

No. of 2018

VIRGIN ISLANDS
CONSUMER PROTECTION ACT, 2018
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SCHEDULE 1

SCHEDULE 2

No. of 2018

Consumer Protection Act, 2018

Virgin
Islands

I Assent

Governor.

, 2018

VIRGIN ISLANDS

No. of 2018

A BILL for

AN ACT to provide for the promotion and protection of consumer interests, in relation to the supply of goods and the provision of services; to ensure protection of life, health and safety of consumers; the establishment of a Consumer Affairs Division; to establish the Consumer Affairs Tribunal; and for connected matters.

[Gazetted , 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I
PRELIMINARY**

Short title and
commencement.

1. (1) This Act may be cited as the Consumer Protection Act, 2018.

(2) This Act shall come into force on such date as the Minister may by Notice published in the *Gazette*, appoint.

Interpretation.

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

“acquire”, in relation to

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

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

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

“appropriate laboratory” means a laboratory that is approved by the Minister in accordance with section 137 for the purpose of undertaking the testing of goods;

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

“complainant” means any of the following who makes a complaint:

- (a) a consumer;
- (b) a registered non-profit organisation;
- (c) one or more consumers, where there are numerous consumers having the same interest; or
- (d) in the case of the death of a consumer, his or her legal heir or representative;
- (e) in the case of a consumer being a child, his or her parent or legal guardian;

“complaint” means an oral or written statement alleging one or more grounds under section 10;

“consumer” means a person who acquires any

- (a) goods under an agreement or transaction and includes any other user of the goods, when such use is made with the consent of the person who acquires the goods, but does not include a person who acquires the goods for resale or for any business;
- (b) services under a consumer agreement and includes any other beneficiary of the services, when the services are used with the consent of the person who acquires the services, but does not include a person who acquires the services under any agreement or transaction for any business;

“Consumer Affairs Division” or “Division” means the Consumer Affairs Division established under section 6;

“Consumer Protection Tribunal” or “Tribunal” means the Consumer Protection Tribunal established under section 20;

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

“defect” or “defective” in relation to any goods, means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard

- (a) which is required to be maintained by or under any law for the time being in force under any contract, express or implied or;
- (b) as is claimed by the supplier in any manner whatsoever in relation to any good;

“Director” means the Director of Consumer Affairs appointed under section 8;

“document” includes electronic records;

“goods” includes all kinds of property, excluding real property, securities, money or chose in action;

“Minister” means the Minister with responsibility for Consumer Affairs;

“negligence” includes the breach of

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

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

“prescribed” means prescribed by Regulations;

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

“pyramid selling scheme” means a scheme

- (a) that provides for the supply of goods or services, or both, for reward;

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

“recognised consumer organisation” means any non-profit organisation that

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

No. 10 of 2012

“services” includes

- (a) a service of any description which is made available to consumers;
- (b) the provision of facilities in connection with banking, finance, insurance, transport, processing, supply of electrical or other energy, boarding or lodging, housing construction, entertainment, amusement or the supply of news or other information,

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

“supplier” means a person who

- (a) sells goods;
- (b) provides services; or
- (c) is responsible for the provision of goods or services including a manufacturer, producer or distributor or an agent;

“supply of services” includes

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

but does not include the rendering of services under a contract of employment.

- (2) In this Act, a reference to
 - (a) “acquisition of goods” includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
 - (b) “supply or acquisition” of goods or services includes a reference to
 - (i) an agreement to supply or acquire goods or services; and
 - (ii) the supply or acquisition of goods or services together with other property or other services or both.

Act binds the Crown.

3. Subject to section 100, this Act binds the Crown.

Purposes of the Act.

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

- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
- (b) promoting fair business practices;

- (c) protecting consumers from unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices including deceptive, misleading, unfair or fraudulent conduct;
- (d) promoting social, economic and environmental responsibility in consumer markets;
- (e) improving consumer awareness and information;
- (f) encouraging responsible and informed consumer choice and behaviour; and
- (g) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

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

(2) In determining whether this Act applies to a body or transaction, the Court or Tribunal shall consider the real substance of the body or the transaction.

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

PART II ADMINISTRATION

6. (1) There is established by this Act the Consumer Affairs Division which shall be headed by the Director of Consumer Affairs. Establishment of Consumer Affairs Division.

(2) The Consumer Affairs Division is a Division of the Department of Trade and Consumer Affairs.

(3) Subject to any policy direction of the Minister, the Director is responsible for the administration and implementation of this Act.

7. The functions of the Division are to

- (a) receive complaints from consumers and taking appropriate action in accordance with this Act;

Functions and powers of the Division.

- (b) carry out on its own initiative or at the request of a consumer, such investigations in relation to the sale of goods or the supply of services that will enable the Division to determine whether goods were sold or services were supplied in contravention of this Act;
- (c) promote the development of and monitor the operations of recognised consumer organisations and ensure that the consumer's interests receive due consideration;
- (d) collect, compile and analyse information in relation to any trade or business and the marketing of goods and services;
- (e) provide information to consumers respecting their rights and obligations as consumers to enable them to make informed choices about goods and services;
- (f) conduct education programmes for the benefit of consumers and suppliers;
- (g) submit annual reports to the Minister on the availability of goods and services to persons referred to in subsection (3), including price and market conditions and the performance of public and private suppliers in ensuring the realisation and full enjoyment of their consumer rights by persons referred to in subsection (3);
- (h) liaising with regional and international consumer agencies to facilitate redress in cross-border dispute; and
- (i) carry out such other functions as the Minister may assign to the Division from time to time.

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

- (a) minors, the elderly and other similarly vulnerable consumers; and
- (b) consumers whose ability to read and comprehend advertisements, agreements, marks, instructions, labels,

warnings or notices is limited by reason of low literacy, vision impairment or limited fluency in the language in which any such text is produced, published or presented.

(4) The functions of the Division shall be performed by the Director or an officer of the Division authorised by the Director for that purpose.

8. (1) The Governor, acting in accordance with section 92 of the Virgin Islands Constitution Order, 2007 shall appoint a suitably qualified person to be the Director of Consumer Affairs.

The Director and other staff.

(2) The Director shall be assisted by such other staff as may be appointed or designated by the Governor for the purpose, including a Deputy Director of Consumer Affairs and investigating officers as may be necessary for the efficient functioning and operation of the Division.

PART III COMPLAINTS AND INVESTIGATIONS

9. (1) Subject to subsections (2) and (4), a consumer who alleges that he or she has been adversely affected in relation to goods or services he or she has acquired or agreed to acquire may, upon payment of the prescribed fees, make a complaint to the Director.

Complaints.

(2) Notwithstanding subsection (1), the following persons may make a complaint

- (a) a recognised consumer organisation;
- (b) one or more consumers jointly where a number of consumers have the same interest and the lodging of the complaint would be for the benefit of all consumers with that interest; or
- (c) the Attorney-General.

(3) Where a consumer is

- (a) a child, a complaint may be lodged by the consumer's parent or legal guardian; or
- (b) unable to lodge a complaint himself or herself by reason of infirmity, death or any other cause, the complaint may be lodged by the consumer's parent or legal guardian or any

other person suitable to be his or her personal representative.

(4) A complaint to the Director may be made orally but shall be reduced to writing by the person receiving the complaint and the complainant shall affix his or her signature or mark, as the case may be, to the record.

(5) Where litigation is contemplated by the complaint, in relation to the complaint, the complaint shall be made in writing.

(6) A complaint made pursuant to this section shall set out any alleged act or omission on the part of a supplier who is in breach of this Act.

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

Grounds for complaint.

10. A complainant may make a complaint on any of the following grounds:

- (a) an unfair trade practice, unfair transaction or an unfair term has been adopted by a supplier under Part VII and Part VIII, respectively;
- (b) the goods acquired by him or her or agreed to be acquired by him or her are defective;
- (c) the services acquired or agreed to be acquired by him or her are defective in any respect;
- (d) the supplier has charged, for the goods or for the services mentioned in the complaint, a price in excess of the price
 - (i) fixed by or under any law for the time being in force;
 - (ii) displayed on the goods or any package containing the goods;
 - (iii) displayed on the price list exhibited by the supplier by or under any law for the time being in force; or
 - (iv) agreed between the parties;
- (e) goods which will be hazardous to life and safety when used, is being offered for sale to the public

- (i) in contravention of any standards relating to safety of the goods as required to be complied with, by or under any law for the time being in force; and
 - (ii) the supplier could have known with due diligence that the goods so offered are unsafe to the public;
- (f) the supplier offers services which are hazardous or likely to be hazardous to life and safety of the public when used, which the supplier could have known, with due diligence, would be injurious to life and safety; or
- (g) the supplier has contravened any of the provisions of this Act, which are not included in paragraphs (a) to (f).

11. (1) Upon receiving a complaint under section 9, the Director shall investigate, or cause the complaint to be investigated unless the Director is satisfied that

Investigation of complaints.

- (a) the subject matter of the complaint is trivial;
- (b) the complaint is frivolous, vexatious or not made in good faith;
- (c) the complaint was filed more than two years from the date on which the cause of action arose and the complainant does not have sufficient cause for the delay;
- (d) the complainant does not have a sufficient interest in the subject matter of the complaint;
- (e) the subject matter of the complaint could be dealt with more appropriately by another body or in another forum; or
- (f) having regard to all the circumstances surrounding the complaint, no investigation or further investigation is necessary.

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

Power to investigate not precluded.

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

(2) Unless the Court otherwise directs, the commencement of an action in Court in connection with a matter under investigation by the Division shall not preclude the investigation.

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

Duty to notify opposite party of the investigation.

13. (1) Where the Director decides to investigate a complaint, he or she shall

- (a) cause a copy of the complaint to be given to the opposite party mentioned in the complaint; and
- (b) in writing, direct the opposite party to submit to the Director a written response to the complaint.

(2) The response referred to in subsection (1)(b) shall

- (b) set out the opposite party's version of events; and
- (a) be submitted no later than thirty days after receipt of the documents referred to in subsection (1) or such extended period, not exceeding fifteen days, as may be specified by the Director.

Director to examine complaint and response.

14. (1) Upon receipt of the response of the opposite party, the Director shall examine the complaint, the response of the opposite party and any supporting materials or documents and conduct any further investigations that the Director considers necessary

(2) If the opposite party fails to make a written response in accordance with section 13 (1), the Director shall complete the investigation based on the complaint and any other evidence or supporting materials or documents submitted by the complainant.

Power to discontinue investigation.

15. (1) The Director may, in his or her discretion, refuse to continue an investigation where the Director is of the opinion that the matter being investigated does not justify further investigation.

(2) Where the Director decides not to conduct or continue an investigation he or she shall, in writing, inform the complainant of that decision and the reasons for the refusal; and

16. (1) The Director may, in relation to any investigation being conducted by the Division, summon a person to Power to
summon persons
to give evidence.

(a) attend and give evidence before an officer of the Division;
and

(b) produce any document which is

(i) in the possession or under the control of the person;
and

(ii) relevant to the matter under investigation.

(2) A summons under this section

(a) shall be in the form set out in Schedule 1; and Schedule 1

(b) may be served by a police officer, a bailiff or any other person authorised by the Director.

17. (1) A person summoned to attend and give evidence or to produce a document pursuant to section 16 (1) shall be entitled Obligations of
persons
summoned.

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

(b) to be paid his or her expenses, including travelling expenses, at the rates as are determined for witnesses in civil proceedings who are entitled to have their expenses paid from the consolidated fund.

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

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

(4) A person who without sufficient cause

- (a) fails or refuses to obey a summons issued under section 16; or
- (b) being a witness, refuses to answer any question put to him or her by the Director,

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

Service of findings of investigation.

18. On the conclusion of an investigation under this Part, where the Director determines that there may be a breach of a provision of this Act, the Director shall, in a timely manner serve

- (a) a copy of the findings of the investigation on the supplier; and
- (b) a notice requiring the supplier to
 - (i) satisfy the finding; or
 - (ii) respond to the finding in writing,

within such reasonable time as may be specified in the notice.

Failure to comply with notice.

19. Subject to section 22, where a supplier fails to satisfy or respond a notice made pursuant to section 18 (b), the Director shall institute proceedings before the Tribunal or in the Court.

**PART IV
CONSUMER PROTECTION TRIBUNAL**

Establishment of Consumer Protection Tribunal.

20. (1) There is established by this Act a Consumer Protection Tribunal (in this Act referred to as “the tribunal”).

(2) The provisions of Schedule 2 have effect with respect to the constitution and procedure of the Tribunal and otherwise in relation thereto.

Schedule 2

Functions and powers of the Tribunal.

21. (1) The functions of the Tribunal are

- (a) subject to subsection (2), to hear and determine matters referred to it pursuant to section 22;

- (b) to resolve disputes between consumers and suppliers in relation to goods or services; and
- (c) where appropriate, to dismiss complaints.

(2) Notwithstanding subsection (1), where the complainant is seeking damages, the Tribunal's jurisdiction is limited to compensatory damages.

(3) For the purposes of this part, the Tribunal may

- (a) issue a summons and enforce the attendance of any party or witness and examine the party or witness on oath;
- (b) order the discovery and production of any document or other object producible as evidence;
- (c) call and examine witnesses;
- (d) requisition the report of the analysis or test from the appropriate laboratory or from any other relevant source;
- (e) require that any document or article submitted to the Division be verified by affidavit; and
- (f) make orders pursuant to section 30.

(4) In all proceedings, any paper, book, record or other document produced to the Tribunal pursuant to this section, shall be received as *prima facie* evidence of the truth of the statement contained therein.

(5) For the purposes of this section "compensatory damages" does not include aggravated damages.

22. (1) A complainant may institute proceedings before the Tribunal regardless of whether he or she submitted the complaint to the Division for investigation.

Instituting proceedings before the Tribunal.

(2) A complainant shall not institute proceedings in both the Tribunal and the Court in respect of the same complaint.

(3) Notwithstanding section 19, the complainant may

- (a) in writing, request that the Director refrain from instituting proceedings in the Court; and
- (b) institute proceedings before the Tribunal.

Request for legal representation for complainant.

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

Rights and obligations of person summoned.

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

- (a) in respect of his or her attendance, to the giving of evidence, the disclosure of any communication or the production of any document, to the same rights and privileges as a person summoned before a Court;
- (b) to be paid his or her expenses, including travelling expenses, at the rates as are determined for witnesses in civil proceedings who are entitled to have their expenses paid from the consolidated fund.

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

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

(4) A person who, without sufficient cause fails or refuses to obey a summons issued by the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding dollars and in default of payment of the fine, to imprisonment for a term not exceeding years.

Failure of party to attend hearing.

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

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

Duration of hearing.

26. The Tribunal shall

- (a) hear and determine every complaint as expeditiously as possible; and
- (b) decide each complaint no later than

- (i) three months from the date on which proceedings were instituted before the Tribunal, where the complaint does not necessitate analysis or testing of commodities; and
- (ii) five months from the date on which proceedings were instituted before the Tribunal, where the complaint necessitates analysis or testing of commodities.

27. (1) A person who appears as a witness before the Tribunal and who, without reasonable excuse, refuses or fails to answer a question that he or she is required to answer by the presiding member at the proceeding, commits an offence and is liable, on summary conviction, to a fine not exceeding dollars or to imprisonment for a term not exceeding years or, to both.

Failure to answer questions.

(2) Any person who, without sufficient cause, obstructs or interrupts the proceedings of the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding dollars or in default of payment of the fine to imprisonment for a term not exceeding years.

28. A person who appears as a witness before the Tribunal and gives evidence that, to his or her knowledge, is false or misleading commits an offence and is liable, on summary conviction, to a fine not exceeding dollars or to imprisonment for a term not exceeding years or to both.

False or misleading evidence.

29. A person who does any act that, if the Tribunal were a Court, would constitute an offence, commits an offence and is liable, on summary conviction, to a fine not exceeding dollars or to imprisonment for a term not exceeding years or, to both.

Contempt of Tribunal.

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

Power to make orders.

(2) If the Tribunal is satisfied that a provision of this Act has been contravened, the Tribunal shall issue an order

- (a) declaring the transaction or conduct which is the subject of the complaint to be in contravention of the provisions of this Act;
- (b) directing the opposite party to do one or more of the following:
 - (i) to remove the defect from the goods in question;
 - (ii) to replace the goods with new goods of a similar description, which shall be free from any defect;
 - (iii) to pay to the consumer a refund and interest, where appropriate;
 - (iv) to remove the deficiencies in the services in question;
 - (v) to desist and discontinue the unfair trade practice or the restrictive trade practice;
 - (vi) to refrain from offering the hazardous goods for sale;
 - (vii) to withdraw the hazardous goods from being offered for sale;
 - (viii) to cease the manufacture of hazardous goods or to desist from offering services which are hazardous in nature;
 - (ix) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
 - (x) to provide for adequate costs to parties in addition to the fees, if any paid to the laboratory for analysis or testing of goods; or
- (c) in relation to any other matter or measures as it deems appropriate or necessary in order to further the objects of this Act.

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

- (a) dismissing the complaint; and
- (b) stating the reasons for the dismissal of the complaint.

(3) Where the Tribunal issues an order under subsection (2), the Tribunal may instruct the complainant to pay to the opposite party such costs, not exceeding dollars, as may be specified in the order.

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

(5) Subject to this Act, the Tribunal shall regulate its own proceedings and shall publish general guidelines concerning the procedures to be observed.

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

Adjournments and interim orders.

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

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

32. (1) Any person who fails to comply with an order of the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding dollars or to imprisonment for a term not exceeding years or to both, and in the case of a continuing offence, to a further fine of dollars for each day or part thereof during which the offence continues.

Failure to comply with order of the Tribunal.

(2) Where it is proved that a supplier has failed to obey an order of the Tribunal, every director and officer of the supplier shall be liable, on summary conviction, to a fine not exceeding dollars or to imprisonment for a term not exceeding years or to both, unless the director or officer proves that all necessary and proper means in his or

her power were taken to obey and carry out the order and that he or she was not at fault for the failure to obey the order.

Appeal. **33. (1)** An appeal shall lie on a question of law to a Judge of the High Court from a decision or Order of the Tribunal.

(2) The appellant shall give notice of the appeal to the Tribunal and to the other party no later than **business days** of the decision or order and the parties shall be entitled to be represented by counsel at the hearing of the appeal.

Stay of proceedings pending appeal. **34.** No appeal shall, of itself, stay or suspend the operation of any decision or order of the Tribunal but the Court may stay or suspend, in whole or in part, the operation of the decision or order of the Tribunal pending the appeal, upon such terms as the Court thinks fit.

Costs of appeal. **35.** All costs incidental to the hearing of an appeal shall be

- (a) defrayed by the parties to the appeal in such manner and in such proportions as the Court determines;
- (b) in accordance with the scale of fees in force in respect of civil proceedings in the High Court; or
- (c) taxed and recovered in the same manner in which costs are taxed and recovered in the High Court.

Determination of question of law. **36.** On the hearing of the appeal and the determination of the question of law involved in the appeal, the Court shall give its decision to the Tribunal and the Tribunal shall make an order in accordance with that decision.

Alleged defects requiring proper analysis and laboratory report. **37. (1)** Where the complainant alleges a defect in goods which cannot be determined without proper analysis or test of the goods, the Tribunal shall, in the prescribed manner

- (a) obtain a sample of the goods from the complainant;
- (b) seal the sample and authenticate it; and
- (c) subject to subsection (2), refer the sealed sample to the appropriate laboratory along with a direction to the laboratory to
 - (i) make an analysis or test of the goods, whichever may be necessary;

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

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

(3) Upon completion of the requisite analysis or tests, the appropriate laboratory shall submit its report to the Tribunal.

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

Receipt and distribution of laboratory report.

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

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

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

Procedure subsequent to receipt of laboratory reports and responses.

(2) The Tribunal, after considering all the evidence shall, by order, perform its functions set out in section 21 (1).

PART V CONSUMER RIGHTS

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

Ambiguities to benefit consumer.

- (a) if a provision of this Act, read in context, can be reasonably construed to have more than one meaning, prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally and in particular by persons referred to in section 7 (3); and;
- (b) strictly interpret the 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, so that
 - (i) any ambiguity that allows for more than one reasonable interpretation of a part of such information or document is resolved to the benefit of the consumer; and
 - (ii) any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to the content of the document, the manner and form in which it was prepared and presented, and the circumstances of the transaction or agreement.

Rights in relation to unsolicited goods or services.

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

- (a) the consumer has expressly requested the supplier to supply the particular goods or services before they are supplied to the consumer;
- (b) the consumer has implicitly requested the supplier to supply the goods or services by
 - (i) tendering payment for them; or

(ii) conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply those goods or services; or

(c) the supplier has undertaken to supply those goods or services from time to time to the consumer without further approval or specific request.

(2) Subject to subsection (4), a supplier is not entitled to demand payment or make any representation that suggests that the consumer is required to make payment in respect of any unsolicited goods or services, despite their subsequent use, receipt, misuse, loss, damage or theft.

(3) Subject to subsection (4), the supplier is liable to pay to the recipient of unsolicited goods, such reasonable costs as are incurred in respect of the storage of the goods.

(4) Subsections (2) and (3), do not apply where

(a) the consumer who receives unsolicited goods has unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods; or

(b) the goods were received in circumstances in which the consumer knew or ought reasonably to have known that the goods were not intended for him or her.

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

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

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

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

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

(10) A recipient of unsolicited goods

(a) may

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

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

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

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

(ii) use or depletion of, or damage to those goods at any time after ten business days after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and has arranged to recover them, at the supplier's risk and expense.

(11) In this section, "unsolicited goods or services" mean goods or services that are supplied to a person who did not request the goods or services, but does not include

(a) goods or services that were intended for another person and the recipient knew or ought to have known that the goods or services were intended for another person;

(b) a non-material change to periodically supplied goods or services; or

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

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

Right to select suppliers and products.

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

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

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

43. (1) This section applies to any 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

Right to authorise services.

- (a) the supplier has or takes possession of the property for the purpose of repair or maintenance; or

- (b) in any other case, the consumer requests an estimate before any services are supplied.

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

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

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

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

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

Right to choose and examine goods.

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

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

- (a) correspond with the description or sample; and

- (b) are free from any defect that would not be apparent from the description or on

reasonable examination of the sample.

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

(4) Where a supplier delivers goods to a consumer under a consumer agreement, the supplier shall allow the consumer a reasonable opportunity to examine the goods for the purpose of ascertaining whether it is in conformity with the consumer agreement.

(5) Where goods which were not previously examined by a consumer are delivered to the consumer, the consumer is deemed not to have accepted them until the consumer has had a reasonable opportunity of examining them for the purpose of ascertaining whether it is in conformity with the consumer agreement.
Rights with respect to delivery of goods or supply of services.

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

Right with respect to delivery of goods or supply of services.

- (a) the supplier is responsible for delivering the goods to the consumer
 - (i) within a reasonable time;
 - (ii) subject to subsection (2) (a), at the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and
 - (iii) at the cost and risk of the supplier; and
- (b) the goods remain at the supplier's risk until the consumer has accepted delivery.

(2) The consumer has the right to require

- (a) delivery of any goods at
 - (i) the date and time agreed; and

(ii) the place of the consumer's choice, but the supplier may require the consumer to pay the costs of delivery at any location other than a location referred to in subsection (1); and

(b) performance of any services at the time agreed with the supplier.

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

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

Acceptance of goods or services.

46. (1) A consumer is deemed to have accepted the supply of goods or services, if

(a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted the goods or services;

(b) the goods have been delivered to, or the services have been performed for, the consumer and the consumer does any act in relation to them in a manner that is inconsistent with the supplier's ownership of the goods or responsibility to perform the services, as the case may be; 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 informing to the supplier that the consumer has rejected them.

(2) Where a supplier delivers to a consumer a quantity of goods greater than the quantity of goods that the consumer agreed to buy, the consumer may

(a) accept the goods and pay for the agreed quantity at the agreed rate; and

- (b) treat the excess quantity of goods as unsolicited goods in accordance with section 41.

(3) Where a supplier delivers to a consumer all of the goods the supplier agreed to sell together with goods of a different description not contemplated in the consumer agreement, the consumer may accept the goods that are in accordance with the agreement and treat the remainder as unsolicited goods in accordance with section 41.

(4) Where a supplier delivers to a consumer some of the goods the supplier agreed to sell together with goods of a different description not contemplated in the consumer agreement, the consumer may

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

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

(2) Where a supplier makes a commitment or accepts a reservation to supply goods or services on a later date, the supplier may

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

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

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

(4) If a consumer is unable to carry out a reservation or advance booking by reason of the death of the consumer, the supplier shall, in full, refund to the administrator of the consumer's estate any deposit paid by the consumer in respect of the reservation or booking.

Right to rescind
or cancel
agreement.

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

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

(a) no later than ten business days after delivery of the goods to be supplied in terms of the agreement, if the agreement arises as a result of

(i) direct, distance or electronic marketing by the supplier and contemplates the delivery of the goods to the consumer; or

(ii) any other marketing in circumstances in which the consumer is unable to choose or examine the goods contemplated in section 44;

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

(3) A consumer may rescind a consumer agreement referred to in subsection (2), within six months after the agreement is made, if the supplier

(a) is required to be licensed or registered pursuant to any other enactment, and the supplier is not so licensed or registered; or

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

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

(a) for the supply of a continuous services;

- (b) to purchase goods or services on a periodic recurring basis by subscription; or
 - (c) to make a donation on a periodic recurring basis.
- (5) The expense and risk of return shall be borne by
 - (a) the supplier, if goods are unacceptable; or
 - (b) the consumer, in circumstances other than those specified in paragraph (a).
- (6) Where a consumer exercises the right to cancel or rescind a consumer agreement, the supplier is
 - (a) obliged to return any payment received from a consumer no later than ten business days after receiving notice of the rescission or cancellation of a consumer agreement; and
 - (b) not entitled to collect any payment in terms of the rescinded or cancelled agreement; and
- (7) This section does not apply with respect to a consumer agreement in terms of which goods have been delivered to the consumer, if
 - (a) any enactment prohibits the return of those goods to the supplier once they have been supplied to, or at the direction of, a consumer; or
 - (b) after having been supplied to, or at the direction of, the consumer the goods have been
 - (i) partially or entirely eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying them; or
 - (ii) partially or entirely disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or other property.

Right to information in English language.

Right to information in plain language.

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

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

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

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

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

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

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

51. (1) Where a consumer enters into a consumer agreement for the supply of any goods or services and dies before those goods or services are supplied

- (a) the personal representative of the consumer's estate may give notice to the supplier
 - (i) requiring delivery of the goods or supply of the services, in accordance with the consumer agreement; or
 - (ii) terminating the consumer agreement as from the date of the death of the consumer; and

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

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

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

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

PART VI DUTIES OF SUPPLIERS

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

Duty to inform consumer.

- (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 contravenes subsection (1), the supplier shall, notwithstanding anything to the contrary in the warranty document, be liable for

any damage done to the goods by the consumer that can be directly attributed to the supplier's failure to comply with subsection (1).

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

Duty to display price of goods or services.

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

- (a) designed and intended predominantly as a form of advertisement of the supplier's, goods or services; and
- (b) in the case of goods, in an area within the supplier's premises to which the public does not ordinarily have access.

(2) For the purposes of this section

- (a) a price is displayed in relation to particular goods if it is
 - (i) appended, annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - (ii) published in a catalogue available to the public, if a time is specified in the catalogue as the time after which the goods may not be sold at that price, and that time has not yet passed or in any other case, the catalogue may reasonably be regarded as not out of date; or
 - (iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services; and
- (b) a price shall not be regarded as being displayed in relation to goods if

- (i) the price was appended to the goods outside the Virgin Islands in relation to the supply of the goods outside Virgin Islands; or
- (ii) the display of that price is fully covered and obscured by a second displayed price.

(3) Subject to subsection (4), where a supplier displays goods for sale or offers to supply any services in relation to which more than one price is concurrently displayed, section 54 applies.

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

(5) Where a supplier has provided an estimate for any goods or services, in accordance with section 43, the price for that service, or goods and services, shall not exceed the estimate unless

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

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

54. (1) Where more than one price is displayed on goods Dual pricing.

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

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

(3) It is a defence to a charge instituted under subsection (2) to prove that

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

Identification of supplier.

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

- (a) the supplier's name, as
 - (i) in the case of an individual, recorded in an official identification document or any other recognised identification document; or
 - (ii) registered pursuant to any enactment; or
- (b) a name registered to, and for the use of, that supplier pursuant to any enactment.

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

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

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

56. (1) A supplier of goods shall not display, offer to supply or supply any goods, other than goods exempted pursuant to subsection (3), unless a trade description of the goods is

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

(2) A supplier of goods shall

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

(3) The Minister may make Regulations to

- (a) exempt particular goods or category of goods from the application of subsection (1) if
 - (i) the goods, or the category of goods, are subject to regulation under any other enactment, and the Minister is satisfied that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section;

- (ii) the information required under this section is self-evident, given the nature of the goods, and the manner and circumstances in which it is customarily made available for supply to the public; or
 - (b) prescribe circumstances of displaying or selling particular goods or category of goods, which if satisfied, would exempt the goods from the application of this section.
- (4) A supplier who
 - (a) knowingly applies to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;
 - (b) alters, defaces, covers, removes or obscures a trade description or trade mark applied to any goods in a manner calculated to mislead consumers; or
 - (c) fails to take reasonable steps to prevent any other person from doing anything referred to in paragraph (a) or (b),

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

- (5) For the purposes of this section, “trade description” means
 - (a) any description, standard, statement or other direct or indirect indication, except a trade mark, as to
 - (i) the size, number, quantity, measure, weight or gauge of any goods;
 - (ii) the name of the producer or producers of any goods;
 - (iii) the ingredients of any goods, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or

- (vi) any goods being the subject of any patent, privilege or copyright; or
- (b) any figure, work or mark, other than a trademark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a).

57. (1) A person who packages or imports any prescribed goods, for supply to consumers shall, in addition to the requirements of section 56, display on or in association with that packaging or the goods, a notice in the prescribed manner and form that discloses

Disclosure of environmental facts affecting goods.

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

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

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

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

(4) A supplier of goods shall

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

(5) A supplier who

- (a) knowingly applies to any goods a notice that is likely to mislead the consumer as to any matter implied or expressed in that notice; or
- (b) alters defaces, covers, removes or obscures a notice applied to any goods in a manner calculated to mislead consumers; or
- (c) fails to take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b),

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

58. (1) A person who offers or agrees to supply, or supplies, any goods that

Disclosure of used, re-conditioned, re-built or re-made goods.

- (a) have been used, re-conditioned, re-built or re-made; and
- (b) bears the trademark of the original manufacturer or supplier,

shall apply a conspicuous notice to the goods stating clearly that it has been used, reconditioned, re-built or re-made.

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

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

Duty to supply sales records.

- (a) the supplier's name, or registered business name;
- (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;
- (j) such other information as may be prescribed.

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

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

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

Measurement of goods.

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

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

Cap. 301

(3) Subject to subsection (4), a supplier who, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the consumer, a quantity lesser than the quantity that

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

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

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

Warranties.

61. (1) A supplier shall issue express warranties in relation to the supplier's goods or services, as the case may be, whether

- (a) the goods are new or used; or
- (b) the service offered is for the repair of any appliance, furniture, equipment or other goods.

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

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

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

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

(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) In the absence of explicit warranties, implied warranties shall apply to the supply and repair of all goods.

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

(7) A supplier who fails to comply with the terms of a warranty, whether explicit or implied, commits an offence and is liable, on summary conviction to a fine not exceeding dollars.

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

Warranty as to quality of services or goods.

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

Cap 298

63. (1) A supplier shall, upon presentation by the consumer of an order issued by the Tribunal declaring its findings that a complaint is valid and well founded,

Damage resulting from use of goods or services.

- (a) undertake to pay the consumer all reasonable costs incurred or to be incurred in correcting the damage so caused; and
- (b) complete payment of compensation in accordance with the period set out in the order.

(2) Subsection (1) applies if a supplier

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

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

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

Supply of damaged goods to consumer.

64. (1) Where

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

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

(2) Where the supplier repairs the goods referred to in subsection (1), he or she shall return the goods to the consumer within such period, as the Tribunal, after consultation with the supplier, considers appropriate.

(3) Where goods referred to in subsection (3) are not returned to the consumer within the period specified by the Tribunal, the supplier shall provide the consumer with a temporary substitute of comparative value for the consumer's

uninterrupted use and enjoyment until the replacement or repair and return of the goods.

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

Return of defective goods.

the consumer may return goods to a supplier.

(2) Subject to subsection (3), where goods are returned pursuant to subsection (1) the supplier shall, in exchange for the returned goods

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

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

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

(4) A supplier of goods to which subsection (3) applies who fails

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

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

Return of
materially
different goods.

66. (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 subsections (2) and (3)

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

(2) Subsection (1) shall not apply unless the goods are returned to the supplier

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

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

Approved and
non-approved
services.

67. (1) A supplier shall

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

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

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

Suppliers offering repair services.

- (a) the name, address and telephone number of the consumer;
- (b) an accurate description of the goods to be repaired, including any identification number or mark;
- (c) an estimate of the replacement value of the goods in its present state as agreed 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 referred to in subsection (1) shall be given to the consumer before the commencement of repairs.

(3) A supplier who offers a repair service shall disclose to the consumer any additional related repairs that the supplier considers necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired good.

(4) A supplier who contravenes subsection (2) or subsection (3) (a) commits an offence and is liable on summary conviction to a fine not exceeding dollars.

69. (1) Where

Advertised delivery date.

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

the advertised date or period forms part of the consumer agreement between the supplier and the consumer.

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

- (a) refund the deposit, plus interest at a rate of ten percent per annum; or
- (b) deliver the goods by another date or within another period on terms to be agreed with the consumer.

(3) A supplier who has advertised a completion or delivery date, and has obtained from the consumer a deposit against the provision of the goods or services may elect to terminate the consumer agreement within seven business days after receipt of the deposit and shall refund the full value of the deposit received.

Conditions of demanding and accepting payment.

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

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

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

General standards for the promotion of goods or services.

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

- (a) in a manner that is misleading, fraudulent or deceptive in respect of
 - (i) the nature, properties, advantages or uses of the goods or services;

- (ii) the manner in which or conditions on which the goods or services may be purchased, leased or otherwise acquired;
 - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, any previous price, or competitors price for a comparable or similar good or services;
 - (iv) the sponsoring of any event; or
 - (v) any other material aspect of the goods or services;
- (b) in a manner that is reasonably likely to imply a false, misleading or deceptive representation concerning the goods or services, as contemplated in section 73;
- (c) the supply, purchase, sale or possession of which is unlawful;
- (d) where the supply of the goods or services is inconsistent with any enactment; or
- (e) in a manner that
- (i) is degrading to the dignity of any person; or
 - (ii) depicts, simulates, suggests, represents or reasonably appears to promote a use or application of the goods or services that is inconsistent with any enactment; or
- (g) in a manner that implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a prohibited ground of discrimination set out in the Constitution, except to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of the particular group of prospective consumers.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding

dollars, and in default of payment of the fine, to imprisonment for a term not exceeding two years.

PART VII UNFAIR TRADE PRACTICES

False, misleading or deceptive representations.

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

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

(2) Without limiting the generality of subsection (1), it is a false, misleading or deceptive representation to falsely state or imply, that

- (a) the supplier has status, affiliation, connection, sponsorship or approval that the supplier does not have;
- (b) goods or services
 - (i) have an ingredient, performance characteristic, accessory, use, benefit, quality, sponsorship or approval that they do not have;
 - (ii) are of a particular standard, quality, grade, style or model;
 - (iii) subject to subsection (3), are new or unused, if they are not or if they are reconditioned or reclaimed,;

- (iv) have been used for a period, to an extent, or in a manner that is materially different from the facts;
- (v) have been supplied in accordance with a previous representation;
- (vi) are available, or can be delivered or performed within a specified time;
- (d) necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;
- (e) a service, part, replacement, maintenance or repair is needed or advisable;
- (f) a specific price advantage exists;
- (g) a charge or proposed charge is for a specific purpose;
- (h) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, a consumer agreement;
- (i) the transaction affects, or does not affect, any rights, remedies or obligations;
- (j) a particular solicitation of, or communication with, the consumer or prospective consumer is for a particular purpose; or
- (k) the consumer or prospective consumer will derive a particular benefit if he or she assists the supplier in obtaining a new or potential customer.

(3) A representation contemplated in subsection (2) (b) (iii) to the effect that goods are new is not false, misleading or deceptive if the goods have been used by or on behalf of the manufacturer, importer, distributor or supplier, for the purposes of reasonable testing, services, preparation or delivery.

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

(5) A supplier who contravenes this section commits an offence and is liable, on summary conviction, to a fine not exceeding

dollars dollars or to imprisonment for a term not exceeding
months or to both.

Restrictive trade practices.

73. (1) No supplier shall adopt or indulge in a restrictive trade practices which

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

(2) A supplier who adopts or indulges in a trade practice referred to in subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding **dollars** or to imprisonment for a term not exceeding **years**.

Unfair trade practice.

74. (1) A supplier shall not in the course of trade or commerce, adopt, for the purpose of promoting the sale, use or supply of goods or for the provision of services, an unfair method or unfair or deceptive practice, including the practice of making any statement, whether orally or in writing or by visible representation which

- (a) falsely represents that goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (b) falsely represents that the services are of a particular standard, quality or grade;
- (c) falsely represents any re-built, used, renovated, reconditioned or old goods as new goods;

- (d) represents that the goods or services have sponsorship, approval, performance, a characteristic, an accessory, a use or a benefit which the goods or services do not have;
 - (e) represents that the supplier has any sponsorship or approval or affiliation which such supplier does not have;
 - (f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test;
 - (h) making a public representation in a form that purports to be
 - (i) a warranty or guarantee of a product or of any goods or services; or
 - (ii) a promise to replace, maintain or repair goods or any part of any goods, or to repeat or continue a services 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 the purported warranty, guarantee or promise will be carried out;
 - (i) materially misleads the public concerning the price at which a product or like product or goods or services, has been or are, ordinarily sold or provided;
 - (j) gives false or misleading facts disparaging the goods, services or trade of another supplier.
- (2) For the purposes of subsection (1), a statement that is
- (a) expressed on any goods offered or displayed for sale, or on its wrapper or container;
 - (b) expressed on anything attached to, inserted in, or accompanying, any goods offered or displayed for sale, or on anything on which the goods are mounted for display or sale; or

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

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

(3) Notwithstanding subsection (1)(g), where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence.

(4) For the purpose of subsection (1) (i), a representation as to price shall be deemed to refer to the price at which the product or goods or services have been sold or provided by suppliers generally in the relevant market, unless it is clearly specified to be the price at which the particular product has been sold or services have been provided by the person by whom or on whose behalf the representation is made.

(5) A supplier shall not

- (a) permit the publication of any advertisement whether in any newspaper or otherwise, for the sale or at a bargain price, of goods or services that are
 - (i) not intended to be offered for sale or supply at the bargain price; or
 - (ii) not intended to be offered for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement;
- (b) permit the offering of gifts, prizes or other items with the intention of not providing them as or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (c) permit 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;

- (d) withhold from the participants of any scheme offering gifts, prizes or other items of charge, on its closure the information about final results of the scheme;
- (e) permit the sale or supply of goods intended to be used, or of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the prescribed standards 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;
- (f) permit the hoarding or destruction of goods, or to refuse to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the price of the goods or service or similar goods or services;
- (g) manufacture counterfeit goods or offering such goods for sale or adopts deceptive practices in the provision of a service.

(6) For the purpose of subsection (5)(a), “bargain price” means

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

(7) For the purposes of subsection (5) (c), the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspaper in which the scheme was originally advertised.

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

Unreasonable transactions.

75. (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) A transaction involving unsuitable goods or services is unenforceable against a consumer.

Unfair transactions.

76. (1) A supplier shall not

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

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

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

(3) A transaction involving an unfair or unjust trade practice is unenforceable against a consumer.

77. (1) A supplier shall not use physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other similar conduct, in connection with

Unconscionable conduct.

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

(2) In addition to any 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 or her own interests because of a disability, illiteracy, ignorance, inability to understand the language of a consumer agreement, or any other similar factor.

(3) In determining whether conduct on the part of or a representation by a person is unconscionable, it may be taken into account that the person or the person's employer or principal knows or ought to have known that

- (a) the consumer is not reasonably able to protect his or her interests due to disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;

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

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

Renegotiation of terms.

78. (1) A person who has custody or control of goods shall not use such custody or control 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 to imprisonment for a term not exceeding**years**, or to both.

Bait advertising.

79. A supplier shall not, in the course of trade or commerce, advertise for supply, at a specified price, goods or services which that supplier

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

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

To print etc. in good faith.

80. It is not an unfair practice for a person, on behalf of another, to print, publish, distribute, broadcast or telecast a representation which that person

accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business, although the content of such activity constitutes an unfair practice.

Referral selling.

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

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

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

(2) This section is subject to existing financial services legislation dealing with the pyramid selling of services and where there is a conflict between that legislation and this section, the financial services legislation shall take precedence.

(3) The Division shall cooperate and share information with the Financial Service Commission in the identification and investigation of pyramid selling activity.

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

83. (1) Where a consumer has entered into a consumer agreement in the course of which transaction the supplier has engaged in an unfair practice, the consumer may rescind the consumer agreement and is entitled to any remedy that is available in law. Rescission.

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

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

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

Defences for
contravention of
this Part.

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

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

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

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

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

(3) In relation to a contravention of a provision of this Part by the publication of an advertisement, it is a defence if the defendant proves that he or she

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

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

Court may order payment of damages or costs.

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

PART VIII UNFAIR TERMS

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

Unfair terms.

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

- (a) the bargaining strengths of the parties to the consumer agreement, relative to each other and taking into account
 - (i) the availability of equivalent goods or services; and
 - (ii) suitable alternative sources of supply;

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

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

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

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

- (a) rescind or amend the agreement or a term of the agreement; or
- (b) make any other order as may be necessary to prevent the effect of the agreement being unfair or unreasonable to any of the parties,

notwithstanding the principle that effect shall be given to the contractual terms agreed upon by the parties.

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

Written terms to be plain and intelligible.

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

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

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

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

Non-exclusion of this Part.

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

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

89. 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.

Indemnity subject to reasonableness.

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

Loss or damage from defective goods or negligence of manufacturer.

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

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

(2) For the purposes of this section

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

Effect of obligation.

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

Satisfying reasonableness where agreement terminated.

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

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

Reasonableness.

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

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

- (a) the resources that the person could expect to be available to him or her for the purpose of meeting the liability if it arises; and
 - (b) the extent to which it was open to that person to cover himself or herself by insurance.
- (3) The onus of proving that a contract term or notice satisfies the requirement of reasonableness lies on the person who claims that it does.

PART IX PRODUCT LIABILITY

94. (1) In this Part,

Interpretation of
Part X.

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

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

“manufacture”, in relation to animals or agricultural produce, includes rearing or growing;

“producer”, means in relation to a product, the person who manufactured the product;

“product” means any goods, including animal 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 or her supply of that product as supplying any of the other products so comprised.

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

Liability for
defects.

- (a) the producer of the product;
- (b) a person who, by putting his or her name on the product or using a trademark or other distinguishing mark in relation

to the product, has held himself or herself out to be the producer of the product;

- (c) the supplier who imported the product into the Virgin Islands; and
- (d) the person who supplied the product, whether to, the consumer, the producer of a product in which the product in question is comprised or to any other person, is liable for the loss, if
 - (i) the person who suffered the loss requests that the supplier identify any person, whether still in existence or not, to whom paragraphs (a), (b) or (c) applies in relation to the product in question;
 - (ii) the request under subparagraph (i) is made within a reasonable time after the loss occurs; and
 - (iii) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him or her.

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

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

Defect inferred.

96. (1) For the purposes of this Part, a product is deemed to be defective if the safety of the product is not such as persons are generally entitled to expect.

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

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

- (c) the time when the product was supplied by its producer to another.

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

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

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

97. (1) A supplier is not liable under section 96 for any damage to any property which, at the time of the damage, is not

Damage giving rise to liability.

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

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

(3) For the purposes of subsection (2)

- (a) the material facts about any damage to property are such facts about the damage as would lead a reasonable person with an interest in the property to consider the damage sufficiently serious to justify instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment;
- (b) a person’s knowledge includes knowledge which the person might reasonably have been expected to acquire
 - (i) from facts observable or ascertainable by the person; or

- (ii) from facts ascertainable by the person with the help of appropriate expert advice which it is reasonable for the person to seek.

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

Prohibition on exclusions from liability.

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

Defences in civil proceedings.

99. In any proceedings instituted under this Part in respect of a defect in a product, it is a defence to prove that

- (a) the defect is attributable to compliance with a requirement imposed by or under any enactment;
- (b) the product was not at any time supplied by the defendant;
- (c) the following conditions are satisfied
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of the business of the supplier;
 - (ii) that section 96 (1) (a) does not apply to the supplier, or applies to the supplier by virtue only of things done otherwise than with a view to profit;
- (d) the defect did not exist in the product at the relevant time;
- (e) the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in the products while they were under the producer's control; or
- (f) the defect
 - (i) constituted a defect in a product, in this paragraph referred to as "the subsequent product", in which the product in question has been comprised; and

- (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

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

**PART XI
CONSUMER SAFETY**

101. In this Part, “consumer safety” includes Interpretation of “consumer safety”

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

102. (1) A person shall not General safety requirements.

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

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

- (a) the manner in which, and purposes for which, the goods is being or would be marketed;
- (b) the packaging and presentation of the goods;

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

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

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

(4) In any proceedings against a supplier for an offence under this section in respect of any goods, it is a defence for the supplier to prove that he or she

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

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

- (a) whether or not the goods is acquired for a person's private use or consumption, they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption; and
- (b) the description of the goods does not, to a significant extent, include manufactured or imported goods that has not previously been supplied in the Virgin Islands.

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

103. (1) A supplier shall provide consumers with the relevant information

Information regarding goods with inherent risks.

- (a) to assess the risks inherent in goods or where such risks are not immediately obvious without adequate warning; and
- (b) to take precautions against those risks.

(2) A supplier shall adopt measures

- (a) to enable the consumer to be informed of the risks which the goods may pose; and
- (b) to warn consumer about the risks so that consumers may take appropriate action to avoid those risks.

(3) The measures referred to in subsection (2) include, except where it is not reasonable to do so, an indication by means of the product or its packaging of

- (a) the name and address of the producer, and
- (b) the product reference or, where applicable, the batch of products to which it belongs.

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

Agreement to exchange information.

104. (1) Where the Virgin Islands enters into an agreement to exchange information by way of a rapid alert system regarding dangerous non-food goods in the CARICOM region, or the Organisation of the Eastern Caribbean States, the Minister may by Order published in the *Gazette* give legal effect to the agreement.

(2) An Order made under this section may contain such supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving legal effect to an agreement referred to in this section.

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

(4) Every Order made under this section shall be subject to affirmative resolution.

Safety regulations.

105. (1) The Minister may make regulations for the purposes of consumer safety, including ensuring that

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

(2) Without prejudice to the generality of subsection (1), regulations under this section may contain provisions

- (a) with respect to the performance, composition or contents, design, construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to such goods;
- (b) with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of descriptions of such goods or of standards for such goods;
- (c) with respect to the conditions that may be attached to any approval given under the regulations;

- (d) prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;
 - (e) with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;
 - (f) for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
 - (g) with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
 - (h) contain 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 ensuring that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;
 - (j) prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
 - (k) requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling the person to exercise any function conferred on the person by the regulations;
- (3) Consumer safety regulations made under this section may
- (a) contain different provisions for different cases;

- (b) provide for exemptions from any provisions of the regulations;
- (c) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.

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

Contravention of safety regulations.

106. (1) A person who contravenes any consumer safety regulations commits an offence and is liable on summary conviction to a fine not exceeding dollars, and in default of the payment of the fine, to imprisonment for years.

PART XI RECALL OF GOODS

Compulsory recall of goods.

107. (1) Subject to sections 110 and 111, where the Minister is satisfied that

- (a) goods supplied are of a kind likely to cause injury, loss or damage to any person; and
- (b) the supplier has not taken satisfactory action to prevent the goods causing injury loss or damage to any person,

the Minister may, by notice published in the *Gazette* and at least one widely circulated newspaper in the Virgin Islands, 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; and
- (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; and
 - (iii) availability of a refund to a person to whom the goods was supplied, whether by the supplier or by another person, the price of the goods, within the period specified in the notice.

(2) The Minister may, by notice published in the *Gazette* and at least one widely circulated newspaper in the Virgin Islands, give directions as to the manner in which the supplier is to carry out a recall of goods required 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 every 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 were specified in the notice under subsection (1), do not have that defect or characteristic;
- (c) repair or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

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

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

(5) Where a supplier is required under subsection (4) to give a notice in writing to another person, the supplier shall, no later than ten business days after giving that notice, provide the Minister with a copy of that notice.

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

108. (1) Where a compulsory recall notice under section 107 is in force in relation to a supplier, the supplier

Effect of recall notice.

- (a) shall comply with the requirements of the notice; and
- (b) shall not,

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

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

Loss or damage caused by contravention of goods recall notice.

109. Where a supplier fails to comply with a notice under section 107 and a person suffers injury, loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods, the person shall be deemed for the purposes of this Act to have suffered the injury, loss or damage by the failure of the supplier to comply with the notice.

Conference to be held in certain cases.

110. (1) Subject to section 111, where the Minister proposes to publish a notice under section 107 (1), the Minister shall, by notice published in the *Gazette* and at least one widely circulated newspaper in the Virgin Islands, invite any supplier who supplies or proposes to supply goods of the kind referred to in the draft notice to notify the Minister whether that supplier 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 107 (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 107 as the Minister thinks fit.

(4) Where the Minister is required pursuant to subsection (1) to hold a conference, the Minister shall hold the conference no later than fourteen days after receipt of the notification under subsection (1), and shall give notice of the day, time and place for the conference to each person concerned.

(5) At a conference held pursuant to subsection (4)

- (a) the Minister, or a person nominated in writing by the Minister, shall be present;

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

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

(7) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present is given a reasonable opportunity at the conference to present his or her case and in particular, to inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the conference.

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

111. (1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister, without regard to any action of a supplier of the goods shall, without reasonable delay, publish in the *Gazette* and in at least one widely circulated newspaper in the Virgin Islands, a notice under section 107 (1) in relation to the goods.

Exception in case of danger to public.

- (2) Where the Minister publishes a notice pursuant to subsection (1)
 - (a) in a case where the notice is published before the Minister takes any action under section 110 (1) in relation to goods of a particular kind, section 110 shall not apply in relation to the action that the Minister may take under section 107 in relation to goods of that kind; or
 - (b) in any other case, any action taken by the Minister under section 110 (1) in relation to goods of a particular kind ceases to have effect, and if a conference had been arranged or had commenced, the Minister may publish the notice under section 107 (1) without regard to the action taken under section 110.

Power to obtain information, documents and evidence.

112. (1) Where the Minister or authorised officer has reason to believe that a supplier who supplies goods of a particular kind which may cause injury to any person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Minister or authorised officer may, by notice in writing served on that supplier, require him or her

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

(2) Subject to subsection (3), an authorised officer who has reasonable cause to believe that goods may cause injury to a consumer may, at all reasonable times and upon producing, if required, his or her certificate of appointment, enter any premises in or from which he or she has reason to believe that a supplier supplies the goods, and may

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

(3) The powers of an authorised officer under subsection (2) shall not be exercised except

- (a) pursuant to a warrant issued under section 113 (1); or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

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

(5) For the purposes of this section and section 113 an “authorised officer” means the Director, or a person appointed as an investigating officer under section 8.

113. (1) Where an application is made to a magistrate under section 112 (4), the magistrate may issue a warrant authorising the authorised officer named in the warrant, with such assistance as the officer thinks necessary, and if necessary by force, to

Power of
magistrate to
issue warrant.

- (a) enter the premises specified in the warrant; and
- (b) exercise the powers of an authorised officer under subsection 112 (1) in relation to those premises.

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

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

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

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

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

- (a) announce that he or she is authorised to enter the premises; and
- (b) afford a reasonable opportunity to be allowed entry to the premises.

(5) An authorised officer or a person assisting such officer is not required to comply with subsection (4) if he or she believes, on reasonable grounds, that immediate entry to the premises is required to ensure

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

(6) Where an authorised officer takes samples under section 112 (2) (b), he or she shall pay a reasonable price for the goods sampled.

(7) A person who

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

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

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

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

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

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

Voluntary recall of goods.

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

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

115. Where the Minister publishes a notice pursuant to section 110 (1) or section 111 (1), the Minister shall, within two days after the publication of that notice, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies goods of the kind to which the notice relates.

Suppliers to be given notice in certain cases.

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

Certain actions not to affect insurance contracts.

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

shall not be affected by reason only that the supplier gives to the Director or the Minister, information relating to any good supplied or proposed to be supplied by that supplier.

PART XII DISTANCE SELLING

117. In this Part,

Interpretation of Part XII.

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

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

Giving effect to agreement regarding distance selling contracts.

118. (1) Where the Virgin Islands enters into an agreement to provide assistance regarding distance selling contracts by way of information, redress, sanctions or otherwise, the Minister may by Order published in the *Gazette* give legal effect to the agreement.

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

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

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

Application of Part XII.

119. This Part does not apply to a contract

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

Prior information requirements.

120. (1) Subject to subsection (2), the supplier shall, before the conclusion of any distance selling contract, provide the consumer with the following information:

- (a) the identity of the supplier and, in the case of a consumer agreement requiring payment in advance, the supplier's address;
- (b) a description of the main characteristics of the goods or services;
- (c) the total price of the goods or services;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of cancellation, where appropriate;
- (g) the cost of using the means of distance communication, where the cost is calculated in a manner other than at the basic rate, such as premium phone lines rates;
- (h) the period for which the offer or the price remains valid; and
- (i) the minimum duration of the consumer agreement in the case of a consumer agreement for the supply of goods or services to be performed permanently or recurrently, where appropriate.

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

(3) Where a distance selling contract for the sale of goods, the supplier shall provide the consumer with confirmation of the information in subsection (1) in a durable medium available and accessible by the consumer.

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

Acceptance or decline of internet consumer agreement.

122. A consumer may request cancellation of a payment where fraudulent use is made of his or her credit or debit card by that supplier and the consumer shall be re-credited with the sums paid.

Payment by credit or debit card.

Performance of distance selling contract.

123. (1) Unless the parties have agreed otherwise, the supplier shall execute a consumer's purchase order no later than thirty days after the day on which the consumer forwarded his or her purchase order to the supplier.

(2) Where a supplier is unable to perform the distance selling contract because the goods or services are not available, the supplier shall inform the consumer and shall refund any sums received within thirty days.

Burden of proof.

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

PART XIII MISCELLANEOUS

Void provisions of consumer agreements.

- 125.** (1) A provision or term of a consumer agreement is void if
- (a) its general purpose or effect is to
 - (i) defeat the purpose and policy of this Act;
 - (ii) mislead or deceive the consumer; or
 - (iii) subject the consumer to fraud;
 - (b) it directly or indirectly purports to
 - (i) waive or deprive a consumer of a right set out in this Act;
 - (ii) avoid a supplier's obligation or duty set out in this Act;
 - (iii) set aside or override the effect of any provision of this Act; or
 - (iv) authorise the supplier to do anything that is prohibited by this Act, or to fail to do anything that is required under this Act;
 - (c) it expresses an acknowledgement by the consumer that
 - (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or

- (ii) the consumer has received any goods or services, or a document that is required by this Act to be delivered to the consumer, that has not in fact been delivered or rendered to the consumer;
- (d) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer
 - (i) exercises the right of rescission under section 83;
 - (ii) fails to comply with a provision of the agreement before the consumer receives any good or services pursuant to the agreement;
- (e) it expresses, on behalf of the consumer
 - (i) an authorisation for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the agreement relates;
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, whether such documentation is complete or incomplete at the time it is signed; or
 - (iii) consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act; or
- (f) it expresses an agreement by the consumer to
 - (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar document or device; or
 - (ii) provide a personal identification code or number to be used to access an account.

(2) A Court or the Tribunal shall, in any matter before it regarding a consumer agreement that contains a provision referred to in subsection (1)

- (a) sever the void provision from the agreement and construe the agreement as though the provision were absent from the agreement and in accordance with this Act; or
- (b) declare the entire agreement void as from the date that the agreement, or amended agreement, took effect

and may make any further order that is just and reasonable in the circumstances.

- (3) A supplier shall not
 - (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be void if it were included in a primary agreement;
 - (b) request or demand a consumer to 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;
 - (c) request or demand a consumer to reveal any personal identification code or number referred to in subsection (1) (f) (ii); or
 - (d) direct, or knowingly permit, any other person to do anything referred to in this subsection on behalf or for the benefit of the supplier.

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

Goods or services acquired by instalment.

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

- (2) The supplier shall
 - (a) present a claim for the exact amount of, or the exact percentage of, the total value of the goods or services actually received to date by the consumer; and

- (b) upon presentation of such claim, be entitled to terminate the consumer agreement if payment in full is not made
 - (i) within a reasonable time after the presentation of the claim, or
 - (ii) by a pre-determined payment date which forms part of the consumer agreement.

(3) In the event that the supplier is unable to present a claim in accordance with 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 pay the estimated amount subject to the following conditions:
 - (i) the amount paid shall be credited to the amount owing at the next time that an accurate claim is presented; and
 - (ii) the supplier shall, under no circumstances, be able to terminate the agreement or impose any penalty contained in the agreement in the event of breach by the consumer, solely on the ground that the consumer has not paid the estimated amount, either in full or in part.

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

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

127. (1) Where a service is provided to a consumer, subsection (2) shall apply where a fee is collected by the supplier from the consumer for that services.

Apportionment of payments where services not received.

- (2) A supplier shall
 - (a) be liable to make a full refund to the consumer, if for reasons not attributable to the consumer, any benefit under the consumer agreement 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) be entitled to receive a similar proportionate part of any unpaid fees.

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

- (4) A supplier who offers a service to the consumer shall
 - (a) stipulate the extent of the benefits to be attached to the service; and
 - (b) provide the consumer with an appropriate warranty that
 - (i) the benefit shall be received for a reasonable time, subject to the fulfilment of such conditions attached by the supplier as may be reasonable to the consumer's receipt of that benefit; and
 - (ii) if the benefit is not so received, the supplier shall again provide the service free of cost to the consumer.

Supplier purporting to act on bill of sale.

- 128. (1)** A supplier shall not
- (a) personally act on the powers contained in a Bill of Sale of property pledged by a consumer; or
 - (b) employ any person other than a 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 contravenes subsection (1) commits an offence and is liable on summary conviction, to a fine not exceeding dollars and in default of payment of the fine, to imprisonment for a term not exceeding years.

(3) A supplier shall not, 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, carry out an act of seizure although the consumer's indebtedness to the supplier

- (a) has already been discharged; or
- (b) is currently being serviced in accordance with existing contractual provisions.

(4) A supplier who contravenes subsection (3) commits an offence and is liable, on summary conviction, to a fine not exceeding dollars and in default of payment of the fine to imprisonment for a term not exceeding 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 dollars per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(6) A person, who wrongfully seizes the property of a consumer, notwithstanding any other charge that may be brought against him or her, commits an offence and is liable, on summary conviction, to a fine not exceeding dollars and in default of payment of the fine to imprisonment for a term not exceeding years.

(7) The court may order a supplier convicted of an offence under subsection (6) to pay to the consumer an amount equal to ten times the market value of the property seized plus an amount of dollars per day for every day that the consumer has been deprived of the use and enjoyment of the property.

- (8) Any person who
 - (a) threatens to seize a consumer's property under the powers contained in a Bill of Sale although the consumer's indebtedness to the vendor has already been discharged; or
 - (b) recklessly damages the consumer's property while exercising distraint,

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

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

Trade coupons and similar promotions.

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

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

(3) A document setting out an offer contemplated in subsection (1) shall fully and clearly state

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

Promotional competitions.

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

- (a) has won a competition, if
 - (i) no competition has in fact been conducted;
 - (ii) the consumer has not expressly or impliedly entered into the competition, or has not in fact won the competition;

- (iii) the prize for that competition is subject to a previously undisclosed condition; or
 - (iv) the consumer is required to offer further consideration for the prize, after the results of the competition have been announced; or
 - (b) has a right to a prize or benefit
 - (i) that the consumer has not solicited or to which the consumer does not in fact have a right;
 - (ii) if the prize or benefit was generally available or offered to all similar prospective consumers or class of prospective consumers;
 - (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 good or services.
- (2) The promoter of a promotional competition shall
 - (a) not require any consideration to be paid by or on behalf of any participant in the promotional competition;
 - (b) file a copy of the competition rules in the prescribed manner and form with the Division no later than the date on which consumers are first able to participate in the competition;
 - (c) make the competition rules available on request and without cost to any participant;
 - (d) not award a prize in a competition to
 - (i) a winner of the competition if it is absolutely unlawful to supply the goods or services to the prize winner; or
 - (ii) any person who is a director, member, partner, employee or agent of, or consultant to the promoter, or any other person who directly or indirectly controls, or is controlled by, the promoter, or to a

supplier of goods or services in connection with the competition.

(3) Subsection (2)(d) does not preclude a person from receiving a prize merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, any enactment.

(4) For the purposes of subsection (2) (a), a promoter requires or receives consideration in respect of a promotional competition if

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

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

- (a) the benefit or competition to which the offer relates;
- (b) the steps required by a consumer to accept the offer or to participate in the competition;
- (c) the basis on which the results of the competition will be determined;
- (d) the maximum number of potential participants in the competition, and the odds of winning any particular prize in that competition;
- (e) the medium by which the results of the competition will be made known, if any; and
- (f) any person from whom, any place where, and any date and time on or at which the successful participant may receive any prize.

- (6) The requirements of subsection (5) may be satisfied
 - (a) directly on any medium through which a person participates in a promotional competition;
 - (b) on a document accompanying any medium contemplated in paragraph (a); or
 - (c) in any advertisement that
 - (i) is published during the time and throughout the area in which the promotional competition is conducted; and
 - (ii) draws attention to and is clearly associated with the promotional competition.

- (7) The right to participate in a promotional competition is fully vested in a person immediately upon
 - (a) complying with any conditions that are required to earn that right; and
 - (b) acquiring possession or control of any medium through which the person may participate in that promotional competition.

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

- (9) A right contemplated in subsection (7) or (8) shall not be
 - (a) made subject to any further condition; or
 - (b) contingent upon a consumer
 - (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying any further requirements than those stipulated in terms of subsection (3).

- (10) The Minister may prescribe

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

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

(12) For the purposes of this section

“participant” means a person who expressly or impliedly 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.

Over-selling and over-booking.

131. (1) supplier

A supplier shall not accept payment for any goods or services if the

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

(2) Where 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 a similar or comparable goods or services of the same or superior quality, class or nature, the supplier shall

- (a) refund to the consumer any amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of re-imbursement; and
- (b) compensate the consumer for breach of contract in an amount equal to the full contemplated price of the goods or services that were committed or reserved.

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

- (a) each amount paid by the consumer is held by the supplier on trust for the benefit of the consumer; and
- (b) the goods remains at the risk of the supplier until the consumer takes possession of it.

(2) Where a supplier is unable to deliver the goods contemplated in subsection (1), upon payment of the full price for the goods by the consumer, the supplier shall, at the option of the consumer

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

(3) Where a consumer referred to in subsection (1)

- (a) terminates or rescinds the agreement before fully paying for the goods, the supplier may charge a cancellation fee before refunding the amount paid by the consumer towards the full price; or

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

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

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

Protection of
consumer rights.

133. (1) Where a consumer has exercised, asserted or sought to uphold any right set out in this Act or in a consumer agreement, and the supplier

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

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

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

- (a) alter the terms or conditions of any other transaction or consumer agreement with another party to the impugned

agreement, except to the extent necessary to correct a similarly unlawful provision; or

- (b) take any action to accelerate, enforce, suspend or terminate another consumer agreement with the consumer to the impugned agreement.

134. (1) This section applies only to a consumer agreement which provides for an arrangement that continues until the consumer cancels the arrangement and does not apply to a consumer agreement regulated by any other enactment.

Written
consumer
agreements.

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

(3) The Minister may prescribe

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

(4) Notwithstanding the requirements of an agreement

- (a) a change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless
 - (i) the change reduces the consumer's obligations or liabilities under the agreement; or
 - (ii) after the change is made, the consumer signs or initials the change in the margin opposite the change; and
- (b) if the parties to an agreement agree to amend any term, the supplier shall deliver to the consumer a document that reflects the amendment to the agreement, no later than twenty business days after the date of the amended agreement.

135. Nothing in this Act shall be interpreted to limit any right or remedy that a consumer may have in any other enactment.

Rights reserved.

No waiver of substantive and procedural rights.

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

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

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

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

Approval of laboratory.

137. (1) The Minister may approve any laboratory recommended by an accreditation body or authority for the purpose of undertaking the testing of goods.

(2) Where the Minister approves a laboratory under subsection (1), the Minister shall publish the name of the approved laboratory in the *Gazette* and at least one widely circulated newspaper in the Territory.

Amendment of schedules.

138. The Minister may, with the approval of Cabinet, by Order published in the *Gazette*, amend the Schedules in such manner as he or she considers necessary.

Offences by bodies corporate.

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

Regulations.

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

(2) Without limiting the generality of subsection (1), regulations may

- (a) provide for regulating the distribution, purchase or sale of goods or any class or description of goods;
- (b) provide for the recall of certain goods and services which are dangerous or hazardous to safety and the refund or remission by the supplier of the purchase price paid;
- (c) require persons carrying on or employed in connection with any trade or business to furnish information concerning all or any of the elements of the cost or sale price of goods or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;
- (d) require the provision and maintenance of devices, at retail establishments, which allows a prospective consumer to ascertain the weight or measurement of goods offered for sale;
- (e) prescribe such fees as may be required from time to time; and
- (f) prescribe anything that is required to be prescribed by this Act.

(3) Nothing in subsection (2) shall be construed as authorising the Minister to make any regulations in relation to any goods if the exportation, distribution, purchase, sale or price of those goods are or may be, regulated under or by virtue of any other enactment.

SCHEDULE 1

[Section 16 (2)]

SUMMONS TO WITNESS

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

You are hereby summoned to appear before the Consumer Affairs Division at (place) on the day of at o'clock and to give evidence respecting (state the matter).

and you are required to bring with you (specify the books or documents required where necessary).

Therefore fail not at your peril.

Given under the hand of Director.

Dated this day of 20 .

SCHEDULE 2

[Section 20 (2)]

CONSTITUTION OF CONSUMER PROTECTION TRIBUNAL

1. (1) The Consumer Protection Tribunal shall consist of not less than three and not more than seven members appointed by the Minister, by instrument in writing, from among persons who are suitably qualified, knowledgeable and experienced in the matters of
- Membership of Tribunal.
- (a) consumer affairs;
 - (b) law;
 - (c) economics;
 - (d) business;
 - (e) accounting; or
 - (f) information technology.
2. The Minister shall appoint a Chairperson and a Deputy Chairperson from among the members of the Tribunal who possess the qualifications to hold office as a Magistrate.
- Chairperson and Deputy Chairperson.
3. (1) A member of the Tribunal shall hold office for a period not exceeding three years but is eligible for reappointment.
- Tenure of office.
- (2) The Chairperson may at any time resign his or her office by notice in writing addressed to the Minister and such resignation becomes effective upon receipt by the Minister.
- (3) A member of the Tribunal, other than the Chairperson, may at any time resign his or her office by notice in writing addressed to the Minister and transmitted through the Chairperson, and such resignation becomes effective upon receipt by the Minister.
- (4) The Minister may, at any time, revoke the appointment of a member of the Tribunal if that member
- (a) is incapable, by reason of mental or physical capacity, of carrying out his or her duties;

- (b) is convicted of an offence under this Act or under the Criminal Code; or
- (c) is guilty of misconduct.

4. (1) Where a member of the Tribunal, other than the Chairperson, is unable to act, the Minister may appoint another person to act temporarily for such member.

Temporary appointment.

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

Filing of vacancy.

5. When a vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of a new member who shall hold office for the remainder of the period for which the previous member was appointed.

Publication of membership.

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

Sittings of the Tribunal.

7. (1) The Tribunal shall meet at such times as may be necessary or expedient for the transaction of business and for the consideration of matters under inquiry.

(2) The Chairperson shall preside over every sitting of the Tribunal and in his or her absence the Deputy Chairperson shall preside.

(3) The decisions of the Tribunal shall be by a majority vote of the members and, in the event of a tie the Chairperson, or in his or her absence, the member presiding shall have a casting vote.

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

(5) Proper records of all proceedings of the Tribunal shall be kept.

Authentication of documents.

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

Remuneration of members.

9. The members of the Tribunal shall be paid such remuneration, whether by way of honorarium, salary or fees and such allowances as the Minister may determine.

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

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

12. A member of the Tribunal who has any direct or indirect interest in any matter which is brought before the Tribunal shall Disclosure of interest.

(a) disclose the nature of the interest to the Tribunal in advance of any consideration of the matter; and

(b) not take part in any of deliberations or decisions of the Tribunal with respect to that matter.

Passed by the House of Assembly this day of , 2018.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to provide for the promotion and protection of consumer rights in relation to the supply of goods and the provision of services, as well as establish the duties and obligations of suppliers. It also seeks to establish a Consumer Affairs Division and a Consumer Protection Tribunal. The Bill is based on the model CARICOM Consumer Affairs Protection Bill which sought to harmonise the law in relation to the protection of consumer interest in the region.

The Bill is divided into thirteen parts.

Part I (clauses 1 - 5) sets out the preliminary provisions which would include the short title and commencement, as well as define various terms used throughout the Act. It would also outline the purposes and application of the proposed Act in clauses 4 and 5 respectively.

Part II (clauses 6 - 8) would provide for Administration of the Act.

A Consumer Affairs Division would be established as a Division of the Department of Trade and Consumer Affairs and it would be headed by the Director of Consumer Affairs. This Part would also set out the responsibilities, functions, duties and powers of the Division which would include investigating consumer complaints, promoting the development of and monitoring the operation of recognised consumer organisations and conducting education programmes for the benefit of consumers and suppliers.

Part III (clauses 9 - 19) provides for complaints and investigations.

Complaints under this Act would be made to the Director, either orally or in writing. This Part would also set out the grounds for complaints and for investigation of those complaints. The Director would also be empowered to discontinue an investigation, where he or she is of the opinion that the matter being investigated does not justify further investigation and summons persons to give evidence in relation to any investigation.

Part IV (clauses 20 - 39) would provide for establishment of the Consumer Protection Tribunal its functions and powers.

Part V (clauses 40 - 51) provides for Consumer Rights.

This Part would set out the various rights of consumers including the right to the most favourable interpretation of terms where ambiguity allows for more than one reasonable interpretation, the right to treat goods as unsolicited goods in appropriate circumstances, the right to select suppliers and product, the right to authorise services, the right to choose and examine goods, rights with respect to delivery of goods or supply of services, the right to cancel reservation or to rescind or cancel an agreement; the right of a consumer's estate to choose whether to uphold agreement, where a consumer dies before receiving the goods or services.

Part VI (clauses 52 - 71) sets out the Duties of Suppliers.

Certain obligations and prohibitions would be imposed on suppliers in relation to the supply of goods and services and in relation to matters in connection with the supply of goods and services. These obligations would include, displaying the price of goods and services, and where more than one price is displayed on the goods the supplier is required to charge the consumer the lowest price of the prices displayed on goods.

Suppliers would also be required to label products, to provide trade descriptions for all goods supplied, to disclose the used or re-conditioned status goods, to supply goods that correspond with a description or sample where the consumer agrees to purchase the goods on the basis of the description or sample, and to provide a sales record or receipt.

This Part would also deal with warranties including the implied warranty that goods are of reasonably acceptable quality and are not defective or damaged.

PART VII (clauses 72 - 85) provides for Unfair Trade Practices.

Unfair trade practices such as false, misleading or deceptive representations, specified restrictive trade practices, bait advertising and pyramid schemes are prohibited.

PART VIII (clauses 86 - 93) provides for Unfair Terms.

This part seeks to identify terms of a consumer agreement that may be construed as unfair and places the responsibility on the supplier to ensure that the terms of a consumer agreement are plain and intelligible. It also seeks to prevent the exclusion, restriction or modification of any of the provisions in the Act.

PART IX (clauses 94 - 100) provides for Product Liability and seeks to protect consumers who suffer damage to property as a result of products supplied to them.

Categories of persons who may be found liable for damage caused by a defect in a product are identified in this Part, as well as, the circumstances in which a defect in a product may be inferred and the defences in civil proceedings that may be available to suppliers.

Part XI (clauses 101 - 106) provides for Consumer Safety.

This part defines consumer safety and prohibits suppliers from supplying, offering to supply, exposing or possessing goods that fail to meet the general safety requirements. It also seeks to place a responsibility on suppliers to provide consumers with relevant information to assess the risks that are not immediately obvious in goods and allow the consumer to take precautions against or void those risks. In addition, it would empower the Minister to make safety regulations in relation to goods and information about goods and to enter agreements to exchange information with respect to dangerous non-food items through a regional rapid alert system.

PART XII (clauses 107 - 116) provides for the Recall of Goods.

This Part would provide for compulsory recall and voluntary recall of goods by setting out the procedure to be followed by the Minister before issuing a compulsory recall notice which includes giving the supplier an opportunity to request a conference with the Minister and the procedure to be followed by a supplier where the supplier voluntarily recalls goods. It also gives the Minister or an authorised officer the power to obtain information, documents and evidence from a supplier where there is reason to believe that the supplier supplies goods which may cause injury to any person. Further, by clause 112 and 113, an authorised officer may pursuant to a warrant enter premises which he or she believes that a supplier supplies the goods and inspect those goods, take samples or inspect documents relating to the goods and make copies of those documents.

PART XIII (clauses 117 - 124) makes provision for distance selling contracts.

This part defines the types of contracts which constitute distance selling contracts. It also excludes certain contracts from the application of the Part, including contracts relating to the financial services. In addition it would require suppliers to provide consumers with specific information in a clear and comprehensible manner, as well as allow consumers to accept or decline an internet consumer agreement and to correct errors before entering into distance selling contracts.

PART XIV (clauses 125 - 140) provides for miscellaneous matters such as the circumstances in which a consumer agreement may be void and empowers the

Court or the tribunal to declare an agreement void or sever a void provision when hearing a matter under this Act.

It also seeks to provide for apportionment of payments where services were not received, the procedure to be followed where goods are purchased on lay away, and creates several offences including prohibiting the offering of prizes where there is no intention of providing a prize or an intention to provide a prize other than that offered.

Premier