

No. of 2019

**VIRGIN ISLANDS**  
**CONSUMER PROTECTION ACT, 2019**  
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## **SCHEDULE**

No. of 2019

Consumer Protection Act, 2019

Virgin  
Islands

I Assent

Governor,

, 2019

**VIRGIN ISLANDS**

No. of 2019

**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; and for connected matters.

[Gazetted , 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I  
PRELIMINARY**

1. (1) This Act may be cited as the Consumer Protection Act, 2019.

Short title and  
commencement.

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

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

Interpretation.

“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 116 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;

No. of 2019 “Commission” means the Virgin Islands Trade Commission established under the Virgin Islands Trade Commission Act;

“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 7;

“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 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 and Fair Trade Protection appointed under Virgin Islands Trade Commission Act;

“document” includes electronic records;

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

“Minister” means the Minister responsible 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;

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“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;

“Tribunal” means the Trade Tribunal established under the Virgin Islands Trade Commission Act.

3. Subject to section 80, this Act binds the Crown.

Act binds the Crown.

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

Purposes of the Act.

(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.

Application.

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.

(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

Responsibilities, functions and powers of the Commission.

6. (1) The Virgin Islands Trade Commission is responsible for the administration of this Act.

(2) The functions of the Commission are to

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

(3) The Commission 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 Commission in relation to the administration of this Act may be performed by the Director or an officer of the Commission authorised by the Director, on behalf of the Commission.

### **PART III COMPLAINTS AND INVESTIGATIONS**

Complaints.

7. (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 Commission.

(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 Commission 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.

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

Grounds for  
complaint.

- (a) an unfair trade practice, unfair transaction or an unfair term has been adopted by a supplier under Part VI and Part VII, 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).

Investigation of complaints.

9. (1) Upon receipt of a complaint under section 7, the Commission shall investigate the complaint unless it is satisfied that

- (a) the subject matter of the complaint is trivial;
- (b) the complaint is frivolous, vexatious or not made in good faith;
- (c) the complaint was filed more than two years from the date on which the cause of action arose 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 Commission accepts a complaint which was filed more than two years from the date on which the cause of action arose, the Commission shall, in writing, admit the complaint for investigation and state the reasons for condoning the delay.

(3) Where the Commission decides to investigate a complaint, it 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 Commission a written response to the complaint.

(4) The response referred to in subsection (3)(b) shall

- (a) set out the opposite party's version of events; and
- (b) be submitted no later than thirty days after receipt of the documents referred to in subsection (3) or such extended period, not exceeding fifteen days, as may be granted by the Commission.

10. (1) The Commission 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.

Power to investigate not precluded.

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

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

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

Commission to examine complaint and response.

(2) If the opposite party fails to make a written response in accordance with section 9 (3), the Commission shall complete the investigation based on the complaint and any other evidence or supporting materials or documents submitted by the complainant.

12. (1) The Commission may, in its discretion, determine whether to conduct or continue an investigation under this Act.

Power to conduct or continue investigation.

(2) Where the Commission decides not to conduct or continue an investigation it shall, in writing, inform the complainant of that decision and the reasons for the refusal.

13. (1) The Commission may, in relation to any investigation being conducted by it, summon a person to

Power to summon persons to give evidence.

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

Schedule

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

Obligations of persons summoned.

**14. (1)** A person summoned to attend and give evidence or to produce a document before the Commission is entitled

- (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 prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from the consolidated fund.

(2) The Commission may, if it thinks fit, disallow the whole or any part of any expenses referred to in subsection (1)(b) and shall give written reasons for the decision.

(3) A person who, without sufficient cause,

- (a) fails or refuses to obey a summons issued under section 13; or
- (b) being a witness, refuses to answer any question put to him or her by the Commission,

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

Service of findings of investigation.

**15.** On the conclusion of an investigation under this Part, where the Commission determines that there may be a breach of a provision of this Act, the Commission 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.

**16.** Where a supplier fails to satisfy or respond to a notice made pursuant to section 15 (b), the Commission shall institute proceedings before the Tribunal or in the Court.

Review of  
decisions.

**17.** (1) The Commission may in accordance with rules made under subsection (2) review any decision made by it under this Act and after the review may affirm, vary or set aside the decision.

(2) The Commission may make rules respecting the review of any decision made by it under this Act, including

(a) the criteria to be used in determining whether to review a decision;

(b) the information to be provided by the person requesting a review; and

(d) the time period within which a person may request a review by the Commission.

Appeals.

**18.** A person aggrieved by a decision of the Commission made under this Act may file an appeal to the Tribunal within thirty days from the date of receipt of the decision.

#### **PART IV CONSUMER RIGHTS**

**19.** 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 6 (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.

**20. (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.

Right to select suppliers and products.

**21. (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

- (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.

22. (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.

23. (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.

24. (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.

25. (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 20.

(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 20.

(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.



26. (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.

27. (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. Right to rescind or cancel agreement.

(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 23;

(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.

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

Right to information in English language.

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

Right to information in plain language.

- (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 Commission 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.

**30. (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 V DUTIES OF SUPPLIERS

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

32. (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 Duty to display price of goods or services.

- (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 33 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 22, 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 five thousand dollars, and in default of payment of the fine, to imprisonment for a term not exceeding two years.

33. (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 five thousand dollars or imprisonment for a term not exceeding one year 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.

34. (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

Identification of supplier.

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

Product labelling  
and trade  
descriptions.

**35. (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, on the advice of the Commission, 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 five thousand 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).

Disclosure of environmental facts affecting goods.

**36. (1)** A person who packages or imports any prescribed goods, for supply to consumers shall, in addition to the requirements of section 35, display on or in association with that packaging or the goods, a notice in the prescribed manner and form that discloses

- (a) the presence, nature and extent of
  - (i) any genetically modified ingredients or components of the goods; or
  - (ii) any 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 five thousand dollars and in default of payment of the fine, to imprisonment for a term not exceeding two years.

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

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

(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 five thousand dollars or to imprisonment for a term not exceeding two years or to both

Duty to supply  
sales records.

**38. (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:

(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 five thousand dollars or to imprisonment for a term not exceeding two 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.

**39. (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. Measurement of 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.

(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

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- (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 five thousand 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.

40. (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 five thousand dollars.

41. (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.

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42. (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

Supply of  
damaged goods  
to consumer.

- (b) the supplier has provided complementary goods or services which fail to function well or cause damage or other loss.

43. (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.

Return of  
defective goods.

44. (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,

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 five thousand dollars.

45. (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)

Return of  
materially  
different goods.

- (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.

**46. (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.

Suppliers offering repair services.

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

- (a) the name, address and telephone number of the consumer;
- (b) 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 five thousand dollars.

**48. (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.

**49. (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

Conditions of  
demanding and  
accepting  
payment.

(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 five thousand dollars or to imprisonment for a term not exceeding two years, or to both.

General standards for the promotion of goods or services.

**50. (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 52;
- (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 five thousand dollars, and in default of payment of the fine, to imprisonment for a term not exceeding two years.

## PART VI UNFAIR TRADE PRACTICES

51. (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

False, misleading or deceptive representations.

- (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 five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

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

- (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 five thousand dollars or to imprisonment for a term not exceeding two years.

Unfair trade  
practice.

53. (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 five thousand dollars or to imprisonment for a term not exceeding two years.

54. (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

Unreasonable transactions.

- (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.

55. (1) A supplier shall not

Unfair transactions.

- (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.

Unconscionable  
conduct.

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

- (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.

**57. (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. Renegotiation of terms.

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

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

- (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.

**59.** 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.

**60. (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 five thousand dollars or imprisonment for a term not exceeding two years or, to both.

Pyramid scheme.

**61. (1)** A person shall not promote, operate or participate in a pyramid selling 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 Commission 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 five thousand dollars or imprisonment for a term not exceeding two years, or to both.

Rescission.

**62. (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.

(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.

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

Defences for  
contravention of  
this Part.

- (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.

Court may order payment of damages or costs.

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

- (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 VII UNFAIR TERMS**

Unfair terms.

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

(2) In determining whether a term is unfair 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.

Written terms to be plain and intelligible.

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

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

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

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

Non-exclusion of this Part.

**67. (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

- (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.

Indemnity subject to reasonableness.

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

Loss or damage from defective goods or negligence of manufacturer.

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

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

70. 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.

Effect of obligation.

71. (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.

Satisfying reasonableness where agreement terminated.

(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.

72. (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.

Reasonableness.

(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 VIII PRODUCT LIABILITY

Interpretation of  
Part VIII.

**73. (1)** In this Part,

“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.

Liability for  
defects.

**74. (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

- (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.

**75. (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. Defect inferred.

(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.

Damage giving rise to liability.

**76. (1)** A supplier is not liable under section 75 for any damage to any property which, at the time of the damage, is not

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

77. 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. Prohibition on exclusions from liability.

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

- (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 75 (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.

Application to  
Crown.

Cap. 21

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

## **PART IX CONSUMER SAFETY**

Interpretation of  
"consumer  
safety"

**80.** In this Part, "consumer safety" includes

- (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.

General safety  
requirements.

**81. (1)** A person shall not

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

Information regarding goods with inherent risks.

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

- (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.