

TASMANIA

AUSTRALIAN CONSUMER LAW (TASMANIA) BILL 2010

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**AUSTRALIAN CONSUMER LAW (TASMANIA)
BILL 2010**

*(Brought in by the Minister for Corrections and Consumer
Protection, the Honourable Nicholas James McKim)*

A BILL FOR

**An Act to apply the Australian Consumer Law as a law of
Tasmania, to provide for the enforcement of this Act and
related Acts, to save various instruments, and for related
purposes**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Australian
Consumer Law (Tasmania) Act 2010*.

2. Commencement

- (1) Parts 6 and 7 commence on the day on which
this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence
on a day or days to be proclaimed.

THIS BILL IS COGNATE WITH THE AUSTRALIAN CONSUMER LAW (TASMANIA)
(CONSEQUENTIAL AMENDMENTS) BILL 2010

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Part 1 – Preliminary

3. Interpretation

(1) In this Act –

“code of practice” means a code of practice
in respect of fair trading in dealings –

- (a) between a particular class of
suppliers and consumers; or
- (b) by a particular class of persons in
relation to consumers;

“Director” means the person holding the
office of Director of Consumer Affairs
under the *Consumer Affairs Act 1988*;

“related Act” means an Act, or a provision of
an Act, that is prescribed by the
regulations to be a related Act.

- (2) For the avoidance of doubt, in this Act, unless
the contrary intention appears, a reference to this
Act includes a reference to the *Australian
Consumer Law (Tasmania)*.
- (3) Notes included in this Act do not form part of
this Act.

PART 2 – THE AUSTRALIAN CONSUMER LAW

Division 1 – Definitions

4. Interpretation

- (1) In this Part, unless the contrary intention appears –

“application law” means –

- (a) a law of a participating jurisdiction that applies the Australian Consumer Law, either with or without modifications, as a law of the participating jurisdiction; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the Australian Consumer Law, applying as a law of the participating jurisdiction, either with or without modifications;

“Australian Consumer Law” means
(according to the context) –

- (a) the Australian Consumer Law text; or
- (b) the Australian Consumer Law text, applying as a law of a

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participating jurisdiction, either
with or without modifications;

“Australian Consumer Law text” means the
text described in section 5;

“instrument” means any document whatever,
including the following:

- (a) an Act or an instrument made
under an Act;
- (b) a law of this jurisdiction or an
instrument made under such a
law;
- (c) an award or other industrial
determination or order, or an
industrial agreement;
- (d) any other order (whether
executive, judicial or otherwise);
- (e) a notice, certificate or licence;
- (f) an agreement;
- (g) an application made, information
or complaint laid, affidavit
sworn, or warrant issued, for any
purpose;
- (h) an indictment, presentment,
summons or writ;
- (i) any other pleading in, or process
issued in connection with, a legal
or other proceeding;

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“Intergovernmental Agreement” means the Intergovernmental Agreement for the Australian Consumer Law made on 2 July 2009 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being;

“jurisdiction” means a State or the Commonwealth;

“law”, in relation to a Territory, means a law of, or in force in, that Territory;

“modifications” includes additions, omissions and substitutions;

“month” means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month;

“participating jurisdiction” means a jurisdiction that is a party to the Intergovernmental Agreement and applies the Australian Consumer Law as a law of the jurisdiction, either with or without modifications;

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“proclamation” means a proclamation of the Governor published on the Tasmanian legislation website;

“State” includes a Territory;

“Territory” means the Australian Capital Territory or the Northern Territory of Australia;

“this jurisdiction” means Tasmania.

- (2) Terms used in this Part and also in the *Australian Consumer Law (Tasmania)* have the same meanings in this Part as they have in that Law.
- (3) For the purposes of this Part –
 - (a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and
 - (b) that corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

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Division 2 – Application of Australian Consumer Law

5. The Australian Consumer Law text

The Australian Consumer Law text consists of –

- (a) Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth; and
- (b) the regulations under section 139G of that Act.

6. Application of Australian Consumer Law

- (1) The Australian Consumer Law text, as in force from time to time –
 - (a) applies as a law of this jurisdiction; and
 - (b) as so applying may be referred to as the *Australian Consumer Law (Tasmania)*; and
 - (c) as so applying is a part of this Act.
- (2) This section has effect subject to sections 7, 8 and 9.

7. Future modifications of Australian Consumer Law text

- (1) A modification made by a Commonwealth law to the Australian Consumer Law text after the

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commencement of this section does not apply under section 6 if the modification is declared by a proclamation to be excluded from the operation of that section.

- (2) A proclamation under subsection (1) has effect only if published or notified no later than 2 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further proclamation so provides.
- (4) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is registered under the *Legislative Instruments Act 2003* of the Commonwealth.

8. Meaning of generic terms in Australian Consumer Law for purposes of this jurisdiction

- (1) In the *Australian Consumer Law (Tasmania)* –

“regulator” means the Director.

- (2) For the purposes of the application of the *Australian Consumer Law (Tasmania)* –

“court” means –

- (a) in relation to section 218 of the *Australian Consumer Law*

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(Tasmania), the Magistrates
Court (Civil Division); and

- (b) in any other case, a court of
competent jurisdiction.

9. Interpretation of Australian Consumer Law

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this jurisdiction to the *Australian Consumer Law (Tasmania)*.
- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if –
 - (a) the statutory provisions in the *Australian Consumer Law (Tasmania)* were a Commonwealth Act; and
 - (b) the regulations in the *Australian Consumer Law (Tasmania)* or instruments under that Law were regulations or instruments under a Commonwealth Act.
- (3) The *Acts Interpretation Act 1931* of Tasmania does not apply to –
 - (a) the *Australian Consumer Law (Tasmania)*; or
 - (b) any instrument under that Law.

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10. Application of Australian Consumer Law

- (1) The *Australian Consumer Law (Tasmania)* applies to and in relation to –
 - (a) persons carrying on business within this jurisdiction; or
 - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
 - (c) persons ordinarily resident in this jurisdiction; or
 - (d) persons otherwise connected with this jurisdiction.
- (2) Subject to subsection (1), the *Australian Consumer Law (Tasmania)* extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).

Division 3 – References to Australian Consumer Law

11. References to Australian Consumer Law

- (1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.
- (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

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12. References to Australian Consumer Law of other jurisdictions

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
- (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.

Division 4 – Application of Australian Consumer Law to Crown

13. Division does not apply to Commonwealth

In this Division –

“**other jurisdiction**” does not include the Commonwealth;

“**participating jurisdiction**” does not include the Commonwealth.

14. Application law of this jurisdiction

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the

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Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

15. Application law of other jurisdictions

- (1) The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.
- (2) If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

16. Activities that are not business

- (1) For the purposes of sections 14 and 15, the following do not amount to carrying on a business:
 - (a) imposing or collecting –
 - (i) taxes; or
 - (ii) levies; or
 - (iii) fees for authorisations;
 - (b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions);

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- (c) a transaction involving –
- (i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of a State); or
 - (ii) only persons who are all acting for the same authority of a State; or
 - (iii) only the Crown in right of a State and one or more non-commercial authorities of that State; or
 - (iv) only non-commercial authorities of the same State;
- (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because –
- (i) the body chooses to acquire the products; or
 - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 14 and 15.
- (3) In this section –
- “acquisition of primary products by a government body under legislation”**

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includes vesting of ownership of primary products in a government body by legislation;

“authorisation” means a licence, permit, certificate or other authorisation that allows the holder of the authorisation to supply goods or services;

“government body” means a State or an authority of a State;

“primary products” means –

- (a) agricultural or horticultural produce; or
 - (b) crops, whether on or attached to the land or not; or
 - (c) animals (whether dead or alive); or
 - (d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of a State is **“non-commercial”** if –
- (a) it is constituted by only one person; and
 - (b) it is neither a trading corporation nor a financial corporation.

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17. Crown not liable to pecuniary penalty or prosecution

- (1) Nothing in the application law of this jurisdiction makes the Crown in any capacity liable to a pecuniary penalty or to be prosecuted for an offence.
- (2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes the Crown in right of this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

Division 5 – Miscellaneous

18. Conferral of functions and powers on certain bodies

- (1) The authorities and officers of the Commonwealth referred to in the *Australian Consumer Law (Tasmania)* have the functions and powers conferred or expressed to be conferred on them under the *Australian Consumer Law (Tasmania)*.
- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.

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19. No doubling-up of liabilities

(1) If –

- (a) an act or omission is an offence against the *Australian Consumer Law (Tasmania)* and is also an offence against an application law of another participating jurisdiction; and
- (b) the offender has been punished for the offence under the application law of the other jurisdiction –

the offender is not liable to be punished for the offence against the *Australian Consumer Law (Tasmania)*.

- (2) If a person has been ordered to pay a pecuniary penalty under an application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the *Australian Consumer Law (Tasmania)* in respect of the same conduct.

PART 3 – ENFORCEMENT PROVISIONS

Division 1 – Preliminary

20. Interpretation

(1) In this Part –

“**authorised officer**” means an authorized officer within the meaning of the *Consumer Affairs Act 1988*.

(2) Without limiting subsection (1), unless the contrary intention appears, the terms used in this Part and also in the *Australian Consumer Law (Tasmania)* have the same meanings in this Part as they have in the *Australian Consumer Law (Tasmania)*.

(3) A reference in this Part to a person involved in a contravention of a provision of this Act or a related Act is to be read as a reference to a person who has –

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced, whether by threats or promises or otherwise, the contravention; or
- (c) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) conspired with others to effect the contravention.

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Division 2 – Powers of authorised officers

21. Powers of authorised officer to enter, search and enquire, &c.

- (1) For the purposes of this Act or a related Act, an authorised officer may, at all reasonable times –
 - (a) enter any place where the authorised officer knows or reasonably believes that a person is engaging, or has engaged, in conduct that constitutes, or may constitute, a contravention of this Act or a related Act; and
 - (b) in any place lawfully entered do any or all of the following:
 - (i) search for, examine, take possession of, or make copies of, or extracts from, documents or records relating to goods or services supplied or to be supplied;
 - (ii) search for goods and examine goods;
 - (iii) open any package that the authorised officer knows, or reasonably suspects, to contain goods;
 - (iv) question, with respect to matters with which this Act or a related

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Act is concerned, any person employed in that place; and

- (c) make the inquiries that the authorised officer believes to be necessary or desirable in relation to the exercise of his or her powers under this Act or a related Act.
- (2) An authorised officer must not enter any place under subsection (1) unless the authorised officer –
- (a) has the permission of the proprietor or manager of that place; or
 - (b) has first obtained a warrant under subsection (3).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 9 months, or both.

- (3) A magistrate may issue a warrant if he or she is satisfied by evidence on oath, upon the complaint of an authorised officer, that there is reasonable cause to permit entry to any place referred to in subsection (1) for the purposes specified in that subsection.
- (4) A warrant issued under subsection (3) is to be a warrant, directed to an authorised officer specified in the warrant, to enter the place, specified in the warrant, for the purpose of exercising in that place the powers conferred on the authorised officer by this Act or a related Act.

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- (5) A warrant issued under this section is, for a period of 7 days from its issue, sufficient authority –
- (a) to the authorised officer to whom it is directed, and to all persons acting in aid of the authorised officer, to enter the place specified in the warrant; and
 - (b) to the authorised officer to whom it is directed to exercise in respect of the place specified in the warrant all the powers conferred on an authorised officer by this Act or a related Act.

22. Dealings with documents, &c., by authorised officer

- (1) An authorised officer who has taken possession under section 21(1)(b) of any document or record –
- (a) is to sign for the document or record; and
 - (b) is to return the document or record immediately it is no longer required for any proceedings under this Act or a related Act.
- (2) A person who –
- (a) is otherwise entitled to possession of a document or record retained by an authorised officer under subsection (1); and

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- (b) requests the authorised officer to be provided with a copy of the document or record –

is entitled to be provided as soon as practicable with a copy of that document, or record, that is a copy certified by the Director to be a true copy.

- (3) A certified copy provided under subsection (2) is to be received in all courts and elsewhere as evidence of the matters contained in that copy, as if it were the original.

23. Powers of authorised officers to require delivery of documents, &c.

- (1) An authorised officer who has reason to believe that a person possesses any document, or record, that is relevant to a matter under this Act or a related Act may require that person to deliver the document or record, or a copy of the document or record, as directed.
- (2) A requirement under subsection (1) may specify that the document, record, or copy, to which it relates is to be delivered –
 - (a) at a place specified in the requirement; and
 - (b) to the Director or any other authorised officer; and
 - (c) at, by, or within, a time specified in the requirement; and

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- (d) in person, by certified mail or in any other prescribed manner.

24. Embargo notices

- (1) An authorised officer who enters premises under a search warrant may give a notice (in this section referred to as an “**embargo notice**”) to the occupier of the premises.
- (2) An embargo notice must –
 - (a) be in writing; and
 - (b) specify the consumer goods or product related services to which the notice relates; and
 - (c) if the notice relates to consumer goods, state that the specified consumer goods must not be –
 - (i) supplied in or from the premises; or
 - (ii) transferred, moved, altered, destroyed or otherwise interfered with –during the period specified in the notice; and
 - (d) if the notice relates to product related services, state that the specified product related services must not be supplied in

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or from the premises during the period specified in the notice.

- (3) A person who knows that an embargo notice relates to consumer goods or product related services must not supply, transfer, move, alter, destroy or interfere with the goods, or supply the product related services, in contravention of the notice.

Penalty: Fine not exceeding 200 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) for the defendant to prove that the defendant moved the consumer goods, or the part of the consumer goods, for the purpose of protecting and preserving the goods.

25. Infringement notices

- (1) An authorised officer may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may not be served on an individual who has not attained the age of 18 years.
- (3) An infringement notice –
- (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to more than 3 offences.

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- (4) The regulations –
 - (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
 - (b) may prescribe different penalties for bodies corporate and individuals.
- (5) The penalty prescribed for any infringement offence is not to exceed 20% of the maximum penalty that could be imposed on an individual by a court in respect of the offence.
- (6) In the application of the *Monetary Penalties Enforcement Act 2005* to an infringement notice issued and served under this section –
 - (a) the issuer and server of the infringement notice is taken to be a public sector body within the meaning of that Act; and
 - (b) a penalty prescribed under subsection (4) in respect of an infringement offence is taken to be the prescribed penalty applicable to that offence for the purposes of section 14(a)(ii) of that Act.
- (7) In this section –
 - “infringement offence”** means an offence against this Act, or the regulations, that is prescribed by the regulations to be an infringement offence.

26. Obstruction, &c., of authorised officers

(1) A person must not –

- (a) assault, resist, impede or obstruct an authorised officer in the exercise of any powers under this Act or attempt to do so; or
- (b) use threatening, abusive or insulting language to an authorised officer engaged in the exercise of any powers under this Act or to any person assisting an authorised officer who is so engaged; or
- (c) fail to comply with a lawful request, direction or requirement of an authorised officer; or
- (d) fail to produce to an authorised officer, when required to do so by that officer, any document or record that –
 - (i) is relevant to the provisions of this Act or of a related Act; and
 - (ii) is in the possession, or at the disposal, of that person; or
- (e) impersonate an authorised officer.

Penalty: Fine not exceeding 20 penalty units.

(2) If a person is convicted of an offence against subsection (1)(c) or (d), the court may order the person to –

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- (a) comply with the lawful request, direction or requirement; or
- (b) produce to an authorised officer the document or record –

that was the subject of the offence, as the case may require.

27. Injunctions in respect of certain provisions of this Act or related Acts

- (1) The Supreme Court may grant an injunction in the terms the Court determines to be appropriate if, on the application of the Minister, the Director or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute –
 - (a) a contravention of a provision of this Act or a related Act; or
 - (b) attempting to contravene such a provision; or
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or

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- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision.
 - (2) Subsection (1) does not apply in relation to a provision of the *Australian Consumer Law (Tasmania)*.
 - (3) Nothing in this section is to be taken to prevent the granting of an injunction under the *Australian Consumer Law (Tasmania)*.
 - (4) Without prejudice to the generality of subsection (1), an injunction granted under that subsection may be, or include, an injunction restraining a person from carrying on a business of supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business) –
 - (a) for a specified period; or
 - (b) except on specified terms and conditions.
 - (5) The Supreme Court may, if –
 - (a) an application for an injunction under subsection (1) has been made; and
 - (b) the Court determines it to be appropriate –

grant an injunction by consent of all the parties to the proceedings, whether or not the Court is

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satisfied that a person has engaged, or is proposing to engage, in conduct of a kind specified in subsection (1).

- (6) The Supreme Court may grant an interim injunction pending determination of an application under subsection (1), if, in the opinion of the Court, it is desirable to do so.
- (7) The Supreme Court may rescind or vary an injunction granted under subsection (1), (5) or (6).
- (8) If the Minister or the Director makes an application to the Supreme Court for the grant of an injunction under this section, the Court is not to require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.
- (9) If –
 - (a) in a case to which subsection (8) does not apply, the Supreme Court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
 - (b) the Minister gives the undertaking –

the Supreme Court is to accept the undertaking by the Minister and is not to require a further undertaking from any other person.

Division 3 – General provisions about enforcement

28. Conduct by directors, employees and agents

- (1) If, in proceedings under this Act in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate –
 - (a) by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent –

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate.

- (3) If, in proceedings under this Act in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the

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state of mind of the person, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

- (4) Conduct engaged in on behalf of a person other than a body corporate –
- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent –

is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

29. Power of court to prohibit payment or transfer of moneys or other property

(1) If –

- (a) proceedings have been commenced in a court of summary jurisdiction against a person for an offence against this Act; or
- (b) an application has been made under section 232 of the *Australian Consumer Law (Tasmania)* for an injunction in respect of a person –

the court having jurisdiction in the proceeding may, if it is satisfied as to the relevant matters, make, on the application of the Minister or the Director, an order or orders mentioned in subsection (3).

(2) For the purposes of subsection (1), the relevant matters are that –

- (a) it is necessary or desirable to do so for the purpose of preserving money or other property held by or on behalf of a person referred to in subsection (1)(a) or (b), as the case may be (in this section referred to as the “**relevant person**”); and
- (b) the relevant person is liable or may become liable under this Act to pay money by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or refund other property; and

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- (c) it will not unduly prejudice the rights and interests of any other person.

(3) The orders referred to in subsection (1) are as follows:

- (a) an order prohibiting a person who is indebted to –

- (i) the relevant person; or

- (ii) an associate of the relevant person –

from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

- (b) an order prohibiting a person who is holding money or other property on behalf of the relevant person, or on behalf of an associate of the relevant person, from –

- (i) paying all or any of the money; or

- (ii) transferring, or otherwise parting with possession of the other property –

to –

- (iii) the person on whose behalf the money or other property is held; or

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- (iv) another person at the direction or request of the person on whose behalf the money or other property is held;
 - (c) an order prohibiting the taking or sending by any person of money of the relevant person, or of an associate of the relevant person, to a place outside this jurisdiction;
 - (d) an order prohibiting the taking, sending or transfer by any person of other property of the relevant person, or of an associate of the relevant person, to a place outside this jurisdiction;
 - (e) an order appointing, if the relevant person is a natural person, a receiver or trustee of the property, or of part of the property, of the relevant person, with the powers specified in the order.
 - (4) An order under this section may prohibit an activity either absolutely or subject to conditions.
 - (5) Subject to subsection (6), an order under this section may be expressed to operate –
 - (a) for a period specified in the order; or
 - (b) until proceedings under any other provision of this Part, or the *Australian Consumer Law (Tasmania)*, in relation to which the order was made have been concluded.

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- (6) An order under this section made in the absence of the person against whom the order is sought may not operate for a period of more than 30 days.
- (7) A person must not contravene an order by a court under this section that is applicable to the person.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units;
or
 - (b) an individual, a fine not exceeding 200 penalty units.
- (8) Nothing in this section affects the powers that the court has apart from this section.
- (9) A reference in this section to a person who is an associate of a relevant person is a reference to –
 - (a) a person holding money or other property on behalf of the relevant person; or
 - (b) if the relevant person is a body corporate, a wholly owned subsidiary of the relevant person.

30. Order for destruction of goods

- (1) A court may, on the application of an authorised officer, make an order of a kind referred to in subsection (2), if the court is satisfied that –

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- (a) a person possesses or has control of consumer goods of a particular kind; and
 - (b) any of the following apply:
 - (i) the consumer goods do not comply with a safety standard that is in force for consumer goods of that kind and the cause of the non-compliance cannot be remedied;
 - (ii) a permanent ban on consumer goods of that kind is in force;
 - (iii) a recall notice for consumer goods of that kind is in force and a defect or dangerous characteristic of such consumer goods identified in the notice cannot be remedied.
- (2) The court may make an order under subsection (1) authorising one or more authorised officers to do the following in accordance with any requirement specified in the order:
- (a) to enter the premises of the person that are specified in the order;
 - (b) to search the premises for consumer goods of a kind specified in the order;
 - (c) to seize any such consumer goods that are found on those premises;

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- (d) to destroy or otherwise dispose of any such consumer goods that are so seized.
- (3) Before making an application under subsection (1), the authorised officer must –
 - (a) take reasonable steps to discover who has an interest in the consumer goods; and
 - (b) if it is practicable to do so, notify of the proposed application each person whom the authorised officer believes to have such an interest.
- (4) A person notified under subsection (3) is entitled to be heard in relation to the application.
- (5) If an authorised officer seizes and destroys or otherwise disposes of consumer goods in accordance with an order under subsection (1) –
 - (a) the person from whom the consumer goods were seized; or
 - (b) if that person is not entitled to possess the consumer goods, the owner of the consumer goods –

is liable to pay an amount equal to the costs reasonably incurred by the authorised officer in seizing, and in destroying or disposing of, the consumer goods.
- (6) An amount payable by a person under subsection (1) –
 - (a) is a debt due by the person to the State; and

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- (b) may be recovered in a court of competent jurisdiction.

31. Declaration of contravention

In any proceedings for an offence against, or a contravention of, this Act (including the *Australian Consumer Law (Tasmania)*) the court may make an order declaring that the accused has contravened a provision of this Act or that Law.

32. Evidentiary provisions

- (1) A document –

- (a) purporting to be a certificate by the Director; and
 - (b) stating that a person specified in the certificate is an authorised officer –

is admissible in evidence in any legal proceedings and is evidence of the matter stated in the certificate.

- (2) In any proceedings an apparently genuine copy of any document or record –
 - (a) taken by an authorised officer under this Act; and
 - (b) certified by the Director to be a true copy of the original –

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is evidence of the existence of the original and of its contents.

Division 4 – Provisions in respect of interim bans and certain notices

33. Director may recommend Minister make certain orders and notices

The Director may recommend to the Minister that, under the *Australian Consumer Law (Tasmania)*, the Minister –

- (a) impose an interim ban; or
- (b) issue a recall notice; or
- (c) publish a notice under section 129 of the *Australian Consumer Law (Tasmania)* –

in relation to goods or services of a particular kind.

34. Certain orders to be published in *Tasmanian Government Gazette*

- (1) The Minister must ensure that a copy of a relevant notice is published in the *Tasmanian Government Gazette* before the relevant notice takes effect.
- (2) For the purposes of subsection (1), a relevant notice is –

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- (a) a notice published by the Minister under section 109, 122 or 129 of the *Australian Consumer Law (Tasmania)*; or
 - (b) a notice that is to be published by the Minister under section 109, 122 or 129 of the *Australian Consumer Law (Tasmania)*.
 - (3) The Minister must ensure that a copy of a notice that is published, or that is to be published, by the Minister under section 111(2) or 113 of the *Australian Consumer Law (Tasmania)* is published in the *Tasmanian Government Gazette* before, on or as soon as practicable after the day the notice takes effect.
 - (4) The Minister must ensure that a copy of a notice that is published by the Minister under section 130(1) of the *Australian Consumer Law (Tasmania)* is published in the *Tasmanian Government Gazette* before, on, or as soon as practicable after the day it is published under that section.
 - (5) A failure to comply with a provision of this section does not render invalid an interim ban or notice imposed, issued or published by the Minister under the *Australian Consumer Law (Tasmania)*.
 - (6) A notice referred to in this section is not –
 - (a) a statutory rule for the purposes of the *Rules Publication Act 1953*; or

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- (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

35. Certain orders and notices to be served on certain persons

- (1) The Minister is to cause a copy of a notice published by the Minister under section 109 or 122 of the *Australian Consumer Law (Tasmania)* to be served on each person whom the Minister knows to be supplying the goods or services to which the notice relates.
- (2) The copy of a notice is to be served under subsection (1) within 2 days after it is published by the Minister under section 109 or 122 of the *Australian Consumer Law (Tasmania)* or as soon as practicable after it is so published.
- (3) A failure to comply with a provision of this section does not render invalid an interim ban or recall notice imposed or issued by the Minister under the *Australian Consumer Law (Tasmania)*.

36. Right of review

- (1) A person who is engaged in trade or commerce in respect of any product affected by an interim ban, or a recall notice, imposed or issued by the Minister under section 109 or 122 of the *Australian Consumer Law (Tasmania)* may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision to impose the interim ban or issue the recall notice.

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- (2) For the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*, the date on which the interim ban or recall notice takes effect under the *Australian Consumer Law (Tasmania)* is taken to be the day on which the decision to impose the ban or issue the notice is made.
- (3) If the Magistrates Court (Administrative Appeals Division) sets aside the decision to impose an interim ban or issue a recall notice –
- (a) the Court may specify the day the interim ban or recall notice is to cease to have effect; and
 - (b) the interim ban or recall notice does not cease to have effect until the date so specified, unless it sooner ceases to have effect by virtue of any action taken under the *Australian Consumer Law (Tasmania)*.
- (4) The Minister may impose or issue, in accordance with the *Australian Consumer Law (Tasmania)*, an interim ban or recall notice in accordance with any directions or recommendations of the Magistrates Court (Administrative Appeals Division).

PART 4 – CODES OF PRACTICE

37. Codes of practice

- (1) Subject to subsections (2), (5) and (6), the Governor, on the recommendation of the Minister, may make regulations prescribing a code of practice.
- (2) Regulations may only be made in accordance with subsection (1) if –
 - (a) the Minister considers it to be in the public interest to do so; and
 - (b) a request is made to the Minister –
 - (i) by any person who has an interest in any appropriate field of trade or commerce; or
 - (ii) by the Tasmanian Consumer Advisory Committee.
- (3) Before a code of practice is prescribed under subsection (1), the Minister is to invite the Tasmanian Chamber of Commerce & Industry to prepare, in consultation with other appropriate bodies or organisations, a draft code of practice.
- (4) If a draft code of practice is prepared under subsection (3), the Minister is to arrange for consultation with, and invite submissions from –
 - (a) the public; and

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- (b) any other person, body or organisation who the Minister believes would have an interest in the terms of the proposed draft code of practice.
- (5) The Minister is not to recommend that the Governor make any regulations under this section unless a draft code of practice is prepared under subsection (3).
- (6) A code of practice must be endorsed by a resolution of both Houses of Parliament before it may be prescribed as a code of practice under subsection (1).

38. Amendments to codes of practice

- (1) If it is proposed to amend a prescribed code of practice, the Minister is to invite comments on the proposed amendment from –
 - (a) the Tasmanian Chamber of Commerce & Industry; and
 - (b) the Tasmanian Consumer Advisory Committee; and
 - (c) any other person the Minister considers ought to be invited to provide comments.
- (2) A proposed amendment to a prescribed code of practice must be laid before each House of Parliament and may be disallowed on a resolution passed by either House within 15 sitting-days of the House after the proposed amendment is laid before it.

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- (3) If a proposed amendment to a prescribed code of practice is not disallowed under subsection (2), the Minister may recommend that regulations be made to amend a prescribed code of practice.

39. Contravention of prescribed code of practice

- (1) The Director may apply to a magistrate for an order under this section if it appears to the Director that a person has contravened any provision of a prescribed code of practice.
- (2) If a magistrate is satisfied that a person has contravened a provision of a prescribed code of practice, the magistrate may order the person –
 - (a) to cease contravening that provision; and
 - (b) to rectify any consequence of the failure or contravention.
- (3) If –
 - (a) the contravention is by a body corporate; and
 - (b) the magistrate is satisfied that it occurred with the consent or connivance of a person who, at the time of the contravention, was a director of the body corporate or a person concerned in its management –

the magistrate may make either or both of the following additional orders:

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- (c) an order prohibiting the person from continuing to consent to, or connive at, the contravention;
 - (d) an order prohibiting the person from consenting to, or conniving at, a similar contravention by any other body corporate of which the person is a director or in the management of which the person is concerned.
 - (4) An order under this section may be made for the period and subject to the conditions that the magistrate thinks fit, including –
 - (a) the future conduct of the person; and
 - (b) any action to be taken to rectify the consequences of the contravention which is the subject of the order.
 - (5) It is a defence in any proceedings in respect of a failure to comply with any regulations relating to a code of practice to establish that compliance was effected by means other than those specified in the code of practice.

40. Injunctions for breach of code of practice

- (1) The Supreme Court may grant an injunction in the terms the Court determines to be appropriate if, on the application of the Director, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes, or would constitute –

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- (a) a contravention of a provision of an order of a magistrate under section 39; or
 - (b) attempting to contravene such a provision; or
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene such a provision; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision.
- (2) An injunction under subsection (1) may be granted as an interim injunction without an undertaking being required as to damages or costs or may be granted as a permanent injunction.

PART 5 – MISCELLANEOUS

41. Information sharing

- (1) The Director may enter into, or approve of, an arrangement (an **“information-sharing arrangement”**) with a relevant agency for the purposes of sharing or exchanging information held by the Director.
- (2) The information to which an information-sharing arrangement may relate is limited to the following:
 - (a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters;
 - (b) probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers;
 - (c) any other information affecting the interests of consumers;
 - (d) any other information of a prescribed type.
- (3) Under an information-sharing arrangement, the Director and the relevant agency are, despite any other Act or law of the State, authorised –

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- (a) to request and receive information held by the other party to the arrangement; and
- (b) to disclose information to the other party –

but only to the extent that the information is reasonably necessary to assist in the exercise of –

- (c) functions under this Act (or any other Act relating to the interests of consumers that is administered by the Minister, whether solely or jointly with another Minister); or
 - (d) the functions of the relevant agency concerned.
- (4) The Director may also (whether as part of an information-sharing arrangement or otherwise) –
- (a) refer to a fair trading agency or law enforcement agency any matter (including any complaint) that affects the interests of consumers; and
 - (b) receive any such matter from a fair trading agency or law enforcement agency; and
 - (c) conduct a joint investigation into any such matter with a fair trading agency or law enforcement agency.

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- (5) Any such fair trading agency or law enforcement agency is, despite any other Act or law of the State, authorised to refer such a matter to the Director or to conduct an investigation into the matter jointly with the Director.
- (6) This section does not limit the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body.
- (7) In this section –

“fair trading agency” means an agency of the State, or of the Commonwealth, another State or a Territory, or an overseas jurisdiction, that exercises functions under an enactment with respect to consumer law;

“law enforcement agency” means –

- (a) the Police Service or the police force of another State or a Territory or of an overseas jurisdiction; or
- (b) the Australian Federal Police; or
- (c) the Integrity Commission established under the *Integrity Commission Act 2009*; or
- (d) the Australian Crime Commission; or

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- (e) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or a Territory or an overseas jurisdiction;

“relevant agency” means –

- (a) a fair trading agency; or
- (b) a law enforcement agency; or
- (c) any other agency of the State or of the Commonwealth, another State or a Territory or an overseas jurisdiction; or
- (d) any other person or body that exercises functions, in the public interest, that involve protecting the interests of consumers.

42. Application for assistance in making civil claims

- (1) A person who claims to be a consumer and who –
 - (a) wishes to bring legal proceedings (other than criminal proceedings) arising out of the supply to the person of goods or services; or
 - (b) wishes to make an appeal, or seek judicial review, in relation to legal

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proceedings of a kind referred to in paragraph (a); or

- (c) is a party to legal proceedings or proceedings relating to an appeal or review referred to in paragraph (a) or (b) –

may apply to the Director for assistance in the conduct of the proceedings.

- (2) An application under subsection (1) is to –

- (a) be in or to the effect of a form approved by the Director; and
- (b) include the particulars required to complete the form; and
- (c) be verified in the manner required by the Director.

43. Grant of assistance

- (1) The Director may grant an application made under section 42 if –
 - (a) the Director is satisfied that the applicant has reasonable grounds for bringing, or being a party to, the proceedings to which the application relates; and
 - (b) the Director is of the opinion that it is desirable, in the general interests of consumers or of any class of consumers, that assistance should be granted; and

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- (c) the Director has received the written approval of the Minister to grant the assistance applied for.
- (2) The Director may refuse assistance if he or she is of the opinion that the assistance should not be granted because of the applicant's financial position.
- (3) The Director is to notify an applicant under section 42 of the grant or refusal of the application.
- (4) If an application is granted –
 - (a) the applicant must not, without the consent of the Director, withdraw from the proceedings; and
 - (b) the applicant must not, except to the extent authorised or required by the Director, interfere, or be involved, in the case; and
 - (c) the Director has, to the exclusion of the successful applicant, the same control over and the same rights in respect of the case (including the right to settle or compromise any claim arising in the case) as, but for that exclusion, would have been available to the assisted person.
- (5) Assistance granted under this section does not extend to expenses other than –
 - (a) the costs of legal representation; and

- (b) prescribed expenses.

44. Costs and expenses in assisted proceedings

- (1) If a person is granted assistance under section 43, a court that makes an order for costs in favour of the assisted person must make the same order (except against another assisted person) as the court would have made in favour of the assisted person if the person had not been an assisted person.
- (2) If a person is granted assistance under section 43, a court that makes an order for costs against the assisted person must make the same order (except in favour of another assisted person) as the court would have made against the assisted person if the person had not been an assisted person.
- (3) If an order for costs is made in accordance with subsection (1) –
 - (a) the costs are payable to the Director instead of the person in whose favour the order is made; and
 - (b) the costs may be recovered by the Director as a debt due to the Crown; and
 - (c) the costs, upon being paid to or recovered by the Director, are to be paid into the Consolidated Fund.

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- (4) If an order for costs is made in accordance with subsection (2), the costs are to be paid by the Director.
- (5) Except in the case of costs payable to the Director, money awarded by a court in favour of an assisted person is payable to the person without deduction.

45. Application of Act to *Sale of Goods Act 1896*

- (1) Sections 18, 19(a) and 20 of the *Sale of Goods Act 1896* do not apply to contracts of supply to which Division 1 of Part 3-2 of the *Australian Consumer Law (Tasmania)* applies.
- (2) Section 5(2) of the *Sale of Goods Act 1896* is taken to apply in relation to Division 1 of Part 3-2 of the *Australian Consumer Law (Tasmania)* as if –
 - (a) the reference to this Act were a reference to Part 3-2 of the *Australian Consumer Law (Tasmania)*; and
 - (b) the reference to contracts for the sale of goods included a reference to contracts of supply of goods.
- (3) A reference in Part 1 of the *Sale of Goods Act 1896* to a condition includes a reference to a guarantee within the meaning of Division 1 of Part 3-2 of the *Australian Consumer Law (Tasmania)*.

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- (4) Except as otherwise expressly provided by Division 1 of Part 3-2 of the *Australian Consumer Law (Tasmania)*, nothing in that Division affects the application of the *Sale of Goods Act 1896* or any other law to a contract of supply of goods or services.

46. Protection for Director, &c.

- (1) Any matter or thing done or omitted to be done in good faith by –
- (a) the Director; or
 - (b) any other person who is an authorized officer within the meaning of the *Consumer Affairs Act 1993*; or
 - (c) any other person –

in the administration or execution, or purported administration or execution, of this Act does not subject any of those persons personally to any action, liability, claim or demand.

- (2) Subsection (1) does not preclude the Crown from being subject to any action, liability, claim or demand to which the Crown would, but for that subsection, have been subject.

47. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or the *Australian Consumer Law (Tasmania) (Consequential Amendments) Act 2010*.
- (3) Any provision of the kind referred to in subsection (2) may, if the regulations so provide, take effect from the date of Royal Assent to this Act or a later date.
- (4) To the extent to which any provision of the kind referred to in subsection (2) takes effect from a date that is earlier than the date of its publication on the Tasmanian legislation website, the provision does not operate so as –
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (5) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (6) The regulations may adopt –

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- (a) either wholly or in part; and
- (b) with or without modification; and
- (c) either specifically or by reference –

any of the relevant instruments, whether the instrument is prescribed, published or issued before or after the commencement of this Act.

- (7) For the purposes of subsection (6), the relevant instruments are regulations, standards, rules, codes, recommendations, specifications, methods or drawings prescribed, published or issued by any national authority or national body specified in the regulations.
- (8) A reference in subsection (6) to a relevant instrument includes a reference to an addition to, or amendment of, that instrument, whether the addition or amendment is prescribed, published or issued before, on or after the commencement day.
- (9) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a penalty not exceeding 100 penalty units and, in the case of a continuing offence, a further penalty not exceeding 10 penalty units for each day during which the offence continues.

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48. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Corrections and Consumer Affairs; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

PART 6 – SAVING OF RETAIL TENANCIES CODE OF PRACTICE

49. Saving of retail tenancies code of practice

- (1) If this section commences on or before 4 December 2010 –
 - (a) the *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998*, reinstated under the *Fair Trading (Reinstatement of Regulations) Act 2008*, that, but for this section, would have expired by virtue of that Act, continue in force by virtue of this section until the commencement of Part 4; and
 - (b) on and from the commencement of Part 4, the regulations referred to in paragraph (a) are to be taken to be regulations made under this Act for the purposes of that Part.
- (2) If this section commences after 4 December 2010, then, on and from the commencement of Part 4, the *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998* reinstated under the *Fair Trading (Reinstatement of Regulations) Act 2008* that have expired by virtue of that Act on 4 December 2010 are to be taken to be regulations made under this Act for the purposes of that Part.
- (3) Nothing in subsection (1) or (2) is to be taken to prevent the code of practice referred to in those

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subsections being amended or rescinded under
Part 4.

**PART 7 – TRANSITIONAL PROVISIONS IN RESPECT
OF MOTOR VEHICLE TRADERS CODE OF
PRACTICE**

**50. Transitional provisions in respect of motor vehicle
traders code of practice**

- (1) The repeal of the *Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996* that, but for this section, would have been effected on 1 January 2011 is postponed until 1 January 2012.
- (2) Subsection (1) does not prevent the *Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996* from being repealed or rescinded before 1 January 2012 by or under another Act.

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**PART 8 – TRANSITIONAL AND SAVINGS
PROVISIONS IN RESPECT OF *FAIR TRADING ACT*
1990**

51. Savings and transitionals – *Fair Trading Act 1990*

- (1) Part 2-3 of the *Australian Consumer Law (Tasmania)* applies to any new contract entered into on or after 1 January 2011.
- (2) Subject to subsection (3), the *Fair Trading Act 1990* as in force immediately before its repeal under the *Australian Consumer Law (Tasmania) (Consequential Amendments) Act 2010* continues to apply to any contract entered into before 1 January 2011.
- (3) If a contract entered into before 1 January 2011 –
 - (a) is renewed on or after that date, Part 2-3 of the *Australian Consumer Law (Tasmania)* applies to the contract as renewed, on and from the day on which the renewal takes effect, in relation to conduct that occurs on or after that day; or
 - (b) if a term of the contract is varied on or after 1 January 2011 and paragraph (a) has not already applied in relation to the contract, Part 2-3 of the *Australian Consumer Law (Tasmania)* applies to the term as varied, on and from the day on which the variation takes effect, in

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relation to conduct that occurs on or after
that day.

- (4) If subsection (3)(b) applies to a term of the contract, sections 23(2) and 27(1) of the *Australian Consumer Law (Tasmania)* apply to the contract.