
- (b) may be used for the purposes of a refund in any of the circumstances specified in this Act.

Measurement of goods

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

(2) For the purposes of subsection (1), a supplier of any goods that is sold by reference to its weight, volume or other measurement shall provide, to the consumer at the time of purchase, appropriate measurement standards in accordance with the Weights and Measures Act or any other applicable written law.

(3) Subject to subsection (4), a supplier commits an offence and is liable on summary conviction to a fine of two thousand dollars if the supplier, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the consumer, a quantity lesser than the quantity that –

- (a) is purported to be supplied; or
- (b) corresponds with the price charged.

(4) An offence is not committed under subsection (3) where the lesser quantity provided to the consumer by the supplier may reasonably be regarded as a minimal amount.

Warranties

66. (1) A supplier shall issue explicit warranties in relation to the supplier’s goods or services, whether the goods are new or used, and whether the service offered is the repair of any appliance, furniture, equipment or other good.

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

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

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

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

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

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

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

(7) Penalties for breach of warranty include repairs, replacement, partial or full refund, allocation of damages and, if necessary, imposition of criminal sanctions as provided under a written law.

Implied warranties as to quality and fitness

67. (1) Subject to subsection (2), where goods or services are supplied under a consumer agreement, there is an implied warranty that the goods or services are of a reasonably acceptable quality.

(2) In relation to the supply of goods, subsection (1) does not apply if—

- (a) defects are specifically drawn to the attention of the consumer before the contract is made; or
- (b) the consumer examines the goods before the contract is made as regards defects which that examination ought to reveal.

(3) Where—

- (a) a supplier supplies goods to a consumer in the course of trade or commerce; and
- (b) the consumer, expressly or by necessary implication, makes known to the supplier or the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired,

there shall be an implied warranty that the goods supplied are fit for that purpose, whether or not that is the purpose for which the goods are commonly supplied.

(4) The warranty referred to in subsection (3) shall not be implied where the circumstances show that the consumer does not rely or that it is unreasonable for him to rely on the skill or judgment of the supplier or the person by whom any antecedent negotiations are made.

(5) Where a consumer agreement for the supply of goods, expressly or by necessary implication, is to the effect that the goods are to be supplied on the basis of a sample, there shall be implied in the consumer agreement a warranty that –

- (a) the bulk of the goods corresponds in quality with the sample;
- (b) the consumer shall have a reasonable opportunity of comparing the bulk of the goods with the sample; and
- (c) the goods shall be free from any defect rendering them unsatisfactory if the defects would not be apparent on reasonable examination.

(6) Where goods are supplied to a consumer there shall be an implied warranty that the goods are unused, unless before the consumer accepts the goods –

- (a) the supplier discloses to the consumer that the goods are not unused; or
- (b) the consumer knows or ought to know that the goods are not unused or are likely not to be unused.

(7) For the purposes of subsection (6), goods are unused notwithstanding that they have been used by the supplier or any other person to test, prepare or deliver them, if they have not been so used to an unreasonable extent.

(8) The provisions of this section shall not apply to a sale by auction or competitive tender.

(9) For the purposes of this section, goods of any kind are of a “reasonably acceptable quality” if they are as fit for the purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to –

- (a) any description applied to them;
- (b) the price, if relevant;
- (c) the state or condition of the goods;
- (d) the durability of the goods;
- (e) freedom of the goods from minor defects;
- (f) the safety and price of the goods;
- (g) any representations made by the supplier of the goods; and
- (h) any other relevant circumstance.

Warranties and conditions under Sale of Goods Act

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

(2) A term or acknowledgement in a consumer agreement that purports to negate or vary an implied condition or warranty under the Sale of Goods Act or any deemed condition or warranty under this Act is void.

(3) A term or acknowledgement referred to in subsection (2) is severable from the consumer agreement.

Damage resulting from use of goods or service

69. (1) This section applies if a supplier –

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

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

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

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

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

Supply of damaged goods to consumer

70. (1) Where –

- (a) within the warranty period, goods supplied to a consumer fail to provide the benefit and uninterrupted enjoyment for which it was intended; and
- (b) the failure is not due to negligence or abuse by the consumer,

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

(2) Subject to subsection (3), a supplier shall, in the event of repair of goods referred to in subsection (1), return the goods to the consumer in a fully repaired and functional state within the period, after receipt of the goods for repair or replacement, as the Department, after consultation with the supplier, considers appropriate.

(3) Where the goods referred to in subsection (2) is not returned to the consumer within the period specified by the Department under that subsection, the relevant supplier shall provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until the replacement or repair and return of the goods.

Return of defective goods

71. (1) Subject to subsections (3) and (4), a consumer may return goods to a supplier if the consumer –

- (a) is encouraged to acquire goods by the supplier's declaration and description of the goods; and
- (b) after acquiring the goods, discovers within a reasonable time that the goods are defective in a material particular from those declared or described.

(2) Where goods are returned under subsection (1), the supplier shall, in exchange for the returned goods –

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

(3) A supplier is obliged to replace or make refunds on goods returned under subsection (2) only where the goods are returned –

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

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

(5) A supplier commits an offence and is liable on summary conviction to a fine of five thousand dollars if the supplier fails –

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

Return of materially different goods

72. (1) Subject to subsections (4) and (5), where a consumer –

- (a) is encouraged to acquire goods by the supplier's declaration and description of the goods; and
- (b) after acquiring the goods, discovers that the acquired goods are different in a material particular from that intended to be acquired, the actions specified in subsection (2) apply.

(2) The actions referred to in subsection (1) (b) are –

- (a) the consumer may return the goods acquired to the supplier;
- (b) the supplier shall be afforded a reasonable opportunity to inspect the goods; and
- (c) if the defect is not fixed after a reasonable time, the supplier shall give to the consumer in exchange for the returned goods, monetary compensation to the value of the goods or another amount agreed between the consumer and the supplier.

(3) Where goods are returned under subsection (2), the supplier shall not charge the consumer a restocking fee for the goods.

(4) Subsection (1) does not apply unless the goods are returned to the supplier –

- (a) in the condition in which they were purchased; or
- (b) with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods before discovery of the material difference between the goods received and the goods that the consumer requested.

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

Approved and non-approved services

73. (1) A supplier shall –

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

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

Duties of supplier offering repair services

74. (1) A supplier who offers repair services to a consumer shall keep a record stating –

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

(2) Before the commencement of repairs, a supplier shall give a consumer a copy of the record referred to in subsection (1).

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

- (a) disclose to the consumer any additional related repairs that he thinks necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired goods; and
- (b) obtain a written indemnity from the consumer if the consumer chooses not to require the supplier to effect the recommended repairs.

(4) A supplier who contravenes subsection (2) or (3) (a) commits an offence and is liable on summary conviction to a fine of two thousand dollars.

Advertised delivery date

75. (1) Where by reason of a date or period advertised by a supplier the delivery of any goods, whether new, used or repaired, a consumer –

- (a) has entered into a consumer agreement with the supplier to deliver the goods; and

- (b) makes a deposit under the consumer agreement referred to in paragraph (a) in respect of the delivery of the goods,

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

(2) If the goods are not delivered to the consumer by the date or within the period referred to in subsection (1), the supplier shall, at the election of the consumer –

- (a) refund the deposit, plus interest for the period beginning with the date of deposit and ending on the date of its refund, at an annual rate of ten percentage points above the Treasury Bill rate applicable at the former date; or
- (b) deliver the goods by another date or within another period on terms to be agreed with the consumer.

(3) A supplier who has –

- (a) advertised a completion or delivery date; and
- (b) obtained from the consumer a deposit against the provision of the goods or service;

may elect to terminate the contract within seven business days after the receipt of the deposit and in such a case, the supplier shall refund the full value of the deposit received.

Conditions of demanding and accepting payment

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

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars and imprisonment for two years.

General standards for the promotion of goods or services

77. (1) A supplier shall not promote goods or services –

- (a) in a manner that is misleading, fraudulent or deceptive in respect of –
 - (i) the nature, properties, advantages or uses of the goods or services;
 - (ii) the manner in or conditions on which those goods or services may be purchased, leased or otherwise acquired;
 - (iii) the price at which the goods or services may be acquired, or the existence of, or relationship of the price to, any previous price, or competitors price for comparable or similar goods or services;
 - (iv) the sponsoring of any event; or
 - (v) any other material aspect of the goods or services;
- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 78;
- (c) the supply, purchase, sale or possession of which is unlawful;
- (d) where the supply of the goods or services would be in a manner that is inconsistent with a written law; or

- (e) in a manner that –
 - (i) is degrading to the dignity of a person;
 - (ii) depicts, simulates, suggests, represents or reasonably appears to promote a use or application of those goods or services that is inconsistent with a written law; or
 - (iii) subject to subsection (2), implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a prohibited ground of unfair discrimination set out in the Constitution.

(2) Subsection (1) (e) (iii) does not apply to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of a particular group of prospective consumers distinguishable from the general population.

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars, and in default of payment of the fine, to imprisonment for two years.

PART VII

UNFAIR TRADE PRACTICES

False, misleading or deceptive representations

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

(2) With respect to any goods or services that are the subject of a consumer agreement or in the marketing of any such goods or services, a supplier shall not, by words or conduct –

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

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

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

- (c) necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;
- (d) a service, part, replacement, maintenance or repair is needed or advisable;
- (e) a specific price advantage exists;
- (f) a charge or proposed charge is for a specific purpose;
- (g) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, a consumer agreement;
- (h) the transaction affects, or does not affect, any rights, remedies or obligations;
- (i) a particular solicitation of, or communication with, the consumer or prospective consumer is for a particular purpose; or
- (j) the consumer or prospective consumer will derive a particular benefit if he assists the supplier in obtaining a new or potential customer.

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

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

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

(6) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

Prohibition on restrictive trade practices

79. (1) A supplier shall not adopt or indulge in a restrictive trade practice.

(2) For the purposes of this section, a “restrictive trade practice” is a trade practice which –

- (a) tends to bring about manipulation of price or conditions of delivery or affect flow of supplies in the market relating to goods or services in a manner as to impose on the consumers unjustified costs or restrictions;
- (b) delays beyond the period agreed to by a supplier in supply of goods or in providing the services which has led or is likely to lead to rise in the price; or
- (c) requires a consumer to buy, hire or avail of any goods or services as a condition precedent to buying, hiring or availing of other goods or services.

(3) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for five years.

Prohibition on unfair trade practices

80. (1) A supplier shall not adopt or indulge in an unfair trade practice.

(2) For the purposes of this section, a reference to an “unfair trade practice” includes a reference to a trade practice which, for the purpose of promoting the sale, use or supply of goods or for the provision of a service, adopts an unfair method or unfair or deceptive practice specified in subsection (3).

(3) The unfair methods and practices and deceptive practices referred to in subsection (2) include—

- (a) making a statement, whether orally or in writing or by visible representation which—
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

- (ii) falsely represents that the services are of a particular standard, quality or grade;
- (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which the goods or services do not have;
- (v) represents that the supplier has a sponsorship or approval or affiliation which the supplier does not have;
- (vi) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided;
- (vii) gives false or misleading facts disparaging the goods, services or trade of another supplier;
- (b) making a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (c) subject to subsection (5), giving to the public a warranty or guarantee of the performance, efficacy or length of life of any goods that is not based on an adequate or proper test thereof;
- (d) making a public representation in a form that purports to be a warranty or guarantee of any goods or services if—
 - (i) the purported warranty or guarantee is materially misleading; or
 - (ii) there is no reasonable prospect that the purported warranty or guarantee will be carried out;
- (e) making a public representation in a form that purports to be a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if—
 - (i) the purported promise is materially misleading; or
 - (ii) there is no reasonable prospect that the purported promise will be carried out;
- (f) publishing an advertisement whether in a newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for –
 - (i) sale or supply at the bargain price; or
 - (ii) a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement;
- (g) offering gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (h) conducting a contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any goods or any business interest;
- (i) withholding from the participants of a scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme;
- (j) offering for sale or supply, goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (k) hoarding or destroying goods, if the hoarding or destruction raises or is intended to raise the price of the goods or other similar goods;

- (l) refusing to sell goods or to make goods available for sale, if the refusal raises or is intended to raise the price of the goods or other similar goods;
- (m) refusing to provide any service if the refusal raises or is intended to raise the price of the services;
- (n) manufacturing of spurious goods or offering such goods for sale; and
- (o) adopting deceptive practices in the provision of services.

(4) For the purpose of subsection (3) (a) (vi), a representation as to price shall be deemed to refer to the price at which the goods or services have been sold or provided by suppliers generally in the relevant market, unless it is clearly specified to be the price at which the goods have been sold or services have been provided by the person by whom or on whose behalf the representation is made.

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

- (a) expressed on an article offered or displayed for sale, or on its wrapper or container;
- (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
- (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

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

(6) Where a defence is raised to the effect that a warranty or guarantee is based on adequate or proper test, the burden of proof of this defence shall lie on the person raising the defence.

(7) For the purpose of subsection (3) (f), “bargain price” means –

- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
- (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the goods advertised or like goods are ordinarily sold.

(8) For the purposes of subsection (3) (i), the participants of a scheme shall be deemed to have been informed of the final results of the scheme where the results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised.

(9) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years.

Unreasonable transactions

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

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

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

(3) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

Unfair or unjust transactions

82. (1) A supplier shall not –

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

(2) For the purposes of this section, a transaction is unfair or unjust if—

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

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

(4) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

Unconscionable conduct

83. (1) It is an unfair practice for a supplier, in the ordinary course of business with a consumer, to engage in unconscionable conduct.

(2) For the purpose of this section, “unconscionable conduct” includes –

- (a) using physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other similar conduct, in connection with the –
 - (i) marketing of any goods or services;
 - (ii) supply of goods or services to a consumer;
 - (iii) negotiation, conclusion, execution or enforcement of an agreement to supply goods or services to a consumer;
 - (iv) demand for, or collection of, payment for goods or services by a consumer; or
 - (v) recovery of goods from a consumer; and
- (b) taking advantage of the fact that a potential consumer was substantially unable to protect his own interests because of disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

(3) Without limiting what may be taken into account in determining whether conduct is unconscionable, there may be taken into account the fact that the supplier or his employee knows or ought to know that –

- (a) the consumer is not reasonably able to protect his interests due to disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) the price grossly exceeds the price at which similar goods or services are readily available to like consumers;

- (c) the consumer is unable to receive a substantial benefit from the subject matter of the conduct;
- (d) there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) the terms of the consumer agreement are so adverse to the consumer as to be inequitable;
- (f) a statement of opinion is misleading and the consumer is likely to rely on it to his detriment; or
- (g) the consumer is being subjected to undue pressure to enter into a consumer agreement.

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

Renegotiation of terms

84. (1) A person who has custody or control of a consumer's goods shall not use custody and control of the goods to pressure the consumer into renegotiating the terms of a consumer agreement.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars and imprisonment for two years.

Bait advertising

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

- (a) does not intend to offer for supply or provide in reasonable quantities; or
- (b) has no reasonable grounds for believing he can supply, immediately, or within a reasonable time,

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand dollars and imprisonment for six months.

To print in good faith

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

Pyramid selling

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

(2) The Department shall cooperate and share information with the Police Force and the Financial Intelligence Unit in the identification and investigation of pyramid selling activity and persons promoting, operating or participating in any pyramid selling scheme.

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

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars and imprisonment for two years.

(5) For the purposes of this section, "pyramid selling scheme" means a scheme that –

- (a) provides for the supply of goods or services or both for reward;
- (b) to the participants, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and
- (c) is unfair, or is likely to be unfair, to many of the participants in that –
 - (i) the financial rewards of many of the participants are dependent on the recruitment of additional participants and not on investments; and

- (ii) the number of additional participants that must be recruited to produce reasonable rewards to participants is either not attainable, or is not likely to be attained, by many of the participants.

Rescission

88. (1) Where a consumer has entered into a consumer agreement and the supplier has engaged in an unfair trade practice, the consumer may rescind the consumer agreement and the consumer is entitled to a remedy that is available in law.

- (2) Where rescission of the consumer agreement under subsection (1) is not possible because –
 - (a) the return or restitution of the goods or services is no longer possible; or
 - (b) rescission would deprive a third party of a right in the subject-matter of the consumer agreement which the third party acquired in good faith and for value,

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

Defences for contravention of this Part

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

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

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

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

the defendant is not, without leave of the court, entitled to rely on that defence unless he has, not later than seven days before the day on which the hearing of the proceeding commenced, served on the person by whom the proceeding was instituted a notice in writing giving the information that would identify or assist in the identification of the other person as was then in his possession.

(3) In proceedings under this section in relation to a contravention of this Part committed by the publication of an advertisement, it is a defence if the defendant proves that –

- (a) he is a person whose business it is to publish or arrange for the publication of advertisements;
- (b) he received the advertisement for publication in the ordinary course of business; and
- (c) he did not know and had no reason to suspect that its publication would amount to a contravention of this Part.

Court may order payment of damages or costs

90. On the conviction of a supplier of an offence under this Part, the court may order the supplier to –

- (a) make to the consumer, restitution of a deposit made by the consumer;
- (b) pay to the consumer, by way of damages, a sum representing the costs reasonably incurred by the consumer as a result of the offence;

- (c) pay to the court a sum as represents the reasonable costs incurred in relation to the prosecution of the offence.

PART VIII

UNFAIR TERMS

Unfair terms

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

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

- (a) the bargaining strengths of the parties to the consumer agreement relative to each other, taking into account –
 - (i) the availability of equivalent goods or services; and
 - (ii) suitable alternative sources of supply;
 - (b) whether the consumer received an inducement to agree to the term, or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services, from a source of supply under a contract that did not include that term;
 - (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to a custom of trade and any previous dealings between the parties;
 - (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer;
 - (e) the nature of the goods or services for which the consumer agreement was concluded;
 - (f) the interests of the supplier;
 - (g) the other terms of the consumer agreement or of another agreement on which it is dependent;
 - (h) the interests of the particular class of consumers who are likely to adhere to the consumer agreement; and
 - (i) the circumstances attending the conclusion of the consumer agreement at the time of its conclusion.
- (3) An unfair term in a consumer agreement is unenforceable against the consumer.
- (4) Where it is asserted that a term in a consumer agreement is unfair, it is for the supplier to show that the term is not unfair.
- (5) If a court, after having considered all the circumstances contemplated in subsection (2), is of the opinion that a term is unfair, it may –
- (a) rescind or amend the consumer agreement or a term of the consumer agreement; or
 - (b) make any other order as may be necessary to prevent the effect of the consumer agreement being unfair or unreasonable to any of the parties, notwithstanding the principle that effect must be given to the contractual terms agreed upon by the parties.
- (6) Without limiting subsection (1), a term in a consumer agreement which is set out in Schedule 4 is unfair, if not individually negotiated.

Written terms to be plain and intelligible

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

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

(3) In so far as a written term in a consumer agreement is plain and intelligible, the assessment of its fairness shall not relate to –

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

Excluding, restricting or modifying liability

93. (1) A term of a consumer agreement, including a term that is incorporated in the consumer agreement by reference to another term of the consumer agreement, is void if it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying –

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

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

Indemnity subject to reasonableness

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

Loss or damage from defective goods or negligence of manufacturer

95. (1) Liability for the loss or damage of goods of a type ordinarily supplied for private use or consumption shall not be excluded or restricted by reference to a notice or term contained in or operating by reference to a guarantee of the goods, if the loss or damage –

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

(2) For the purposes of this section –

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

Effect of obligation

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

Satisfying reasonableness where agreement terminated

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

(2) Where on a breach, the consumer agreement is nevertheless affirmed by a party entitled to treat it as repudiated, the affirmation does not of itself exclude the requirement of reasonableness in relation to a term of the consumer agreement.

Reasonableness

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

(2) Where a person seeks to restrict liability to a specified sum of money by reference to a notice or a term of a consumer agreement, and the question arises under this Act or any other written law as to whether the notice or term satisfies the requirement of reasonableness, regard shall be had to the factors specified in subsection (3).

(3) For the purposes of subsection (2), regard shall be had to –

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

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

PART IX PRODUCT LIABILITY

Interpretation of Part

99. (1) In this Part –

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

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

“manufacture”, in relation to animals or agricultural produce, includes to rear or grow;

“producer”, in relation to a product, means –

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

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

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

Defect inferred

100. (1) There is a defect in a product for the purposes of this Part if the safety of the product is not such as persons are generally entitled to expect.

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

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

(3) Notwithstanding subsections (1), (2) and (3), a defect shall not be inferred from the fact alone that the safety of a product which is supplied after is greater than the safety of the product in question.

(4) For the purposes of this section, “safety” in relation to a product, includes safety –

- (a) with respect to products comprised in that product; and
- (b) in the context of the risk of damage to property and in the context of the risk of death or personal injury.

Liability for defects

101. (1) Subject to this Part, where damage is caused, wholly or partly, by a defect in a product the following persons are liable for the damage –

- (a) the producer of the product;
- (b) a person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and
- (c) a person who has imported the product into Saint Vincent and the Grenadines, to, in the course of business, supply it to another person.

(2) Subject to this Part, a person who supplied the product, whether to the person who suffered the damage, to the producer of a product in which the product in question is comprised or to any other person, is liable for the damage if –

- (a) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom subsection (1) applies in relation to the product;
- (b) that request is made within a reasonable time after the damage occurs; and
- (c) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

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

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

Damage giving rise to liability

102. (1) A person is not liable under section 101 for damage to any property which, at the time of the damage, is not –

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

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

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

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

(4) A person shall not be taken by virtue of subsection (3) to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

Prohibition on exclusions from liability

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

Defences in civil proceedings

104. In any proceedings under this Part in respect of a defect in a product it is a defence to show that –

- (a) the defect is attributable to compliance with a requirement imposed by or under a written law;
- (b) the product was not at any time supplied by the defendant;
- (c) the following conditions are satisfied, that is to say –
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
 - (ii) that section 101 does not apply to the supplier, or applies to him by virtue only of things done otherwise than with a view to profit;
- (d) the defect did not exist in the product at the relevant time;
- (e) the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it has existed in his products while they were under his control; or
- (f) the defect –
 - (i) constituted a defect in a product, in this paragraph referred to as “the subsequent product”, in which the product in question has been comprised; and
 - (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

Application to Crown

105. The Crown shall not, as regards the Crown's liability by virtue of this Part, be bound by this Part further than the Crown is made liable in tort or in reparation under the Crown Proceedings Act.

PART X
CONSUMER SAFETY

Interpretation of Part

106. In this Part, “consumer safety” means –

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

General safety requirements

107. (1) A person shall not –

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

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

- (a) the manner in which, and purposes for which, the goods are being or would be marketed;
- (b) the packaging and presentation of the goods;
- (c) the use of any mark in relation to the goods;
- (d) instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
- (e) applicable safety standards or technical regulations; and
- (f) the existence of any means by which it would have been reasonable for the goods to have been made safer.

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

- (a) anything which is shown to be attributable to compliance with a requirement imposed by or under a written law; or
- (b) a failure to do more in relation to a matter than is required by –
 - (i) safety regulations imposing requirements with respect to that matter;
 - (ii) standards of safety prescribed for the purposes of this section and imposing requirements with respect to the goods; or
 - (iii) a provision of a written law imposing the requirements with respect to the goods as are designated for the purposes of this subsection by the written law.

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

- (a) he reasonably believed that the goods would not be used or consumed in Saint Vincent and the Grenadines;
- (b) he supplied the goods, offered or agreed to supply them or, exposed or possessed them for supply in the course of carrying on a business neither knowing nor having reasonable grounds for believing that the goods failed to comply with the general safety requirements; or

- (c) the terms on which he supplied the goods or agreed or offered to supply them or, in the case of goods which he exposed or possessed for supply, the terms on which he intended to supply them provided for, or contemplated, the acquisition of an interest in the goods by the persons supplied or to be supplied.
- (5) For the purposes of subsection (4) (b), goods are supplied in the course of carrying on a business if –
 - (a) whether or not the goods are themselves acquired for a person's private use or consumption, they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption; and
 - (b) the descriptions of the goods do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in Saint Vincent and the Grenadines.
- (6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars, and in default of the payment of the fine, to imprisonment for five years.

Information in regard to goods with inherent risks

108. (1) A supplier shall provide consumers with the relevant information –
- (a) to assess the risks inherent in goods where such risks are not immediately obvious without adequate warning; and
 - (b) to take precautions against those risks.
- (2) A supplier shall adopt measures to enable a consumer to –
- (a) be informed of the risks which the goods might pose; and
 - (b) take appropriate action to avoid the risks by warning the consumers as to the risks.
- (3) The measures referred to in subsection (2) include, except where it is not reasonable to do so, an indication by means of the product or its packaging of –
- (a) the name and address of the producer; and
 - (b) the product reference or where applicable the batch of products to which it belongs.
- (4) A supplier shall, within the limits of his activities, monitor the safety of such goods.

Agreement to exchange information

109. (1) Where Saint Vincent and the Grenadines enters into an agreement to exchange information by way of a rapid alert system regarding dangerous non-food goods in the CARICOM region, the Minister may by order published in the *Gazette* give legal effect to the agreement .
- (2) An order under subsection (1) may contain supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving legal effect to an agreement referred to in this section.
- (3) If an agreement referred to in subsection (1) is amended, the Minister may amend an order published under subsection (1) accordingly.
- (4) An order under this section is subject to affirmative resolution of the House of Assembly.

Safety regulations

110. (1) The Minister may, after consulting the Bureau of Standards, make safety regulations for the purposes of ensuring that –
- (a) goods to which this section applies are safe;
 - (b) goods to which this section applies which are unsafe, or would be unsafe in the hands of persons of a particular description, are not made available to persons generally or, as the case may be, to persons of that description; and

- (c) appropriate information is, and inappropriate information is not, provided in relation to goods to which this section applies.
- (2) Without prejudice to subsection (1), safety regulations may –
 - (a) contain provisions with respect to the performance, composition or contents, design, construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to the goods;
 - (b) contain provisions with respect to the giving, refusal, alteration or cancellation of approvals of the goods, of descriptions of the goods or of standards for the goods;
 - (c) contain provisions with respect to the conditions that may be attached to any approval given under the regulations;
 - (d) contain provisions prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for the approval or alteration;
 - (e) contain provisions with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;
 - (f) contain provisions for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
 - (g) contain provisions with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
 - (h) contain provisions with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
 - (i) contain provisions requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;
 - (j) contain provisions prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for the goods;
 - (k) contain provisions requiring information to be given to a person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on him by the regulations;
 - (l) contain different provisions for different cases;
 - (m) provide for exemptions from any provisions of the regulations; and
 - (n) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.
- (3) This section applies to all goods other than aircraft.

Contravention of safety regulations

111. (1) Where safety regulations –
- (a) prohibit a person from supplying or offering or agreeing to supply any goods or from exposing or possessing any goods for supply, the person commits an offence if he contravenes the prohibition; or
 - (b) require a person who makes or processes any goods in the course of carrying on a business –

- (i) to carry out a particular test or use a particular procedure in connection with the making or processing of the goods with a view to ascertaining whether the goods satisfy any requirements of the regulations, the person commits an offence if he does not comply with the requirement; or
- (ii) to deal or not to deal in a particular way with a quantity of the goods of which the whole or part does not satisfy the test or does not satisfy standards connected with such a procedure, the person commits an offence if he does not comply with the requirement.

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

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

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

(4) A person who commits an offence under this section is liable on summary conviction to a fine of five thousand dollars and in default of the payment of the fine, to imprisonment for two years.

PART XI

RECALL OF GOODS

Voluntary recall of goods

112. (1) Where a supplier voluntarily takes action to recall goods because the goods will or may cause injury, loss or damage to a person, he shall, within two days after taking that action, give a notice in writing to the Director –

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Compulsory recall of goods

113. (1) Subject to sections 116 and 117, where—

- (a) goods are supplied on or after the coming into force of this Act; and
- (b) the Director, acting on the advice of the Bureau of Standards, is satisfied that—
 - (i) the goods are goods of a kind which will or may cause injury, loss or damage to any person; and
 - (ii) the supplier has not taken satisfactory action to prevent the goods causing injury loss or damage to any person,

the Director may, by notice in writing published in the *Gazette* and at least two newspapers in general circulation in Saint Vincent and the Grenadines, require a supplier to do any of the things specified in subsection (2).

(2) The Director may require a supplier to do one or more of the following –

- (a) take action within the period specified in the notice to recall the goods;
- (b) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following –

- (i) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;
- (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous; or
- (iii) the availability of a refund to a person to whom the goods were supplied, whether by the supplier or by another person, of the price of the goods, within the period specified in the notice.

(2) The Director may by notice in writing published in the *Gazette* and at least two newspapers of general circulation in the Saint Vincent and the Grenadines, give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

(3) Where the supplier under subsection (1) undertakes to –

- (a) repair goods, the supplier shall cause the goods to be repaired so that any defect in the goods specified in the notice under subsection (1) is remedied;
- (b) replace goods, the supplier shall replace the goods with like goods which, if a defect in, or a dangerous characteristic of, the first-mentioned goods was specified in the notice under subsection (1), do not have that defect or characteristic; or
- (c) repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(4) Where goods are recalled under a requirement made by the Director under subsection (1), a supplier or a person who has supplied any of the recalled goods shall, as soon as practicable after the supply of those goods, give a notice in writing to the person to whom the goods were supplied –

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

(5) Where a person is required under subsection (4) to give a notice in writing to another person, the first-mentioned person shall, within ten days after giving that notice, provide the Director with a copy of that notice.

(6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of five thousand dollars and in the case of a continuing offence to pay a fine of one hundred dollars per day in respect of which the contravention continues after conviction.

Compliance with recall notice

114.(1) Where a notice under section 113 (1) is in force in relation to a supplier, that supplier –

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

Loss or damage caused by contravention of recall notice

115. Where a person fails to comply with a notice under section 113 and another person suffers injury, loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods, that other person shall be deemed for the purposes of this Act to have suffered the injury, loss or damage by the failure of the first-mentioned person to comply with the notice.

Conference to be held in certain cases

116. (1) Subject to section 117, where the Director proposes to publish a notice under section 113 (1) the Director shall by notice in writing published in the *Gazette* and at least two newspapers in general circulation in Saint Vincent and the Grenadines, invite a person, who supplied or proposes to supply goods of the kind referred to in the draft notice to notify the Director whether that person wishes the Director to hold a conference in relation to the proposed notice.

(2) A notice published under subsection (1) shall set out a draft of the notice the Director proposes to publish under section 113 (1) and a summary of the reasons for the proposed notice.

(3) Where the Director is not requested in accordance with subsection (1) to hold a conference, the Director shall proceed to take the action under section 113 as he thinks fit.

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

(5) At a conference held under subsection (1) –

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

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

(7) The Director shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present or his representative is given a reasonable opportunity at the conference to –

- (a) present his case; and
- (b) in particular, inspect any documents which the Director proposes to consider for the purpose of making a decision after the conclusion of the conference.

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

Exception in case of danger to public

117. (1) Where it appears to the Director that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Director, without regard to any action of a supplier of the goods shall, without delay, publish in the *Gazette* and in at least two newspapers in general circulation in Saint Vincent and the Grenadines, a notice under section 113 (1) in relation to the goods.

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

- (a) in a case where the notice is published before the Director takes any action under section 116 (1) in relation to goods of a particular kind, section 116 does not apply in relation to the action that the Director may take under section 113 in relation to goods of that kind; or
- (b) in any other case, any action taken by the Director under section 116 (1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 116, been arranged or had commenced, the Director may publish the notice under section 113 (1) without regard to the action taken under section 116.

Suppliers to be given notice in certain cases

118. Where the Director publishes a notice under section 116 (1) or 117 (1), he shall, within two days after the publication of that notice, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, cause a copy of the notice to be given to each person who, to the knowledge of the Director, supplies goods of the kind to which the notice relates.

Power to obtain information, documents and evidence

119.(1) Where the Director or an authorised officer has reason to believe that a person who, in trade or commerce, supplies goods of a particular kind which causes or may cause injury to a person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Director or authorised officer may, by notice in writing served on that person, require him –

- (a) to furnish to the Director or authorised officer, and within the reasonable time as is specified in the notice, the information;
- (b) to produce to the Director or authorised officer, in accordance with the reasonable requirements as are specified in the notice, the documents; or
- (c) in person or by his representative to appear before the Director or authorised officer at the reasonable time and place as are specified in the notice to give the evidence, either orally or in writing, and produce any of the documents.

(2) A person commits an offence and is liable on summary conviction to a fine of five thousand dollars if the person –

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

Power to enter premises

120.(1) Subject to subsection (3), where the Director or an authorised officer has reason to believe that goods will or may cause injury to a consumer, he may, accompanied by police officers, enter a premises in or from which he has reason to believe that a person supplies goods of that kind in trade or commerce and for the purposes of ascertaining whether goods of that kind will or may cause injury to a consumer do the things specified in subsection (2).

(2) Subject to subsection (3), the Director or authorised officer who has entered a premises for the purposes referred to in subsection (1) is empowered to –

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

(3) The powers under subsection (2) shall not be exercised except –

- (a) under a warrant issued under section 121 (1); or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

(4) The Director or authorised officer or a person assisting the Director or authorized officer shall, before entering the premises under a warrant –

- (a) announce that he is authorised to enter the premises; and
- (b) give a person at the premises a reasonable opportunity to allow entry to the premises.

(5) The Director or authorised officer or a person assisting the Director or authorized officer is not required to comply with subsection (4) if he believes on reasonable grounds that immediate entry to the premises is required to ensure –

- (a) the safety of a person, including the Director, authorised officer or the person assisting the Director or authorised officer; or
- (b) that the effective execution of the warrant is not frustrated.

(6) Where the Director or authorised officer takes samples under subsection (2), the Department shall pay a reasonable price for the goods sampled.

(7) A person commits an offence who –

- (a) interferes with the Director or an authorised officer in the execution of a warrant under this section; or
- (b) refuses or fails to provide the Director or an authorised officer acting in accordance with subsection (2) with all reasonable facilities and assistance for the effective exercise of the Director's or authorised officer's powers under that subsection

(8) A person who commits an offence under subsection (7) is liable on summary conviction to a fine of five thousand dollars.

Issue of warrant

121.(1) The Director or an authorized officer may apply to a magistrate for the issue of a warrant to exercise the powers under subsection (2).

(2) Where an application is made to a magistrate for a warrant, the magistrate may issue a warrant authorising the Director, or authorised officer named in the warrant, with any assistance as the Director or authorized officer thinks necessary and if necessary by force, to –

- (a) enter the premises specified in the warrant; and
- (b) exercise the powers under section 120 (2) in relation to those premises.

(3) A magistrate shall not issue a warrant under subsection (2) unless –

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

(4) A warrant shall –

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

Inadmissibility of evidence

122. Any information, evidence or document furnished or produced by a person under section 119 or obtained from a person under section 120 is only admissible in proceedings against the person for a contravention of this Part.

Certain actions not to affect insurance contracts

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

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

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

PART XII

DISTANCE SELLING

Interpretation of Part

124. In this Part –

“distance communication” includes electronic mail and electronic commerce by way of letters, catalogues, by facsimile machine, telephone and television; and

“distance selling agreement” means an agreement concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service scheme run by the supplier, who, for the purpose of the agreement, makes exclusive use of one or more means of distance communication up to and including the moment at which the agreement is concluded.

Application of Part

125. This Part does not apply to an agreement –

- (a) relating to a financial service;
- (b) concluded by means of automatic vending machines or automated commercial premises; and
- (c) concluded with a telecommunication operator through the use of payphones;
- (d) concluded at an auction.

Agreement regarding distance selling contracts

126.(1) Where Saint Vincent and the Grenadines enters into an agreement to provide assistance regarding distance selling agreements by way of information, redress, sanctions or otherwise, the Minister may by order published in the *Gazette* give legal effect to the agreement .

(2) An order under subsection (1) may contain supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving legal effect to an agreement referred to in subsection (1).

(3) If an agreement referred to in subsection (1) is amended, the Minister may amend an order published under subsection (1) accordingly.

(4) An order under this section is subject to affirmative resolution of the House of Assembly.

Prior information requirements

127.(1) Subject to subsection (2), a supplier shall, before the conclusion of any distance selling agreement, provide the consumer with the following information –

- (a) the identity of the supplier and, in the case of a consumer agreement requiring payment in advance, his address;
- (b) a description of the main characteristics of the goods or service;
- (c) the price of the goods or service including all applicable taxes;
- (d) delivery costs, where appropriate;

- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of cancellation, except in certain cases where this right does not exist;
- (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate such as premium phone lines rates;
- (h) the period for which the offer or the price remains valid; and
- (i) where appropriate, the minimum duration of the consumer agreement in the case of a consumer agreement for the supply of goods or service to be performed permanently or recurrently.

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

(3) In a distance selling agreement for the sale of goods, the consumer is to receive confirmation of the information in subsection (1) in a durable medium available and accessible by the consumer.

Acceptance or decline of internet consumer agreement

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

Payment by card

129. A consumer may request cancellation of a payment where fraudulent use is made of his payment, credit or debit card and the consumer is to be re-credited with the sums paid.

Performance

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

(2) Where a supplier is unable to perform an agreement because the goods or service is not available, the supplier shall inform the consumer of the situation and refund any sums received within thirty days of informing the consumer.

Burden of proof

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

PART XIII

GENERAL

Void provisions of consumer agreements

132.(1) A provision of a consumer agreement, or a condition to which a consumer agreement is subject, is void if –

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

- (iv) authorise the supplier to do anything that is prohibited by this Act or fail to do anything that is required in terms of this Act;
- (c) it expresses an acknowledgement by the consumer that –
 - (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or
 - (ii) the consumer has received any goods or services, or a document that is required by this Act to be delivered to the consumer that has not in fact been delivered or rendered to the consumer;
- (d) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer
 - (i) exercises the right of rescission under section 88; or
 - (ii) fails to comply with a provision of the consumer agreement before the consumer receives any goods or services pursuant to the agreement;
- (e) it expresses, on behalf of the consumer –
 - (i) an authorisation for a person acting on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the consumer agreement relates;
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether the documentation is complete or incomplete at the time it is signed; or
 - (iii) consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act; or
- (f) it expresses an agreement by the consumer to –
 - (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or a similar document or device; or
 - (ii) provide a personal identification code or number to be used to access an account.

(2) Where a consumer agreement that contains a provision referred to in subsection(1) falls for consideration before the Tribunal or a court, the Tribunal or the court shall –

- (a) if the provision is void, sever any void provision from the consumer agreement to the extent required to render it lawful;
- (b) if it is reasonable to alter the provision having regard to the consumer agreement as a whole, alter the provision to the extent required to render it lawful;
- (c) declare the entire consumer agreement void as from the date that the consumer agreement took effect; or
- (d) make any further order that is just and reasonable in the circumstances with respect to the void provision, or the entire agreement, as the case may be.

(3) A supplier shall not –

- (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign a document, that contains a provision that would be void if it were included in a primary agreement;
- (b) request or demand a consumer to –
 - (i) give the supplier possession of an instrument referred to in subsection (1) (f) (i) other than for the purpose of identification, or to make a copy of the instrument; or
 - (ii) reveal any personal identification code or number referred to in subsection (1) (f) (ii); or

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

(4) A supplier who contravenes a provision of subsection (3) (b) commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

Goods or services acquired by instalment

133.(1) This section applies where a supplier contracts to –

- (a) provide a consumer with goods or services over an extended period of time; and
- (b) receive from the consumer periodic payments for the goods or services.

(2) The supplier shall –

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

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

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

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

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

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

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

Apportionment of payments where service not received

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

- (a) the supplier is deemed to be providing the consumer with a benefit under the relevant agreement; and
- (b) subsection (2) shall apply where a fee is collected by the supplier from the consumer for that service.

(2) A supplier shall –

- (a) be liable to make a full refund to the consumer, if for reasons not attributable to the consumer, the benefit is not received by the consumer; or
- (b) where the benefit is received only in part –
 - (i) refund a proportionate part of the fees collected; or

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

(3) Subsection (2) shall not apply in any case where the consumer agrees to pay the supplier the fee under subsection (1) (b) regardless of whether the consumer receives the benefit.

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

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

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

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

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

Supplier purporting to act on bill of sale

135.(1) A supplier shall not, in taking action pursuant to the powers contained in a bill of sale of moveable or personal property pledged by a consumer in the event of default in repayment of a loan –

(a) employ a person other than an authorised person under the bill of sale to recover any or all of the property pledged in the bill of sale in the event of default in repayment of a loan; or

(b) carry out an act of seizure although the consumer's indebtedness to the supplier –

(i) has already been discharged; or

(ii) is currently being serviced in accordance with existing contractual provisions.

(2) A supplier who contravenes subsection (1) is liable on summary conviction to a fine of ten thousand dollars, and in default of payment to imprisonment for two years.

(3) A person, who wrongfully seizes the property of a consumer, notwithstanding any other charge that may be brought against him, commits an offence and is liable on summary conviction to a fine of ten thousand dollars and in default of payment to imprisonment for two years.

(4) The court may order a person convicted of an offence under subsection (2) or (3) to pay to the consumer an amount equal to ten times the market value of the property seized plus an amount of two hundred dollars per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(5) A person who –

(a) threatens to seize a consumer's property under the powers contained in a bill of sale although the consumer's indebtedness to the vendor has already been discharged; or

(b) recklessly damages the consumer's property while exercising distraint,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars, and in default of payment to imprisonment for five years.

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

Trade coupons and similar promotions

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

(2) A document setting out an offer referred to in subsection (1) must fully and clearly state –

(a) the nature of the prize being offered;

(b) the goods or services to which the offer relates;

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

(3) A person who commits an offence under this section is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for five years.

Promotional competitions

137.(1) A person shall not, directly or indirectly, inform a consumer that the consumer—

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

(2) The promoter of a promotional competition shall —

- (a) not require any consideration to be paid by or on behalf of a participant in the promotional competition;
- (b) file a copy of the competition rules in the prescribed manner and form with the Department no later than the date on which consumers are first able to participate in the competition;
- (c) make the competition rules available on request and without cost to a participant;
- (d) not award a prize in a competition to —
 - (i) a winner of the competition if it is absolutely unlawful to supply those goods or services to the prize winner, but this sub-paragraph does not preclude a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, a written law; or
 - (ii) any person who is a director, member, partner, employee or agent of, or consultant to the promoter, or any other person who directly or indirectly controls, or is controlled by, the promoter, or to a supplier of goods or services in connection with that competition.

(3) For greater certainty in applying subsection (2) (a), a promoter shall be regarded as having required or received consideration in respect of a promotional competition if —

- (a) the participant is required to pay any consideration, directly or indirectly for the opportunity to participate in the promotional competition, for access to the competition, or for any device by which a person may participate in the competition; or
- (b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts,

ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition.

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- (4) An offer to participate in a promotional competition shall be in writing, and must fully and clearly state
- (a) the benefit or competition to which the offer relates;
 - (b) the steps required by a person to accept the offer or to participate in the competition;
 - (c) the basis on which the results of the competition will be determined;
 - (d) the maximum number of potential participants in the competition, and the odds of winning any particular prize in that competition;
 - (e) the medium through or by which the results of the competition will be made known, if any; and
 - (f) any person from whom, any place where, and any date and time on or at which the successful participant may receive any prize.
- (5) The requirements of subsection (4) may be satisfied –
- (a) directly on a medium through which a person participates in a promotional competition;
 - (b) on a document accompanying a medium contemplated in paragraph (a); or
 - (c) in an advertisement that –
 - (i) is published during the time and throughout the area in which the promotional competition is conducted; and
 - (ii) draws attention to and is clearly associated with the promotional competition.
- (6) The right to participate in a promotional competition is fully vested in a person immediately on –
- (a) complying with a condition that is required to earn that right; and
 - (b) acquiring possession or control of a medium through which the person may participate in that promotional competition.
- (7) The right to a benefit or right conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately on the determination of the results of the competition.
- (8) A right contemplated in subsection (6) or (7) must not be –
- (a) made subject to any further condition; or
 - (b) contingent upon a person –
 - (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying any further requirements than those stipulated in subsection (4).
- (9) The Minister may, by regulations, prescribe –
- (a) a monetary threshold for the purpose of excluding competitions with low value prizes from the definition of “promotional competition”;
 - (b) minimum odds for prizes or categories of prizes offered in terms of any promotional competition;
 - (c) minimum standards and forms for keeping records associated with promotional competitions; and
 - (d) audit and reporting requirements in respect of promotional competitions.
- (10) For the purposes of this section –
- “participant” means a person who expressly or implicitly enters into a promotional competition;

“promoter” means a person who directly or indirectly promotes, sponsors, organises or conducts a promotional competition, or for whose benefit a promotional competition is promoted, sponsored, organised or conducted.

Over-selling and over-booking

138.(1) A supplier shall not accept payment for any goods or services if the supplier –

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

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

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

Lay-aways

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

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

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

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

(3) If a consumer referred to in subsection (1) –

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

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

(5) The Minister may prescribe a maximum amount for a cancellation fee referred to in subsection (3) (b) (ii).

Protection of consumer rights

140.(1) Where a consumer has exercised, asserted or sought to uphold a right set out in this Act or in a consumer agreement with a supplier, the supplier commits an offence and is liable on summary conviction to a fine of five thousand dollars if, in response to the action of the consumer, the supplier—

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

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

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

Written consumer agreements

141.(1) This section applies only to a continuous service agreement other than those regulated by any other written law.

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

(3) The Minister may prescribe –

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

(4) Despite the requirements of a particular written agreement under this section –

- (a) a written consumer agreement between a supplier and consumer must satisfy the requirements of sections 52 and 53;
- (b) a change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless –
 - (i) the change reduces the consumer's obligations or liabilities under the agreement; or
 - (ii) after the change is made, the consumer signs or initials opposite the change in the margin of the document; and
- (c) if the parties to a written consumer agreement agree to change its terms, the supplier must deliver to the consumer a document that reflects their amended agreement within twenty business days after the date of the agreement to amend.

(5) For the purposes of this section, a “continuous service agreement” is an agreement that continues until the consumer cancels the agreement.

Rights reserved

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

No waiver of substantial and procedural rights

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

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

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

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

Institution of proceedings under this Act

144.(1) The Department may, on its own initiative or on a request of a person, institute or cause to be instituted criminal or civil proceedings in respect of a contravention of this Act.

(2) Where the Department is of the opinion that a supplier is engaged in conduct that does not necessitate instituting proceedings under this Act, the Department may demand a written undertaking from the supplier to the effect that the supplier shall desist from that kind of conduct.

(3) A written undertaking given by a supplier under subsection (1) is enforceable in a court of law.

(4) Nothing in this section shall be deemed to limit the private right of action available to an individual to enforce his rights under this Act.

General penalty provision

145. A person who commits an offence under this Act for which no penalty is attached is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

Criteria for determining penalty

146. A court in imposing a penalty for an offence under this Act or the regulations shall take the following into consideration and issue judgment accordingly –

- (a) whether the defendant's business is large, medium or small;
- (b) the severity of the offence; and
- (c) whether the offender is a serial offender.

Liability for offence by body corporate

147. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in such a capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

Establishing intention of body corporate

148.(1) Where, in any proceedings under this Act in respect of any conduct engaged in by a body corporate, it is necessary to establish the intention of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate by whom the conduct was engaged in had that intention.

(2) A conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate or by any other person at the direction or with the consent or agreement, whether express or implied, of a

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

Conflict of laws

149. Where there is a conflict between this Act and another written law in respect of the promotion and protection of consumer interest relating to the supply of goods and services for private use and consumption, this Act prevails.

Regulations

150.(1) The Minister may make regulations for the purposes of giving effect to the provisions of this Act, and for prescribing all things required to be prescribed.

(2) Without limiting subsection (1), the Minister may make regulations –

- (a) with regard to the regulation of the distribution, purchase or sale of goods or any class or description of goods;
- (b) providing for the recall of certain goods and services which are dangerous or hazardous to safety and the refund or remission by the vendor of the purchase price paid;
- (c) requiring persons carrying on or employed in connection with any trade or business to furnish information concerning all or any of the elements of the cost or sale price of goods or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;
- (d) requiring the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby prospective purchasers of any goods are offered for sale by retail may ascertain their weight or measurement; or
- (e) respecting such procedure relating to the conduct of the meetings of the Department, its sittings and other matters as may be required to be prescribed.

(3) Nothing in subsection (2) shall be deemed to authorise the Minister to make regulations in relation to any goods if the exportation, distribution, purchase, sale or price thereof is or may be, regulated under any other written law.

(4) Regulations may create offences and may prescribe penalties for the offences on summary conviction to a fine of up to twenty thousand dollars and to imprisonment for four years.

Guidelines

151. (1) Subject to this section, the Department may prepare, issue and publish guidelines applicable to suppliers or persons representing suppliers concerning any of the following –

- (a) a matter of consumer interest or protection; or
- (b) a matter of practical guidance to suppliers in relation to business practices, whether generally or in a particular business.

(2) Before issuing and publishing guidelines under this section, the Department may prepare draft guidelines and consult any person, as the Department considers appropriate.

(3) If satisfied that proposed or draft guidelines protect consumer interests, the Department may issue guidelines and shall cause them to be published in the manner the Department considers appropriate for the purpose.

(4) Without limiting subsection (3), the Department may publish a copy of guidelines issued by it under this section on the internet.

(5) In any proceedings before the Tribunal or a court, guidelines issued and published under this section are admissible in evidence and, if a provision of the guidelines is relevant to a question arising in those proceedings, the provision may be taken into account in determining that question.

(6) A failure on the part of a person to observe a provision of the guidelines issued and published under this section shall not, of itself, render that person liable to any proceedings.

Consequential amendments

152.(1) The Sale of Goods Act is amended by inserting after section 2 and before Part I, the following new section –

This Act does not apply to a contract to which the Consumer Protection Act 2019 applies except as it relates to an implied condition or warranty.”.

(2) The Price and Distribution of Goods Act is amended by deleting the definition of consumer and inserting the following –

“consumer” has the same meaning as within the Consumer Protection Act 2019;”

SCHEDULE 1

(Section 19 (2) (a))

SUMMONS TO WITNESS

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

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

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

Therefore fail not at your peril.

Given under the hand of (Director of the Department) this _____ day of 20__

SCHEDULE 2

(Section 31 (2))

CONSUMER PROTECTION TRIBUNAL

1. Appointment of members

(1) The Consumer Protection Tribunal consists of the following members –

- (a) a Chairperson who is an attorney-at-law of not less than ten years standing, or a person who has held high judicial office, to be nominated by the Minister responsible for legal affairs;
- (b) a member who has knowledge and experience in consumer protection, to be nominated by a recognized consumer organisation; and
- (c) a member who has knowledge and experience in commerce, to be nominated by the Chamber of Industry and Commerce.

(2) The members referred to in paragraph (1) shall –

- (a) by instrument in writing, be appointed by the Governor-General for the period the Governor-General considers necessary; and
- (b) be paid an allowance or honorarium determined by the Cabinet.

(3) The Governor-General shall from amongst the members of the Tribunal appoint a Deputy Chairperson.

2. Publication of membership

The names of the members of the Tribunal as first constituted and every change in membership of the Tribunal shall be notified in the *Gazette*.

3. Revocation of appointment

The Governor-General may at any time revoke the appointment of a member of the Tribunal.

4. Resignation

(1) A member of the Tribunal, other than the Chairperson, may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the Chairperson, and from the date of the receipt by the Governor-General of the instrument the member ceases to be a member of the Tribunal.

(2) The Chairperson may at any time resign his office by instrument in writing addressed to the Governor-General and the resignation takes effect as from the date of the receipt of the instrument by the Governor-General.

5. Filling of vacancy

If any vacancy occurs in the membership of the Tribunal, the vacancy shall be filled by the appointment of another member in the same manner in which the previous member was appointed and the member so appointed shall, subject to the provisions of this schedule, hold office for the remainder of the period for which the previous member was appointed.

6. Constitution of Tribunal to perform functions

(1) Subject to subparagraphs (2) and (3), the Chairperson shall preside over every sitting of the Tribunal.

(2) Where the Chairperson is absent, the Deputy Chairperson shall preside.

(3) The decisions of the Tribunal shall be by a majority votes of the members and, in addition to an original vote, the chairperson or other person presiding has a casting vote in any case where the voting is equal.

(4) For the hearing of a matter under this Act, the Tribunal may consist of one member sitting alone if the parties to the hearing agree.

7. Authentication of document

All documents made by, and all decisions of, the Tribunal may be signified under the hands of the Chairperson or any other member of the Tribunal authorised to act in that behalf.

8. Procedure

(1) Subject to this Act, the Tribunal has the power to regulate its own procedure.

(2) The Tribunal shall sit at the times necessary or expedient for the transaction of business and for the consideration of matters under inquiry and the sittings shall be held at the places and times and on the days as the Tribunal may determine.

(3) Proper records of all proceeding of the Tribunal shall be kept.

9. Protection of members

No action, suit, prosecution or other proceeding shall be brought or instituted personally against any member of the Tribunal in respect of an act done *bona fide* in pursuance or in execution or intended execution of this Act.

10. Validity of proceedings

The validity of a proceeding of the Tribunal shall not be affected by a vacancy among the members or a defect in the appointment of a member.

11. Disclosure of interest

A member of the Tribunal who has an interest, directly or indirectly in a matter brought before the Tribunal shall –

- (a) disclose the nature of the interest to the Tribunal; and
- (b) not take part in any deliberations or decisions of the Tribunal with respect to that matter.

SCHEDULE 3

(Section 33 (2) (a))

SUMMONS TO WITNESS

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

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

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

Therefore fail not at your peril.

Given under the hand of (Chairperson of the Tribunal) this _____ day of 20__

SCHEDULE 4

(Section 91 (6))

TERMS WHICH ARE UNFAIR IF NOT INDIVIDUALLY NEGOTIATED

1. Unfair terms

A term of a consumer agreement which has the object or effect of –

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

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

2. Exception to paragraph 1(g).

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

3. Exception to paragraph 1(j).

Paragraph 1(j) does not apply to a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties at the earliest opportunity and that the latter are free to dissolve the contract immediately.

4. Exception to paragraph 1(j).

Paragraph 1(j) does not apply to a term under which a supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

5. Exceptions to paragraph 1(g), (j) and (l).

Paragraphs (g), (j) and (l) of section 1 do not apply to –

- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the supplier does not control; or
- (b) agreements for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

6. Exception to paragraph 1(l).

Paragraph 1(l) does not apply to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

Passed in the House of Assembly this day of 2019.

Clerk of the House of Assembly.

OBJECTS AND REASONS

The object of this Bill is to provide for the promotion and protection of consumer interests, in relation to the supply of goods and the provision of services; to ensure protection of life, health and safety of consumers; to provide for the establishment of a Consumer Department; and for connected purposes.

Hon. Louis Straker
Deputy Prime Minister, Minister of Foreign Affairs,
International Trade and Regional Integration