



Belize
Draft Model Law
on
Consumer Protection

DRAFT MODEL LAW ON CONSUMER PROTECTION

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**A BILL
ENTITLED**

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

ENACTING CLAUSE

**PART I
PRELIMINARY**

- Short title and commencement** 1. This Act may be cited as the Consumer Protection Act, 2010 and shall come into operation on
- Interpretation.** 2. (1) In this Act –
- “acquire” in relation to –
- (a) goods, means obtaining by way of gift, purchase, or exchange, the taking on lease, hire or hire purchase;
- (b) services, means accepting the provision of services;
- “advertisement” means a form of communication made to the public or a section of the public for the purpose of promoting goods and services;
- "business" means a professional practice or another undertaking that is carried on for gain in the course of which goods and services are supplied otherwise than free of charge;
- “Commission” means the body established by section 6;
- 'complainant' means—
- (i) a consumer, or several having the same interest;
- (ii) a registered consumer association;

- (iii) the Crown, including all municipalities;
- (iv) in case of death of a consumer, his legal heir or representative;

who makes a complaint;

'complaint' means an allegation in writing or orally made by a complainant that—

- (i) an unfair trade practice or a restrictive trade practice has been adopted by a supplier;
- (ii) the goods bought or agreed to be bought by a consumer suffer from a defect;
- (iii) the services hired or agreed to be hired by a consumer suffer from deficiency in any respect;
- (iv) the supplier has charged for the goods or for the service mentioned in the complaint an excessive price –
 - (a) fixed by a law;
 - (b) displayed on the goods or package containing goods;
 - (c) displayed on the price list exhibited by supplier under any law;
 - (d) agreed between the parties;
- (v) goods which will be hazardous to life and safety when used or being offered for sale to the public,-
 - (a) in contravention of any standards relating to safety of goods as required to be complied with, under any law;

- (b) if the supplier could have known with due diligence that the goods so offered are unsafe to the public;
- (vi) services which are or are likely to be hazardous to life and safety of the public when used, are being offered by the supplier who could have known with due diligence to be injurious to life and safety;

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

"Consumer" means a person who-

- (a) buys goods under an agreement that includes another user of the goods, when such use is made with the consent of the person who buys the goods, but does not include a person who obtains such goods for resale or for commercial purpose; or
- (b) hires or avails of services under an agreement and includes another beneficiary of such services, when such services are used with the consent of the hirer, but does not include a person who hires or avails of such services for commercial purposes.

For the purposes of this clause, "commercial purpose" does not include use of goods bought and used by a person and services availed by that person exclusively for the purposes of self-

employment.

“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;

"document" includes electronic and all other records;

'defect' means fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by law under a contract, express or implied by the supplier in a manner in relation to goods;

"goods" includes all kinds of property other than immovable property, securities, money, services or rights;

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

"mediation" means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by a law.

It includes mediation conducted by a person who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by one party to settle a dispute in the course of judicial proceedings concerning the dispute in question.

"mediator" means any third person who is asked to conduct a mediation in an effective, impartial and

competent way, regardless of the denomination or profession of that third person and of the way in which the third person has been appointed or requested to conduct the mediation.

“Minister” means the Minister of the Government of Belize with responsibility for Consumer Affairs;

["negligence" means the breach -

- (a) of an 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; or
- (b) of a common law duty to take reasonable care of a contract;

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

“price” means any representation that may reasonably be inferred to be a representation of a value of a good or service;

‘service’ means service of a description which is made available to users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, education, information technology, telecommunication, processing, medical, consulting and legal services, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of a service free of charge or under a contract of personal service or of employment;

”supplier” means -

- (a) a seller of goods or services; or
- (b) a person providing a service.

Purpose.

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

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

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

(3) The Minister can by Order and after consultation with the Consumer Affairs Commission, subject to affirmative resolution, exempt categories of trade or business from the application of this Act.

(4) Subject to section 73, this Act binds the Crown.

Functions of
the Consumer
Protection
Unit

**FUNCTIONS OF THE CONSUMER PROTECTION UNIT IN
THE MINISTRY OF ECONOMIC DEVELOPMENT, TRADE
AND INDUSTRY, CONSUMER AFFAIRS; CONSUMER
ORGANIZATIONS**

5. The Consumer Protection Unit within the Ministry is responsible to

(1) take reasonable and practical measures, to promote and support the development of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market in order to meet the needs of the following persons:

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

(2) monitor the operations of and cooperate with organizations formed to provide services for the protection of consumers and ensure that the consumer's interests receive due consideration;

(3) collect, compile and analyze information in relation to a trade or business, or marketing of goods and services which are hazardous to life, health and property;

(4) provide information to consumers on their rights and to assist them making informed choices about goods and services at competitive prices, if this is not already done by consumer organizations, or by a common initiative of the Consumer Protection Unit and consumer organizations;

(5) implement education programs for the benefit of consumers and suppliers.

(6) The Minister can delegate additional functions and assignments to the Consumer Protection Unit.

(7) The Minister can assign the Consumer Protection Unit to other bodies of the Government.

Consumer Organizations

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

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

Financial independence of consumer organizations

(2) Consumer organizations may accept money for their activities from the Crown. If they receive gifts other than test copies for which the test results are published, money or donations from businesses, this would have to be mentioned in their annual reports, which are compulsory for these kinds of organizations and have to be published, at least to their members and the Ministry including the Consumer Protection Unit. In this report, the time of receipt and source of financial means have to be mentioned.

PART II

FUNCTIONS OF THE CONSUMER PROTECTION UNIT IN THE MINISTRY OF ECONOMIC DEVELOPMENT, TRADE AND INDUSTRY, CONSUMER

AFFAIRS

(...) The Consumer Protection Unit within the Ministry is responsible to

(1) take reasonable and practical measures, to promote and support the development of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market in order to meet the needs of the following persons

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

(2) monitor the operations of and cooperate with organizations formed to provide services for the protection of consumers and ensure that the consumer's interests receive due consideration at forums;

(3) collect, compile and analyze information in relation to a trade or business, or marketing of goods and services which are hazardous to life, health and property;

(4) provide information to consumers on their rights and to assist them making informed choices about goods and services at competitive prices, if this is not already done by consumer organizations, or by a common initiative of the Consumer Protection Unit and consumer organizations;

(5) implement education programs for the benefit of consumers and suppliers.

(...) The Minister can delegate additional functions and assignments to the Consumer Protection Unit.

ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION

Establishment of
Consumer Affairs
Commission

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

Functions of
Commission.

7. The Commission shall

(a) investigate complaints by consumers or a consumer association in relation to the supply of goods and services,

(b) try to solve, upon request of at least one of the involved parties or a consumer association or on its own initiative, consumer protection cases and provide redress against unfair or restrictive trade practices, by means of mediation,

(c) make annually relevant reports and recommendations to the Minister; this report and recommendations have to be made accessible to the public and, if so decided, be discussed in Parliament,

(d) carry out any other function described in this law or the Minister may assign to the Commission

(2) The Commission may enter into a transaction which is necessary to ensure the proper exercise of its functions.

Number of members.

8. The Commission shall consist of members, with a minimum of three up to a maximum of fifteen as determined by the Minister.

Cooperation with the Consumer Protection Unit

9. The secretariat of the Commission shall be run by the Consumer Protection Unit, which is responsible for the day-to-day management of the work of the Commission. Staff of the Consumer Protection Unit may be named as member of the Commission.

Appointment of members.

10. (1) The members of the Commission shall be appointed by the Minister in writing for a period up to three years, upon a recommendation by the Consumer Protection Unit, and shall be eligible for reappointment. The members collectively shall have knowledge of or experience in industry, commerce, law, public administration or consumer protection.

(2) The Minister shall appoint one of the members of the

Commission to be the Chairperson and maximum two others to be Deputy Chairpersons.

- Acting Chairperson. 11. If the Chairperson or its Deputies are absent or unable to act, the Minister may appoint another person to act temporarily in their place.
- Resignations. 12. A member of the Commission may resign by instrument in writing addressed to the Minister and transmitted through the Consumer Protection Unit, and from the date of the receipt by the Minister of such instrument, that member shall cease to be a member of the Commission.
- Revocation. 13. The Minister may at any time revoke the appointment of any member of the Commission if that member
- (a) becomes unable to perform functions by reason of mental or physical incapacity;
 - (b) or is declared bankrupt;
 - (c) or is sentenced to a term of imprisonment;
 - (d) or is convicted of an offence involving dishonesty;
 - (e) or fails to carry out any of the functions conferred or imposed under this Act.
- Publication of names of members. 6. The names of the members of the Commission and every change in the membership shall be published in the Gazette.

Procedure for meetings.

7. (1) Along with any mediation session about single consumer protection cases, the Commission holds an annual meeting where the development of complaints, their resolution and further development of consumer protection is dealt with. These meetings shall also serve as further dissemination of additional knowledge and improvement in mediation. If possible, international experience as well as general management questions of the Commission shall be discussed. Existing consumer organizations shall be invited to participate in a consulting role.

(2) If necessary, the Commission can hold extraordinary meetings in addition to its annual meeting.

(3) In the absence of the Chairperson the Deputy Chairperson shall preside at meetings of the Commission, and in the absence of both from a meeting, the members present at that meeting shall elect one of them to preside.

(4) The decisions of the Commission on recommendations for consumer protection and other issues shall be by a majority of votes and, in the case where the voting is equal, the Chairperson or other member presiding at the meeting shall have the deciding vote.

(5) Minutes of each meeting shall be kept by the secretariat and shall be confirmed by the Chairperson or other member presiding.

(6) The Commission shall have power to regulate its own proceedings.

Seal of the Commission.	9. The seal of the Commission shall be kept in the custody of the secretariat at the Consumer Protection Unit and that seal shall be affixed to instruments pursuant to a resolution, minutes and results of mediation attempts by the Commission in the presence of the Chairperson, or any other member acting as such.
Protection of members.	10. A member of the Commission shall not be personally liable for anything done or omitted by that member in good faith in the course of the operations of the Commission.
Disclosure of interest.	11. A member of the Commission who is interested in a matter which is being dealt with in proceedings before the Commission shall disclose to the Commission the fact and nature of his interest and shall not take part in any deliberation or any decision of the Commission relating to such matter and must not mediate any case. Such a disclosure shall be kept in the records of the Commission.
Remuneration of members.	12. There shall be paid to the members of the Commission remuneration, whether by way of allowance, honorarium, salary or fees, as determined by the Minister.
Funds and resources of Commission.	13. The funds and resources of the Commission shall consist of <ul style="list-style-type: none"> (a) monies placed at its disposition for the purposes of this Act by Parliament; (b) all other monies and other property which may in any manner become payable to, or vested in the Commission in respect of any matter incidental to its functions.
Expenses of Commission.	14. The expenses of the Commission, including the remuneration of the members shall be defrayed out of the funds of the Commission, which for this purpose needs no own accountancy but is managed from the Consumer Protection Unit.

Keeping of accounts and records.

15. (1) The Commission's accountancy shall be kept separately from the Consumer Protection Unit's accounts. The Consumer Protection Unit shall prepare annually a statement of accounts in a form satisfactory to the Minister in accordance with established accounting principles.

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

Annual reports and budget

16. (1) The Commission shall

(a) within four months of the end of each financial year submit to the Minister the report of its activities, including a statement of its accounts audited in accordance with the provisions of Section 15;

(b) at least three months before the end of each financial year, submit to the Minister for approval its estimates of budget for the following financial year. For the first year the budget is drafted by the Ministry.

(2) The Minister shall transmit, besides the annual periodical reports with recommendations, the annual statement of accounts and auditor's report thereon to Parliament and to be published in the Gazette.

Exemption from income tax.

17. The income of the Commission members is exempt from income tax.

PART III COMPLAINTS

**Complaints
made to be dealt
with by the
Commission**

18. (1) A consumer complaint may be made by a person who claims to have been adversely affected in relation to the acquisition of goods or services, or by a consumer organization who either represents the interests of such person or without such representation wants a general context to be clarified

(2) Where the complainant is –

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

(3) Complaints are in general solved by the means of mediation. An application for mediation can be made in direct connection with a consumer complaint and shall be made in writing, orally, by telephone or by any appropriate and understandable means. It would have to be addressed to the Consumer Affairs Commission, the Consumer Protection Unit or any bigger structure or institution which hosts them.

(4) If a complaint with application for mediation has been sent in writing, or deposited in making a statement which is reduced to writing by a duly qualified official, to any public institution, ministry, other government agencies or local or regional administration, this institution has to pass on the request immediately to the Commission.

(5) The Commission may at any time refuse to mediate the pending case and recommend the complainant to follow litigation before the competent court.

(6) Before any mediation, both parties have to sign a declaration that they accept mediation and the result thereof. After successful mediation, they have to sign the minutes of mediation, which has to contain only the results of mediation. Both parties have a right to receive a copy of both signed declarations, which will also be taken in the records of the Commission.

Manner in which complaint shall be made.

8A. (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with the Commission or as the case may be, the court by –

- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- (b) any recognized consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the Commission or as the case may be, the court on behalf of, or for the benefit of, all consumers so interested; or
- (d) the State, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fees and payable in such manner as may be prescribed by rules.

(3) On receipt of a complaint made under sub-section (1), the Commission or as the case may be the court may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

(4) Where a complaint is allowed to be proceeded with

under sub-section (3), the Commission or as the case may be, the court may proceed with the complaint in the manner provided under this Act.

Discretion
whether to
conduct
investigation

9. (1) The Commission may, in its absolute discretion, determine whether to conduct or continue an investigation under this Act. The Consumer Protection Unit is regularly charged with this investigation, but can also ask competent other government or local administration offices to conduct them. If a consumer organization is willing and able to conduct investigations, then this organization can be asked to conduct it. All investigation results have to be submitted in writing to the Commission and, if requested, also to the parties.

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

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

(3) Where, in the case it has been asked for by one of the parties, the Commission decides not to conduct or continue an investigation, it shall, in writing, inform the parties of that decision and the reasons for it.

(4) In the case that this investigation would induce costs, e.g. laboratory fees, the mediator has in the course of the mediation to find a solution about who will be charged with the costs. In general, the party to whom the investigation is not favourable has to carry the costs.

10.(1) The Commission shall, on admission of a complaint and on agreement of the complainant to bring this case to mediation,

**Procedure on
admission of
complaint**

- (a) refer a copy of the admitted complaint, within ten workdays days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of maximum thirty days or exceptionally an extended period as may be granted by the Commission, asking the opposite party if mediation can be agreed upon and fixing a mediation date; which latter can also be arranged by phone or similar means; this mediation session should take part within ten workdays after the opposite party has expressed themselves;
- (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the Commission or does not give the consent to mediation, the Commission shall proceed to declare the consumer not to be solved by mediation and will refer the complainant to the court or other measures.
- (c) hold a non-public mediation session, with the exception that both parties agree to the presence of thirds; if other public bodies had

been or are involved in the case, representatives of these bodies have the right to be present;

- (d) receive in all proceedings any document produced to the Commission as evidence at first sight of the truth of the statements contained therein,
- (e) ask witnesses or experts to testify before the Commission, without the right to summon them.

(2) The parties have the right to find solutions on all matters pending between them or seized in the mediation session. They have to be included in the minutes handed out at the end of the session.

(3) If the party who as a result of a mediation session has a claim which is not fulfilled by the opposite party in due time, a court can be asked to fulfil the claim as determined under the consent of both parties during the mediation.

**Appeal;
refusal of
mediation**

11. If there is a decision against accepting a complaint for mediation by the Commission, there is no appeal against this decision.

All complaints for mediation can be refused in favor to a recommendation to the complainant to go in ordinary litigation before the courts.

As mediation is sometimes a complicated task, the Commission may in any stage of a case declare that it feels not fit for a mediation procedure.

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PART IV
CONSUMER RIGHTS

Ambiguities to
benefit
consumer.

14. In any matter brought before the Commission or a Court shall

- (a) if a provision of this Act, read in context, can be reasonably construed to have more than one meaning, taking into consideration the spirit and purpose of this Act that aims to improve consumers' rights,
- (b) interpret information that is required to be disclosed under this Act and any document prepared or published by or on behalf of a supplier or required to be produced by a supplier, to the benefit of the consumer, that
 - (i) any ambiguity in the interpretation of a part of such information or document is resolved in the consumer's favour,
 - (ii) any restriction or deprivation of a

consumer's legal rights in a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect 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.

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

- (a) the consumer has implicitly requested the supplier to supply those goods or services by
 - (i) tendering payment for them; or
 - (ii) conduct that leads the supplier to believe that the consumer has requested the goods or services
- (b) the consumer has expressly requested the supplier to provide those particular goods or services before they are supplied to the consumer; or
- (c) the supplier has undertaken to provide those goods or services from time to time to the consumer without a specific request.

(2) Subject to subsection (4), a supplier is not entitled to demand or suggest payment from a consumer for unsolicited goods or services, despite their subsequent use, receipt, misuse, loss, damage or theft.

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

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

- (a) the recipient has unreasonably refused to

permit the supplier 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.

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

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

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

(8) Where a supplier has received payment from or on behalf of a consumer in respect of unsolicited goods or services, the consumer may demand a refund of the payment within one year after making the payment, if the consumer did not make any use of the goods or services.

(9) Goods or services are unsolicited if the goods or services are supplied to a consumer who did not request them.

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

- (a) may retain the goods without payment; or
- (b) return the goods to the supplier at the supplier's risk and expense; and
- (c) subject to subsection (4), is not liable for loss or damage to those goods while they are in transit, or after they are received by the consumer, regardless if they remain in the consumer's possession; or

- (d) use those goods after three months after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and has arranged to recover them, at the supplier's risk and expense.

(11) 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;
- (iii) the goods or services are supplied under a written future performance agreement that provides for the periodic supply of goods to the recipient without further solicitation.

Consumer's right to select suppliers and products.

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

- (a) purchase any other goods or services from that supplier;
- (b) enter into an additional agreement or transaction with the same or another supplier; or
- (c) agree to purchase any goods or services from a designated third party,

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

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

the supplier

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

Consumer's
right to
authorise
services

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

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

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

- (a) the supplier has given the consumer an estimate that satisfies the prescribed requirements, and the consumer subsequently authorises the work; or
- (b) the consumer in writing
 - (i) declined the offer of an estimate, but 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 discloses the price for preparing that estimate, and the consumer approves it; or
- (b) a diagnostic work, disassembly or re-assembly required in order to prepare an estimate; or
- (c) for any damage or loss of parts in the course of preparing an estimate.

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

Consumer's
right to choose
and examine
goods

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

(2) Where a consumer agrees to purchase goods on the basis of a description or sample of the goods it is an implied condition of the agreement that the goods delivered to the consumer

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

(3) Where a consumer agrees to purchase or lease goods on the basis of a sample, or by description, it is insufficient that the bulk of the goods needs to correspond with the sample if the goods do not correspond with the description.

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

the purpose of ascertaining whether they are in conformity with the consumer agreement.

(5) Where goods not previously examined by a consumer, are delivered, that consumer is deemed not to have accepted them until that consumer examines the goods to ascertain whether they are in conformity with the consumer agreement

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

19. (1) Unless otherwise stated in a consumer agreement, it is an implied condition of every transaction for the supply of goods that

(a) the supplier is responsible to deliver the goods to the consumer

(i) within a reasonable time;

(ii) subject to subsection (2)(a) at the supplier's place of business, or as a substitute the 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 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 a location other than a location referred to in subsection (1); 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 services, the supplier shall not require that the consumer accept delivery or performance of the services at an unreasonable time.

Consumer's acceptance of

20. (1) A consumer is deemed to have accepted goods when

goods or services.

- (a) that consumer communicates acceptance to the supplier;
- (b) the goods have been delivered to the consumer, and that consumer does an act 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 communicating non-acceptance to the supplier.

(2) Where a supplier delivers to a consumer a differing quantity of goods than the consumer agreed to buy, the consumer may accept the goods, and

- (a) pay for the agreed quantity at the agreed rate; and
- (b) treat the excess quantity as unsolicited goods in accordance with section 15.

(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 in the consumer agreement, the consumer may

- (a) accept the goods that are in accordance with the agreement and reject the remainder; or
- (b) reject the whole.

Consumer's right to cancel reservation.

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

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

- (a) may require payment of a deposit in advance, not exceeding the prescribed amount or percentage of the cost of the goods or

services that have been reserved; and

- (b) may impose a reasonable charge for cancellation of the order or reservation.

(3) A cancellation charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to

- a) the nature of the service that is being 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 a cancellation fee with respect to the reservation or booking; and
- (b) shall refund to the administrator of the consumer's estate the deposit paid by the consumer for the in respect of the reservation. or booking.

Consumer's right to rescind or cancel agreement.

22. (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 a consumer.

[(2) Subject to subsection (3), a consumer may rescind a consumer agreement

- (a) within 10 business days after delivery of goods supplied in terms of the agreement, if the agreement is a result of
 - (i) direct, distance or electronic marketing by the supplier and entails the delivery of goods the consumer; or

(ii) any other marketing after which the consumer is unable to choose or examine goods referred to in section 18;

(b) within 5 business days after entering into the agreement, if the agreement is a direct, distance or electronic marketing by the supplier but does not contemplate the delivery of goods to the consumer.

(3) A consumer may rescind a consumer agreement referred to in subsection (2) within 1 year after the agreement, if the supplier

(a) was required to be licensed or registered in terms of any public regulation, and was not so licensed or registered; or

(b) contravenes a provision of this Act in respect of the transaction.

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

(a) for the supply of a continuous service;

(b) to purchase goods or services on a periodic or recurring basis by subscription; or

(c) to make a donation on a periodic or recurring basis.

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

(6) A supplier

(a) is obliged to return a payment received from a consumer within 5 business days after receiving notice of the rescission of a consumer agreement; and

(b) is not entitled to collect a payment in ~~terms of~~ a rescinded agreement.

(7) This section does not apply to a consumer agreement in

terms of which goods have been delivered to the consumer, if

- (a) a public regulation prohibits the return of those goods to the supplier once they have been supplied to a consumer; or
- (b) after having been supplied to, the consumer, the goods are
 - (i) partially or entirely consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose; or
 - (ii) partially or entirely disassembled, physically altered, or affixed, attached, blended or combined with, or embedded within, other goods or property.

Right to information in official language

23. A consumer has a right to receive a document or sufficient labelling required under this or other Acts in the official language.

Right to information in plain and understandable language

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

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

(2) A document is in plain language if its content is comprehensive to an ordinary consumer with average literary skills and minimal experience of the relevant goods or services, who could be expected to understand the significance of the document without due effort, regarding

- (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 illustrations, examples, headings, or other aids to reading and understanding.

(3) The Minister may publish an Order with guidelines on methods for assessing a document as required under subsection (1) (b).

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

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

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

(2) Where a consumer agreement is terminated under subsection (1)(a)(ii) relating to the supply of any special-order goods, the supplier, after receiving notice of the termination

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

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

PART V
DUTIES OF SUPPLIERS

Information to consumer.

26. (1) Where goods are sold as used or unused, a supplier shall, before receiving payment, provide the consumer in English language information mentioned in subsection (2) and requirement relating to packaging, labeling or description of goods

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

(3) Where a supplier fails to comply with subsection (1) that 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.

(4) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 2,000 dollars and in default of payment of the fine, to imprisonment for a term not exceeding six months.

Disclosure of price of goods or services.

27. (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 and
- (b) in the case of goods, in an area within the supplier's premises which is not ordinarily accessible to the public.

(2) For the purposes of this section,

- (a) a price is displayed in relation to particular goods if it is
 - (i) appended, affixed to, written, printed, stamped, 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 the catalogue may reasonably be regarded as not out of date; or
- (iii) 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 the sales room in relation to the supply of the goods inside; or
- (ii) the display of that price is fully covered and obscured by another displayed price, except the price of a labeling machine which may be attached on more than one label covering another.
- (iii) if the price is not clearly visible to the customer, or visible from his usual position

(3) Where a supplier displays goods for sale or offers to supply any services in relation to which more than one price is concurrently displayed, section 28 applies.

(4) Subsection (3) does not apply to goods and services if the price of those goods and services are determined by an enactment.

(5) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 10,000 dollars and in default of payment of the fine, to imprisonment for a term not exceeding one year.

Gross pricing 28. All price indications, catalogues, advertisements, Internet offers from the territory of Belize or a Internet provider from Belize, which are directed to private consumers, have to include all tax on the sales prices.

Dual pricing 28A. (1) Where, under section 30, more than one price is displayed on goods

(a) the customer is entitled to pay the lowest price that is displayed; and

(b) a supplier shall not supply the goods at a price that is higher than the lowest price.

(2) A supplier who contravenes subsection (1)(b) commits an offence and is liable on summary conviction to a fine not exceeding 10,000 dollars or imprisonment for a term not exceeding one year or to both.

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

(a) the contravention for which the prosecution was instituted was due to

(i) the act or default of another person (other than a director, employee or agent of the defendant); or

(ii) an accident or to some other cause beyond the defendant's control; and

(b) the defendant takes all reasonable precautions and exercises due diligence to avoid the contravention.

Identification of supplier. 29. (1) A person shall not carry on business, advertise, or supply any goods and services, or enter into a transaction or

consumer agreement with a consumer under a name except

- (a) the person's official name, as
 - (i) recorded in an official identity document or another recognised identification document, in the case of a natural person; or
 - (ii) registered under an enactment, in the case of a legal person; or
- (b) a name registered to that person under an enactment.

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

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

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 20,000 dollars and in default of payment of the fine, to imprisonment for a term not exceeding two years.

Product
labelling and
trade
descriptions.

30. (1) A supplier of goods shall not display, offer to supply or supply goods, other than those that are exempt under subsection (3), unless a trade description of those goods is

- (a) applied or attached to the goods, or to a covering, label or reel on which the goods are packaged;
- (b) displayed together with the goods in a manner that leads to the belief that the goods are designated or described by that description; or
- (c) contained in a sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication with which a

consumer may request or order the goods.

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

(3) The Minister, may

- (a) exempt goods or categories of goods from the application of subsection (1) if
 - (i) those goods, or that category of goods, are subject to regulation under another enactment, and the Minister is satisfied that the regulatory scheme provides for adequate disclosure of information to the consumer; or
 - (ii) the information 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 goods or categories of goods, which if satisfied, would exempt those goods from the application of this section.

- (4) It is an offence for a person to
- (a) knowingly apply to goods a trade description

that is likely to mislead a consumer; as to any matter implied or expressed in that trade description

- (b) alter, deface, cover, remove or obscure a trade description or mark applied to goods in a manner calculated to mislead consumers; or
- (c) fails to take steps to prevent another person from doing anything referred to in paragraph (a) or (b)

(5) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding 20,000 dollars and in default of payment of the fine, to imprisonment for a term not exceeding [two] years.

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

- (a) a description, statement or other direct or indirect indication, except a trade mark, as to
 - (i) the number, quantity, measure, weight or gauge of goods;
 - (ii) the name of the producer of goods;
 - (iii) the ingredients of goods or material of which goods are made;
 - (iv) the place or country of origin of goods;
 - (v) the mode of manufacturing or producing goods; or
 - (vi) goods being the subject of patent, privilege or copyright; or
- (b) 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 stated in paragraph (a).

Disclosure of environmental facts affecting goods

31. (1) In addition to the requirements of section 30, a person who packages or imports any prescribed goods, for consumers shall display on or in association with that packaging or those goods, a notice in the prescribed manner and form that discloses

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

(2) A person who supplies to a consumer goods that are prescribed in subsection (1), shall

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

(3) Subsection (1) does not apply to goods and services where a substantially similar label or notice is applied or provided in terms of any other public regulation.

(4) A supplier of goods shall

- (a) not offer to supply, display, or supply any goods if the supplier knows, or reasonably could determine, or has reason to suspect, that;

- (i) a notice applied to those goods is likely to mislead a consumer as to any matter implied or expressed in that notice; or
- (ii) a notice applied to those goods is altered under subsection (5); and

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

- (5) It is an offence for a person to
- (a) knowingly apply to goods a notice that is likely to mislead a consumer, implied or by direct expression;
 - (b) alter, deface, cover, remove or obscure a notice applied to goods in a manner calculated to mislead a consumer; or to goods within that person's control; or
 - (c) fail to take steps to prevent another person from doing anything under paragraph (a) or (b).

(6) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding 20,000 dollars and in default of payment of the fine, to imprisonment for a term not exceeding two years.

Disclosure of re-conditioned goods.

32. A person who offers or agrees to supply, or supplies, goods that

- (a) are re-conditioned, re-built or re-made; and
- (b) bear the trade mark of the original manufacturer or supplier,

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

Sales records

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

- (a) the supplier's name, or registered business name, and the GST 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 applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including applicable taxes; and
- (j) other information prescribed under this or another enactment.

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

(3) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 10,000 dollars or to imprisonment for a term not exceeding one year or to both.

Utility of sales record

34. The sales record provided 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 specified in this Act.

Measurement of goods

35. (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 goods that is sold by weight, volume or other measurement shall provide, to a consumer at the time of purchase, appropriate measurement standards.

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

(a) purported to be supplied; or

(b) corresponding with the price charged,

commits an offence and is liable on summary conviction to a fine not exceeding 2.000 dollars.

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

Warranties

36. (1) Subject to the standard provision of warranties, a supplier shall issue explicit warranties for goods and services supplied, whether those goods are new or used, or whether the service offered is the repair of any appliance, furniture, equipment or other good.

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

(a) be deemed to have issued to the customer, the manufacturer's warranty as an explicit warranty by the supplier; and

(b) despite any geographical limitations in the warranty, be liable to the consumer under the warranty as if the supplier were the manufacturer.

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

(a) there is implied, a warranty that the repair or replacement shall be carried out within a reasonable time; and

(b) 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 be attached to the transaction.

Quality of
Services or
goods

37. (1) A supplier is deemed to warrant that the goods and services supplied under a consumer agreement are of an acceptable quality.

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

(3) The implied conditions and warranties applying to the sale of goods under the Sale of Goods Act are to apply with necessary modifications to goods that are leased or traded under a consumer agreement.

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

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

Supply of
damaged goods
to consumer.

39. (1) A supplier shall be responsible for replacement or repair of goods at no cost to a consumer 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 or undue utilization by the consumer,

(2) In accordance with subsection (1) a supplier shall, in the event of repair of goods

- (a) return the goods to the consumer in a fully repaired and functional state within the shortest possible but necessary period, after receipt of the goods for repair or replacement, and
- (b) if it is not returned to the consumer within the period agreed upon between the supplier and the customer, 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

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

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

- (a) replace the goods within 2 days of the return of the goods if a replacement is objectively available; in the negative case the supplier bears the burden of proof and has to order the replacement from his own wholesale supplier or manufacturer immediately and pass on the information about this order, or
- (b) at the election of the consumer, immediately refund the value of the goods or such other

amount agreed between the consumer and supplier.

(3) A supplier is obliged to replace or make refunds on goods returned under subsection (1) only when 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 a defect.

(4) A supplier who fails

- (a) to replace the goods within 2 days of the return of the goods; or cannot prove upon request that he immediately ordered a replacement by his wholesaler or manufacturer,
- (b) where applicable, to immediately refund the value of the goods or the amount agreed between himself and the consumer,

commits an offence and is liable on summary conviction to a fine not exceeding 5,000 dollars.

(5) A supplier who sells goods similar or identical to what is requested or described, shall not refund a consumer if after leaving the supplier's premises, that consumer no longer wants the goods.

Return of materially differently goods.

41. (1) Where a consumer is encouraged to acquire goods by the supplier's declaration and description of the goods, and the consumer subsequently discovers that the goods acquired are different in a material particular from that intended to be acquired, subject to subsection (2) and (3)

- (a) the consumer may return the goods to the supplier; and
- (b) the supplier shall immediately 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.

(2) Subsection (1) does not apply unless the goods are returned to the supplier in the condition in which they were purchased or with minimal damage resulting from 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.

Approved and non-approved services.

42. (1) A supplier shall
- (a) only provide such services as are approved by the consumer; and
 - (b) not require a consumer to pay for additional services which, in addition to those contracted, may, in the opinion of the supplier, may be necessary or appropriate.
- (2) A consumer shall not be liable to pay for a service not approved by that consumer.

Businesses offering repair services.

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

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

(3) A supplier who offers a repair service shall

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

(4) A supplier who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding 2.000 dollars.

Advertised
delivery date

44. (1) Where

- (a) a supplier has advertised a date or period for delivery of any new, used or repaired goods; and
- (b) a consumer has entered into a consumer agreement with, and given a reasonable deposit to the supplier to deliver the goods,

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

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

- (a) refund the deposit inclusive of interest for the period beginning the date of the deposit and ending on the date of its refund, at an annual rate of ten percent above the Treasury Bill rate applicable at the former date
- (b) deliver those goods by another date or within another period agreed with the consumer.

(3) A supplier who has advertised a completion or delivery date, and has obtained from the consumer a deposit for the provision of the goods or service, may elect to terminate the contract within five days after the receipt of the deposit and shall refund the full value of the deposit within two work days.

Conditions of
demanding and

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

accepting
payment

of the demand or acceptance, that person

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 10,000 dollars or imprisonment for a term not exceeding one year or both.

General
standards for the
promotion of
goods or
services

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

- (a) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of
 - (i) the nature, properties, advantages or uses of the goods or services;
 - (ii) the manner in or conditions on which those goods or services may be leased or purchased -or otherwise acquired;
 - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, a previous price, or competitors price for comparable or similar goods or services; comparative advertising is, however, allowed under the condition that own and competitors' prices are objectively mentioned and no disparagement about competitors is advertised;
- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning

those goods and services, under section 47;

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

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 30,000 dollars and in default of payment of the fine, to imprisonment for a term not exceeding two years.

PART VI **UNFAIR PRACTICES**

False, misleading or deceptive representations.

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

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

- (a) directly or indirectly express or imply a false,

misleading representation concerning a material fact to a consumer; or prospective consumer

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

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

- (a) the supplier has status, affiliation, connection, sponsorship or approval that does not exist;
- (b) goods and services
 - (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that do not exist;
 - (ii) are of a particular standard, quality, grade, style or model;
 - (iii) are new, if they are not or if they are reconditioned or reclaimed, subject to subsection (4);
 - (iv) have been used for a period, or in a manner that is materially different from the facts;
 - (v) have been supplied in accordance with

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

(4) A representation under subsection (3)(b)(iii) to the effect that goods are new, is not misleading 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.

47A (1) No supplier shall adopt or indulge in a trade practice which:

- (a) tends to bring about manipulation of price or conditions of delivery or affect the flow of supplies in the market relating to goods or services to impose unjustified costs or restrictions on a consumer;
- (b) delay 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;
- (c) requires a consumer to buy, hire or avail of goods or, services as condition precedent to buying, hiring or availing of other goods or services.

(2) A supplier who adopts or indulges in the restrictive trade practice commits an offence and is liable on summary conviction to a fine not exceeding 100,000 dollars and with imprisonment for a term which may extend to three years.

Prohibition on unfair trade practice.

47B. (1) No supplier shall adopt or indulge in any unfair trade practice.

(2) For the purposes of this section, any trade practice which, for the purpose of promoting the sale, use or supply of goods or for the provision of any service, adopts unfair method or unfair or deceptive practice including any of the following practices shall be considered as unfair trade practice, namely

(1) The practice of 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;
- (iii) falsely represents that the services are of a particular standard, quality or grade;

- (iv) falsely represents a 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 such goods or services do not exist;
- (v) represents that the supplier has a sponsorship or approval or affiliation which such supplier does not exist;
- (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

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

- (viii) makes to the public a representation in a form that purports to be
- (ix) a warranty of or guarantee of a product or of any goods or services; or
- (x) a promise to replace, maintain or repair an article or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading; or if there is no reasonable prospect that such

warranty, will be carried out;

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

(xii) gives or misleading facts disparaging the goods and services or trade of another supplier.

(2) For the purposes of clause (1), a statement that is

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

(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, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

(d) shall be deemed to be a statement expressed to the public by a person;

(3) Permits the publication of an advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

(4) For the purpose of clause (3), 'bargaining price' means

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

(5) Permits

- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(6) Withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

(7) For the purposes of clause (6), the participants of a scheme shall be informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

(8) Permits the sale or supply of 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;

(9) Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to

provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(10) Manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

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

Unreasonable transactions

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

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

(2) An unreasonable transaction cannot be enforced against a consumer.

Unfair or unjust transactions.

49.(1) A supplier must not

- (a) offer to supply, supply, or enter into an agreement to supply, any goods or services at a price or on terms that are unfair or unjust; or
- (b) market any goods or services, or negotiate, enter into or administer an agreement for the supply of any goods or services, in a manner that is unfair or unjust, having regard to

- (i) the fair value of the goods or services;
- (ii) the circumstances of the agreement;
- (iii) the nature of the parties to that agreement;
- (iv) the relationship of the parties to each other; and the relative capacity, education, experience and bargaining position of the parties.

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

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

(3) An unfair or unjust transaction cannot be enforced against a consumer.

Unconscionable
conduct

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

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

- (a) marketing of goods and services;
- (b) supply of goods or services to a consumer;

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

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

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

- (a) the consumer is not reasonably able to protect his interests due to disability, ignorance, illiteracy, or 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 consumers
- (c) the consumer is unable to receive a substantial benefit from the subject matter of the representation
- (d) there is no reasonable probability of payment of the obligation in full by the consumer
- (e) the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
- (f) a statement of opinion is misleading and the consumer is likely to rely on it; to his detriment; or

(f) a consumer is being subjected to undue pressure to enter into a consumer transaction.

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

Renegotiation of terms.

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

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

Bait advertising.

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

(a) does not intend to offer for supply; or

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

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

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

Referral selling.

53. (1) A supplier shall not induce a consumer to acquire goods or services under a consumer agreement by

representing that the consumer will, after the agreement is made, receive a rebate, commission or other benefit in return for giving the first-mentioned person the names of prospective consumers or otherwise assisting that person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after the agreement is made.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 100,000 dollars or imprisonment for a term not exceeding two years or to both.

Pyramid
selling

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

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

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

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

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 100,000 dollars or imprisonment for a term not exceeding two years or to both.

Exception. 55. 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.

Rescission. 56. (1) Where a consumer has entered into a consumer agreement in which the supplier has engaged in an unfair practice, the consumer agreement may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law.

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

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

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

Defences for contravention of this Part. 57. (1) Subject to subsection (2) in a prosecution under this Part, it is a defence if the defendant proves

- (a) that the contravention 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 due diligence was exercised to avoid the contravention.

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

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

the defendant is not, without leave of the court, entitled to rely on that defence unless he has, not later than 7 days before the day on which the hearing of the proceeding commenced, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

(3) In proceedings under this section it is a defense if the defendant proves that he, in cases of contravention committed by the publication of an advertisement,

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

Court may order payment of damages or costs.

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

- (a) refund the consumer's deposit
- (b) pay to the consumer damages, a sum representing the costs reasonably incurred by that consumer; and
- (c) pay the costs incurred in relation to the prosecution of the offence.

PART VII
UNFAIR TERMS

Unfair terms.

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

(2) In determining whether a term is unfair a Court shall take into consideration all the circumstances of the case and

- (a) the bargaining strengths of the parties to the agreement taking into account
 - (i) the availability of equivalent goods or services; and
 - (ii) suitable alternative sources of supply;
- (b) whether the consumer is the recipient of an inducement to agree to the term or has an opportunity to acquire the goods or services from another source not included in the

contract

- (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to any custom of trade and any previous dealings between the parties;
- (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer;
- (e) the nature of the goods or services for which the agreement was concluded;
- (f) the interests of the supplier;
- (g) the other terms of the agreement or of another agreement on which it is dependent;
- (h) the interests of the particular group of consumers who are likely to adhere to the agreement; and
- (i) the circumstances of the conclusion of the agreement. at the time of its conclusion.

(3) An unfair term in a consumer agreement cannot be enforced against the consumer.

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

(5) If a Court, is of the opinion that a term under subsection (2) is unfair, it may

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

Written terms to be plain and intelligible.

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

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

(3) The assessment of the fairness of a term that is plain and intelligible shall not relate to

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

Excluding

61. (1) A term of a consumer agreement, including a term that is incorporated in the agreement is void if

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

(2) A term of a consumer agreement is not to be taken as purporting to 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

62. 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

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

- (a) arises from the goods proving defective while in consumer use; and

- (b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

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

(2) For the purposes of this section

- (a) Goods are to be regarded as being in consumer use when a person is in possession of them for use other than for the purposes of a business
- (b) anything in writing is a guarantee if it contains an assurance that defects will be made good by repair, replacement or monetary compensation

Effect of obligation

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

Satisfying reasonableness where agreement terminated

65.(1) Where a term of a consumer agreement is required to be fair, it may be given effect, regardless of the fact that the agreement is terminated by breach or a party electing to reject it

(2) Where a breach of a consumer agreement is confirmed by a party entitled to do so, such affirmation does not rule out the requirement of reasonableness in relation to any term of a consumer agreement.

Reasonableness

66.(1) A term of a consumer agreement satisfies the condition of reasonableness if the term is fair and reasonable regarding the circumstances under which the parties make

the contract.

(2) where a person seeks to restrict their liability to a specified sum by reference to a notice of a term of the agreement, and the validity of subsection (1) is questioned, then, regard shall be given to

- (a) the resources which a person could expect to be available for the purpose of meeting the liability and
- (b) the extent to which it was open for that person to receive insurance coverage.

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

PART VIII **PRODUCT LIABILITY**

Interpretation of
this part.

67. (1) In this Part,

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

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

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

“producer”, in relation to a product, means

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

“product” means any goods, including animals or agricultural produce reared or grown for supply, and, subject to subsection (2), includes a product which is comprised in

another product, whether by virtue of being a component part or raw material or otherwise.

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

Liability for defects.

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

- (a) the following persons are liable for the damage
 - (i) the producer of the product;
 - (ii) a person whose name, trade mark or other distinguishing mark in relation to the product has held himself out to be the producer of the product; and
 - (iii) a person who has imported the product into Belize, to, in the course of business, supply it to another.

- (b) a person who supplied the product to the person who suffered the damage, to the producer of a product which is in question or another person is liable for the damage if
 - (i) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom paragraph (a) applies in relation to the product;
 - (ii) that request is made within one year after the damage occurs or the damage has been noticed by the consumer; and
 - (iii) the supplier fails, within one month after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

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

(3) This section is without prejudice to any liability arising

otherwise than by virtue of this Part.

Defect
inferred.

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

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

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

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

- (a) the manner in which and the purposes for which the product has been marketed,
- (b) its appearance,
- (c) the use of a mark in relation to the product
- (d) any instructions or warnings with respect to, doing or refraining from doing anything with or in relation to the product;
- (e) what might reasonably be expected to be the due use of the product;

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

Damage giving
rise to
liability

70.(1) A person is not liable under section 68 for any damage to property which is not

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

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

property had knowledge of the material facts about the damage.

(3) For the purposes of subsection (2)

(a) the material facts about damage to property are such facts that lead a person to who is interested in that property to consider the damage serious enough to institute proceedings for damages against a defendant [who does not dispute liability and is able to satisfy a judgment;

(b) a person's knowledge includes what that person is expected reasonably to acquire from facts observable or ascertainable by him or with the help of appropriate expert advice.

(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

71. 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

72. 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 under an enactment;
- (b) the product was not at any time supplied by the defendant;
- (c) the following conditions are satisfied,
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
 - (ii) that section 68(1)(a) does not apply to the supplier, or applies to him by virtue only of things done otherwise than with a view to profit;
- (d) the defect did not exist in the product at the

- relevant time;
- (e) the state of scientific and technical knowledge at the relevant time is not such that another producer of products of the same description as the product in question is expected to discover the defect if it exists in those products while they were under their control; or
- (f) the defect
 - (i) constitutes a defect in a product, in this paragraph referred to as “the subsequent product”, where 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 State.

73. The Crown shall not as regards to liability, be bound by this Part further than is made liable in tort or in reparation under Crown proceedings

PART IX **CONSUMER SAFETY**

Interpretation of this Part.

74. (1) In this Part,

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

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

“safety regulations” means regulations made by the Minister under section 76.

(2) In subsection (1), a reference to the “keeping, use or consumption of any goods” is a reference to

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

General safety requirement.

75. (1) A person shall not

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

(2) In determining when goods fail to meet the general safety requirement includes the following:

- (a) the manner in which the goods are marketed, the appearance of the goods, the use of a mark in relation to the goods and instructions which are given regarding the use of those goods,
- (b) applicable safety standards; and
- (c) the existence of means where goods are made to be safer.

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

- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any enactment; or
- (b) a failure to do more in relation to a matter than is required by
 - (i) safety regulations imposing requirements. Hereupon, ;
 - (ii) standards of safety prescribed or
 - (iii) a provision of any enactment imposing requirements with respect to that matter

(4) In proceedings against a person for an offence under this

section , it is a defence to show that

- (a) the goods would not be consumed in Belize, the CARICOM Member States and the SICA];
- (b) the goods for supplyin the course of carrying on a retail business, unbeknownst to the supplier, are not compliant with the general safety requirements, or
- (c) the terms on which the goods are intended for and supplied, the acquisition of an interest in the goods by persons to be supplied.

(5) For the purposes of subsection (4)(b), goods are supplied

- (a) if they are supplied in the course of carrying on a business and make a supply of consumer goods available to persons who generally acquire them for private use or consumption; and
- (b) the descriptions of goods tmanufactured or imported that are available for supplythat have not been previously supplied in Belize,

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding 80.000 dollars and in default of the payment of the fine, to imprisonment for a term not exceeding two years.

Safety
regulation.

76. (1) The Minister may, after consulting the Bureau of Standards, make safety regulations for the purposes of ensuring that

- (a) goods under this section 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, to persons of that description; and
- (c) appropriate information relating to goods are supplied.

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

- (a) with respect to the performance, composition design, construction, or packaging of goods and to other matters relating to such goods;
- (b) with respect to the distribution, alteration or cancellation of goods, descriptions of such

- (c) goods or standards for such goods;
with respect to the conditions that are attached to an approval given under the regulations;
- (d) prescribing the fees to be paid on the giving or alteration of an approval under the regulations and on the application for such an approval or alteration;
- (e) with respect to appeals against refusals, alterations and cancellations of approval under the regulations and against the conditions contained in such approvals;
- (f) for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
- (g) with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
- (h) with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
- (i) requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;
- (j) prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
- (k) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling that person to exercise any function conferred on

him by the regulations.

- (3) A safety regulation may
- (a) contain different provisions for different cases;
 - (b) provide for exemptions from a provision of the regulation;
 - (c) contain supplemental, consequential and transitional provisions as the Minister considers appropriate.

(4) This section applies not to aircraft.

Contravention of
safety
regulations.

77. (1) Where a safety regulation prohibits a person from supplying or offering or agreeing to supply goods, an offence is committed if that person contravenes the prohibition.

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

- (a) to conduct a test or use a procedure in connection with the processing of the goods in order to ascertain whether the goods satisfy a regulations; or
- (b) to deal with goods that do not satisfy a test or standards connected with a procedure, ,

that person commits an offence if the requirement is not complied with.

(3) A person who contravenes a provision of safety regulations by means of a mark or information in relation to goods, commits an offence.

(4) Where a safety regulation requires a person to give information for the purpose of enabling that another person to exercise a function, that person commits an offence if

- (a) without reasonable cause it is failed to comply with the requirement; or
- (b) in giving the information required of such person
 - (i) by a statement which is false in a material particular; or
 - (ii) a reckless statement which is false in a

material particular.

(5) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding 80,000 dollars and in default of the payment of the fine, to imprisonment for two years.

PART X

RECALL OF GOODS

Compulsory recall
of goods

78. (1) Subject to sections 81 and 82, where goods are supplied on or after the commencement date of this Act and those goods may cause injury or a menace for the life or the health of humans and animals of the house, and if the supplier has not taken satisfactory action to prevent the goods causing injury loss or damage to any person, the Minister may publish a notice in the Gazette and at least four newspapers in general circulation in Belize, and require the supplier to do one or more of the following

- (a) take action within the period specified in the notice to recall the goods;
- (b) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;
 - (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
 - (iii) refund to a person to whom the goods were supplied, whether by the supplier or by another person, the price of the goods, within the period specified in the notice.

(2) The Minister may publish in the Gazette and four newspapers of general circulation in Belize, giving directions on what is required of suppliers to carry out a recall of goods

under subsection (1).

(3) Where a supplier under subsection (1) undertakes to

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

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

- (a) stating that the goods are subject to recall; and
- (b) if the goods contain a defect or have a dangerous characteristic, stating 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 5 days after giving that notice, provide the Minister with a copy of that notice.

(6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding 20,000 dollars or imprisonment for a term not exceeding six months.

Compliance With goods recall notice.

79. Where a notice under section 78(1) is in force the supplier

- (a) shall comply with the requirements of the notice; and
- (b) shall not, in trade whatsoever
 - (i) where the notice specifies a defect in goods, or a dangerous characteristics of the goods, supply goods of the kind

- to which the notice relates, which have that defect or characteristic; and
- (ii) in any other case, supply goods of the kind to which the notice relates.

Loss or damage caused by contravention of goods recall notice.

80. Where a person fails to comply with a notice under section 78 and another person suffers injury, losses 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

81. (1) Subject to section 82, where the Minister proposes to publish a notice under section 78(1) the Minister shall by notice in writing published in the Gazette and at least four newspapers in general circulation in Belize, invite any person, who supplied or proposes to supply goods of the kind referred to in the draft to notify the Minister, whether that person wishes the Minister to hold a conference in relation to the proposed notice.

(2) A notice published under subsection (1) shall set out a draft of the notice the Minister proposes to publish under section 78(1) and a summary of the reasons for the proposed notice.

(3) Where the Minister is not requested in accordance with subsection (1) to hold a conference, the Minister shall proceed to take such action under section 78.

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

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

- (a) the Minister or a person nominated by the Minister is entitled to be present;
- (b) each supplier who notified the Minister in accordance with subsection (4) is entitled to be present or be represented;
- (c) another person whose presence at the conference is considered by the Minister to be appropriate is entitled to be present or to be represented; and

(d) the procedure to be followed shall be as determined by the Minister.

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

(7) The Minister shall ensure that each person who, is given a reasonable opportunity at the conference to

- (a) present a case; and
- (b) inspect documents which the Minister proposes to consider for making a decision after the conclusion of the conference.

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

International cooperation

82. The Minister makes use of all possible international governmental channels, if he deems a danger not only for the people of Belize, but also one on international level, or if trade flows require international action..

Exception in case of danger to public.

83. (1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister shall publish in the Gazette and in at least four newspapers in general circulation in Belize, a notice under section 78(1) in relation to the goods.

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

- (a) in a case where the notice is published before the Minister takes any action under section 81(1) in relation to goods of a particular kind, section 81 does not apply in relation to the action that the Minister may take under section 78 in relation to goods of that kind; or
- (b) in any other case, any action taken by the Minister under section 81(1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 81 been arranged or had commenced, the Minister may publish the notice under section 78(1) without regard to the action taken under

section 81.

Power to obtain information, documents and evidence.

83. (1) Where the Minister or an officer authorised by the Minister for the purposes of this section, in this section referred to as an “authorised officer”, has reason to believe that a person who, in trade or commerce, supplies consumer goods of a particular kind which will or may cause injury or serious harm to any person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Minister or the authorised officer may, by notice in writing served on that person, require him

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

(2) Subject to subsection (3), where an authorised officer has reason to believe that goods will or may cause injury to a consumer, he may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any consumer, enter any premises in or from which he has reason to believe that a person supplies goods of that kind in trade or commerce and

- (a) inspect those goods;
- (b) take samples of those goods;
- (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 or storage of those goods.

(3) The powers of an authorised officer under subsection (2) is void unless

- (a) a warrant is issued under subsection (5); or
- (b) the exercise of those powers is required

without delay in order to protect life, health or public safety.

(4) An authorised officer may apply to a magistrate for the issue of a warrant to exercise the powers of an authorised officer under subsection (2).

Application
warrant.

84. (1) Where an application is made to a magistrate under section (83)(4), the magistrate may issue a warrant authorising an authorised officer named in the warrant, with such assistance as the officer thinks necessary and if necessary by force, to

- (a) enter the premises specified in the warrant; and
- (b) exercise the powers of an authorised officer under subsection 83(2).

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

- (a) an affidavit is produced setting out the grounds on which the warrant is being sought;
- (b) the applicant or another person gives the magistrate further information, concerning the grounds on which the warrant is being sought; and
- (c) the magistrate is satisfied that there are grounds for issuing the warrant.

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

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

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

- (a) announce that he is authorised to enter the premises;
- (b) be afforded an opportunity to be allowed to enter the premises.

(5) An authorised officer or a person assisting such officer is

not required to comply with subsection (4) if he believes on reasonable grounds to believe that immediate entry to the premises is required to ensure

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

(6) Where an authorised officer takes a sample under section 83 (2) (b), a reasonable price shall be paid for the goods sampled.

(7) A person who

- (a) fails to comply with a notice under this section or
- (b) in compliance with a notice furnishes information or gives evidence that, to his knowledge, is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding 80.000 dollars.

(8) A person who fails to provide an authorised officer acting in accordance with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding 50.000 dollars.

(9) Any information or document furnished or evidence given by a person under this section, any document produced by a person under this section, is not admissible as evidence against that person

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

Voluntary recall

84A. (1) Where a supplier voluntarily takes action to recall goods because the goods will or may cause injury, loss or damage to any person shall, within two days after taking that action, give a notice in writing to the Minister

- (a) that the goods are subject to recall; and

(b) setting out the nature of the defect or dangerous characteristic of the goods.

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

Suppliers to be given notice in certain cases.

85. Where the Minister publishes a notice under section 81(1) or pursuant to 82(1) shall, within two days after the publication of that notice or after the end of that period, cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies goods of the kind to which the notice relates.

Certain action not to affect insurance contracts.

86. The liability of an insurer under a contract of insurance with a supplier, which is relating to

- (a) the recall of goods supplied 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 Consumer Affairs Commission, the Minister or a public officer, information relating to goods supplied. or proposed to be supplied by that supplier.

PART XI **MISCELLANEOUS**

Void provisions of consumer agreements.

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

- (a) its general purpose or effect is to
 - (i) defeat the purpose and policy of this Act;
 - (ii) misleads a consumer; or
 - (iii) subject a consumer to fraudulent conduct;

- (b) it directly or indirectly purports to
 - (i) waive or deprive a consumer of a right
 - (ii) avoid a supplier's obligation or duty ;
 - (iii) overrides the effect of a provision in this Act; or

- (iv) authorise the supplier to do anything that is prohibited 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 warranties were made in connection with the agreement by 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 22;
 - (ii) fails to comply with a provision of the agreement before receiving any goods or services under the agreement;
- (e) it expresses, on behalf of a consumer
 - (i) an authorisation for a representative of that supplier to enter a premises to take possession of goods to which the agreement relates;
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed; or
 - (iii) consent to a pre-determined value of costs relating to enforcement of the agreement; or
- (f) it expresses an agreement by a consumer to
 - (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card,

or any similar document or device; or

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

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

- (a) sever that void provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
- (b) declare the entire agreement void as from the date that the agreement, or amended agreement, took effect, and

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

(4) A supplier shall not

- (a) 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 a consumer to
 - (i) give the supplier possession of an instrument referred to in subsection (1)(f)(i) other than for the purpose of identification, or to make a copy of the instrument;
 - (ii) reveal any personal identification code or number referred to in subsection 1(f)(ii); or
- (c) direct, or knowingly permit, another person to do anything referred to in this section on behalf or for the benefit of a supplier.

(5) A supplier who contravenes any provision of subsection (4) (b) commits an offence and is liable on summary conviction to a fine not exceeding 50,000 dollars or to imprisonment for a

term of one year.

Goods or
services acquired
by installment.

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

(2) The supplier shall

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

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

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

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

- (a) the amount paid will be credited to the amount owing at the next time that an accurate claim is presented; and
- (b) the supplier shall under no circumstances, be able to terminate the agreement or impose any penalty 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 a claim for goods or service shall present an accurate claim no later than [90] days after presentation of the estimate.

(6) Subsection (5) shall apply despite that the consumer of the goods or service does not pay the estimated amount claimed.

Apportionment of payments where service not received.

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

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

(4) A supplier who offers a service to 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 such conditions attached by the supplier as may be reasonable to the consumer's enjoyment of that benefit; and
 - (ii) if the benefit is not enjoyed, the supplier shall again provide the service free of cost to the consumer.

Supplier
purporting to
act on Bill of Sale

90. (1) A supplier commits an offence if
(a) that supplier acts on the powers contained in a Bill of Sale of moveable personal property pledged by a consumer; and

(b) that supplier employs a person other than a Bailiff to recover any or all of the property pledged in the Bill of Sale in the event of default in repayment of a loan.

(2) A supplier who commits an offence under subsection (1) shall, upon summary conviction be liable to a fine not exceeding 80.000 dollars and in default of payment to imprisonment for a term not exceeding two years.

(3) A supplier commits an offence if, in taking action to recover any or all of the property pledged by the consumer in the Bill of Sale in the event of default in repayment of a loan, he carries out an act of seizure although the consumer's indebtedness to the supplier

(a) is already discharged; or

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

(4) A supplier who commits an offence under subsection (3) shall, on summary conviction be liable to a fine not exceeding 80.000 dollars and in default of payment to imprisonment for a term not exceeding two years.

(5) The court may order a supplier convicted of an offence under subsection (3) to pay to the consumer an amount equal to ten times the market value of the property seized plus an amount of 2.000 dollars per day for every day that the consumer is deprived of the use and enjoyment of those chattels.

(6) A person, who wrongfully seizes the property of a consumer, despite any other charge that may be brought against that person, commits an offence and is liable on summary conviction to a fine not exceeding 100.000 dollars.

(7) A person who commits an offence under subsection (6) shall, upon summary conviction be liable to a fine not exceeding 100.000 dollars and in default of payment to imprisonment for a term not exceeding two years.

(8) The court may order a person convicted of an offence under subsection (7) to pay to the consumer an amount equal to ten times the market value of the property seized plus an amount of 2,000 dollars per day for every day that the consumer is deprived of the use and enjoyment of the property.

Trade coupons and similar promotions.

91. (1) A person shall not offer any prize with the intention of not providing it, or providing other than what is offered.
- (2) A document setting out an offer under in subsection (1) must 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 consumer to accept that offer or to receive the benefit of the offer; and
 - (d) a person from whom, any place where, and date and time at which the consumer may receive the benefit.

Promotional competitions.

92. (1) In this section
- “participant” means a person who enters into a promotional competition;
- “promoter” means a person who directly or indirectly promotes, sponsors, organises or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organised or conducted.
- (2) A person shall not inform a consumer, or prospective consumer that the consumer or prospective consumer
- (a) has won a competition, if
 - (i) no competition has in fact been conducted;
 - (ii) the consumer has not expressly or implicitly entered into such a competition, or has not in fact won the competition;
 - (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 is 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 is generally available or offered to all similar prospective consumers or class of prospective consumers;
 - (iii) if, before becoming eligible to receive the prize or benefit, the consumer is required to offer further consideration for the prize or to purchase any particular goods or services.

(3) The promoter of a promotional competition shall

- (a) not require any consideration to be paid by or on behalf of a participant in the promotional competition;
- (b) file a copy of the competition rules in the prescribed manner and form with the Commission no later than the date on which consumers are able to participate in the competition;
- (c) make the competition rules available on request and without cost to any participant;
- (d) not award a prize in a competition to
 - (i) a winner of the competition if it is unlawful to supply those goods or services to the prize winner, but this subparagraph 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, a public regulation; or
 - (ii) a person who is a director, member, partner, employee or agent of, or consultant to the promoter, or another person who controls, or is controlled by, the promoter, or to a supplier of goods or services in connection with that competition.

(4) For greater certainty in applying subsection (3)(a), a promoter shall be regarded as receiving consideration in respect of a promotional competition if

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

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

- (a) the benefit or competition to which the offer relates;
- (b) the steps required by a person to accept the offer 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 a particular prize in that competition;
- (e) the medium through or by which the results of the competition will be made known; and
- (f) a person from whom, a place where, and a date and time on which the successful participant may receive the prize.

(6) The requirements of subsection (5) may be satisfied either

- (a) directly on a medium through which a person participates in a promotional competition;
- (b) on a document accompanying a medium

- under paragraph (a); or
- (c) in a advertisement that
 - (i) is published during the time and throughout the area in which the promotional competition is conducted; and
 - (ii) draws attention to and is clearly associated with the promotional competition.

(7) The right to participate in a promotional competition is fully vested in a person immediately upon

- (a) complying with conditions that are required; to earn that right; and
- (b) acquiring possession or control of a medium through which a person may participate in that promotional competition.

(8) The right to any benefit conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately upon the determination of the results of the competition.

(9) A right under subsection (7) or (8) must not be

- (a) made subject to a further condition; or
- (b) contingent upon a person
 - (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying further requirements other than those stipulated in terms of subsection (5).

(10) The Minister may prescribe

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

Over-selling and over-booking.

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

- (a) has no basis to assert an intention to supply those goods or provide those services; or
- (b) intends to supply goods or services that are materially different from the goods or services in respect of which the payment is 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 amount paid in respect of that commitment, together with interest at the prescribed rate from the date on which the amount was paid until the date of re-imburement; and
- (b) in addition, compensate the consumer for
 - (i) breach of contract in an amount equal to the full contemplated price of the goods or services that are reserved; and
 - (ii) consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use, sustained by the consumer as a consequence of the supplier's breach of the contract.

Lay-aways.

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

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

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

supplier shall,

- (a) supply that consumer with an equivalent quantity of goods that are comparable 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) Under subsection (1) if a consumer

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

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

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

Protection of
consumer rights.

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

- (a) discriminates against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;

- (b) penalises the consumer;
- (c) alters, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
- (d) takes any action to accelerate, enforce, suspend or terminate an agreement with the consumer,

commits an offence and is liable on summary conviction to a fine not exceeding 10,000.

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

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

Written consumer agreements.

96. (1) This section applies only to a continuous service agreement other than those regulated by another enactment.

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

(3) The Minister may prescribe

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

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

- (a) a written agreement between a supplier and a consumer must satisfy the requirements of sections 23 and 24;
- (b) a change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, or delivered to the consumer, is void unless

- (i) the change reduces the consumer's obligations or liabilities under the agreement; or
 - (ii) after the change is made, the consumer signs or initials in the margin opposite the change; and
- (c) if the parties to a written agreement agree to change its terms, the supplier must deliver to the consumer a document that reflects their amended agreement within [20] business days after the date of the agreement to amend.

Rights reserved.

97. Nothing in this Act shall be interpreted to limit a right or remedy of a consumer.

No waiver of substantive and procedural rights

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

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

(3) Where a dispute over which a consumer may commence an action in the Court arises, the consumer, the supplier and any other person involved in the dispute may agree to resolve the dispute using any procedure that is available in law, including mediation offered by the Consumer Affairs Commission.

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

Limitation period

98A. (1) The Commission or the court shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen or came to the knowledge of the complainant.

(2) Despite anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the Commission or the

court that there is sufficient cause for not filing the complaint within such period:

Provided that no complaint shall be entertained unless the Commission or the court records its reasons for condoning such delay.

Enforcement of order by the Commission or the court.

98B. (1) Where an order made under this Act is not complied with, the court may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds the court may award such damages the complainant and shall pay the balance, to the person entitled thereto.

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

Dismissal of false, frivolous or vexatious complaints

98C. Where a complaint instituted before the Commission or the court is found to be false, frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding 2.000 dollars, as specified in the order.

Penalties

98D. (1) Where a supplier against whom a complaint is made or the complainant fails to comply with an order made by the court, such supplier or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to one year, or with fine which shall not be less than 1.000. dollars but which may extend to 40.000 dollars, or with both:

(3) All offences under this Act may be tried summarily by the court.

Regulations

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

Minister to make Orders.

100. (1) The Minister may, by Order

- (a) regulate the distribution, purchase or sale of goods;
- (b) provide for the recall of certain goods and services which are dangerous or hazardous to safety and the refund by the vendor of the purchase price paid;
- (c) require persons carrying on or employed in connection with a trade or business to furnish information concerning the elements of the cost or sale price of goods bought or sold in such trade or business, whether by wholesale or retail;
- (d) require the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby prospective purchasers of those goods may ascertain the weight or measurement.
- (e) regulate all other issues described in this Act.

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

FIRST SCHEDULE

(Section 59)

TERMS WHICH ARE UNFAIR IF NOT INDIVIDULLY NEGOTIATED

Unfair terms.

1. A term of a consumer agreement which has the object or effect of -

- (a) excluding or limiting the legal liability of a supplier in

the event of the death of the consumer or personal injury to the latter resulting from an act or omission of that supplier;

- (b) inappropriately excluding or limiting the legal rights of the consumer *vis-a-vis* the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against him;
- (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition whose realisation depends on his own will alone;
- (d) permitting the supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier where the latter is the party cancelling the contract;
- (e) requiring the consumer to pay a disproportionately high sum in compensation if he fails to fulfill his obligation;
- (f) authorising the supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the supplier to retain the sums paid for services not yet supplied by him where it is the supplier himself who dissolves the contract;
- (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are **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; **and**
- (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**.

Exception to paragraph 1(g).

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

Exception to paragraph 1(j).

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

Exception to paragraph 1(j).

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

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

5. Sub-paragraphs (g), (j) and (l) of paragraph 1 do not apply to-

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

Exception to paragraph 1(l).

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