

## CLAUSE NOTES

### Australian Consumer Law (Tasmania) Bill 2010

#### **PART I            PRELIMINARY**

##### **Clause 1           Short Title**

The Act is referred to as the *Australian Consumer Law (Tasmania) Act 2010*

##### **Clause 2           Commencement**

Part 6 and 7 commence on the day on which this Act receives the Royal Assent. The remaining provisions of this Act commence on a day or days to be proclaimed.

The different commencement dates for Parts 6 and 7 are due to the 'saving' of the *Retail Tenancies Code of Practice* (Parts 6) and 'transitional provisions' in respect of the *Motor Vehicle Traders Code of Practice* (Part 7).

##### **Clause 3           Interpretation**

This clause defines a 'codes of practice', 'Director' and 'related Act'.

An avoidance of doubt provision is contained in clause 3(3) providing that 'unless the contrary intention appears, a reference to this Act includes a reference to the *Australian Consumer Law (Tasmania)*'.

## **PART 2        THE AUSTRALIAN CONSUMER LAW**

### **Clause 4        *Interpretation***

This clause defines a range of terminology for the interpretation of Part 2 of the Bill.

### **Clause 5        **The Australian Consumer Law text****

The “Australian Consumer Law text” consists of Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth and regulations under s139G of that Act.

### **Clause 6        **Application of Australian Consumer Law****

Provides for the application of the Australian Consumer Law in Tasmania.

### **Clause 7        **Future modifications of Australian Consumer Law****

Provides for future amendment/modification of the Australian Consumer Law.

### **Clause 8        **Meaning of generic terms in Australian Consumer Law for the purposes of this jurisdiction****

Defines a number of terms used.

### **Clause 9        **Interpretation of Australian Consumer Law****

To ensure consistent interpretation of the Australian Consumer Law in each jurisdiction across Australia, clause 9 applies the *Acts Interpretation Act 1901* of the Commonwealth as the law of Tasmania for the purposes

of interpreting the Australian Consumer Law in Tasmania and ‘dis-applies’ the ***Acts Interpretation Act 1931*** for the purposes of the Australian Consumer Law of Tasmania and instruments made under that law.

**Clause 10      Application of Australian Consumer Law**

Confirms the ‘extra-territorial’ application of the Australian Consumer Law of Tasmania.

**Clause 11      References to Australian Consumer Law**

Provides that unless the contrary intention appears or the context otherwise requires, a reference in any instrument to the Australian Consumer law is a reference to the Australian Consumer Law of any participating jurisdiction.

The expressions ‘instrument’ and ‘participating jurisdiction’ are defined in clause 4.

**Clause 12      References to Australian Consumer Law of other jurisdictions**

Provides for references to the Australian Consumer Law of another jurisdiction.

**Clause 13      Division does not apply to Commonwealth**

Division 4 deals with the application of the Australian Consumer Law to the Crown. Clause 13 confirms that Division 4 does not apply to the Commonwealth.

**Clause 14      Application law of this jurisdiction**

Provides that the application law of Tasmania (defined in clause 4) binds the Crown in right of Tasmania and each

other jurisdiction in so far as the Crown carries on business either directly or by the authority of the relevant jurisdiction.

**Clause 15      Application law of other jurisdictions**

Provides that the application law of another jurisdiction binds the Crown in right of Tasmania in so far as the Crown carries on business either directly or by the authority of the Crown in the right of Tasmania.

Clause 15(2) provides that if, because of this Part, a provision of the law of another jurisdiction binds the Crown in the right of Tasmania, the Crown in that right is subject to the law, despite any prerogative right or privilege.

**Clause 16      Activities that are not business**

Provides that certain activities carried on by the Crown are not to be regarded as 'carrying on a business' for the purposes of clauses 14 and 15.

**Clause 17      Crown not liable to pecuniary penalty or prosecution**

Clause 17(1) provides that nothing in the application law of Tasmania makes the Crown, in any capacity, liable to a pecuniary penalty or to be prosecuted for an offence.

Clause 17(2) provides that nothing in the application law of any participating jurisdiction makes the Crown in right of Tasmania liable to a pecuniary penalty or to be prosecuted for an offence.

**Clause 18**      **Conferral of functions and powers on certain bodies**

Provides that authorities and officers of the Commonwealth, who have certain powers under the Australian Consumer Law, have those functions and powers with respect to the Australian Consumer Law as it applies to Tasmania.

Also provides that those authorities and officers also have the power to do all things necessary and convenient to be done in connection with the performance of those functions and exercise of those powers.

**Clause 19**      **No doubling-up of liabilities**

Provides that where an act or omission is an offence against the Australian Consumer Law as it applies in Tasmania, and is also an offence against the Australian Consumer Law of another participating jurisdiction, an offender is not liable to be punished for the offence under the Australian Consumer Law of Tasmania if the offender has been punished under the Australian Consumer Law of another participating jurisdiction.

Similarly, if a person has been ordered to pay a pecuniary penalty under the Australian Consumer Law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the Australian Consumer Law of Tasmania with respect to that same conduct.

**PART 3**            **ENFORCEMENT PROVISIONS**

**Clause 20**      **Interpretation**

Clause 20 (1) defines authorised officer to mean an authorised officer within the meaning of the *Consumer*

*Affairs Act 1988.*

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

Clause 21(1)(a) provides that for the purpose of the *Australian Consumer Law (Tasmania) Act 2010* or a related Act, an authorised officer may, at reasonable times, 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.

Clause 21(1)(b) provides that the authorised officer may search, examine, open any package, question any person and make inquiries.

Clause 21(2) provides that the authorised officer must not enter any place unless they have the permission of the proprietor or have first obtained a warrant.

Clause 21(3) provides that a magistrate may issue a warrant.

**Clause 22 Dealing with documents, & c., by authorised officer**

Details the manner in which an authorised officer should deal with documents.

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

Clause 23(1) provides that an authorised officer may require a person, who they have reason to believe possesses a relevant document, to deliver the document as directed.

Clause 23(2) outlines the process in relation to the delivery of the relevant document.

**Clause 24      Embargo notices**

Embargo notices do not form part of the Australian Consumer Law. This clause provides additional powers for inspectors which interact with part 3-3 of the Australian Consumer Law and the new product safety provisions of the Australian Consumer Law.

**Clause 25      Infringement notices**

This clause allows for the issue of infringement notices for prescribed offences against the Australian Consumer Law (Tasmania).

The Australian Consumer Law does not include a provision for the issue of infringement notices under the Australian Consumer Law as it applies in Tasmania.

**Clause 26      Obstruction, &c., of authorised officers**

Provides that a person must not obstruct an authorised officer.

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

Provides that the Supreme Court may grant an injunction on the application of the Minister or Director or any other person if satisfied that the person has engaged in specified conduct (eg. contravention of a provision of this Act; or attempting to do so, or inducing or attempting to induce to do so).

**Clause 28      Conduct by directors, employees and agents**

Details when the conduct of directors, employees and agents is considered as being conduct on the part of a body corporate.

**Clause 29      Power of the court to prohibit payment or transfer of moneys or other property**

Provides for a power of the courts to make orders prohibiting payment or transfer of moneys or other property.

**Clause 30      Order for destruction of goods**

Details the circumstances in which a court may order the destruction of dangerous goods. The Australian Consumer Law does not include an equivalent provision. This clause interacts with Part 3-3 of the Australian Consumer Law.

**Clause 31      Declaration of contravention**

Provides that a court may make an order declaring that the accused has contravened a provision of this Act or the Australian Consumer Law (Tasmania).

**Clause 32      Evidentiary provisions**

Details when a document is admissible as evidence in legal proceedings.

**Clause 33      Director may recommend Minister make certain orders and notices**



Provides that the Director may recommend to the Minister to impose an interim ban, issue a recall notice or publish a notice under section 129 of the Australian Consumer Law (Tasmania) in relation to goods or services of a particular kind.

**Clause 34**      **Certain orders to be published in Tasmania Government Gazette**

Provides that the Minister must publish notices under clause 33 in the Government Gazette.

**Clause 35**      **Certain orders and notices to be served on certain persons**

Provides that the Minister is to service a notice published under section 109 and 122 of the Australian Consumer Law (Tasmania) on each person whom the Minister knows to be supplying the goods or services to which the notice relates.

**Clause 36**      **Right of review**

Provides that a person who is engaged in trade or commerce in respect of a product affected by an interim ban, or a recall notice, may apply to the Magistrates Court for a review of the decision to impose the interim ban or issue the recall notice.

**PART 4**      **CODES OF PRACTICE**

**Clause 37**      **Codes of practice**

Provides that the Governor, on recommendation of the Minister, may make regulations prescribing a code of practice.

**Clause 38      Amendments to codes of practice**

Outlines the process to be followed in amending codes of practice.

**Clause 39      Contravention of prescribed code of practice**

Provides that 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.

**Clause 40      Injunctions for breach of code of practice**

Provides that the Supreme Court may grant an injunction if a person has engaged in certain conduct.

**PART 5      MISCELLANEOUS**

**Clause 41      Information sharing**

Supports the administration of national consumer laws and deals with the circumstances in which information may be shared.

Clause 41(1) provides that 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 and the relevant agency.

**Clause 42      Application for assistance in making civil claims**

Allows a consumer to make an application to the Director for assistance in regard to legal proceedings.

**Clause 43      Grants of assistance**

Details the circumstances in which the Director may grant an application for assistance under clause 42.

**Clause 44      Costs and expenses in assisted proceedings**

Clause 44(1) provides that if a person is granted assistance under clause 43, a court that makes an order for costs in favour of the assisted person must make the same order as the court would have made in favour of the assisted person if the person had not be assisted.

Clause 44(2) provides that if a person is granted assistance under clause 43, a court that makes an order for costs against the assisted person must make the same order as the court would have made in favour of the assisted person if the person had not be assisted.

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

Clause 45 clarifies the interaction between the *Sale of Goods Act 1986* and the Australian Consumer Law.

Provides that section 17, 18, 19(a) and 9b) of the *Sale of Goods Act 1896* do not apply to contracts of supply to which Division I of Part 3-2 of the Australian Consumer Law (Tasmania) applies.

This clause also provides that section 5(2) of the *Sale of Goods Act 1896* is taken to apply in relation to Division I of Part 3-2 of the Australian Consumer Law (Tasmania).

The clause provides that, except as otherwise expressly provided by Division I of Part 3-2 of the Australian

Consumer Law (Tasmania), nothing in that Division affects the application to a contract of supply of goods or services of the Sale of Goods Act 1896 or any other Act or law.

**Clause 46      Protection for Director, & c.**

Clause 46 provides that the Director, or any other person who is an authorized officer within the meaning of the *Consumer Affairs Act 1993*, is not liable for any thing done in good faith in the administration of this Act.

**Clause 47      Regulations**

Provides that the Governor may make regulations for the purposes of this Act.

**Clause 48      Administration of Act**

Provides that until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*, the administration of this Act is assigned to the Minister for Corrections and Consumer Affairs and the department responsible to the Minister in relation to administration of the Act is the Department of Justice.

**PART 6      SAVING OF RETAIL TENANCIES CODE OF PRACTICE**

**Clause 49      Saving of retail tenancies code of practice**

Provides for transitional arrangements for the *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998*.

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

## **PRACTICE**

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

Provides for transitional arrangements for the *Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996*.

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

### **Clause 51 Saving and transitionals – Fair Trading Act 1990**

Clause 51(1) provides that Part 2-3 of the Australian Consumer Law (Tasmania) applies to any new contract entered into on or after 1 January 2011.

Clause 51(2) provides that, 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.

Clause 51(3) deals with the renewal and variation of contracts which were entered into before 1 January 2011.

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